



Ministerial Working Group on Protecting Vulnerable Visa Holders

Information Paper—20 October 2015 Meeting

1. Background

As people become increasingly mobile and look to take up opportunities in an international market place, temporary migration for the purposes of work has grown globally. Australia offers a number of temporary visas with full or partial work rights for workers to take up jobs in Australia for a period of time, including the Temporary Work Skilled, Student, Skilled Graduate and Working Holiday programmes.

The number of temporary visa holders in Australia has grown substantially in recent years. There are some 700,000¹ people in Australia on a temporary visa with a full or partial work right (although work may not be the primary purpose of the visa and not all visa holders may participate in work). This growth presents new challenges to the Australian Government across multiple portfolios, including in relation to workplace relations compliance, migration and visa enforcement, taxation compliance and workplace safety. There are also impacts on state and territory governments in relation to infrastructure and the delivery of services.

Temporary visa holders with a work right are (with a few exceptions) entitled to the protections under the Australian workplace relations framework and the *Fair Work Act 2009* (Fair Work Act), including in terms of the investigation of claims or reports of underpayment or exploitation. Temporary visa holders must also satisfy any Australian licensing, registration or certification requirements for the occupations in which they are employed.

In addition to applicable Australian workplace law, temporary visa holders should also be engaged in accordance with Australian superannuation, workers' compensation, workplace safety and relevant Australian taxation requirements.

Temporary work visa holders, including those seeking low-skilled and seasonal work, benefit the economy and the labour market. However, the unscrupulous practices of some employers and labour hire companies, combined with the fact that many visa holders tend to be young and not highly proficient in English language skills, is contributing to a vulnerable overseas workforce. Some of these problems are structural in nature, while others may be due to rogue employers or labour hire companies, as noted by the Interim Report of the Senate Inquiry² into Temporary Work Visas (released on 14 October 2015). This situation threatens to undermine public support for programmes that are critical for good employers and labour hire companies in certain sectors, such as horticulture and food processing.

The recent allegations of the underpayment and exploitation of Working Holiday and Student visa holders in the media and through the Senate Inquiry has focussed attention on these temporary migration programmes and their intersection with the Australian labour market.

¹ Estimates of the number of temporary visa holders with a work right resident in Australia vary depending on the visa subclasses considered (for example, this estimate does not include New Zealand citizens, provisional, bridging or temporary protection visa holders with a work right) and how dependent school-aged temporary visa holders are counted.

² Senate Education, Employment and References Committee, Inquiry into the Impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.

The complex interaction of workplace, migration and corporation laws has contributed to a situation where poor employment practice has thrived in some industries and organisations. For example, the 40 hours work per fortnight condition on Student visa holders appears to have been a factor in the 7-Eleven issue, where witnesses to the Senate Inquiry have stated that franchisees have encouraged visa holders to breach this visa condition while underpaying them. Visa holders, while vulnerable to this kind of exploitation, may also be complicit in agreeing to such arrangements, knowingly breaching their visa conditions.

The Government has taken firm action through the establishment of Taskforce Cadena and putting in place stronger rules to support the integrity of Working Holiday programme. However, there is pressure on the Government to take further action which will require a coordinated policy, enforcement and data sharing effort across a number of portfolios.

Attachment A to this Information Paper provides a timeline on media reports and announcements relevant to discussion by this Ministerial Working Group.

Attachment B is the Interim Report of the Senate Inquiry into Temporary Work Visas (released 14 October 2015); which provides a summary of submissions and key evidence presented to the Inquiry (see Chapter 2).

2. Temporary Visa Holders in Australia at 30 June 2015 by Visa Category³

The following table provides Department of Immigration and Border Protection (DIBP) data on the number of temporary visa holders in Australia at 30 June 2015 for the main temporary migration programmes which include a work right. This table includes primary and secondary visa holders (including persons not exercising a work right and dependent children not of working age).

Visa Category	Total
Student visa holders	374,570
Temporary graduate (subclass 485) visa holders	26,260
Temporary skilled (subclass 457) visa holders	188,000
Working Holiday visa holders	143,920
Total⁴	732,750

In September 2015, the Australian Bureau of Statistics Labour Force Survey (trend data) estimated that 11,775,800 persons were employed in Australia. If we assume that all of the temporary visa holders with a work right in the table above are working, they would represent some 6 per cent of employed persons.⁵

Analysis on the extent of exploitation of temporary visa holders should be considered in the context of data which shows that in the 2014-15 financial year, the Fair Work Ombudsman (FWO) finalised 1,971 complaints from identified visa holders, making up just under 11 per cent of all finalised complaints and recovered over \$1.6 million for visa holders. Of these 1,971 complaints:

- Over 40 per cent (820 complaints) came from subclass 417 visa holders.
- Around 15 per cent (287 complaints) came from subclass 457 visa holders.
- Over 8 per cent (163 complaints) came from Student visa holders.
- Holders of 17 other visa types were also represented.

³ Department of Immigration and Border Protection, Temporary Entrants and New Zealand citizens in Australia, BR0169.

⁴ Estimate does not include New Zealand citizens resident in Australia on Subclass 444 visas.

⁵ Estimates of temporary visa holders with a work right as a percentage of employed persons vary over time.

Matters involving visa holders are disproportionately represented in FWO civil penalty litigations and other enforcement activities. In 2014-15, 36 per cent (or 202 of 558) of FWO's enforcement outcomes involved a visa holder, also noting:

- Of 50 civil penalty litigations filed, 21 (or 42 per cent) involved visa holders.
- Of 42 enforceable undertakings signed, 20 (or just under 48 per cent) involved visa holders.
- Of 118 compliance notices issued, 37 (or just over 31 per cent) involved visa holders.
- Of 348 infringement notices issued, 124 (or just under 36 per cent) involved visa holders.

3. Issues for Discussion

A number of issues have been raised in the media and during the Senate inquiry on Australia's temporary work visa programmes. Some of the key areas for discussion are:

Provision of information on workplace rights and responsibilities for Visa Holders and Employers

- Lack of awareness of work rights among vulnerable visa holders and reluctance to make complaints (including because visa conditions are being breached).
- The Government has improved the information provided to visa holders on workplace rights and protections (including more detailed information on the DIBP and FWO websites, and the publication of materials in languages of the main source countries for temporary visa holders).
- What additional information could be provided to visa holders and employers?

Data sharing and coordinated action across Government

- Labour hire companies including overseas-based operations (which charge an upfront fee to arrange a job in Australia, sometimes also arranging travel and accommodation at an inflated price) contribute to the vulnerability for visa holders. s. 47C(1)
- Referrals and information sharing between agencies with a compliance role, including for temporary visa holders with a work right, are not working as effectively as possible.
- Data sharing to identify areas of higher risk (for example, where phoenixing and non-compliance with tax laws are identified, this could point to a higher risk of non-compliance with workplace laws as well). Improved data sharing and coordinated action across departments (including in terms of compliance action and prosecutions) may act as a deterrent.

Enforcement of visa and sponsorship conditions

- Visa conditions, such as the 40 hour work per fortnight condition for Student visa holders and that Work and Holiday visa holders must only work for one employer for a maximum of six months, are difficult to enforce. Breaching these visa conditions appears to contribute to visa holders' vulnerability in the workforce.
- Similarly, the obligation for employers not to employ a person in breach of their visa conditions can be hard to enforce.
- Coordinated efforts across enforcement agencies has already assisted in this area and there may be further opportunities for joint work.

Breaches of workplace law and penalty provisions

- Employers are breaching Australian workplace law—under payment, long shifts, lack of record keeping, false records to circumvent visa conditions and migration sponsorship obligations. There are reports this is more apparent in some industries such as horticulture, labour hire, and hospitality.
- The current cost of non-compliance with the Fair Work Act in terms of potential prosecution and fines may not be high enough to deter deliberate non-compliance by employers, particularly in relation to non-sponsored temporary visa holders.

- FWO does not currently have the power to compel people to give evidence. The FWO identified this as a factor in its investigation of the Baiada group this year.
- Lack of documentation (for example pay slips and employment records) kept by employers frustrates the efforts of the FWO to investigate and pursue complaints.

Phoenixing and sham contracting

- Phoenixing is where employers, including small labour hire operations, go out of business in order to avoid penalties and proper payments to underpaid employees. These businesses often re-open elsewhere under a different name, making them hard to track. For example, when the Fair Work Ombudsman investigated the labour hire contractors and sub-contractors involved in Baiada's plants in New South Wales, many of these labour hire companies were then de-registered or went into liquidation.
- Sham contracting typically occurs where the labour hire contractor seeks to claim that a worker is an independent contractor when in fact they are an employee. This can often be an effort on the part of the labour hire contractor to avoid the responsibilities and (where they apply) migration sponsorship obligations, associated with employees.
- As an alternative to regulation, which may be viewed as additional red tape by industry and small business, an option may be to establish a voluntary code of practice which provides a framework for companies and human resource professionals to ensure their practices comply with the Fair Work Act and related laws.

Franchising structures and accessorial liability

- There have been recent reports that some employees (such as the practices of 7-Eleven franchises and Student visa holders) are being systematically exploited and underpaid within some Australian franchising structures. The underpayment and exploitation of employees represents a serious breach of the rights of these workers.
- s. 47C(1)

Time Line—Media Reports and Announcements on Vulnerable Visa Holders

2014

- June Fair Work Office (FWO) commences a long-term inquiry into systemic workplace issues at 7-Eleven franchises.
- August FWO announces a national inquiry on the wages and conditions of workers in Australia on the Working Holiday (subclass 417) visa.

