

CHAPTER 7

Wages, conditions, safety and entitlements of Working Holiday Maker (417 and 462) visa holders

Introduction

7.1 Evidence throughout this inquiry highlighted the major role of certain labour hire companies in the exploitation of Working Holiday Maker (WHM) (417 and 467) visa holders. This chapter focuses on the wages, conditions, safety and entitlements of WHM visa holders, including the role and prevalence of labour hire companies operating in both the horticulture and meat processing industries (matters relating to compliance and recommendations around the regulation of labour hire companies are covered in chapter 9).

7.2 The chapter begins by examining the additional factors that contribute to the vulnerability of WHM visa holders, followed by a brief look at proposed changes to the tax treatment of WHMs.

7.3 The role of labour hire companies in horticulture is then considered. The bulk of the chapter examines the activities of a web of labour hire companies supplying labour to Baiada's chicken processing sites in New South Wales (NSW). This includes evidence of gross exploitation from temporary visa workers themselves as well as insights from the report of the Fair Work Ombudsman (FWO) into these matters.

Working Holiday Maker visa program

7.4 Evidence from a wide range of submitters and witnesses pointed to the pervasive exploitation of visa holders other than 457 visa workers. The Migration Institute of Australia (Migration Institute) noted WHM and student visa holders were 'consistently reported to suffer widespread exploitation in the Australian workforce'.¹

7.5 The Migration Institute pointed to demographic differences as a potential factor in the greater exploitation of WHM and international students compared to 457 visa workers. The Migration Institute observed that WHMs and students are 'generally young, low skilled and with lower than average English language skills' and typically work in low skill, casual occupations. Furthermore, WHMs and students do not enjoy the same regulatory protections as 457 visa workers:

They are not protected by the Temporary Skilled Migration Income Threshold (TSMIT) of a minimum \$53 900pa as are 457 visa holders and they usually undertake work that is low skilled, casual or part time and in occupations or locations where there may be little choice of employment. Student and Working Holiday Visa holders are often very reliant on any income they can get for basic living costs. This makes them more willing to

1 Migration Institute of Australia, *Submission 40*, p. 11.

accept jobs that do not meet legislative levels for Australian income, terms and conditions and safety standards.²

7.6 The Migration Institute was critical of the requirements attached to the second WHM visa:

The linking of eligibility for a second WHV to three months employment in regional areas in industries such as horticultural and hospitality, has exacerbated the problem of employer exploitation amongst this group.³

7.7 In a similar vein, the Australian Council of Trade Unions (ACTU) recommended that the option of gaining a second year WHM visa should be abandoned because the requirements for obtaining a second year WHM visa risk creating the conditions for systemic abuse of backpackers.⁴

7.8 By contrast, the Australian Chamber of Commerce and Industry (ACCI) stressed the economic benefits to Australia of the WHM scheme, in particular the money spent by WHMs on accommodation, transport and education.

7.9 ACCI also remarked on the reciprocal cultural exchange between Australia and partner countries, and quoted the following statement from the Joint Standing Committee on Migration inquiry into WHMs, arguing that the sentiments remain true today:

The working holiday program provides a range of cultural, social and economic benefits for participants and the broader community. Those benefits show that the program is of considerable value to Australia and should continue to be supported.

Young people from overseas benefit from a working holiday by experiencing the Australian lifestyle and interacting with Australian people in a way that is likely to leave them with a much better understanding and appreciation of Australia than would occur if they travelled here on visitor visas. This contributes to their personal development and can lead to longer term benefits for the Australian community.⁵

7.10 The committee notes, however, that in terms of the reciprocal arrangements between countries party to the WHM program, the FWO reported that 31 Australians

2 Migration Institute of Australia, *Submission 40*, p. 11; see also Dr Joanna Howe and Professor Alexander Reilly, *Submission 5*, p. 5; . Dr Joanna Howe, *Committee Hansard*, 14 July 2015, p. 58.

3 Migration Institute of Australia, *Submission 40*, p. 11.

4 Australian Council of Trade Unions, *Submission 48*, p. 44.

5 Joint Standing Committee on Migration, *Working Holiday Makers: More Than Tourists*, Parliament of the Commonwealth of Australia, August 1997, p. xv, in Australian Chamber of Commerce and Industry, *Submission 10*, p. 15.

were granted a Taiwanese WHM visa in 2013 compared to 15 704 Taiwanese granted an Australian WHM visa for the same period.⁶

Changes to the tax treatment of Working Holiday Makers

7.11 As noted in chapter 4, the committee received a body of evidence that WHM visa holders played an important role in the agricultural sector harvesting perishable goods in regional and remote Australia.

7.12 Given WHM visa holders filled a labour supply shortage during peak season, the National Farmers' Federation (NFF) expressed concern about the impact that proposed changes to the tax treatment of WHMs would have on the future supply of WHMs to Australian agriculture.

7.13 Mr Tony Maher, Deputy Chief Executive Officer of the NFF, noted that the 2015 Commonwealth budget announced changes to the tax treatment of WHMs. WHM visa holders are currently treated as residents for tax purposes if they stay in Australia for more than six months:

This gives them access to the tax-free threshold, the low-income tax offset and a lower tax rate of 19 per cent for income above the tax-free threshold up to \$37 000.⁷

7.14 But from 1 July 2016, WHMs will be treated as non-residents for tax purposes and will therefore be taxed at 32.5 per cent on all income. Mr Maher remarked that about 40 000 WHMs work on Australian farms each year earning, on average, about \$15 000 a year in Australia (below the current tax-free threshold of \$18 200).⁸

7.15 Mr Maher was concerned that Australian agriculture could face severe labour shortages if the changed tax treatment caused a reduction in the number of WHMs visiting Australia. The NFF therefore proposed a compromise that would see WHMs taxed at of 19 per cent of their income and not be eligible for the tax-free threshold, and that the changed tax treatment of WHMs be 'deferred for later consideration as part of the federal government's broader tax reform process'.⁹

7.16 Noting that WHMs 'inject more than \$3.5 billion into the Australian economy each year', Mr Maher stated that there was a lot of concern from the business community that WHMs continue to work in rural and remote Australia rather than just congregating in major holiday destinations.¹⁰ The NFF also confirmed that it was not

6 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 13.

7 Mr Tony Maher, Deputy Chief Executive Officer, National Farmers' Federation, *Committee Hansard*, 5 February 2016, p. 1.

8 Mr Tony Maher, Deputy Chief Executive Officer, National Farmers' Federation, *Committee Hansard*, 5 February 2016, p. 1.

9 Mr Tony Maher, Deputy Chief Executive Officer, National Farmers' Federation, *Committee Hansard*, 5 February 2016, p. 1.

10 Mr Tony Maher, Deputy Chief Executive Officer, National Farmers' Federation, *Committee Hansard*, 5 February 2016, pp 1 and 2.

consulted before the government announced the decision to change the tax treatment of WHMs.¹¹

7.17 The NFF provided a comparison of the comparable earnings of WHMs (in all industries) in Australia, New Zealand and Canada, including the hourly rates and the net hourly rates after tax (see Table 7.1 below). The table shows that under the government's proposed changes, the net hourly wage of WHMs in Australia would fall below the comparable rate in New Zealand. But under the NFF's proposal, the net hourly wage of WHMs in Australia would remain above the comparable rate in New Zealand.

Table 7.1: Comparable earnings of Working Holiday Makers

Country	Australia (32.5%)	Australia (19%)	Canada	New Zealand
Min. hourly wage	\$17.29	\$17.29	\$10.73	\$14.75
Tax rate	32.5%	19%	15%	10.5%
Net hourly wage	\$11.67	\$14.03	\$9.13	\$13.20

Source: National Farmers' Federation, answer to question on notice, 5 February 2016 (received 15 February 2016).

Exploitation of Working Holiday Maker visa workers by labour hire companies in the horticulture industry

7.18 Evidence to the inquiry illustrated the different approaches growers in the horticulture industry used to recruit workers, and the advantages and disadvantages of the various methods.

7.19 Mr David Fairweather stated that Tastensee Farms did not use labour hire companies, and instead did all their hiring directly via a web page. Mrs Laura Wells from Tastensee Farms said she used a Facebook page with about 2500 followers to recruit workers.¹²

7.20 Ms Donna Mogg from Growcom, the peak industry body for fruit and vegetable growers in Queensland, pointed out that difficulties arise when workers do not show up for work. Many growers were therefore tempted to use a labour hire company because the labour hire company takes responsibility for ensuring that workers arrive for their shifts.¹³

11 National Farmers' Federation, answer to question on notice, 5 February 2016 (received 15 February 2016).

12 Mr David Fairweather, Tastensee Farms, *Committee Hansard*, 12 June 2015, pp 22–23; Mrs Laura Wells, Tastensee Farms, *Committee Hansard*, 12 June 2015, pp 22–23.

13 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, p. 23.

7.21 However, Ms Mogg disputed the assertion that the exploitation of temporary visa workers was as widespread as the media seemed to suggest:

I say that because we deliver a full and comprehensive industrial relations advisory service through Growcom, and I would average around 300 calls from growers every year. These are growers calling me to find out what they need to do to be in compliance, what their obligations to employees are and how they better engage with skilling, with local communities, with local employment coordinators. This is how we know that not every grower in this state, let alone in this country, behaves in this way.¹⁴

7.22 Nevertheless, Ms Mogg acknowledged that reports of underpayment, exploitation and abuse of visa workers in horticulture 'are a matter of great concern' to the industry and to many growers. She also confirmed 'there are a lot' of 'fly-by-night phoenix operators' and that they are very difficult to track down:¹⁵

And we do believe that it is the labour hire contractors, particularly recent entrants to the industry—the dodgy ones from overseas, I guess—who are causing the significant majority of these problems.¹⁶

7.23 Mr Guy Gaeta, a NSW orchardist, asserted that problems of non-payment and mistreatment of 417 visa workers in the agriculture sector were associated exclusively with labour hire companies:

...I represent the New South Wales Cherry Growers Association—I am in the committee—and I am a delegate to NSW Farmers, and the only problem I have ever, ever seen with backpackers, with people not getting paid or being mistreated, is with people that work for contractors.¹⁷

7.24 Mr George Robertson, an organiser with the National Union of Workers (NUW) stated that the conditions around the granting of a second year WHM visa render 417 visa workers vulnerable to exploitation, particularly by labour hire contractors:

But there are a variety of potential problems that can arise from relying on a particular contractor in order to apply for a second visa. We have heard stories from members about contractors saying you have to work for free for X amount of time in order to get a second visa, or you have to provide sexual favours in order to receive a second visa. That puts workers in a vulnerable position where their continued presence in the country and their

14 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, p. 19.

