

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

Agency - Fair Work Ombudsman

Department of Employment Question No. EMSQ17-001520

Senator Marshall provided in writing.

Question

FWO - Migrant Worker Taskforce - Visa holders

“While a general amnesty from migration law is not appropriate, the Department of Immigration and Border Protection and the Fair Work Ombudsman have agreed that where temporary visa holders with a work entitlement attached to their visa may have been exploited and they have reported their circumstances to the FWO, the Department will generally not cancel a visa, detain or remove those individuals from Australia, providing:

- the visa holder commits to abiding by visa conditions in the future; and
- there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).

For any temporary visa holder who has no work entitlement attached to their visa, the Department will make no commitment other than to consider the case on its merits. “

Is this arrangement reduced to writing? Is there an MOU?

What guarantee exists for each person who come forward to the FWO that DIBP will follow these guidelines?

What form does the commitment to abiding by visa conditions have to take? A written undertaking?

What recourse does the FWO have, or an individual visa holder have, if the DIBP detains or removes an exploited person contrary to this agreement?

Answer

The Fair Work Ombudsman (FWO) will publish information about the reporting protocols on its website www.fairwork.gov.au. The FWO and the Department of Immigration and Border Protection (DIBP) have an existing Memorandum of Understanding that clarifies and facilitates the FWO’s responsibilities under the *Migration Act* to undertake monitoring of obligations relating to the subclass 457 visa program.

In accordance with the reporting protocols, DIBP has agreed that it will *generally not* cancel a visa, detain or remove those individuals from Australia. This is dependent on the visa holder committing to abide by their visa conditions in the future and there being no other basis for visa cancellation.

As at 24 March 2017, the FWO had made 13 referrals to DIBP on behalf of employees in breach of their visa work conditions who were assisting the FWO with an investigation, including 11 individuals in matters related to 7-Eleven franchises.

As was previously the case, DIBP has discretion as to how it deals with breaches of visa conditions. Through these protocols, FWO works with DIBP to inform the way DIBP exercises its discretion; however it is ultimately a decision for DIBP.

Questions about how DIBP implements the protocols, exercises its discretion and satisfies itself of a visa holder's commitment to abide by their visa conditions in the future should be directed to DIBP.