2015

- 24 March The Senate refers the inquiry into the impact of Australia's temporary work visa programs on Australian labour market and on the temporary work visa holders to the Education and Employment References Committee (E&ERC) for inquiry and report. Eight public hearings were held between May and September 2015 in most capital cities.
- 1 May Minister Cash, as Assistant Minister for Immigration and Border Protection—announced measures to strengthen the integrity of the Working Holiday programmes, primarily relating to the evidentiary requirements for Working Holiday (subclass 417) visa holders undertaking 88 days eligible work with regional employers to qualify for a second visa.
- 4 May *Four Corners*/Fairfax airs an episode on the alleged underpayment and exploitation of Working Holiday (subclass 417) visa holders on farms and poultry processing businesses supplying Australia's biggest supermarkets (including Woolworths, Coles, Aldi, IGA and Costco) and fast food chains (KFC and Red Rooster).
- 18 May Minister Cash, as Assistant Minister for Immigration and Border Protection, announces Taskforce Cadena.
- 18 June FWO released a report on its inquiry into the Baiada Group's labour procurement processes in New South Wales. The inquiry into Baiada Group (poultry processing plants) commenced in November 2013.
- 22 June *7:30 Report* programme provided follow up to the 4 May *Four Corners* report claiming that Government measures to address exploitation are not effective.
- 1 July Taskforce Cadena commences.
- 31 August *Four Corners*/Fairfax media reports on claims of widespread underpayment of student and other temporary visa holders by 7-Eleven franchises.
- 2 October *The Age*, *Sydney Morning Herald* and *The Canberra Times* reported on a Fairfax Media and Monash University survey of more than 1,000 foreign language job advertisements, claiming that 80 per cent offer wages below legal rates.
- 12 October Adam Bandt MP, Greens, introduces a Bill into Parliament to make head offices/franchisors accountable for the wages and conditions of franchisee's employees.
- 14 October The E&ERC interim report is due to be tabled with the Senate.
- 20 October First Ministerial Working Group on Protecting Vulnerable Visa Holders
- November PC Final Report into Australia's WR Framework is due.
- 12 November Second Ministerial Working Group on Protecting Vulnerable Visa Holders
- 13 November E&ERC public hearing in Canberra.
- 20 November E&ERC public hearing in Brisbane.
- 3 December Third Ministerial Working Group on Protecting Vulnerable Visa Holders.

2016

- February The E&ERC is due to table the Final Report to the Senate



**Ministerial Working Group on Protecting Vulnerable Visa Holders
3 December 2015 Meeting**

**Breaches of Workplace Law and Penalty Provisions:
Record Keeping and Payslips**

Agenda Item 4.1

Recommendations

s. 47C(1)

Summary

1. A number of high-profile underpayment of wages cases involving large organisations like 7-Eleven and chicken producer Baiada have raised questions about the adequacy of penalty levels under the *Fair Work Act 2009* (Cth) (Fair Work Act). There is a good argument that the maximum penalties for breach of record-keeping requirements are not high enough to effectively deter the most serious cases of employee exploitation involving underpayment of wages and false (or no) records. The proposals do not impose additional administrative requirements on employers.
2. This paper has been prepared in consultation with the Attorney-General's department.

s. 47C(1)

b. 47C(1)

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s. 47C(1)



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ATTACHMENT A: Current Framework and Penalties

Courts may impose civil (not criminal) penalties for breaches of the Fair Work Act, in addition to ordering employers to pay employees their unpaid wages. Courts may also order that any penalties collected by the Commonwealth be re-directed to employees, for example if their employer has gone into liquidation and unpaid wages can't be recovered.

<i>Fair Work Act 2009</i>	Maximum penalties	
Underpayment of wages	60 penalty units (\$10,800) for an individual	300 penalty units (\$54,000) for a body corporate
Failing to make or keep employee records	30 penalty units (\$5,400) for an individual	150 penalty units (\$27,000) for a body corporate

<i>Fair Work Regulations 2009</i>	Maximum penalties	
Failing to ensure that employee records are not false or misleading (or for knowingly using false or misleading records)	20 penalty units (\$3,600) for an individual	100 penalty units (\$18,000) for a body corporate

Knowingly misleading the Fair Work Ombudsman or Fair Work Inspectors may also be an offence under the *Criminal Code Act 1995* (Cth).

If companies enter into liquidation or are wound up, proceedings usually only continue against individuals alleged to have been 'involved in' the contraventions. This means that only the lower penalties that apply to individuals may be imposed by a court in these cases.

Example 1: *Fair Work Ombudsman v Barry Scott Distributors Pty Ltd* [2014] FCCA 1587 (31 October 2014)

In this case, the parties agreed three of the company's employees were underpaid by a total of \$62,514.82 including unpaid superannuation entitlements. The employees remain unpaid as at the date of the hearing. The company's director, the second respondent, admitted involvement in the contraventions.

The Court ordered the employees be paid the amount of the underpayments, and imposed total penalties of \$79,942 against the company, and \$15,048 against its director. Of those penalties, \$4,702/\$3,762 were imposed on each party respectively, for failing to make and keep records which included details of loadings and penalty rates employees were entitled to.

No amounts have been paid in this matter. The FWO has commenced winding-up proceedings against Barry Scott Distributors Pty Ltd in the Federal Court of Australia. The FWO is also taking steps to summons the Director, Mr Andrews, to attend a compulsory examination in relation to his financial position with a view to recovering the outstanding amounts owed by him personally.

Example 2: *Fair Work Ombudsman v Christopher and Elsie Brandso*

In May 2015 the Federal Circuit Court in Darwin fined business partners Christopher and Elsie Brandso, who operated the Red Dog Café in the Todd Mall, Alice Springs, \$1,500 out of a maximum of \$5,100 for record-keeping failures.

The Brandsos ignored repeated requests from inspectors to provide employment records, before finally admitting they had failed to keep any. Mr Brandso told Fair Work Inspectors he employed backpackers and did not pay penalty rates and paid what he thought they were worth. But the absence of any records it impossible for the FWO to pursue any additional contravention

Fair Work Ombudsman Ms Natalie James says failing to keep records is a serious matter because it increases the risk of staff underpayments occurring and hampers the ability of inspectors to determine if employees are being paid correctly.

s. 47C(1)



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s. 47C(1)



ATTACHMENT C: Employee record-keeping provisions under the *Migration Act 1958* (Cth)

Migration Act 1958 (Cth)	
Section	Extract
140Q	<p>140Q Civil penalty—failing to satisfy sponsorship obligations</p> <p>(1) A person contravenes this subsection if:</p> <ul style="list-style-type: none"> (a) the regulations impose a sponsorship obligation on the person; and (b) the person fails to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) prescribed by the regulations. <p>Civil penalty: 60 penalty units.</p> <p>(2) A person contravenes this subsection if:</p> <ul style="list-style-type: none"> (a) the person (other than a Minister) is a party to a work agreement; and (b) the terms of the work agreement: <ul style="list-style-type: none"> (i) vary a sponsorship obligation that would otherwise be imposed on the person by the regulations; or (ii) impose an obligation, identified in the agreement as a sponsorship obligation, on the person; and (c) the person fails to satisfy the sponsorship obligation in the manner (if any) or within the period (if any) specified in the work agreement. <p>Civil penalty: 60 penalty units.</p> <p>Note: Migration Regulations 1994 (Cth), reg 2.79 requires payment of minimum rates of pay; reg 2.82 requires sponsors to keep records of monies paid sponsored workers.</p>
140S	<p>140S Liability to pay amounts</p> <p>(1) This section applies if a person who is or was an approved sponsor is required to pay an amount of a kind prescribed in the regulations to the Commonwealth, a State or Territory or another person (the payee) in relation to a sponsorship obligation.</p> <p>(2) The payee may recover the amount as a debt due to the payee in an eligible court.</p> <p>(3) To avoid doubt, an amount may be recovered under this section if proceedings for a civil penalty order are brought under Part 8D and discontinued or completed without the court making an order of a kind referred to in subsection 486S(4) in relation to the amount.</p> <p>(4) For the purpose of paragraph (e) of the definition of eligible court, the regulations may prescribe a court of a State or Territory in which an amount may be recovered under this section.</p>
486V	<p>486V Multiple contraventions</p> <p>(1) An eligible court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.</p> <p>(2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.</p>



Ministerial Working Group on Protecting Vulnerable Visa Holders

Discussion Paper—Department of Employment and The Treasury

Agenda Item 4.2—s. 47C(1)

1. Issues and Background

There have been recent community concerns in relation to the underpayment and exploitation of workers, particularly temporary visa holders, by unethical employers and labour hire companies. The labour hire industry includes recruitment firms, labour hire firms, head hunting firms, project management and contracting consultants.

Concerns about the practices of labour hire companies came to the attention of the Immigration and Employment portfolios in 2006–07 in relation to the alleged misuse of the temporary work skilled (subclass 457) programme. This resulted in the labour hire industry being excluded from the standard subclass 457 programme and the introduction of the On–Hire Labour Agreement, which is the only means through which labour hire companies can recruit subclass 457 visa holders. While Recruiting and Consulting Services Australia (RCSA) was consulted in the development of this Labour Agreement, participating companies do not need to be RCSA members.

2. Objectives

s. 47C(1)


s. 47C(1)

s. 47C(1)



4. Role for Government

s. 47C(1)



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s. 47C(1)



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MEETING BRIEF

MINISTER: Peter Dutton

ADVISER: s. 22(1)(a)(ii)

Meeting Brief - Working Group on Protecting Vulnerable Visa Holders - 20 October 2015

Person/ Organisation

Working Group on Protecting Vulnerable Visa Holders

Has the Minister met with this person/organisation in the past?

No – this is the first meeting of the Working Group

Purpose of Meeting

To lay out the goal of the Working Group and establish a forward work plan.

Date

Tuesday 20 October 2015

Time

3.30-4.30pm

Venue

Parliament House, Suite MG.63 (next to the Prime Minister's Office)

Travelling time from airport to location

N/A

Parking facilities

N/A

List of Attendees

Senator the Hon Michaelia Cash, Minister for Employment

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Michael Keenan MP, Minister for Justice

The Hon Kelly O'Dwyer MP, Assistant Treasurer

Ministerial staff – s. 22(1)(a)(ii); other ministerial staff to be advised

Departmental officials – David Wilden, FAS ICP, other departmental officials to be advised

Organisation Funding

Previous funding to organisation

Nil

Proposed funding to organisation

Nil

Background

The Minister for Employment, Senator the Hon Michaelia Cash, wrote to you on 2 October 2015, requesting your participation in a ministerial Working Group on protecting vulnerable visa holders (see letter at [Attachment A](#)). The Department of Employment and the Fair Work Ombudsman are the primary owners of Australian workplace law for all workers (non-citizens and Australians).

This follows extensive recent media reporting on the subject of foreign workers being exploited by Australian employers, including the underpayment and non-payment of wages, coercion and encouragement to breach work related visa conditions and, in some cases, verbal and physical harassment and abuse.