15 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, p. 23.

16 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, p. 19.

17 Mr Guy Gaeta, *Committee Hansard*, 26 June 2015, p. 36.

ability to work and receive a second visa is contingent on whether they agree with those terms that are provided by the contractors.¹⁸

7.25 Ms Sherry Huang, a former horticulture worker from Taiwan and now an organiser with the NUW, explained the mode of operation of a labour hire company. Typically, the owner of a labour hire company in Australia would set up a labour hire company in Taiwan and then source all the workers from Taiwan. The labour hire agency would charge 417 visa holders a fee of several thousand dollars to arrange flights, accommodation, transport, and a job.¹⁹

7.26 Ms Lin Pei (Winnie) Yao heard about a job vacancy at Covino Farms through a friend and was employed to work there by a labour hire company. She worked as a casual six days a week for 10 or 11 hours a day at \$14 an hour, with a break and lunch.²⁰ Mr Robertson noted the Horticulture Award contains no penalty rates for casual workers and imposes no restrictions on the hours worked by casuals. However, Ms Yao was still paid substantially less than the award rate of \$21.08 an hour.²¹

7.27 Ms Yao never met or spoke to the head contractor from the labour hire company and never knew the company name. The only contact was by text.²² Furthermore, Ms Yao did not receive a payslip, just an envelope with cash inside. The hours and amount were written on the back of the envelope. Ms Yao paid no tax. Mr Robertson clarified that 'workers must be provided with a pay slip that indicates how much they are receiving, how many hours they have worked, their superannuation and their taxation'. He also noted that in the poultry processing sector, such cases had been referred to the Australian Tax Office (ATO).²³

7.28 Ms Huang confirmed that, in her experience, many 417 visa workers had no idea about the taxation arrangements in Australia, or indeed that they were not paying tax:

I can only tell you my experience. I applied for the 417 back in 2010. I just applied online. The working conditions or working regulations are all on the Immigration website, which is all English. The backpackers especially have no idea whatsoever. In terms of talking about a tax issue, they probably come over here and just want to travel a little bit, earn some extra

18 Mr George Robertson, union organiser, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 17.

19 Ms Sherry Huang, previous worker and union organiser, National Union of Workers, *Committee Hansard*, 18 May 2015, pp 16–17.

20 Ms Lin Pei (Winnie) Yao, worker, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 18.

21 Mr George Robertson, union organiser, National Union of Workers, *Committee Hansard*, 18 May 2015, pp 18 and 27.

22 Ms Lin Pei (Winnie) Yao, worker, National Union of Workers, *Committee Hansard*, 18 May 2015, pp 19–20.

23 Ms Lin Pei (Winnie) Yao, worker, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 18; Mr George Robertson, union organiser, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 18.

money. So they have no idea. Her friend told her, 'Hey, you can find a job this way,' so she just dialled the number and texted the labour-hire company saying, 'Hey, I need a job.' Even a worker said to me: 'It is the end of the financial year. How am I going to do the tax?' So they have no idea they are not paying tax either.²⁴

7.29 The head contractor from the labour hire company organised the accommodation, typically a two or three bedroom house, with two or three backpackers sleeping in each room. Ms Yao stated that all the backpackers in her house paid \$105 a week in rent each.²⁵

7.30 Empirical fieldwork research conducted in 2013 and 2014 across Victoria (Bendigo, Maffra, and Mildura), Tasmania and the Northern Territory by Dr Elsa Underhill and Professor Malcolm Rimmer, from Deakin University and La Trobe University respectively, found that WHM visa workers experience significant vulnerability in the harvesting sector in Australia and below award average hourly rates of pay. The level of vulnerability was intensified when WHM visa workers were employed by a labour hire company rather than employed directly by the grower.²⁶

7.31 Dr Underhill and Professor Rimmer found WHM visa workers experienced 'very low rates of pay when paid piece rates' and that this situation was 'exacerbated by the Horticultural Award clause on piece rates which refers to 'the average competent worker'. As a consequence of this clause, it was found that growers and contractors are able to pay piece rates that do not allow the average competent worker to earn an amount which approximates that set out in the award. Dr Underhill and Professor Rimmer therefore recommended:

Replicating the British system of providing a specified floor, equal to the minimum hourly rate of pay, would overcome the intense exploitation experienced by piece workers in horticulture.²⁷

7.32 Furthermore, the pressures imposed on WHM visa workers by the piece rate system led to 'a level of work intensification' that enhanced the risk of workplace injury and led to a 'low level but constant exposure to injury'. At the same time, the research found visa workers did 'not receive adequate information and training about the health and safety risks which they are likely to encounter at work'.²⁸

The role of industry associations in combatting rogue labour hire companies

7.33 Ms Mogg suggested that dealing with a growing number of rogue labour hire contractors required collaboration between industry and the FWO in order to ensure

24 Ms Sherry Huang, previous worker and union organiser, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 28.

25 Ms Lin Pei (Winnie) Yao, worker, National Union of Workers, *Committee Hansard*, 18 May 2015, p. 19.

26 Dr Elsa Underhill, *Submission 42*, p. 2.

27 Dr Elsa Underhill, *Submission 42*, p. 2.

28 Dr Elsa Underhill, *Submission 42*, p. 2.

that the regulation of the contract labour hire industry is adequately enforced (this is covered in greater depth in chapter 9). However, Ms Mogg also recognised the need for industry to work with employers in terms of advising employers about their compliance obligations, and advising employers 'not to deal with dodgy operators'.²⁹

7.34 In this regard, Growcom had provided advice and support to employers in the Queensland horticulture sector over a number of years. This included workplace relations advice, specific resources to assist employers to meet their compliance obligations, regular training and seminars, and information on workforce development and planning.³⁰

7.35 The South Australian Wine Industry Association played a similar role in running education and training programs for employers so that they understand their obligations in terms of workplace and migration law.³¹

Exploitation of Working Holiday Maker visa workers by labour hire companies in the meat processing industry

7.36 Evidence to the inquiry from the FWO, the Australasian Meat Industry Employees' Union (AMIEU), and several 417 visa workers themselves, detailed the extensive exploitation of 417 visa workers at meat processing plants in Queensland, NSW and South Australia (SA). In this regard, the committee notes the *Four Corners* program in May 2015 revealed the exploitation of 417 visa workers at a Baiada poultry processing plant in SA.³²

7.37 The evidence outlined a litany of activities, many of them illegal, including below-award wages, non-payment of entitlements under the law, coercion and threats against union members, substandard and illegal living conditions in accommodation provided by labour hire contractors, health and safety conditions, as well as the labour hire business model.

7.38 At the public hearing in Brisbane, Mr Warren Earle, a Branch Organiser for the AMIEU (Queensland), described what had occurred at the Primo Smallgoods (Hans Continental Smallgoods) site at Wacol near Ipswich. The site opened in late 2012 and is the largest smallgoods plant in Australia.³³

7.39 Primo Smallgoods dealt with a labour hire firm called B&E Poultry Holdings that was itself a parent company to subsidiary companies. Mr Earle stated that at the

29 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, p. 19.

30 Ms Donna Mogg, Commercial Services Manager, Growcom, *Committee Hansard*, 12 June 2015, pp 19–20.

31 Mr Brian Smedley, Chief Executive, South Australian Wine Industry Association, *Committee Hansard*, 14 July 2015, pp 3–4.

32 Caro Meldrum-Hanna and Ali Russell, 'Slaving Away: The dirty secrets behind Australia's fresh food', *Four Corners*, Australian Broadcasting Corporation, broadcast 4 May 2015.

33 Mr Warren Earle, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, pp 14–15.

time, the Korean workers on 417 visas got pay slips from two different companies, Best Link Management and Bayer Management. The pay slips showed the Korean visa workers were getting between \$1 and \$3.50 less than the award rate and 'were not getting paid any overtime, shift penalties or weekend penalties'.³⁴

7.40 During this time, approximately 140 Korean 417 visa workers joined the AMIEU. The AMIEU followed up on the underpayments and secured a six figure sum in back pay plus superannuation for the Korean workers.³⁵

7.41 However, the labour hire company was monitoring the activities of the Korean visa workers and a representative also sent text messages to the Korean workers threatening them that they would lose their jobs if they spoke to the union. Over the next 6 to 12 months, the Korean workers were replaced with Taiwanese workers on 417 visas. The AMIEU has been informed that the Taiwanese visa workers have also been threatened that they will lose their jobs if they approach the union.³⁶

7.42 It also appears that the subsidiary labour hire firms are circumventing the rules that prevent a 417 visa worker from working for more than six months for any one employer by simply transferring employees from the books of one labour hire company to the other one.³⁷

International labour hire networks

7.43 At the public hearing in Sydney, the committee heard from Mr Grant Courtney, Branch Secretary of the AMIEU (Newcastle and Northern NSW Branch), Mr Hoi Ian Tam, International Liaison Officer with the AMIEU, and three 417 visa workers, Miss Chiung-Yun Chang, Miss Chi Ying Kwan, and Mr Chun Yat Wong.