Relatedly, on 24 March 2015, the Senate established an Inquiry into *'the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders'*. The Inquiry has since made the issue of foreign worker exploitation one of its central considerations. It is due to report on 11 February 2016. An interim report was released on 14 October 2015, summarising submissions and key evidence, but not making recommendations. The Department's response to the Senate Inquiry is summarised at [Attachment B](#).

Allegations of employer exploitation have been made across multiple visa programmes with work rights, including the Temporary Work (Subclass 457) visa programme, the Working Holiday Maker (WHM) visa programme, and the Student visa programme. The Department has prepared an overview of the various temporary visas with work rights (see table at [Attachment C](#)). We can provide you with additional copies for distribution during the Working Group if needed.

The Department has existing legislative oversight frameworks in place for the management of employers of sponsored work visa holders (see [Attachment D](#)), and for sanctioning employers found to be employing illegal foreign workers (see [Attachment E](#)). Additionally, the Department has recently introduced a range of new measures to address the issue of exploitation within temporary visa programmes of particular concern. These new measures are discussed further below. A number of additional regulatory options have been considered, but not implemented (see [Attachment F](#)).

The Working Group represents a valuable opportunity to establish a cohesive and coordinated approach to the issue across Government. Its efforts will likely inform all aspects of the Government's work on the issue going forward, from a regulatory reform, policy, operational and enforcement perspective.

s. 47C(1)

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Key issues to be raised at meeting

1. Purpose of the Working Group.
2. Current policy settings and options for improvement.
3. Media strategy and stakeholder consultation.
4. Forward work plan.

The meeting agenda is at Attachment G. A draft information paper has been circulated to participants by the Department of Employment for consideration (see Attachment H).

Key Messages for Minister to Deliver

- I welcome the opportunity the Working Group provides for a whole-of-government response to the issue of foreign worker exploitation in the workplace.
- I anticipate the Working Group will be able to coordinate the Government's collective efforts to better enforce existing workplace law, to identify potential improvements to our respective legal frameworks, improve educational materials, and enhance inter-agency information sharing.
- It is important to recognise that when an employee is exploited by an employer, it is the employer who bears responsibility, not the employee.
 - o Support is provided to the victims of debt bondage, slavery and human trafficking in accordance with the National Action Plan.
 - o Visa cancellation powers are exercised on a discretionary basis, in accordance with the circumstances of each case.

Existing protections

- The Immigration and Border Protection portfolio has a strong legislative basis to deal with employers who exploit non-citizens working in Australia, including:
 - o if an employer sponsoring a work visa holder is found to have failed an obligation, the Department can potentially impose administrative sanctions such as barring or cancelling their sponsorship, issuing infringement notices, executing enforceable undertakings and/or applying to the Federal Court for a civil penalty order; and
 - o sanctions for employers found to have allowed or referred non-citizens for work, where they have no work rights or breach the work limits attached to their visa. Sanctions may include warning notices, infringements, civil penalties, or criminal prosecution.
- There are deterrent – but discretionary – powers of visa cancellation available for dealing with non-citizens who engage in work when they have no work rights or breach the work limits attached to their visa.
- There are protections in place to address the higher order exploitation issues of debt bondage, slavery and human trafficking. Consistent with the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, the Department works collaboratively with other Australian Government agencies and Non-Government Organisations to support trafficked people. The Department provides support via the:
 - o Bridging F Visa for a suspected trafficked person;
 - o Criminal Stay and Criminal Entry Justice Visa for the administration of criminal justice; and
 - o the Referred Stay (Permanent) visa, previously known as Witness Protection (Trafficking) (Permanent) visa for trafficked people who meet criteria.

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s. 47C(1)

Consultation

Investigations Division

Border Management Division

Community Protection Division

Compliance and Enforcement Framework Section

Clearance**Clearance officer:**Chloe Bird, Assistant Secretary,
Economic Policy Branch**Phone:** s. 22(1)(a)(ii)**Date:**

s. 22(1)(a)(ii)

19/10/15

Contact officer:s. 22(1)(a)(ii) Director, Tourism
Policy Section**Division:** PG – Immigration and
Citizenship Policy**Branch:** Economic Policy Branch**Phone:** s. 22(1)(a)(ii)**Attachments:**

- A:** Letter from Minister Cash
- B:** Department's response to Senate Inquiry
- C:** Overview of temporary visas with work rights
- D:** Sponsored work visa framework

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E: Illegal workers
F: Unimplemented measures
G: Meeting agenda
H: Draft information paper
I: Taskforce Cadena

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Senator the Hon Michaelia Cash

Minister for Employment

Minister for Women

Minister Assisting the Prime Minister for the Public Service

Reference: MS15-000798

COPY

- 2 OCT 2015

The Hon Peter Dutton MP
Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dear Minister

Ministerial Working Group on Protecting Vulnerable Visa Holders

I am writing to invite you to participate in a Ministerial Working Group on Protecting Vulnerable Visa Holders. This Ministerial Working Group will also include the Hon Michael Keenan MP, Minister for Justice and the Assistant Treasurer, the Hon Kelly O'Dwyer MP; along with departmental officials from relevant agencies including the Department of Employment, the Department of Immigration and Border Protection, the Fair Work Ombudsman, the Australian Taxation Office, the Australian Federal Police and the Australian Investment and Securities Commission.

The Working Group will examine potential Australian Government initiatives to address the very concerning allegations arising from the Senate Standing Committee on Education and Employment's Inquiry into 'The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders' on the alleged underpayment and exploitation of international student and working holiday visa holders.

The Australian Government takes such allegations seriously and has already implemented a number of measures to strengthen the integrity of its temporary migration programmes. This includes the establishment of Taskforce Cadena and the introduction of stronger rules to support the integrity of the working holiday programme. However, I believe that more can be done, particularly on the complex issues that arise where workplace relations, migration and corporations laws intersect.

In order to meet potential legislative and Budget timeframes, I propose that this Ministerial Working Group meet once during each Parliamentary fortnight between now and the end of the year, with policy work being progressed by departments between meetings. To assist my office to formalise arrangements and coordinate logistics for this Ministerial Working Group, can you please confirm your availability and identify a departmental contact by Friday, 9 October 2015.

Please contact my office on (02) 6277 7320 to discuss this further.

Yours sincerely

Senator the Hon Michaelia Cash

2 / 10 / 2015

Parliament House Canberra ACT 2600 Telephone (02) 6277 7320 Fax (02) 6273 4115

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Attachment B**Department's response to Senate Inquiry**

The Department of Immigration and Border Protection is continuing to cooperate fully with the ongoing work of the Senate Education and Employment Committee's inquiry into *'the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders'*.

The Department provided input for a whole-of-government submission to the Senate Inquiry which was led by the Department of Employment. In line with the advice from the Committee Secretariat regarding the focus of the Inquiry, the Department's input to this submission concentrated on the 457 programme and the Independent Review into Integrity in the 457 Programme.

The Department provided written responses to 16 questions asked by the Committee in advance of the Department's appearance at a hearing. These questions focussed on the legislative and administrative frameworks for the 457 programme and the labour agreements programme.

The Department was part of the whole-of-government appearance before the Senate Inquiry in Canberra on Friday 17 July 2015. The Department gave evidence in relation to allegations of the exploitation of temporary workers including Student visa holders, Working Holiday Makers and 457 visa holders:

- Details were provided to the Senate Inquiry about the compliance and enforcement activity put in place in response to these allegations, specifically Operation Cloudburst under Taskforce Cadena.

Overview of temporary visas with work rights

Category	Number*	Work rights	Legal Powers
New Zealand Special Category Visa	653,832	New Zealanders holding a Special Category Visa (SCV) have unrestricted work rights in Australia as long as they remain a New Zealand citizen.	No special powers.
	374,554	Most students are limited to a maximum 40 hours work per fortnight while their course is in session and unlimited hours during scheduled course breaks. The holder of a Postgraduate Research Sector (subclass 574) visa can in some circumstances work unlimited hours. Secondary visa holders have broadly similar work rights but can only work after the primary visa holder has commenced their course.	Sanctions may be taken against employers who allow or refer a student visa holder to work in breach of a visa condition prohibiting or restricting work.
Temporary Work 457s	188,002	Primary visa holders must only work in the nominated position for their sponsor. Secondary visa holders have unrestricted work rights.	The Department monitors sponsors' compliance, including ensuring the sponsored visa holder actually works in the position, is paid the salary approved by the Department, is engaged under a written employment contract, keeps records of pay, and does not 'pass on' the costs of sponsorship to the visa holder. If a sponsor is found to have failed an obligation, the Department can potentially impose administrative sanctions: barring or cancelling the sponsorship, infringement notices, enforceable undertakings and/or applying to the federal court for a civil penalty order. 457 visa holders must comply with certain conditions such working in the nominated occupation only for the sponsor who most recently received an approved nomination for them. Sanctions may be taken against employers who allow or refer a visa holder to work in breach of a visa condition prohibiting or restricting work.
Working Holiday Makers	143,918	WHMs have work rights for the full duration of their 12 month stay but are limited to a maximum of six months' work with any one employer, unless permission is granted to work for longer.	Sanctions may be taken against employers who allow or refer a visa holder to work in breach of a visa condition prohibiting or restricting work.
Other temporary visa holders	58,881	Primary visa holders have permission to work. Those granted in relation to specific work or training activities are restricted to those activities outlined in their visa application. Secondary holders of long stay temporary residence visas are generally granted unrestricted permission to work. Temporary Graduate visa and Skilled-Recognised Graduate visa holders have unrestricted work rights. Superyacht visa holders may only work as a member of a superyacht crew. Maritime Crew visa holders may only undertake normal crew duties as crew of a non-military ship while it is at sea.	Sanctions may be taken against employers who allow or refer a visa holder to work in breach of a visa condition prohibiting or restricting work.
Total:		1,419,187	

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*Temporary entrants in Australia with work rights at 30 June 2015

Sponsored work visa framework

The Department is responsible for the monitoring and management of sponsors of temporary work visa programmes. The current sponsorship framework applicable to temporary work visas, and in particular the 457 visa, seeks to ensure that the working conditions of sponsored visa holders meet Australian standards and standardise the obligations and requirements all sponsors must meet.