7.44 Mr Wong recounted that in Hong Kong, he and Miss Kwan had seen an advertisement on Facebook for work at Baiada in Australia. Mr Wong and Ms Kwan were subsequently contracted by the labour hire company, NTD Poultry Pty Ltd (NTD Poultry), to work at the Baiada chicken processing plant in Beresfield, northwest of Newcastle. NTD Poultry is part of the multi-layered web of labour

34 Mr Warren Earle, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, p. 15.

35 Mr Warren Earle, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, p. 15.

36 Mr Warren Earle, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, p. 15.

37 Mr Warren Earle, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, p. 15.

contracting firms that supplied workers to the Baiada processing plants in NSW (see Figure 7.1 later in this chapter).³⁸

7.45 The AMIEU also tabled evidence documenting the role played by international labour hire agencies in the exploitation of 417 visa workers. For example, agencies in Taiwan such as Interisland and OZGOGO will help labour hire companies in Australia such as AWX Pty Ltd (AWX) and Scottwell International to recruit workers.³⁹

7.46 Mr Tam stated that agencies in Taiwan charges workers in Taiwan up to \$3000 to organise a job in the meatworks in Australia. However, the workers often report they have to wait a long time to get a job in Australia and still have to pay rent to the Australian labour hire company:

Basically, lots of agencies from Taiwan help the labour hire company in Australia—such as AWX and Scottwell International in Australia—to recruit workers. This agency from Taiwan requests workers in Taiwan to pay up to \$3000 Australian in order to get a job in the Australian meat industry. They arrange all the things for the workers like accommodation, induction and other things. But most of the workers say they cannot get a job and they need to wait a long time, probably two to three months, until they get a chance to be inducted. In this time, the workers also need to pay rent to the labour hire agency. So before they start work, they have already paid A\$6000 for this purpose.⁴⁰

7.47 Miss Chang confirmed that even after paying \$3000 in Taiwan and then having to wait before they can begin induction training, many of her friends also had to pay an agent called Tim another \$1000 to \$2000 to work in a meat factory. Mr Tam noted that Tim works for AWX, so the union believed that AWX also collects that money.⁴¹

7.48 The AMIEU provided further documents to support the evidence given by the witnesses. Tabled document 12 is a Chinese contract issued in Taiwan by a Taiwanese labour hire company with links to Scottwell International. It offers two job vacancies,

38 Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, p. 12; Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 13; see also Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015.

39 Australasian Meat Industry Employees' Union, Tabled Document 3, Sydney, 26 June 2015, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Additional_Documents; see also *Committee Hansard*, 26 June 2015, p. 20.

40 Mr Hoi Ian Tam, International Liaison Officer, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW), *Committee Hansard*, 26 June 2015, p. 20.

41 Miss Chiung-Yun Chang, *Committee Hansard*, 26 June 2015, p. 20; Mr Hoi Ian Tam, International Liaison Officer, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW), *Committee Hansard*, 26 June 2015, p. 20.

one at an Adelaide beef factory and the other at a Sydney beef factory. The fees are in New Taiwanese Dollars (NTD). The contract fee and overseas fee total NTD \$65 000, or just over AUD\$2800. In addition, there is a jobs bond of AUD\$600. The pay rates are \$18.10 to \$21.70, with overtime paid at the same rates. The period of work is one year, and accommodation is \$80 to \$100 a week with a two week bond.⁴²

7.49 Tabled document 9 included three Chinese language documents. The first offered a seminar about working holidays by Australian labour hire company AWX and Taiwanese labour hire company Interisland. The second offered a package of meatworks jobs arranged Interisland and AWX for 417 visa workers. The package required workers to pay NTD \$15 000 and AUD\$150 a week for rent, AUD\$30 for food and AUD\$150 for transportation. The third, by Taiwanese company OZGOGO with links to Australian labour hire company Scottwell International, advertised jobs for \$18 an hour in a meatworks in Murray Bridge, SA.⁴³

Illegal training wages

7.50 The committee heard evidence that once the visa workers had arrived in Australia, the labour hire company exploited them over the conduct and payment of training prior to their being granted employment in the meat industry.

7.51 As background, Mr Courtney described the long-standing training system in the meat industry:

We have a very good training system called the Meat Industry Training Advisory Council [MINTRAC], which the union and the employer association established about 25 years ago. Most of the people who work in our industry go through a certificate II in MINTRAC for that purpose, to give them the food safety competencies and also the standard occupational health and safety requirements in the position.⁴⁴

7.52 A certificate II must be designed and accredited to adhere to the specifications of the Australian Qualifications Framework and any government accreditation standards for vocational education and training. The purpose of a certificate II is to qualify individuals to undertake mainly routine work and as a pathway to further learning.⁴⁵

7.53 By contrast, Mr Courtney said that what the 417 visa workers were put through had 'nothing to do with training'.⁴⁶ Miss Chang described the four week

42 Australasian Meat Industry Employees' Union, Tabled Document 12, Sydney, 26 June 2015.

43 Australasian Meat Industry Employees' Union, Tabled Document 9, Sydney, 26 June 2015.

44 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 17.

45 Australian Qualifications Framework, AQF specification for the Certificate II, Second edition, January 2013, available at http://www.aqf.edu.au/wp-content/uploads/2013/05/4AQF_Certificate-II.pdf

46 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 17.

'training' organised by the labour hire company, AWX. A series of standard AWX forms tabled by the AMIEU laid out the evidence on the extent of the deception involved in the AWX training program.⁴⁷

7.54 One week prior to commencing training, Miss Chang had to pay a \$300 up-front fee to AWX. The AWX timesheet states that the worker will be paid for one day's work each week, which will be a total of 9.5 hours at \$21.08 an hour for a total of \$200.26 per week before tax. There is also a clause in the contract stating:

Your wage for the 4th week will be held and paid with your first week's salary after commencing employment on an AWX site.⁴⁸

7.55 But the training documents only wore the appearance of legality. In reality, the visa workers worked 50 to 60 hours a week at A. & A. Reid Enterprise Pty Ltd, trading as Reid Meats in Western Sydney, not the 9.5 hours on the timesheet. Miss Chang stated that the visa workers started their training shift at 6.00am and finished at 3.00pm, but often worked overtime until 4.00pm or 5.00pm. Likewise on the evening shift, they started at 3.00pm and would finish at 1.00am or 2.00am, a ten or eleven hour shift.⁴⁹

7.56 To add insult to injury, however, once the trainee commenced employment, the training wages were deducted from the employee's wages in eight weekly instalments of \$100:

After your training is complete and your employment commences with AWZ; \$100 per week will be deducted from your wages for a total of 8 weeks to cover the remaining training costs.⁵⁰

7.57 Mr Tam explained that, in effect, the visa workers did four weeks of unpaid work of up 60 hours per week:

For three to five weeks. 'You will still get paid \$200 a week as a living allowance.' It is for their rent, but the pay slip shows the wrong working hours. Basically, they worked for 50 or 60 hours per week, but the pay slip only shows nine hours per week and it makes it look legal. Also, after the workers, like Amy, get a job start at an abattoir, this \$200 per week will be deducted back by AWX, so actually it is no pay.⁵¹

Below award wage rates and long hours

7.58 The wages the 417 visa workers at the Baiada site in Beresfield were getting were well below award rates. Mr Wong stated that the hourly rate was 'close to \$12' an

47 Australasian Meat Industry Employees' Union, Tabled Document 2, Sydney, 26 June 2015; see also *Committee Hansard*, 26 June 2015, pp 16–19.

48 Australasian Meat Industry Employees' Union, Tabled Document 2, Sydney, 26 June 2015.

49 Miss Chiung-Yun Chang, *Committee Hansard*, 26 June 2015, p. 18.

50 Australasian Meat Industry Employees' Union, Tabled Document 2, Sydney, 26 June 2015.

51 Mr Hoi Ian Tam, International Liaison Officer, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW), *Committee Hansard*, 26 June 2015, p. 18.

hour, with a maximum of \$15 an hour over the past half-year. Mr Wong said the rate cannot be given with certainty because 'it is counted by kilogram; it is not by hours'.⁵²

7.59 Mr Tam said the workers have been unable to get the information that would allow them to work out their wage calculations:

Every time when the workers want to ask how much they can pay and how that amount is calculated, the contractor will explain that we will calculate as a team how much production by kilogram as a formula, and formulate that amount of money, which is like 0.32 per cent of the whole production, for which you can get this money. Actually they have no idea how much they produce and how to calculate the actual amount, and they cannot get the answer.⁵³

7.60 Miss Kwan also explained that although the same formula was used for male and female employees, the women were paid less than the men because they were doing different work:

Boys can get more than a woman. Maybe \$0.50 to \$1.

...

Because the girls are only packing or labouring and the boys will move the meat or do some harder work.⁵⁴

7.61 The 417 visa workers at the Baiada Beresfield site worked long hours. The minimum hours worked were 12 hours every day, with an overnight Saturday/Sunday shift of up to 18 hours:

The minimum was 12 hours every day.

...

The longest was on Saturday until Sunday. The hours were very long. One time we started at 5 pm on Saturday and worked until 11 am on Sunday. This is a long day.⁵⁵

7.62 Furthermore, visa workers did not always get designated breaks. Rather, meal breaks were dependent on the urgency of the orders to be completed, with a toilet break being the only respite:

It is urgent to finish. We will maybe work seven hours with no break and when you finish the job you will be off duty. But there was no break.

...

Because I am late shift staff we must be finished all orders before we can go home. If they were urgent there may be no break for us—only toilet breaks.⁵⁶

52 Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, p. 12.

53 Mr Hoi Ian Tam, International Liaison Officer, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW), *Committee Hansard*, 26 June 2015, p. 12.

54 Miss Chi Ying Kwan, *Committee Hansard*, 26 June 2015, p. 12.

55 Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, p. 13.

7.63 In addition to the long hours, the entire shift was spent in a processing plant where the average temperature was between three to five degrees celsius with short periods of minus 20 degrees celsius in the blast room.⁵⁷

7.64 Mr Wong raised concerns about workplace health and safety and the pressures placed on staff to return to work despite suffering work-related injuries:

I hurt my neck from the working hours, but they just give me two days off to rest. After that my boss needed me to go back to work, because they said there was not enough manpower. My section has only two guys to handle it. When I had a break no-one covered my job. So there was a request that I go back to work.⁵⁸

7.65 Ms Chang stated that her training contract had a rate of \$21 an hour. However, when she started her employment at the Teys abattoir in Wagga Wagga, AWX told her the salary started at \$16 to \$17 an hour:

They told me there was an apprenticeship in Wagga Wagga, but the salary starts at \$16 or \$17 per hour. In our training course contract we were already on \$21 per hour. If you do not want that and you cannot accept that, you are just waiting a long time. We do not have a choice. You just start at \$16 or \$17.⁵⁹

7.66 Mr Courtney clarified that \$16.86 per hour is the entry level rate under the award, but that 'no-one in the meat industry generally gets paid the entry-level rate if they have skills'.⁶⁰

'Voluntary overtime' agreements

7.67 The AMIEU also tabled a standard AWX form that sets out a 'voluntary overtime' agreement between AWX and an employee. Attached to the document was a wage slip for the first week of February 2015. The wage slip showed a worker at George Weston Foods Ltd (trading as Don KRC) in Castlemaine Victoria worked 38 hours at \$16.86 per hour and worked an additional 10.25 hours (over 38 hours) at \$16.86 per hour.⁶¹ Mr Courtney stated that paying \$16.86 per hour for overtime hours clearly breached the *Fair Work Act 2009* (FW Act) and the award.⁶²

56 Miss Chi Ying Kwan, *Committee Hansard*, 26 June 2015, p. 13.

57 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 13.

58 Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, p. 13.

59 Miss Chiung-Yun Chang, *Committee Hansard*, 26 June 2015, p. 19.

60 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 18.

61 Australasian Meat Industry Employees' Union, Tabled Document 3, Sydney, 26 June 2015; see also *Committee Hansard*, 26 June 2015, pp 17–18.

62 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 18.

7.68 Mr Courtney expressed disappointment that AWX 'were conducting themselves the way some of these other sham contracting agencies were', particularly with regard to the four weeks unpaid training at Reid Meats and the overtime hours paid at normal rates. Mr Courtney was unsure of AWX's motivation and whether it was 'a drive to the bottom' or a necessity to compete with sham contractors and illegal phoenix operators in the labour hire sphere.⁶³

7.69 Nevertheless, Mr Courtney noted that AWX was the largest supplier of labour to Teys Cargill Australia and that 'large companies like Teys are engaging labour indirectly for the purpose of undermining enterprise agreements. We can have the best agreement in the world, but it is not worth the paper it is written on'.⁶⁴

Fake timesheets and no payslips

7.70 Mr Wong also provided the committee with evidence of fake timesheets produced by the labour hire company NTD Poultry to satisfy new requirements from Baiada. Sheet 2 of Tabled Document 7 shows the signed Time and Attendance Record for the tray pack night shift on 3 June 2015. According to the Time and Attendance Record, the workers started at 5.00pm and finished at either 10.00pm or 4.00am, a maximum shift of 11 hours. However, NTD Poultry also kept an actual record of their workers hours in order to pay them. Sheet 1 of Tabled Document 7 is the true record. It shows worker 56 (Mr Wong) actually worked from 5.00pm until 8.00am, a shift of 15 hours:

The reason I needed to take this photo is it was very difficult—very important for the company—and now you can see. No. 1 is the true hours timetable. They just follow this one. How many hours they pay their staff. So this one is the real one.

...

This No. 2 document they started 8 June, because they got the order from Baiada that they needed to do this timetable for Baiada. The first time, I asked what the reason for the paperwork was, but they did not answer me. They needed our signature first, and then after you can see the start time and the finish time. The finish time is empty, and it is clean when we sign it. We sign it before. So that means that, after we sign it, they can write whatever they want. Also, after three days I asked, 'Why do we need to sign this before?' I thought maybe there was a law or something—we make mistakes; we get trouble. They answered me: 'This one is for Baiada. Also, does not write down for more than 12 hours for this paper.' So this is the fake hours.⁶⁵

63 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 18.

64 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 19.

65 Australasian Meat Industry Employees' Union, Tabled Document 7, Sydney, 26 June 2015; Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, p. 22.

7.71 Miss Kwan and Mr Wong also explained that they never got a payslip from NTD Poultry, just an envelope with cash inside. AMIEU Tabled Document 8 shows that on the back of the envelope were the employee number, the date, a kilogram figure, and a total pay amount.⁶⁶

Local workers unable to secure enough hours

7.72 There were marked differences not only in the pay that 417 visa workers received compared to local workers, but also in the hours that they worked. Mr Tam explained that many of the local workers were not able to get direct employment and instead had to get work through a labour hire company. However, the local workers paid at about \$27 an hour could only get 16 to 20 hours work a week when they actually wanted full-time work of 38 hours a week. By contrast, the 417 visa workers had to work 60 or even 80 or 90 hours a week when they only wanted 45 hours work a week. The 417 visa workers are paid only \$12 to \$15 an hour, whereas the local workers are paid correctly.⁶⁷

7.73 For example, page four of Tabled Document 6 shows three 417 visa workers at the Baiada plant employed by NTD Poultry worked 93 hours in the week at \$12.50 an hour when they were expecting 40 hours a week. By contrast, page one shows four local workers paid at \$26.46 an hour only getting 21 to 24 hours a week when they were expecting 38 to 40 hours a week.⁶⁸

7.74 The committee was keen to understand the role that supermarkets play in this system. Mr Courtney explained that the minimum wage in the meat processing sector was low compared to other industries, with the average rate for a labourer in the industry of between \$32 000 and \$37 000 a year. And yet, employers such as Baiada have repeatedly told the union that the supermarket chains dominate the market and can therefore determine the price and they are driving down prices even further.⁶⁹

Substandard accommodation provided by labour hire contractors

7.75 Mr Ian McLauchlan, a Branch Organiser for the AMIEU (Queensland), described the atrocious living conditions of 417 visa workers employed at Wallangarra Meats on the NSW-Queensland border. At the former Wallangarra hotel, now backpacker accommodation, the showers did not work and there were up to four 417 visa workers in small rooms. Elsewhere in Wallangarra, ten 417 visa workers paid the labour hire company \$120 each a week to live in an old home. They were not

66 Australasian Meat Industry Employees' Union, Tabled Document 8, Sydney, 26 June 2015; Mr Chun Yat Wong, *Committee Hansard*, 26 June 2015, pp 22–23; Miss Chi Ying Kwan, *Committee Hansard*, 26 June 2015, pp 22–23.

67 Mr Hoi Ian Tam, International Liaison Officer, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW), *Committee Hansard*, 26 June 2015, p. 22.

68 Australasian Meat Industry Employees' Union, Tabled Document 6, Sydney, 26 June 2015.

69 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 20.

allowed to use the heating in winter, the bedding was on the floor, there was no kitchen table, and they had to set up a rice cooker on boxes.⁷⁰

7.76 The 417 visa workers in NSW experienced similar conditions in their accommodation. Miss Chang also had to pay \$120 rent per week for a room she shared with two other people. Another flatmate had to sleep in the living room. The property owner dealt with AWX.⁷¹ The AMIEU tabled photographs of the crowded slum-like conditions of visa worker accommodation provided by labour hire contractors.⁷²

Picture 7.1: Accommodation for 417 visa holders employed in NSW meatworks



Source: Australasian Meat Industry Employees' Union, Tabled Document 4, Sydney, 26 June 2015.

7.77 Evidence gathered by the FWO during their investigation of Baiada supported the accounts provided by 417 workers and the unions regarding the benefits that labour hire contractors derived from exploiting temporary visa workers over their accommodation. The FWO calculated that the potential annual rental income accruing to a labour hire contractor from temporary visa worker accommodation is substantial. For example, one overcrowded Beresfield property was found to have sleeping

70 Mr Ian McLauchlan, Branch Organiser, Australasian Meat Industry Employees' Union (Queensland), *Committee Hansard*, 12 June 2015, p. 17.

71 Miss Chiung-Yun Chang, *Committee Hansard*, 26 June 2015, p. 19.

72 Australasian Meat Industry Employees' Union, Tabled Document 9 and tabled document 12, Sydney, 26 June 2015.

accommodation for 21 visa workers employed at the Beresfield plant. The FWO observed:

Based on 20 people paying \$100 per week, the potential rental income for this property is over \$100,000 per year.⁷³

7.78 The FWO also documented another case of overcrowded accommodation that benefitted the labour hire contractor at the Baiada Beresfield site:

Thirty workers engaged within the Pham Poultry supply chain were housed in a six bedroom house with two bathrooms, with the supervisor having one bedroom for her exclusive use. Each worker was required to pay \$100 per week, deducted from their wages.⁷⁴

7.79 In addition, the FWO found there were no written agreements in relation to the deductions for rent from the wages of the visa workers. The FWO noted that deductions for rent are not permitted under the FW Act if the requirement is deemed unreasonable:

Subsection 325(1) of the FW Act provides that 'an employer must not directly or indirectly require an employee to spend any part of an amount payable to the employee in relation to the performance of work if the requirement is unreasonable in the circumstances'.

Subsection 326(1) provides that a term of a contract permitting a deduction has no effect to the extent that the deduction is 'directly or indirectly for the benefit of the employer' and 'unreasonable in the circumstances'.⁷⁵

Visa manipulation

7.80 The AMIEU also tabled a document they said indicated the manipulation of the visa system by labour hire agencies both in overseas countries and within Australia. The alleged scam involved charging 417 visa workers a large fee to access a protection visa application in order for the worker to gain another 18 months' work in a meatworks in Australia, all the while knowing that the application would eventually fail:

...one of the main concerns that we have at the moment with the visa system is the manipulation of the visas across the refugee visa, the 417 visa and, in turn, the bridging visa and student visas. Clearly the ability for foreign visitors to apply for a protection visa when they arrive in Australia is a bit of a scam at the moment, the way I see it, because they are being

73 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 13.