Key requirements under the 457 programme which mitigate the risk of worker exploitation include that applicants are nominated to work in a genuinely skilled occupation, be paid the market salary rate, and meet English language standards. Worker protection laws complement this framework by providing protection for vulnerable overseas workers.

The Department takes a risk based approach to monitoring sponsor (employer) obligations under the 457 visa programme (for skilled workers). If a sponsor is found to have failed an obligation, the Department institutes appropriate action, which may take the form of imposing administrative sanctions, issuing infringement notices, executing enforceable undertakings or applying to the federal court for a civil penalty order.

In the period 1 July 2015 to 30 September 2015, the Department finalised the monitoring of 475 temporary work sponsors, the majority of which were 457 sponsors.

- Almost two-thirds (312) of sponsors monitored were considered to have satisfactorily met their obligations.
- Just over one third (163) of the sponsors monitored were found to be in breach of their obligations. Of these, a total of 101 sponsors were sanctioned (cancelling and/or barring the sponsor), 58 received a formal warning and 11 were issued with infringement notices.

In the small number of very serious cases, the Department seeks penalty orders with the courts. Currently one case is before the courts, whilst in 2014-15 a case was successfully prosecuted by the Department (Minister for Immigration and Border Protection v Choong Enterprises) where the court imposed total penalties and restitution of \$335,017.13.

Any issues of exploitation of workers and illegal work practices are a matter for the Fair Work Ombudsman (FWO), who operate under the *Fair Work Act 2009* and is able to instigate workplace investigations, compliance notices, infringement notices and litigation against employers.

The FWO also has a limited monitoring role under the *Migration Act 1958* focussed on monitoring 457 sponsors' compliance with two key obligations:

- the obligation to ensure the worker's pay is the same as the equivalent Australian or at least as much as was approved by the Department at the time of nomination (whichever is higher), and
- the obligation to ensure that the sponsored person works in the nominated occupation.

In addition to FWO's monitoring role, the Department works collaboratively in relation to specific instances of overseas worker exploitation.

Attachment E**Illegal workers**

The Department is responsible for the monitoring and management of non-citizen illegal workers. Employer exploitation can also occur amongst illegal workers. Illegal work potentially spans a range of visa products, including visa programmes which prohibit work, such as tourists. It can also occur where a person no longer holds a valid visa, overstaying as an unlawful non-citizen.

The Department has the ability to implement Employer Sanctions against the employer who has employed illegal workers under the *Migration Act 1958*. Since the introduction of the sanctions in July 2013, there have been **nine** infringements issued to employers of illegal workers.

The sanctions are outlined in the table below.

Sanction category	Maximum penalty
Illegal Worker Warning Notice (IWWN)	Administrative warning
Infringement	AUD 3,240 fine for individuals
	AUD 16,200 fine for bodies corporate
Civil penalty	AUD 16,200 fine for individuals
	AUD 81,000 fine for bodies corporate
Criminal offence	AUD 21,600 fine and/or two years imprisonment for individuals
	AUD 108,000 fine for bodies corporate
Aggravated Criminal Offence	AUD 54,000 fine and/or five years imprisonment for individuals
	AUD 270,000 fine for bodies corporate

The Department can also take action against non-citizen illegal workers. An illegal worker is a person who is working in breach their visa conditions or without a visa. Working in breach of visa conditions may take the form of working in excess of the hours set out in the visa or working with a visa that does not have work rights. The Department is able to cancel an illegal worker's visa under various powers of the *Migration Act 1958* (sections 116, 119, 120, 121, 124 and 127).

The Department expects that Australian employers will take reasonable steps to ensure that they are not employing or contracting illegal workers. To ensure compliance, the Department implements Employer Awareness campaigns to peak bodies, awareness visits to businesses by Compliance Field teams as well as the Visa Entitlement Verification Online (VEVO) system which provides a free online method of checking the visa details of potential or current employees.

Attachment F

s. 47C(1)



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Ministerial Working Group on Protecting Vulnerable Visa Holders Agenda

Tuesday 20 October 2015

3.30 pm – 4.30 pm

Parliament House, Suite MG-63 (next to Prime Minister's Office)

Chair: Senator the Hon Michaelia Cash, Minister for Employment

Attendees:

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Michael Keenan MP, Minister for Justice

The Hon Kelly O'Dwyer MP, Assistant Treasurer

Ministerial staff – to be advised

Departmental officials – to be advised

Agenda Item	Title	Presented by	Time
1.	Welcome and apologies	Chair	3.30–3.35
2.	Purpose of the Working Group	Chair	3.35–3.40
3.	Discussion on current policy settings and options for improvement (with discussion paper)	All	3.40–4.05
4.	Media Strategy and stakeholder consultation	All	4.05–4.15
5.	Forward work plan	Chair/All	4.15–4.25
6.	Other business and next meeting	Chair	4.25–4.30

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Ministerial Working Group on Protecting Vulnerable Visa Holders

Information Paper—20 October 2015 Meeting

1. Background

As people become increasingly mobile and look to take up opportunities in an international market place, temporary migration for the purposes of work has grown globally. Australia offers a number of temporary visas with full or partial work rights for workers to take up jobs in Australia for a period of time, including the Temporary Work Skilled, Student, Skilled Graduate and Working Holiday programmes.

The number of temporary visa holders in Australia has grown substantially in recent years. There are some 700,000¹ people in Australia on a temporary visa with a full or partial work right (although work may not be the primary purpose of the visa and not all visa holders may participate in work). This growth presents new challenges to the Australian Government across multiple portfolios, including in relation to workplace relations compliance, migration and visa enforcement, taxation compliance and workplace safety. There are also impacts on state and territory governments in relation to infrastructure and the delivery of services.

Temporary visa holders with a work right are (with a few exceptions) entitled to the protections under the Australian workplace relations framework and the *Fair Work Act 2009* (Fair Work Act), including in terms of the investigation of claims or reports of underpayment or exploitation. Temporary visa holders must also satisfy any Australian licensing, registration or certification requirements for the occupations in which they are employed.

In addition to applicable Australian workplace law, temporary visa holders should also be engaged in accordance with Australian superannuation, workers' compensation, workplace safety and relevant Australian taxation requirements.

Temporary work visa holders, including those seeking low-skilled and seasonal work, benefit the economy and the labour market. However, the unscrupulous practices of some employers and labour hire companies, combined with the fact that many visa holders tend to be young and not highly proficient in English language skills, is contributing to a vulnerable overseas workforce. Some of these problems are structural in nature, while others may be due to rogue employers or labour hire companies, as noted by the Interim Report of the Senate Inquiry² into Temporary Work Visas (released on 14 October 2015). This situation threatens to undermine public support for programmes that are critical for good employers and labour hire companies in certain sectors, such as horticulture and food processing.

¹ Estimates of the number of temporary visa holders with a work right resident in Australia vary depending on the visa subclasses considered (for example, this estimate does not include New Zealand citizens, provisional, bridging or temporary protection visa holders with a work right) and how dependent school-aged temporary visa holders are counted.

² Senate Education, Employment and References Committee, Inquiry into the Impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.

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The recent allegations of the underpayment and exploitation of Working Holiday and Student visa holders in the media and through the Senate Inquiry has focussed attention on these temporary migration programmes and their intersection with the Australian labour market.

The complex interaction of workplace, migration and corporation laws has contributed to a situation where poor employment practice has thrived in some industries and organisations. For example, the 40 hours work per fortnight condition on Student visa holders appears to have been a factor in the 7-Eleven issue, where witnesses to the Senate Inquiry have stated that franchisees have encouraged visa holders to breach this visa condition while underpaying them. Visa holders, while vulnerable to this kind of exploitation, may also be complicit in agreeing to such arrangements, knowingly breaching their visa conditions.

The Government has taken firm action through the establishment of Taskforce Cadena and putting in place stronger rules to support the integrity of Working Holiday programme. However, there is pressure on the Government to take further action which will require a coordinated policy, enforcement and data sharing effort across a number of portfolios.

Attachment A to this Information Paper provides a timeline on media reports and announcements relevant to discussion by this Ministerial Working Group.

Attachment B is the Interim Report of the Senate Inquiry into Temporary Work Visas (released 14 October 2015); which provides a summary of submissions and key evidence presented to the Inquiry (see Chapter 2).

2. Temporary Visa Holders in Australia at 30 June 2015 by Visa Category³

The following table provides Department of Immigration and Border Protection (DIBP) data on the number of temporary visa holders in Australia at 30 June 2015 for the main temporary migration programmes which include a work right. This table includes primary and secondary visa holders (including persons not exercising a work right and dependent children not of working age).

Visa Category	Total
Student visa holders	374,570
Temporary graduate (subclass 485) visa holders	26,260
Temporary skilled (subclass 457) visa holders	188,000
Working Holiday visa holders	143,920
Total ⁴	732,750

In September 2015, the Australian Bureau of Statistics Labour Force Survey (trend data) estimated that 11,775,800 persons were employed in Australia. If we assume that all of the temporary visa holders with a work right in the table above are working, they would represent some 6 per cent of employed persons.⁵

Analysis on the extent of exploitation of temporary visa holders should be considered in the context of data which shows that in the 2014-15 financial year, the Fair Work Ombudsman (FWO) finalised 1,971 complaints from identified visa holders, making up just under 11 per cent of all finalised complaints and recovered over \$1.6 million for visa holders. Of these 1,971 complaints:

³ Department of Immigration and Border Protection, Temporary Entrants and New Zealand citizens in Australia, BR0169.

⁴ Estimate does not include New Zealand citizens resident in Australia on Subclass 444 visas.

⁵ Estimates of temporary visa holders with a work right as a percentage of employed persons vary over time.

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- Over 40 per cent (820 complaints) came from subclass 417 visa holders.
- Around 15 per cent (287 complaints) came from subclass 457 visa holders.
- Over 8 per cent (163 complaints) came from Student visa holders.
- Holders of 17 other visa types were also represented.

Matters involving visa holders are disproportionately represented in FWO civil penalty litigations and other enforcement activities. In 2014-15, 36 per cent (or 202 of 558) of FWO's enforcement outcomes involved a visa holder, also noting:

- Of 50 civil penalty litigations filed, 21 (or 42 per cent) involved visa holders.
- Of 42 enforceable undertakings signed, 20 (or just under 48 per cent) involved visa holders.
- Of 118 compliance notices issued, 37 (or just over 31 per cent) involved visa holders.
- Of 348 infringement notices issued, 124 (or just under 36 per cent) involved visa holders.

3. Issues for Discussion

A number of issues have been raised in the media and during the Senate inquiry on Australia's temporary work visa programmes. Some of the key areas for discussion are:

Provision of information on workplace rights and responsibilities for Visa Holders and Employers

- Lack of awareness of work rights among vulnerable visa holders and reluctance to make complaints (including because visa conditions are being breached).
- The Government has improved the information provided to visa holders on workplace rights and protections (including more detailed information on the DIBP and FWO websites, and the publication of materials in languages of the main source countries for temporary visa holders).
- What additional information could be provided to visa holders and employers?

Data sharing and coordinated action across Government

- Labour hire companies including overseas-based operations (which charge an upfront fee to arrange a job in Australia, sometimes also arranging travel and accommodation at an inflated price) contribute to the vulnerability for visa holders. s. 47C(1)
- Referrals and information sharing between agencies with a compliance role, including for temporary visa holders with a work right, are not working as effectively as possible.
- Data sharing to identify areas of higher risk (for example, where phoenixing and non-compliance with tax laws are identified, this could point to a higher risk of non-compliance with workplace laws as well). Improved data sharing and coordinated action across departments (including in terms of compliance action and prosecutions) may act as a deterrent.

Enforcement of visa and sponsorship conditions

- Visa conditions, such as the 40 hour work per fortnight condition for Student visa holders and that Work and Holiday visa holders must only work for one employer for a maximum of six months, are difficult to enforce. Breaching these visa conditions appears to contribute to visa holders' vulnerability in the workforce.
- Similarly, the obligation for employers not to employ a person in breach of their visa conditions can be hard to enforce.
- Coordinated efforts across enforcement agencies has already assisted in this area and there may be further opportunities for joint work.

Breaches of workplace law and penalty provisions

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- Employers are breaching Australian workplace law—under payment, long shifts, lack of record keeping, false records to circumvent visa conditions and migration sponsorship obligations. There are reports this is more apparent in some industries such as horticulture, labour hire, and hospitality.
- The current cost of non-compliance with the Fair Work Act in terms of potential prosecution and fines may not be high enough to deter deliberate non-compliance by employers, particularly in relation to non-sponsored temporary visa holders.
- FWO does not currently have the power to compel people to give evidence. The FWO identified this as a factor in its investigation of the Baiada group this year.
- Lack of documentation (for example pay slips and employment records) kept by employers frustrates the efforts of the FWO to investigate and pursue complaints.

Phoenixing and sham contracting

- Phoenixing is where employers, including small labour hire operations, go out of business in order to avoid penalties and proper payments to underpaid employees. These businesses often re-open elsewhere under a different name, making them hard to track. For example, when the Fair Work Ombudsman investigated the labour hire contractors and sub-contractors involved in Baiada's plants in New South Wales, many of these labour hire companies were then de-registered or went into liquidation.
- Sham contracting typically occurs where the labour hire contractor seeks to claim that a worker is an independent contractor when in fact they are an employee. This can often be an effort on the part of the labour hire contractor to avoid the responsibilities and (where they apply) migration sponsorship obligations, associated with employees.
- As an alternative to regulation, which may be viewed as additional red tape by industry and small business, an option may be to establish a voluntary code of practice which provides a framework for companies and human resource professionals to ensure their practices comply with the Fair Work Act and related laws.

Franchising structures and accessorial liability

- There have been recent reports that some employees (such as the practices of 7-Eleven franchises and Student visa holders) are being systematically exploited and underpaid within some Australian franchising structures. The underpayment and exploitation of employees represents a serious breach of the rights of these workers.
- s. 47C(1)

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Attachment A

Time Line—Media Reports and Announcements on Vulnerable Visa Holders

2014

- June Fair Work Office (FWO) commences a long-term inquiry into systemic workplace issues at 7-Eleven franchises.
- August FWO announces a national inquiry on the wages and conditions of workers in Australia on the Working Holiday (subclass 417) visa.

2015

- 24 March The Senate refers the inquiry into the impact of Australia's temporary work visa programs on Australian labour market and on the temporary work visa holders to the Education and Employment References Committee (E&ERC) for inquiry and report. Eight public hearings were held between May and September 2015 in most capital cities.
- 1 May Minister Cash, as Assistant Minister for Immigration and Border Protection—announced measures to strengthen the integrity of the Working Holiday programmes, primarily relating to the evidentiary requirements for Working Holiday (subclass 417) visa holders undertaking 88 days eligible work with regional employers to qualify for a second visa.
- 4 May *Four Corners*/Fairfax airs an episode on the alleged underpayment and exploitation of Working Holiday (subclass 417) visa holders on farms and poultry processing businesses supplying Australia's biggest supermarkets (including Woolworths, Coles, Aldi, IGA and Costco) and fast food chains (KFC and Red Rooster).
- 18 May Minister Cash, as Assistant Minister for Immigration and Border Protection, announces Taskforce Cadena.
- 18 June FWO released a report on its inquiry into the Baiada Group's labour procurement processes in New South Wales. The inquiry into Baiada Group (poultry processing plants) commenced in November 2013.
- 22 June *7:30 Report* programme provided follow up to the 4 May *Four Corners* report claiming that Government measures to address exploitation are not effective.
- 1 July Taskforce Cadena commences.
- 31 August *Four Corners*/Fairfax media reports on claims of widespread underpayment of student and other temporary visa holders by 7-Eleven franchises.
- 2 October *The Age*, *Sydney Morning Herald* and *The Canberra Times* reported on a Fairfax Media and Monash University survey of more than 1,000 foreign language job advertisements, claiming that 80 per cent offer wages below legal rates.
- 12 October Adam Bandt MP, Greens, introduces a Bill into Parliament to make head offices/franchisors accountable for the wages and conditions of franchisee's employees.
- 14 October The E&ERC interim report is due to be tabled with the Senate.
- 20 October First Ministerial Working Group on Protecting Vulnerable Visa Holders
- November PC Final Report into Australia's WR Framework is due.
- 12 November Second Ministerial Working Group on Protecting Vulnerable Visa Holders
- 13 November E&ERC public hearing in Canberra.
- 20 November E&ERC public hearing in Brisbane.
- 3 December Third Ministerial Working Group on Protecting Vulnerable Visa Holders.

2016

- February The E&ERC is due to table the Final Report to the Senate

Taskforce Cadena

Taskforce Cadena was established in June 2015 through a Joint Agency Agreement between the Department of Immigration and Border Protection (DIBP), Australian Border Force (ABF) and the Fair Work Ombudsman (FWO). Taskforce Cadena enhances the ability of involved agencies to target and disrupt entities which seek to commit visa fraud and exploit foreign workers in Australia.

Targeting is undertaken across multiple jurisdictions and is not limited by industry or immigration status. The work of Taskforce Cadena is intended to complement, not replace or duplicate the work of regional enforcement activity already happening. It draws on capabilities within the Department, and across other government agencies to target organised criminal activity taking advantage of the temporary visa programme. Under Taskforce Cadena, the FWO and DIBP work together in sharing intelligence and data to identify strategic targets for operations in regard to both contraventions of the Fair Work Act and the Migration Act.

Taskforce Cadena has provided significant direction to operational activities throughout Australia since its formation and continues to develop targeted referrals for investigation. Departmental policy areas will use insights from Taskforce Cadena to assist with broader analysis. This analysis will include details as to whether current temporary visa policy settings are creating drivers for the exploitation of foreign workers or whether the issue is better framed in a broader whole-of-government response to the exploitation of workers. The information gathered will provide a useful evidence base to inform engagement with other portfolios on these matters.



MEETING BRIEF

MINISTER: Peter Dutton

ADVISER: s. 22(1)(a)(ii)

Ministerial Working Group on protecting vulnerable visa holders

Person/ Organisation

Ministerial Working Group on Protecting Vulnerable Visa Holders

Has the Minister met with this person/organisation in the past?

Yes – this is the second meeting of the Working Group

Purpose of Meeting

Discussion of key priority initiatives for the Working Group's action.

Date

Thursday 12 November 2015

Time

3.30-4.30pm

Venue

Parliament House, Suite MG-63 (next to Prime Minister's Office)

Travelling time from airport to location

N/A

Parking facilities

N/A

List of Attendees

Senator the Hon Michaelia Cash, Minister for Employment

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Michael Keenan MP, Minister for Justice

The Hon Kelly O'Dwyer MP, Assistant Treasurer

Ministerial staff – s. 22(1)(a)(ii) other ministerial staff to be advised

Departmental officials – David Wilden, FAS ICP, Stephen Lancaster, FAS Investigations

Organisation Funding

Previous funding to organisation

Nil


Proposed funding to organisation

Nil

Background


You attended the first meeting of the Ministerial Working Group on Protecting Vulnerable Visa Holders on 20 October 2015. The Minister for Employment, Senator the Hon Michaelia Cash, subsequently wrote to you on 2 November 2015, seeking your agreement to the five priority initiatives identified during the Working Group's first meeting (see letter at [Attachment A](#)). The Department has prepared a draft response to Minister Cash for your signature at [Attachment B](#).

s. 47C(1)



The agenda for the second meeting of the Working Group is at [Attachment C](#).

Key Messages for Minister to Deliver

- Taskforce Cadena is actively cooperating in an effective manner with a number of the agencies identified for expansion. Formal expansion of its membership may not be required.
 - Protected ATO information is already shared with the Immigration and Border Protection portfolio via the Phoenix Taskforce. A 'prescribed' taskforce designation for Taskforce Cadena may also be unnecessary.
 - s. 47C(1)
- 

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s. 47C(1)



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Related integrity measures

- Your Office specifically requested information within this brief on two further integrity measures which have been considered by the Department for the 457 and Working Holiday Maker visa programmes respectively. This information is at Attachment G.