74 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 20.

75 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 20.

advised by certain people within Australia and also within their home countries on how to access continuous work in Australia unlawfully. One of our main concerns with that is that holders of 417 visas in particular have to pay, and are being requested to pay, up to \$7000 to buy another right to stay in Australia, and that is about applying for a protection visa or refugee visa. Of course, once they apply for that visa, they are then given a window of up to 18 months for that visa to be accepted, knowing that that visa will not be accepted. We have had a range of members that have contacted us—in particular from the Baiada Beresfield site—that have highlighted what they have paid, and in some cases it is up to \$7000. In turn, if they want to make an application for a protection visa, it is a \$35 application. So they are clearly being exploited (1) by the advisers in Australia that are providing this information and (2) by certain labour agents in their home countries milking the system and making sure they take as much money off these workers as they can.⁷⁶

Approach taken by the AMIEU to resolving complaints

7.81 The committee questioned the AMIEU over the approach it has taken to resolving complaints from workers and about the relationship that it has with employers in the industry.⁷⁷

7.82 Mr Courtney was very clear that the AMIEU looked to work cooperatively with employers and certainly would not 'name and shame' an employer, firstly, because the union had a good agreement with the employer and, secondly, because damage to a company's reputation would be counter-productive in terms of the ongoing employment and welfare of the workers that they represent. Mr Courtney stated the issue was not the agreement that the union had negotiated with the company, but the inequitable treatment of the contracted labour at Baiada:

But, in the discussions that we have had with all of the employers, particularly Baiada, where we represent over 1000 people in New South Wales, we have been very up-front with them. We provided the company with the evidence that we have provided to the Fair Work Ombudsman. We have been very open with them. We have not tried to hoodwink them. We have not attacked them publicly. What we have done is expressed our concerns about the contracting companies they are engaging, especially when we have the best enterprise agreement rate and the highest union rates in Australia at the Beresfield site. We can have the highest rates, at \$26.50 entry level, but then you have cases like Skye's and Gypsy's, where they are getting paid \$11.50 and \$12.50 on the same site. It is the inequity issue that we have major concerns about.

...

76 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 11; Australasian Meat Industry Employees' Union, Tabled Document 13, Sydney, 26 June 2015.

77 Senator McKenzie, *Proof Committee Hansard*, 26 June 2015, pp 14–15.

We have been pressing that point with the employers directly, because the last thing we want to do is put fear into the community about buying the product. We have the welfare of our 600-strong workforce to think of, as well as the good name of the company, we believe—because we have a good agreement with the company. The problem that we have is those contracted service arrangements that we are not privy to, and the only time that we can express an opinion with the company is when we provide them with the information. They know what the issues are. We do not just pull them out of the sky. There are 700 at one particular site at the moment that I say are all being grossly underpaid and treated inequitably.⁷⁸

7.83 In terms of the scale of exploitation, since 2012 Mr Courtney noted that the AMIEU estimated 417 visa workers were owed \$1.26 million in underpayments. With one labour hire company, Pham Poultry, the AMIEU provided evidence to the FWO that 32 workers were owed \$434 000.⁷⁹

7.84 Since 2011, Mr Courtney indicated that the AMIEU notified the FWO about visa worker exploitation on most occasions (about 70 per cent). The AMIEU pursued the rest of the cases directly through the courts.⁸⁰

7.85 However, Mr Courtney also set out two major difficulties in pursuing court proceedings. First, visa workers only have a limited time in Australia, and second, companies liquidate as soon as they become aware of any proceedings against them:

Because of the time constraints in relation to pursuing legal proceedings and dealing with 417 backpackers—most of the claims are from backpackers—by the time the matters get before the courts the person is generally back in their home country. To provide evidence in chief is very difficult when you are 3,000 or 4,000 kilometres away. We have actually pursued our own matters as well. The process that we usually follow is: we notify the circuit court—that is, the application—and then we get in the queue. It is usually nine months before the matter is mediated. As soon as we notify the circuit court, the company in question makes an application to liquidate.⁸¹

7.86 The issue of companies being repeatedly liquidated, and then reappearing as different companies, has been documented by both the AMIEU and the FWO. While this phenomenon is covered in greater depth in subsequent sections, the question of how to regulate illegal phoenix activity is considered in chapter 9.

78 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 15.

79 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 14.

80 Australasian Meat Industry Employees' Union, answer to question on notice, 26 June 2015 (received 30 August 2015).

81 Mr Grant Courtney, Branch Secretary, Australasian Meat Industry Employees' Union (Newcastle and Northern NSW) *Committee Hansard*, 26 June 2015, p. 14.

The Fair Work Ombudsman investigation into the labour hire arrangements of the Baiada Group

7.87 Following media reports in October 2013 alleging visa worker exploitation at the Baiada Beresfield plant in NSW, the FWO began an investigation into the labour procurement arrangements of Baiada at its three NSW sites, Beresfield, Hanwood and Tamworth. The FWO inquiry began in November 2013 and reported in June 2015.⁸²

7.88 The FWO investigation and report are covered at length here because the findings corroborate the evidence the committee received from both the AMIEU and 417 visa workers.

7.89 The FWO report was scathing of the failure by Baiada to fully cooperate with the inquiry, noting that:

- the inquiry encountered a failure by Baiada to provide any significant or meaningful documentation as to the nature and terms of its contracting arrangements with businesses involved in sourcing its labour; and
- Baiada denied Fair Work Inspectors access to its three sites in NSW which would have provided the inquiry with an opportunity to observe work practices as well as talk to workers about work conditions, policies and procedures.⁸³

Baiada's contractor operating model

7.90 The FWO report noted that the Baiada Group (Baiada) and Ingham Enterprises dominated the poultry processing industry in Australia, supplying 70 per cent of the national poultry meat market. Both companies were vertically integrated entities that owned or controlled all aspects of the production chain. Baiada included both Baiada Poultry Pty Ltd and Bartter Enterprises Pty Ltd (the latter purchased in 2009).⁸⁴

7.91 The FWO found Baiada directly employed 2200 employees.⁸⁵ The rest of the processing labour force was procured through a network of contractors. The FWO found Baiada had agreements to source labour from six principal contractors: B & E Poultry Holdings Pty Ltd; Mushland Pty Ltd; JL Poultry Pty Ltd; VNJ Foods Pty Ltd;

82 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 5.

83 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 2.

84 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 7.

85 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 6.

Evergreenlee Pty Ltd; and Pham Poultry (AUS) Pty Ltd. Furthermore, 'there was no documentation establishing or governing' the arrangements between Baiada and the contractors and 'all of these agreements were verbal agreements'.⁸⁶

7.92 Beyond the principal contractors, the FWO uncovered a web of subcontractors that in turn engaged further subcontractors. The FWO found the following:

- the principals contracted to at least seven entities acting as second tier contractors;
- the second tier contractors, often contracted down a further two or three tiers;
- the principal and second tier contractors were not generally engaged in the direct sourcing of labour; and
- the operating model relied upon verbal agreements and operated on high levels of trust.⁸⁷

7.93 The web of contractors and subcontractors led the FWO to conclude that Baiada had adopted an operating model which sought 'to transfer costs and risk associated with the engagement of labour to an extensive supply chain of contractors responsible for sourcing and providing labour'.⁸⁸

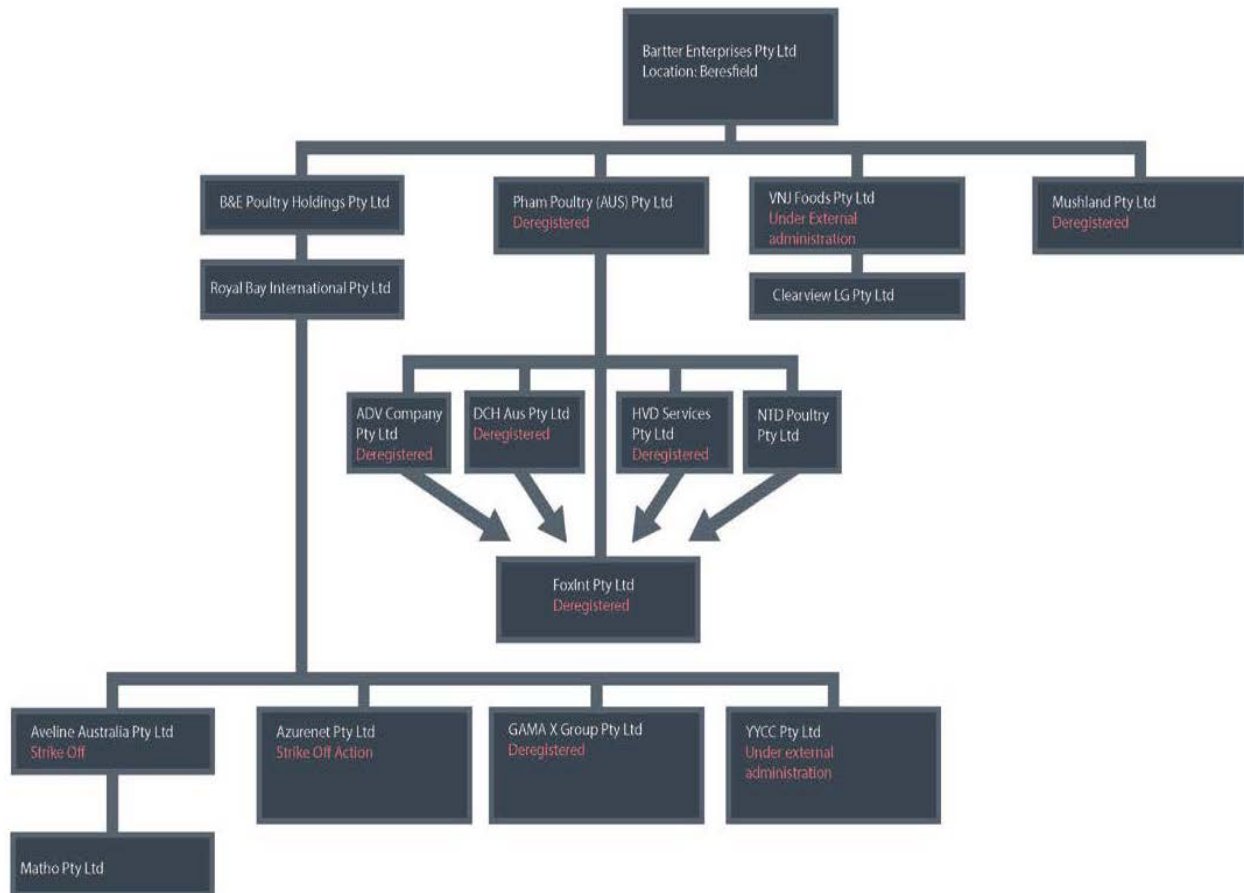
7.94 Figure 7.1 (below) shows the labour procurement arrangements identified by the FWO during its investigation of the Baiada Beresfield site.