Consultation

Investigations Division

Border Management Division

Compliance and Enforcement Framework Section

Clearance**Clearance officer:**Chloe Bird, Assistant Secretary,
Economic Policy Branch**Phone:** s. 22(1)(a)(ii)**Date:****Contact officer:**s. 22(1)(a)(ii) A/g Director, Tourism
Policy Section**Division:** PG – Immigration and
Citizenship Policy**Branch:** Economic Policy Branch**Phone:** s. 22(1)(a)(ii)**Attachments:**

- A: Letter from Minister Cash
- B: Draft letter to Minister Cash
- C: Meeting agenda
- D: Taskforce Cadena – talking points and background
- E: Employer sanctions framework
- F: Employer sanctions – talking points
- G: Related integrity measures



Senator the Hon Michaelia Cash

Minister for Employment

Minister for Women

Minister Assisting the Prime Minister for the Public Service

Reference: MS15-000957

The Hon Peter Dutton MP
Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dear Minister

Dept of Immigration & Border Protection	
<input type="checkbox"/> Priority A - 7 days	<input type="checkbox"/> Reply by Min. Inmit
<input type="checkbox"/> Priority B - 14 days	<input type="checkbox"/> Reply by Asst Min
<input type="checkbox"/> Priority C - 28 days	<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> Priority D - Intervention	<input type="checkbox"/> Reply by Sen. Adviser
<input type="checkbox"/> Info/No Resp	
<input type="checkbox"/> Non Portfolio	
RECEIVED - 4 NOV 2015	
Action Area	Reply by Dept
	<input type="checkbox"/> FAS
	<input type="checkbox"/> AS
	<input type="checkbox"/> EL 2
	<input type="checkbox"/> State/Territory

Ministerial Working Group on Protecting Vulnerable Visa Holders

Thank you for participating in the Ministerial Working Group on Protecting Vulnerable Visa Holders. I look forward to working with you and other Ministers to develop a holistic solution to the issue of visa holder exploitation by unscrupulous employers and labour hire companies. I believe our discussions at the first meeting on 20 October 2015 provided clear directions for further work between our agencies, including pooling our existing regulatory powers and resources.

I seek your endorsement of the key priorities for action discussed at the Working Group meeting, including the lead agencies on each work area. The Working Group discussed five priorities for action:
s. 47C(1)



I propose that our agencies continue to work together on these issues, including an exploration of whether there is further opportunity to tackle the worst cases of employer exploitation of workers using the sanctions available under the provisions of the *Migration Act 1958*. I also request that the Department of Immigration and Border Protection provide advice on this issue to the Ministerial Working Group at the next meeting.

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The next meeting of the Working Group is scheduled for 12 November. I look forward to seeing you or your representative then.

The contact officer in the Department of Employment is Ms Helen Innes, Branch Manager, Workforce Strategies on s. 22(1)(a)(ii). Please contact my office on s. 22(1)(a)(ii) if you would like to discuss this letter. I look forward to continuing to work with you on this important issue.

Yours sincerely



Senator the Hon Michaelia Cash

2 / 11 / 2015

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**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Ref No: MC15-267665

Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 2 November 2015, concerning the outcomes of the first meeting of the Ministerial Working Group on Protecting Vulnerable Visa Holders, held on 20 October 2015, and the priority areas for discussion at the Group's second meeting of 12 November 2015. I welcome the strengthened focus embodied by the Working Group's formation on addressing the issue of foreign worker exploitation.


As you would be aware, Taskforce Cadena has provided a positive vehicle for a more focused cross-agency approach to exploitation, particularly in relation to labour hire arrangements. At an operational level, the Taskforce has been working cooperatively with the Australian Tax Office (ATO), the Australian Federal Police (AFP) and others, to progress issues of shared interest.

s. 47C(1)



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s. 47C(1)



I look forward to working with you on this vital issue.

Yours sincerely

PETER DUTTON



Ministerial Working Group on Protecting Vulnerable Visa Holders

Agenda

Thursday 12 November 2015

3.30 pm – 4.30 pm

Parliament House, Suite MG-63 (next to Prime Minister's Office)

Chair: Senator the Hon Michaelia Cash, Minister for Employment

Attendees:

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Michael Keenan MP, Minister for Justice

The Hon Kelly O'Dwyer MP, Assistant Treasurer (tbc)

Ministerial staff and departmental officials – to be advised

Agenda Item	Title	Presented by	Time
1.	Welcome and apologies	Chair	3.30–3.35
2.	Endorse previous meeting outcomes	Chair	3.35–3.40
3.	s. 47C(1)	Minister Dutton/DIPB Minister O'Dwyer/ATO Minister Dutton/DIPB Minister O'Dwyer/ASIC	3.40–4.25
4.	Other business and next meeting (3 December at 3.30pm) <ul style="list-style-type: none"> Fair Work Act Penalties (Employment) Labour hire industry code (Employment/Treasury) 	Chair	4.25–4.30

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Attachment D**Taskforce Cadena – Talking Points & Background****Talking Points**

- I support the view that we need to develop a holistic solution – engaging a wide range of agencies – to the issue of visa holder exploitation by unscrupulous employers and labour hire companies. The priority focus for government on this is through Taskforce Cadena.

- s. 47C(1)

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Background

- Taskforce Cadena has been engaging with identified agencies since its formation, specific related actions to date are briefly outlined below.

Australian Tax Office (ATO)

- Taskforce Cadena has been sharing information through the prescribed Phoenix Taskforce, with current agreed arrangements considered sufficient in order to service the existing Taskforce Cadena mandate.
- Taskforce Cadena has had several key meetings with the Phoenix Taskforce to establish agreed arrangements.

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- Establishing a formalised agreement (MoU) outside of the Phoenix Taskforce arrangements may add value to Taskforce Cadena in relation to establishing a commitment from the ATO to prioritise requests for information from the taskforce and in addition accept relevant referrals from Taskforce Cadena regarding tax evasion for actioning.

Australian Federal Police (AFP)

- Taskforce Cadena is working closely with the Victim Based Crime Portfolio and has information sharing arrangements in place with the Human Trafficking and Human Slavery teams.
- AFP National Office has been briefed on Taskforce Cadena objectives and to date has been providing appropriate support to Taskforce Cadena, including the sharing of intelligence.
- AFP has been liaising directly with the taskforce in relation to a number of servitude matters which fall short of providing enough evidence for Police action, however may include offences under the Migration Act.
- Current arrangements are considered sufficient in order to service the existing Taskforce Cadena mandate.

Australian Crime Commission (ACC)

s. 47E(d)



Australian Securities and Investment Commission (ASIC)

- Taskforce Cadena has been utilising intelligence systems and is able to access business records to support intelligence capability.
- No further engagement has occurred.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

- Taskforce Cadena is currently engaged with AUSTRAC and is proactively receiving information in relation to assessments that hit the Taskforce Cadena thresholds.

Associated documents

Taskforce Cadena Joint Agency Agreement (see overleaf).



Australian Government
Department of Immigration
and Border Protection



Australian
BORDER FORCE



Australian Government

Fair Work
OMBUDSMAN

TASKFORCE CADENA

JOINT AGENCY AGREEMENT

Foundation agreement for the formation of a taskforce for the conduct of multi-agency operations targeting visa fraud, illegal work and the exploitation of foreign workers

Department of Immigration and Border Protection

Australian Border Force

Fair Work Ombudsman

Version 2.0

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Purpose

1. The purpose of this Joint Agency Agreement (JAA) is to ensure that all parties involved in Taskforce Cadena have a clear understanding of the objectives and key deliverables of the Taskforce and the general principles governing its operation.

Parties

2. This Joint Agency Agreement (Agreement) is made between the following parties:
 - Department of Immigration and Border Protection (DIBP);
 - Australian Border Force (ABF); and
 - Fair Work Ombudsman (FWO)

Background

3. The incidence of fraud and exploitation involving foreign workers in Australia is well-known to DIBP and FWO. A range of integrity and investigative initiatives have been actively progressed across these agencies through ongoing campaigns, enquiries, investigations and field operations.
4. Targeting and disrupting entities which seek to commit visa fraud and exploit foreign workers is a priority of DIBP, FWO and other regulatory agencies.
5. Taskforce Cadena will initially focus on the collective information holdings of DIBP, FWO, the Australian Federal Police (AFP), and other agencies. Further action will be considered and linked to broader coordinated activity across government to address the matters related to illegal work and the exploitation of foreign workers.

Objectives

6. To reduce visa fraud, illegal work and the exploitation of foreign workers in Australia.
7. To utilise intelligence from a range of sources to identify and investigate major targets of interest.
8. To influence Australian businesses in order to enhance compliance with Australian workplace laws and regulations in relation to foreign worker rights and obligations.

Governance

9. Oversight to Taskforce Cadena will be provided by the Taskforce Cadena Joint Management Group (JMG). The JMG will meet at least bi-monthly and comprise the following parties:
 - DC Border Operations, ABF
 - AC Border Management, ABF

- AC Strategic Border Command, ABF
 - AC Investigations, ABF
 - FAS Immigration and Citizenship Policy, DIBP
 - Commander Taskforce Cadena, ABF
 - Deputy Fair Work Ombudsman, FWO
 - ED, Dispute Resolution and Compliance, FWO
 - Other observers may be invited as the JMG requires.
10. Taskforce Cadena Operational Coordination Group (OCG) will be co-led by officers from ABF/DIBP and FWO. The OCG will meet at least monthly and will comprise the following:
- DIBP/ABF Lead – Commander Taskforce Cadena
 - FWO Lead – Executive Director, Dispute Resolution and Compliance, FWO
 - Commander Investigations, Border Operations, ABF
 - Commander Immigration Compliance, ABF
 - AS Operational Intelligence, Intelligence, DIBP
 - AS Mobility, Immigration and Citizenship Policy, DIBP
 - Executive Director, Policy Media and Communications, FWO
11. Changes to JMG and OCG membership may occur at any time with the agreement of all parties.
12. The Taskforce will operate across the border continuum and through the SBC Regional Command and FWO network utilising operational command procedures via a Concept of Operations (COO) to be developed by the Taskforce Cadena OCG.
13. The JAA will be reviewed by the JMG on a six monthly basis so as to ensure it is delivering its objectives and deliverables.

Key Taskforce Deliverables

14. Identify and investigate major targets of interest as identified by joint intelligence activities.
15. Co-ordinate existing integrity and investigative measures being progressed by the DIBP and FWO, ensuring a coordinated, strategic approach is taken to tackling the issue of visa fraud, illegal work and foreign worker exploitation nationally.
16. Establish clear and effective lines of communication and information sharing protocols with other government agencies including seeking administrative, civil, and criminal remedies jointly with partner agencies including agencies such as the AFP, Australian Crime Commission and the Australian Taxation Office.