86 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 10.

87 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 10.

88 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 2.

Figure 7.1: The labour procurement arrangements at the Baiada Beresfield site as at 31 October 2013.



Source: Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 19.

7.95 The FWO identified four principal contractors at the Beresfield site. One of these contractors, B&E Poultry Holdings (B & E), operated its own processing factories in Ormeau in Queensland and Blacktown in NSW. B & E had already been the subject of FWO action:

In the last three years 14 requests for assistance have been received from direct employees of B & E working at the Ormeau site resulting in recoveries of over \$100 000 in underpayments. On 1 August 2014 B & E entered into a three year Enforceable Undertaking with the FWO in respect of admitted contraventions by B & E in relation to its direct employees. The admitted contraventions concerned: underpayment of base hourly rates, underpayment of casual loadings, overtime rates, weekend penalties and shift penalties.⁸⁹

89 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 17.

7.96 There were substantial differences in the payments made from Baiada to the principal contractors and those paid by the contractors to the employees. For example, in October 2013, Baiada paid Mushland Pty Ltd (Mushland) \$255 415 and Mushland paid \$52 460 in wages to 18 employees during the same period. This gave Mushland a margin of \$202 954. Mushland was deregistered on 16 July 2014 with no back payment to the underpaid workers.⁹⁰

7.97 Similarly, Baiada paid Pham Poultry (AUS) Pty Ltd (Pham Poultry) \$1 078 155 for services provided at the Beresfield site during October 2013. Yet the FWO found substantial underpayment of the visa workers at the bottom of the supply chain:

The Pham Poultry arm of the labour supply chain involved four companies at a tier below the principal, these four companies subsequently contracted a further tier to a company called FoxInt Pty Ltd (FoxInt). The director, Quoc Hung Pham, was also a director of the principal Pham Poultry.

Although Pham Poultry directly engaged some workers who were supervisors at the site, all process workers were engaged by FoxInt. Workers were paid between \$11.50 and \$13.50 per hour for shifts of up to 19 hours and were not paid any leave entitlements or provided payslips. The wages paid to the process workers at the bottom of this supply chain did not meet the required minimum entitlements.⁹¹

7.98 Almost all of the subcontracting companies were deregistered or went into voluntary liquidation upon investigation by the FWO. Following Pham Poultry's deregistration, NTD Poultry Pty Ltd (NTD Poultry) replaced Pham Poultry as the principal contractor. However, the same labour supply chain (with the same uncontactable director) remained in place:

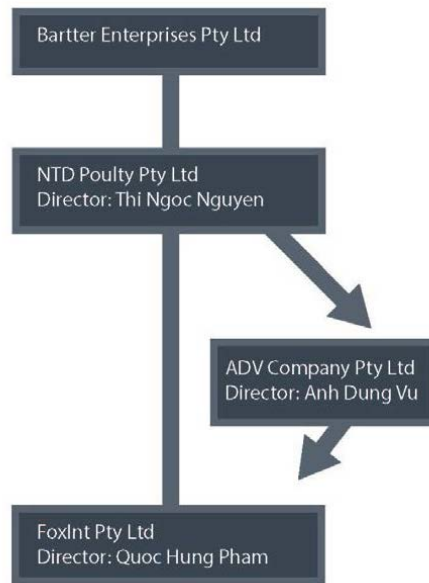
The labour supply chain operated by NTD Poultry contained the same entities as those in the Pham Poultry labour supply chain. That is, a three tier supply model remained in place and the final contractor of labour FoxInt Pty Ltd, remained, whose Director, Mr Quoc Hung Pham, had been the Director of Pham Poultry and who could not be located by Fair Work Inspectors.⁹²

90 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 18.

91 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, pp 18–19.

92 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 22.

Figure 7.1: The NTD Poultry supply chain as at January 2014



Source: Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 22.

7.99 Even after NTD Poultry replaced Pham Poultry, the FWO still received reports of the continuing underpayment of workers getting \$11.50 to \$12.50 an hour. In this regard, the FWO made the point that when a contractor or subcontractor ceased to operate, it was 'very quickly replaced with new 'price takers', resulting in suppliers of labour being forced into accepting market prices with no power to negotiate a higher price'.⁹³

7.100 Although the FWO endeavoured to investigate NTD Poultry further, it found that 'workers were reluctant to be witnesses in any ongoing investigation' and no documentary evidence had been recorded or maintained by the employing entity.⁹⁴ (The committee therefore notes the evidence in the preceding section from Miss Chi Ying Kwan and Mr Chun Yat Wong who were both employed by NTD Poultry).

7.101 The FWO was unable to locate the director of Pham Poultry and FoxInt Pty Ltd, Mr Quoc Hung Pham. The FWO noted that 'the second director of Pham Poultry,

93 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 27.

94 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 22.

Mr Binh Hai Nguyen, made voluntary payments of \$20 250 to 10 workers to partially rectify the underpayment of entitlements'.⁹⁵

7.102 In terms of the labour hire contractors supplying workers to Baiada, the FWO found:

- employees not being paid their lawful entitlements;
- a large amount of work performed 'off the books';
- contractors unwilling to engage with Fair Work inspectors;
- production of inadequate, inaccurate and/or fabricated records to inspectors;
- a number of entities throughout extensive supply chain networks did not engage any workers or have any direct involvement in work undertaken within Baiada's NSW processing plants or the sourcing or management of labour undertaking the work;
- a large number of the entities identified in the supply chains ceased trading; at times ceasing to exist the day before scheduled meetings with the FWO;
- invoices from contractors that were either no longer registered as businesses or claimed not to be involved in the industry; and
- workers too scared to talk.⁹⁶

7.103 Related to the above, the FWO uncovered a raft of other issues and possible contraventions including entities failing to update their details with ASIC, entities operating when deregistered, sham contracting, subcontracted entities operating as clothing manufacturers with no apparent connection to the poultry processing industry, a principal contractor that did not engage any employees directly, and another principal contractor that only directly engaged one employee to perform processing work.⁹⁷

7.104 The FWO also found that Baiada paid the 'principal contractors by the kilogram of poultry processed rather than by hours worked or the times processing work was performed'. That is, Baiada took no account of whether the work was undertaken on weekends, public holidays or during a night shift.⁹⁸

95 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 21.

96 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, pp 2–3.

97 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015.

98 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 10.

7.105 The FWO noted that from 1 July 2014, the Poultry Processing Award 2010 [MA000074] (Modern Award) applied in full across all three Baiada NSW sites for workers engaged through contractors undertaking poultry processing work. The FWO also noted the provisions related to piece rates:

Although contractors within the supply chain reported paying piece rates, the industrial instruments that covered the work undertaken did not provide for payment of piece rates. In circumstances where piece rates are provided for in a Modern Award or enterprise agreement, there remains a requirement to ensure workers receive wages that equate to award minimums.⁹⁹

7.106 In sum, the inquiry found:

- non-compliance with a range of Commonwealth workplace laws;
- very poor or no governance arrangements relating to the various labour supply chains; and
- exploitation of a labour pool that is comprised predominantly of overseas workers in Australia on 417 working holiday visas, involving:
 - significant underpayments;
 - extremely long hours of work;
 - high rents for overcrowded and unsafe worker accommodation;
 - discrimination; and
 - misclassification of employees as contractors.¹⁰⁰

7.107 The FWO recommended a series of actions for Baiada to take in order to address the issues arising from the investigation. These actions are covered in the next section.

Baiada's response and the Proactive Compliance Deed between the Fair Work Ombudsman and Baiada

7.108 Before examining the response from Baiada, the committee notes that the FWO report emphasised the point that Baiada was the chief beneficiary of the labour contractor model that it used to source labour and that Baiada had the power to improve its internal processes and rectify the non-compliance with workplace laws:

The Inquiry also identified that this operating model transfers the cost and risk associated with the engagement of labour from the Baiada Group to labour supply chains of contractors. When contractors are asked to demonstrate to the Baiada Group that they are complying with minimum

99 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 9.

100 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 3.

entitlements, they provide very minimal evidence, which appears to be accepted.

...