17. Prioritise intelligence leads for targeted action through a risk-based approach whilst ensuring that overlaying FWO and DIBP macro-control strategies underpin strategic and operational planning.
18. Establish a referral process to ensure prioritised targets are subject to appropriate operational responses. Ensure operational teams are briefed thoroughly, and provide linkages to involved or interested government agencies to ensure co-ordinated action at the operational level.
19. Manage strategic communications and reporting regarding Taskforce efforts nationally, including co-ordination of media engagement and communication campaigns.

Other Agencies

20. The Taskforce will refer matters and engage with other agencies as required to assist in delivering the objectives of the Taskforce. This may include, but is not limited to the following agencies and bodies:
 - Australian Federal Police;
 - State and Territory police forces;
 - Australian Crime Commission;
 - Australian Taxation Office;
 - Australian Transaction Reports and Analysis Centre;
 - Australian Securities and Investments Commission;
 - Department of Employment; and
 - the prescribed Phoenix Taskforce.

Personnel and Resources

21. Each party will contribute such personnel as required to be attached to the Taskforce on a permanent or adhoc basis to support the operational activities of the Taskforce. At all times each party remains the employer of the personnel they contribute to the Taskforce and will be responsible for all administrative and legal issues relating to their personnel.
22. No party will be required to maintain resourcing obligations under the JAA in the event of major and unforeseen demands on their resources and with the agreement of the JMG.
23. Each party will ensure that prior to appointment to the Taskforce its personnel are cleared to Protected level (baseline). All costs associated with the processing of security clearances will be borne by the participating agency.

Intelligence Cell

24. The Taskforce will establish an Intelligence Cell that will be staffed by relevant analysts and intelligence officers allocated by parties to the JAA.
25. The Intelligence Cell will consolidate, assess and analyse available intelligence, and engage relevant Commonwealth and State and Territory agencies, to build a comprehensive and accurate picture for the Taskforce of fraudulent and exploitative practices, including the drivers for non-compliance and will update and maintain relevant information via a centralised process.

Costs

26. Unless otherwise agreed, each agency and work area will meet the costs of their employees attached to the Taskforce, including the payment of salaries, allowances and penalties (if applicable).

Information Management and Exchange

27. The parties agree to ensure that information exchanges are undertaken consistent with relevant provisions of the Public Service Act and any other relevant legislation that applies in relation to the sharing of information relevant to Taskforce activities.

Enforcement Activity

28. Any enforcement action undertaken (be it court proceedings or otherwise) will be the responsibility of the agency with lead responsibility in relation to the offence(s) or contravention(s) being pursued.

Dispute Resolution

29. The parties agree to negotiate promptly to resolve any dispute that arises between them in connection with this JAA and the Concept of Operations.
30. In the first instances, responsibility for dispute resolution sits at the Taskforce level and then with the JMG. If unresolved, the JMG can refer matters to the senior executive of the relevant agencies.

Duration

31. The JAA will commence from the date it is signed by relevant parties and will remain in place until such time that it is mutually terminated by the agreement of all parties.

Variation

32. This JAA may only be varied with the agreement of the parties. Any amendment will be in writing. Signed by all parties and lodged with JMG. Variation will take effect as soon as they are agreed by all parties, unless otherwise indicated.

Termination

33. A party may terminate their involvement in the JAA by giving not less than 28 days written notices to the JMG. In the event that this JAA is terminated under this clause, the parties agree to negotiate in good faith arrangements to permit the parties to minimise disruptions to investigations and operational security.

Signatures

Signed for on behalf of the Department of
Immigration and Border Protection by:
s. 22(1)(a)(ii)

Michael Pezzullo
Secretary
14/07/2015

Signed for on behalf of the Australian
Border Force by:
s. 22(1)(a)(ii)

Roman Quaadvlieg
ABF Commissioner
14/7/15

Signed for on behalf of the Fair Work
Ombudsman by:
s. 22(1)(a)(ii)

Natalie James
Ombudsman
22/7/15

Attachment E**Employer Sanctions Framework**

The Department is responsible for the monitoring and management of the employers of both non-citizen illegal workers and sponsors of temporary work visas.

The Department also manages non-citizen illegal workers. An illegal worker is a person who is working in breach their visa conditions or without a visa. Working in breach of visa conditions may take the form of working in excess of the hours set out in the visa or working with a visa that does not have work rights. The Department is able to cancel an illegal workers visa under the numerous powers of the Migration Act 1958 (sections 116, 119, 120, 121, 124 and 127).

The Migration Amendment (Reform of Employer Sanctions) Act 2013 came into effect in July 2013. The amendment enables the Department to serve infringement notices and civil penalties for persons that allow, or refer, illegal workers to work. The Migration Amendment creates a credible threat of consequences for employers and employees; and sanctioning businesses that commit breaches or persist in employing illegal workers.

The following table outlines the administrative notices and penalties.

Sanction category	Maximum penalty
Illegal Worker Warning Notice (IWWN)	Administrative warning
Infringement	AUD 3,240 fine for individuals
	AUD 16,200 fine for bodies corporate
Civil penalty	AUD 16,200 fine for individuals
	AUD 81,000 fine for bodies corporate
Criminal offence	AUD 21,600 fine and/or two years imprisonment for individuals
	AUD 108,000 fine for bodies corporate
Aggravated Criminal Offence	AUD 54,000 fine and/or five years imprisonment for individuals
	AUD 270,000 fine for bodies corporate

*Please note: sanctions and penalties are per illegal worker

Following the implementation of Employer Sanctions in July 2013, there has been an increased focus on the employment of illegal workers, with over 5000 locations of illegal workers, over 1600 Illegal Worker Warning Notices and nine sanctions against employers of illegal workers.

The Department undertakes a range of employer awareness and compliance activities designed to inform, educate, warn and sanction individuals or organisations in order to illicit voluntary compliance and deter illegal work practices in Australia. The following prevention strategies and activities are designed to inform and maximise voluntary compliance.

- Communication strategies using a variety of mediums including information on the departmental website, advertising on social media, printed posters and brochures for dissemination in the community.

- The Visa Entitlement Verification Online (VEVO) is a free online service for employers which provides information regarding the work entitlements of prospective employees.
- Compliance Field officers conduct Employer Awareness visits to businesses to disseminate information about the consequences of employing illegal workers and information regarding VEVO.
- Illegal Worker Warning Notices (IWWNs) provide a warning to those who employ illegal workers. In the last financial year, there were 655 IWWNs issued to employers of illegal workers.
- Infringement notices sanction those who continue to employ illegal workers. There have been nine infringement notices issued to employers following the legislative changes in July 2013.

The current sponsorship framework applicable to temporary work visas, and in particular the subclass 457 visa, seeks to ensure that the working conditions of sponsored visa holders meet Australian standards and standardise the obligations and requirements all sponsors must meet.

Key requirements under the 457 programme which mitigate the risk of worker exploitation include that applicants are nominated to work in a genuinely skilled occupation, be paid the market salary rate, and meet English language standards. Worker protection laws complement this framework by providing protection for vulnerable overseas workers.

The Department takes a risk based approach to monitoring sponsor (employer) obligations under the 457 visa programme (for skilled workers). If a sponsor is found to have failed an obligation, the Department institutes appropriate action, which may take the form of imposing administrative sanctions, issuing infringement notices, executing enforceable undertakings or applying to the federal court for a civil penalty order.

In the period 1 July 2015 to 30 September 2015, the Department finalised the monitoring of 475 temporary work sponsors, the majority of which were subclass 457 sponsors.

- Almost two-thirds (312) of sponsors monitored were considered to have satisfactorily met their obligations.
- Just over one third (163) of the sponsors monitored were found to be in breach of their obligations. Of these, a total of 101 sponsors were sanctioned (cancelling and/or barring the sponsor), 58 received a formal warning and 11 were issued with infringement notices.

In the small number of very serious cases, the Department seeks penalty orders with the courts. Currently one case is before the courts, whilst in 2014-15 a case was successfully prosecuted by the Department (Minister for Immigration and Border Protection v Choong Enterprises) where the court imposed total penalties and restitution of \$335,017.13.

The Department works closely with other agencies to address the employment of illegal workers and maintains Memoranda of Understanding (MOUs) with agencies including the Australian Federal Police, Australian Taxation Office and the Fair Work Ombudsman (FWO).

Any issues of exploitation of workers and illegal work practices are a matter for the FWO, who operate under the *Fair Work Act 2009* and are able to instigate workplace investigations, compliance notices, infringement notices and litigation against employers.

The FWO also has a limited monitoring role under the *Migration Act 1958* focussed on monitoring subclass 457 sponsors' compliance with two key obligations:

- the obligation to ensure the worker's pay is the same as the equivalent Australian or at least as much as was approved by the Department at the time of nomination (whichever is higher); and
- the obligation to ensure that the sponsored person works in the nominated occupation.

In addition to FWO's monitoring role, the Department works collaboratively in relation to specific instances of overseas worker exploitation.

Attachment F**Talking Points – Employer Sanctions Framework**

- I welcome further discussion on how to enhance the use of the Department's employer sanctions powers.
- The Department is responsible for the monitoring and management of the employers of both non-citizen illegal workers and sponsors of temporary work visas.

Employee sponsorship

- The current sponsorship framework applicable to temporary work visas, and in particular the subclass 457 visa, seeks to ensure that the working conditions of sponsored visa holders meet Australian standards and standardise the obligations and requirements all sponsors must meet.
- Key requirements under the 457 programme which mitigate the risk of worker exploitation include that applicants are nominated to work in a genuinely skilled occupation, be paid the market salary rate, and meet English language standards. Worker protection laws complement this framework by providing protection for vulnerable overseas workers.
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 - In the small number of very serious cases, the Department seeks penalty orders with the courts. Currently one case is before the courts, whilst in 2014-15 a case was successfully prosecuted by the Department (Minister for Immigration and Border Protection v Choong Enterprises) where the court imposed total penalties and restitution of \$335,017.13.