It is important to note the actual work and subsequent non-compliance with Commonwealth workplace laws is taking place on premises owned and operated by the Baiada Group. Baiada Group is therefore the chief beneficiary of work carried out by this labour force. The Baiada Group has the ability to take steps to ensure that workplace laws are complied with on their sites.¹⁰¹

7.109 In September 2015, Baiada advised the committee that it had instituted 'some of the most stringent contractor-oversight measures in the industry'. The following specific measures had been implemented since May 2015:

- Baiada terminated agreements with three contractors that could not demonstrate they had sufficient measures in place to ensure compliance with workplace laws. The termination affected 600 workers (50 per cent of the contract processing workforce). Those workers agreed to move to an agency employment provider and nearly all are still working at Baiada sites;
- Baiada prohibited labour subcontracting such that only entities in a contractual relationship with Baiada may engage workers at Baiada sites. Baiada's contractors were prohibited from further subcontracting unless they receive express written permission to do so from Baiada's Managing Director;
- Baiada introduced electronic time keeping for contractors' process workers at Baiada processing sites;
- Baiada required all remaining contractors to appoint Baiada to deposit wages directly into contractors' workers' bank accounts. Baiada also pays all workers' superannuation directly into their superannuation accounts and ensures all pay-as-you-earn (PAYE) tax is paid directly to the ATO;
- Baiada entered into new contracts requiring contractors to improve record keeping, increase transparency, provide detailed reporting, obtain certificates of compliance from external accounting professionals and allow third parties to conduct audits of their books;
- Baiada introduced multilingual (including Mandarin, Vietnamese and Korean) workplace policies, procedures and information, including complaints processes, at processing sites. In addition, Baiada established an onsite translation service and now provides newly inducted workers with the FWO work rights pamphlets when they commence work at a site;
- Baiada now confirms that contractors' process workers have the correct visa status before they are able to commence work at Baiada processing sites.

101 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 27.

Once the Visa Entitlement Verification Online (VEVO) checks are completed, the workers are issued with a Photographic ID Card showing their name, employer and work rights status. Baiada recently conducted additional checks of the contractors' workforce to confirm compliance with visa restrictions relating to hours of work or length of engagement and will conduct another such check before the end of 2015;

- Baiada now requires all contractors to provide Baiada with bi-annual third party compliance audits of their workers' payroll records; and
- Baiada took advice from specialist workplace consultants, and corporate law firm Minter Ellison.¹⁰²

7.110 Baiada now has seven contractors at its eight processing plants covered by ten separate agreements:

- Adelaide: J & T Trade Pty Ltd;
- Beresfield: J & T Trade Pty Ltd; and VNJ Holdings Pty Limited;
- Ipswich: PHV Poultry Pty Limited;
- Laverton: GGPB Power Pty Ltd;
- Hanwood: GGPB Power Pty Ltd;
- Tamworth: GGPB Power Pty Ltd; and HP Food Pty Limited;
- Osborne Park: Calacash Inwa Enterprises Pty Limited; and
- Mareeba: Springtime Poultry Pty Limited.¹⁰³

7.111 Mr Grant Onley, Human Resources Manager at Baiada, noted that Baiada charged the contracting agencies a fee for service for the new payroll services whereby Baiada deposits wages directly into contractors' workers' bank accounts. However, Mr Onley stated that 'Baiada is actually losing money on that, but it is part of our commitment to ensure that workers are paid right. That is part of our business model going forward'.¹⁰⁴

7.112 Indeed, Baiada estimated 'the new payroll services arrangements cost the business in the vicinity of \$500 000 per annum' and that this did 'not include the other non-payroll oversight measures we have introduced at our sites'.¹⁰⁵

7.113 Mr Onley noted that Baiada had also invested in other parts of the business to ensure ethical and lawful business practices were occurring throughout the organisation:

102 Baiada, *Submission 57*, pp 1–3; Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 33.

103 Baiada, answer to question on notice, 20 November 2015 (received 17 December 2015).

104 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 43.

105 Baiada, answer to question on notice, 20 November 2015 (received 17 December 2015).

We have invested heavily in biometrics. Rather than an ID card that has a photo on it, we are using fingerprint biometric technology in some of our processing plants. We have certainly engaged consultants to do the review of the audits. The management time that we have thrown into this is quite considerable. We have some training requirements with regard to management and supervisor training going forward that we have committed to.¹⁰⁶

7.114 On 23 October 2015, Baiada signed a three year Proactive Compliance Deed (Deed) with the FWO. In the Deed, Baiada acknowledged its responsibilities as a business to all workers at its sites:

Baiada believes it has a moral and ethical responsibility to require standards of conduct from all entities and individuals involved in the conduct of its enterprise, that:

- a) comply with the law in relation to all workers at all of its sites, and
- b) meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all workers at all of its sites.¹⁰⁷

7.115 The Deed also stated that Baiada 'has and will continue to implement fundamental, permanent and sustainable changes to its enterprise' to ensure compliance with the FW Act.¹⁰⁸ As part of these commitments, Baiada agreed to ensure:

- a dedicated hotline is established for employees to call and make a complaint if they believe they have been underpaid;
- workers carry photo identification cards which record the name of their direct employer;
- an electronic time-keeping system that records all working hours of each employee;
- employee wages can be verified by an independent third party, and are preferably paid via electronic funds transfer;
- contractors must be independently audited to ensure their compliance with workplace laws, with audit results to be provided to the FWO and published;
- the company's own compliance with the FW Act is independently assessed regularly over the next three years;

106 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 43.

107 Commonwealth of Australia and Baiada Poultry and Bartter Enterprises, Proactive Compliance Deed, 23 October 2015, Item J, p. 4.

108 Commonwealth of Australia and Baiada Poultry and Bartter Enterprises, Proactive Compliance Deed, 23 October 2015, Item L, p. 5.

- a workplace relations training program is put in place to educate employees about their workplace rights, including language-specific induction documents;
- qualified human resources staff are on-site at each processing plant to respond to inquiries, complaints and reports of potential non-compliance;
- contact details of all labour-supply contractors are provided to the FWO, including copies of passports of company directors;
- Fair Work inspectors have access to any worksites and any documents at any time; and
- arrangements with contractors are formalised in written contracts requiring contractors to comply with workplace relations laws.¹⁰⁹

7.116 Under the Deed, Baiada also agreed to rectify any underpayment of wages by its labour hire contractors that occurred from 1 January 2015 and set aside \$500 000 for this purpose. Claims could be lodged via a dedicated hotline or email established by Baiada under the terms the Deed. However, the agreement only applied to workers who lodged claims before 31 December 2015.¹¹⁰ In effect, therefore, workers had about two months to lodge a claim following the official notification of the offer.

7.117 At the hearing in Melbourne on 20 November 2015, the committee noted that the AMIEU had provided evidence to the FWO that indicated Pham Poultry and NTD Poultry, both of which provided workers to Baiada, owed \$434 000 to 32 visa workers and \$134 000 to 20 visa workers respectively. The committee was therefore keen to understand why Baiada had limited claims to the period beginning 1 January 2015 and whether \$500 000 was sufficient to cover those claims. Mr Onley stated that the figure of \$500 000 was achieved in consultation with the FWO and that the FWO had 'agreed with Baiada that \$500 000 for claims post-January 1 is a sufficient amount to cover those claims'. In response to the evidence of visa worker exploitation going back two or more years, Mr Onley defended the company by stating that 'Baiada has not been party to any exploitation of workers'.¹¹¹

7.118 The committee then drew Mr Onley's attention to section C on page one of the Deed that stated:

Prior to November 2013, the Fair Work Ombudsman (FWO) received requests for assistance from contract workers at Baiada's Beresfield plant alleging that they were being underpaid by their contractor employer,

109 Commonwealth of Australia and Baiada Poultry and Bartter Enterprises, Proactive Compliance Deed, 23 October 2015; Fair Work Ombudsman, Baiada declares 'moral and ethical' responsibility to stamp out contractors' unlawful opractices at its worksites, Media Release, 26 October 2015.

110 Commonwealth of Australia and Baiada Poultry and Bartter Enterprises, Proactive Compliance Deed, 23 October 2015, Item 7, p. 13.

111 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 43.

forced to work extremely long hours, and required to pay high rents for overcrowded and unsafe employee accommodation.¹¹²

7.119 Mr Onley therefore undertook to investigate any information regarding claims prior to 1 January 2015, to work through it with the FWO, and to take any such matters to the Baiada board.¹¹³

7.120 With regard to union engagement, Mr Onley said Baiada had 'an open dialogue with the NUW and the AMIEU':

I am holding meetings at both a national and a state level directly with those organisations—Grant Courtney from the AMIEU, Chris Clark from AMIEU's southern division, and NUW's Alex Snowball; I have met with Alex again this week. We have given information on the hotline and the process we are going through, and I have encouraged them to use that process to give us the information on any claims that they may have or their members may have.¹¹⁴

7.121 Baiada advised that as at 20 November 2015, Baiada was investigating 16 claims that met the criteria under the Deed with regard to underpayment.¹¹⁵ Mr Onley also pointed out that Baiada had 'taken unlimited responsibility for any underpayment to contract workers', should it occur in the future.¹¹⁶

7.122 On 9 February 2016, Baiada advised the committee that it had reviewed and processed the claims it received under the terms of its Deed with the FWO. However, Baiada provided no specific details on the numbers of claims received or determined:

In the spirit of the proactive compliance partnership, we have provided the FWO with our proposed response to each claim and believe it is appropriate to receive the FWO's final concurrence before confirming any specific information in relation to the claims.

Once consultation with the FWO has been finalised we will contact the claimants with the outcome of their inquiry along with an explanation of how the claim was determined.

In the meantime, we are writing to claimants informing them that we have reviewed their claim, that we are working with the FWO on finalising the claim and that they will be notified of the outcome as soon as possible.¹¹⁷

112 See Senator Deborah O'Neill, *Committee Hansard*, 20 November 2015, p. 44.

113 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 44.

114 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 45.

115 Baiada, answer to question on notice, 20 November 2015 (received 17 December 2015).

116 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 34.

117 Baiada, answer to question on notice, 20 November 2015 (received 15 February 2016).

7.123 In terms of its internal compliance processes prior to May 2015, Mr Onley advised that Baiada conducted checks on all its principal contractors and received 'assurances' from the company directors and 'information from their accountants in some cases'.¹¹⁸ Based on the FWO report, Baiada had agreements at that time to source labour from six principal contractors for its NSW operations: B & E Poultry Holdings Pty Ltd; Mushland Pty Ltd; JL Poultry Pty Ltd; VNJ Foods Pty Ltd; Evergreenlee Pty Ltd; and Pham Poultry (AUS) Pty Ltd.¹¹⁹

7.124 In response to a question on notice about the information Baiada had requested from the directors of the principal contractors and the responses that Baiada had received from those directors, Baiada undertook to provide the committee with the information. Baiada provided the committee with:

- two letters, one it had sent to Mr Xu Chun Dong of B & E Poultry Holdings Pty Ltd on 19 April 2013, and one it had sent to Mr Binh Nguyen of Pham Poultry (AUS) Pty Ltd on 19 April 2013;
- an unsigned letter on Pham Poultry company letterhead stating:

This is to confirm that the company is paying its employees and other persons engaged in performing the work under our agreement as a minimum and amount equivalent to the appropriate and current rate as defined by namely MA000074 – Poultry Processing Award 2010.

Should you have any question regarding this please do not hesitate to contact us.
- A letter from Pham Poultry's accountant stating:

Based on records and information supplied, we confirm that this company is compliant with its obligation in relation to the direct employees' entitlements in accordance with Poultry Processing Award 2010 [MA000074].
- One week of payslips for 12 employees.¹²⁰

7.125 With respect to the above documents, the committee notes the following. Firstly, Baiada only provided the committee with a response from the director of one principal contractor and their accountant. Secondly, these are the same documents examined by the FWO in its investigation of Baiada's labour supply arrangements in NSW. Thirdly, the FWO reported that payslips showing one week of wages for 12 employees (one being the Pham Poultry company director) revealed wage payments totalling \$6828.63 compared to payment made by Bartter Enterprises Pty Ltd to Pham

118 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 41.

119 Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 10.

120 Baiada, answer to question on notice from Senator Lines (received 17 December 2015).

Poultry of \$196 307.01 for that week.¹²¹ Fourthly, on the basis of the above documents, Baiada advised the FWO 'they were satisfied that Pham Poultry was compliant with Commonwealth workplace laws'.¹²² Fifthly, the FWO was of the view that the above documentation was not able to support Baiada's conclusion that Pham Poultry was compliant with Commonwealth workplace laws.¹²³

7.126 Given Baiada has stated it was unaware of the level of subcontracting until after it conducted its own review in May 2015,¹²⁴ a question arises as to why Baiada was satisfied that a principal contractor to which it paid \$196 307.01 for a week's worth of wages in October 2013 was compliant with all workplace laws when the FWO found that contractor was only making total wage payments of \$6828.63 for that same week.

Committee view

7.127 A substantial body of evidence to this inquiry demonstrated blatant and pervasive abuse of the WHM visa program by a network of labour hire companies supplying 417 visa workers to businesses in the horticulture sector and the meat processing industry.

7.128 It was clear from the evidence that these labour hire companies have a particular business model. There are a number of labour hire companies in Australia with close links to labour hire agencies in certain south-east Asian countries. Workers on 417 visas are recruited from countries such as Taiwan and South Korea and brought to Australia specifically to work in meat processing plants. The scale of the abuse is extraordinary, both in terms of the numbers of young temporary visa workers involved, and also in terms of the exploitative conditions that they endure.

7.129 Work in a meat processing plant is hard, fast, and potentially dangerous. The committee heard evidence from the 417 visa workers themselves that when they arrived in Australia, they often had to wait before they could begin work, but still had to pay rent to the labour hire company. Work as such began at a meat processing facility where the temporary visa workers had to undergo a four to six week 'training' program. The visa workers worked about 60 hours a week and got paid \$200 for 9.5 hours work. However, the labour hire company recouped its \$200 a week outlay, because the four weeks at \$200 a week was deducted from the visa workers' wages

121 See Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 21.

122 See Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 21.

123 See Fair Work Ombudsman, *A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales*, Commonwealth of Australia, June 2015, p. 21.

124 Mr Grant Onley, Human Resources Manager, Baiada Poultry Pty Ltd, *Committee Hansard*, 20 November 2015, p. 41.

once the visa worker was placed in a 'real' job. In practice, therefore, 417 visa workers work 60 hours a week for four weeks in a meat processing plant and get paid nothing.

7.130 On completion of their 'training', the 417 visa workers were given a job where they were required to work regular 12 to 18 hour shifts 6 days a week. They were frequently denied proper breaks and often had to keep working or return to work early after suffering workplace injuries. The pay rates were appalling. Most received around a flat \$11 or \$12 an hour irrespective of whether this was the night shift, the weekend, or overtime hours. These wage rates are illegal and clearly breach award minimums.

7.131 Poor or non-existent record-keeping was endemic across the labour hire companies mentioned in this inquiry. This has serious implications for ensuring compliance with legal minimum conditions of employment. The 417 visa workers never met the head labour hire contractor and only had a mobile number to receive texts about the start time for their next shift. The committee received many documents including fake timesheets and envelopes with a figure scrawled on it instead of a proper timesheet. The workers were paid in cash with no deductions for tax.

7.132 When the shift was over, these workers returned to squalid and overcrowded accommodation with no proper facilities, for which they were charged exorbitant levels of rent by the labour hire contractor. The rent payments were deducted straight from the workers' pay packets, most of the time in clear contravention of the law.

7.133 This raft of exploitative and illegal activity has been corroborated by the FWO in various investigations conducted over recent years. The committee is particularly concerned that, in light of the evidence it has received during the inquiry, that the levels of exploitation that have been documented in this chapter are not isolated instances, but appear to be pervasive, particularly amongst a group of labour hire contractors supplying temporary visa workers to particular sectors of the economy.

7.134 The committee notes that the AMIEU has had a cooperative approach to the major industry employers in the meat processing sector and has not sought to name and shame employers, but has instead sought to work with the respective businesses in order to help the employer address issues such as underpayments.

7.135 In this regard, the committee notes that the AMIEU had, over a considerable period of time, been raising these matters with Baiada. The committee also notes that Baiada was paying substantial sums of money to principal contractors, one of whom did not engage any employees directly, another that only directly engaged one chicken processing worker, and another that only paid a wage bill that was a tiny fraction of the money received from Baiada. This last point is confirmed, in part, by documents Baiada gave the committee. Given the above, therefore, the committee can only conclude that, at best, Baiada was turning a 'blind eye' to the exploitation that was actually occurring at its sites and within its labour supply arrangements.

7.136 In light of the above, the committee makes a number of points. First the committee did not receive evidence about the widespread exploitation of 417 visa workers directly employed by growers and producers. Indeed, the committee heard from growers about how much they value the visa workers that work for them.

7.137 Nevertheless, the committee received evidence that points to a potential loophole in the Horticulture Award as opposed to the Poultry Award. Piece rates are allowed under the Poultry Award so long as there remains a requirement to ensure workers receive wages that equate to award minimums. By contrast, evidence to the committee indicated that no such safety net exists within the Horticulture Award. While the piece rate may provide an incentive that allows people to earn much more than the award, the committee is concerned that the piece rate may also mean that people working in the horticulture sector may earn much less than the award.

7.138 Evidence to the inquiry from both growers and unions indicated a preference for the direct employment of labour where possible. This is a preference that the committee endorses. The committee recognises, however, that labour market dynamics vary considerably and that the seasonal fluctuation in the number of workers required, particularly in horticulture and fruit production, means that the direct employment of workers is not always possible or preferable. Further, as noted in chapter 4, it appears that the government has not addressed in a considered and holistic way the particular labour market needs of certain sectors in rural Australia. This has led, in part, to the current over-reliance on the poorly regulated WHM visa program.

7.139 Given that certain sectors of the economy have a requirement for temporary visa workers, the committee endorses the work of industry organisations such as Growcom that has developed an education and training program for employers on matters such as compliance with workplace laws.

7.140 Indeed, there is a lot that employers can do. This is demonstrated, in part, by the recent response of Baiada, particularly in terms of measures such as stipulating that a labour hire company is not allowed to subcontract to another labour hire company for the provision of labour, implementing electronic timekeeping, ensuring that all wage payments are made by electronic bank transfer and not in cash, and enforcing compliance monitoring and auditing.

7.141 However, these measures may not be enough to stamp out the exploitative practices of a group of unscrupulous labour hire contractors across a range of industry sectors. The committee therefore has more to say on the regulation of labour hire companies in chapter 9.

7.142 The vulnerability of WHM visa holders stands in stark contrast to the rights and protections accorded to workers employed under the Seasonal Worker program. Indeed, the optimistic view of the WHM program espoused in previous inquiries has been tarnished by the illegal and disturbing treatment of WHMs recounted in this chapter.

7.143 Finally, the committee notes that, given the temporary nature of their visa, many 417 visa workers have left the country without having had the opportunity to pursue a legal remedy for their underpayments. The committee therefore reiterates the view expressed in chapter 6, namely that, where required, access to a bridging visa to pursue a meritorious workplace claim is a necessary part of ensuring that temporary visa workers enjoy the same access to the law that an Australian worker would in similar circumstances.

7.144 Finally, the committee also received evidence about proposed changes to the tax treatments of WHMs. A consistent theme throughout this inquiry has been that the keeping of accurate employment records is essential for ensuring compliance with workplace laws. The committee is therefore concerned that an overly onerous tax regime applied to WHMs could give rise to unintended consequences. The consequences could include a perverse incentive for WHMs to seek cash in hand work to avoid a high tax regime, and for employers to offer a below the award cash rate to WHMs. This would risk entrenching illegal rates of pay in certain sectors and place further downward pressure on wages. In addition, it is by no means certain that the measure, as currently conceived, would raise the predicted tax revenue.

7.145 The committee is therefore of the view that the government should re-examine its proposed tax changes to WHM visa holders, including giving consideration to other proposals such as that put forward by the NFF.