Illegal Workers

- There is a comprehensive range of sanctions under the *Migration Act 1958* to respond to migration related illegal work. Illegal work occurs where a person or business allows or refers a non-citizen to work, where that non-citizen does not have a visa or would be working in breach of a visa condition prohibiting or restricting work.
- 'Allowing to work' and 'referring for work' captures a broad range of work arrangements including those in labour hire arrangements or others participating in an arrangement where illegal work occurs.

- The Department's overall approach to reduce instances of illegal work is through building awareness of the consequences of employing illegal workers; creating a credible threat of consequences for employers and employees; and sanctioning businesses that commit breaches or persist in employing illegal workers.
- The Department provides Visa Entitlement Verification Online (VEVO), a free online service for employers with information regarding the work entitlements of prospective employees.
- There is a great deal of public information available to employers to educate themselves on how to do the right thing. For example, the Border website contains information on 'Employing Legal Workers' and a Fact Sheet.
- This has been effective in educating business on the sanctions available. It has also encouraged the use of the Department's VEVO tool.
- In 2014-15, 1271 awareness visits were undertaken with business, industry and stakeholder groups.
- In 2014-15, more than 2,641,245 VEVO checks were completed, an increase of 15% from the previous year.
- If employers continue to engage illegal workers, the Department can take the following actions:
 - o issue an administrative warning in the form of Illegal Worker Warning Notice (IWWN);
 - o where the employer has not taken reasonable steps to check if their employees are illegal workers the Department can issue infringements and civil penalties; and
 - o for more serious matters, the Department has the option to mount a criminal prosecution or aggravated criminal prosecution where the worker has been exploited due to slavery, servitude, forced labour, forced marriage, or debt bondage.
- In 2014-15, the Department issued 655 IWWNs and 8 infringement notices with fines totalling AUD \$62,730.
- The *Migration Act 1958* also includes information gathering powers and powers of search under a warrant for authorised officers.

Attachment G**Related Integrity Measures****457 visa programme – tax file number data exchange**

The Department and the Australian Taxation Office (ATO) currently exchange a range of information, particularly to facilitate the s. 47E(d) and enforcement of taxation laws. Release of information is tightly controlled under ATO, departmental and privacy legislation and supported through numerous Memoranda of Understanding.

The Department and the ATO are currently sponsoring Act amendments to broaden information release powers, which would allow broader accessing of information where it relates to powers administered by our respective agencies. Greater information sharing between the Department and the ATO would support s. 47E(d) and enforcement activities and enforcement of taxation laws.

The 457 Integrity Review recommended greater collaboration between the Department and the ATO, particularly through data sharing and matching relating to visa holder salaries, to better target monitoring of the sponsor obligation to pay 457 visa holders the salary approved by the Department and to minimise the information burden on employers. The 457 Integrity Review panel recommended that 457 visa holders be required to provide their Tax File Numbers (TFNs) to the Department, on the understanding that TFNs would be necessary to match departmental and ATO records.


s. 47C(1)

s. 47E(d)

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Freedom of Information Act 1982

Working Holiday Maker (WHM) –s. 47C(1)

s. 47C(1)



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Freedom of Information Act 1982



MEETING BRIEF

MINISTER: Peter Dutton

ADVISER: s. 22(1)(a)(ii)

Meeting Brief - Ministerial Working Group - Thursday 3 December 3.30pm-4.10pm

Person/ Organisation

Ministerial Working Group on Protecting Vulnerable Visa Holders

Has the Minister met with this person/organisation in the past?

Yes – this is the third meeting of the Working Group

Purpose of Meeting

Update on action item progress and announcement of agreed measures.

Date

Thursday 3 December 2015

Time

3.30-4.10pm

Venue

Parliament House, Suite MG-63 (next to Prime Minister's Office)

Travelling time from airport to location

N/A

Parking facilities

N/A

List of Attendees

Senator the Hon Michaelia Cash, Minister for Employment

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Kelly O'Dwyer MP, Assistant Treasurer

Ministerial staff – s. 22(1)(a)(ii) other ministerial staff to be advised

Departmental officials – s. 22(1)(a)(ii) Coordinator Taskforce Cadena

Organisation Funding

Previous funding to organisation

Nil

Proposed funding to organisation

Nil

Background

You attended the first and second meeting of the Ministerial Working Group on Protecting Vulnerable Visa Holders on 20 October 2015 and 12 November 2015 respectively.

s. 47C(1)

The agenda for the third meeting of the Working Group is at Attachment A.

Key Messages for Minister to Deliver

Update on Taskforce Cadena

- The intent of Taskforce Cadena is to target those involved in the organisation of visa fraud and illegal workers and not the victims of these practices. The Taskforce is coordinating strategic analysis of the problem and how the visa and migration programme is being used to facilitate exploitation. This will feed back into relevant policy discussions and system changes to thwart efforts of those who seek to abuse the visa and migration programme.
- Taskforce Cadena is intended to complement, not replace or duplicate, work of other areas and provides an enhanced level of support to existing business practices.
- Taskforce Cadena does not focus on any one industry in any one state. An enhanced level of support has been provided by the Taskforce to Australian Border Force (ABF) compliance and investigations teams across all mainland states and territories in Australia on multiple industries.
- As of 30 November 2015, Taskforce Cadena has received 58 allegations relating to the organised and significant exploitation of foreign workers, visa fraud or illegal work.
- A further 39 allegations have been recorded by the National Allegations and Assessment Team. These are currently being reviewed by the Command Group. Some of these 39 have been previously assessed.
- The Taskforce Cadena Command Group has provided 16 assessments to the Fair Work Ombudsman (FWO) for endorsement of the activity as Cadena activity.
- Nine referrals have been forwarded to operational areas for their planning and actioning between September and November 2015.

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Freedom of Information Act 1982

- Since July 2015 there have been seven operations 'badged' Taskforce Cadena, with a further four being of interest to the Taskforce. Some of these operations were before the formation of the current processes.
- As at 1 December 2015 the Taskforce Command Group has:
 - 7 allegations to receive further analysis;
 - 19 assessments underway;
 - 6 referrals with operational teams for planning and execution;
 - 6 operations in the "post operation" phase, whereby intelligence is still being assessed;
 - 18 finalised referrals; and
 - 5 allegations currently on-hold due to engagement with the FWO by the entities of interest.
- An activity dashboard for the Taskforce is available for the Working Group's reference (see Attachment B).

s. 47C(1)

Consultation

Investigations Division

Clearance**Clearance officer:**Chloe Bird, Assistant Secretary,
Economic Policy Branch**Phone:** s. 22(1)(a)(ii)**Date:**

s. 22(1)(a)(ii)

02/12/15

Contact officer:s. 22(1)(a)(ii) Coordinator, Taskforce
Cadena**Division:** OPs – Investigations
Division**Branch:** Immigration and Customs
Enforcement Branch**Phone:** s. 22(1)(a)(ii)Released by DIBP under the
Freedom of Information Act 1982

Attachments:

A: Meeting agenda

B: Taskforce Cadena activity dashboard

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Ministerial Working Group on Protecting Vulnerable Visa Holders

Agenda

Thursday 3 December 2015

3.30 pm – 4.10 pm

Parliament House, Suite MG-63 (next to Prime Minister's Office)

Chair: Senator the Hon Michaelia Cash, Minister for Employment

Attendees:

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

The Hon Kelly O'Dwyer MP, Assistant Treasurer

Ministerial staff and departmental officials – to be advised

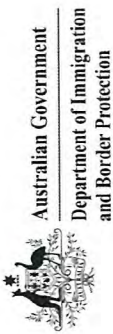
Agenda Item	Title	Presented by	Time
1.	Welcome and apologies	Chair	3.30
2.	Endorse previous meeting outcomes	Chair	3.30–3.35
3.	Update on Taskforce Cadena activities and related operations (standing item)	Minister Dutton/ Immigration	3.35–3.40
	Update on Taskforce Cadena being prescribed and ASIC and ATO investigations	Minister O'Dwyer/ Treasury	
4.	Discussion (with papers): (i) Fair Work Act Penalties s. 47C(1)	Minister Cash/ Employment Minister Cash/ Employment/ Minister O'Dwyer/ Treasury	3.40–3.55
5.	Announcement of agreed measures	All	3.55–4.00
6.	Forward meeting plan 2016	All	4.00–4.05
7.	Other business and next meeting	Chair	4.05–4.10



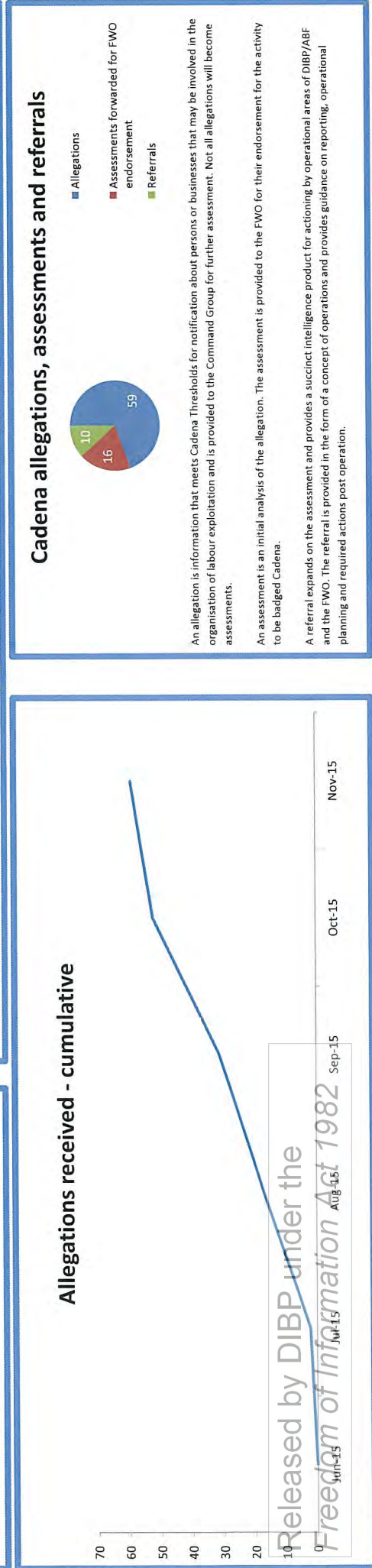
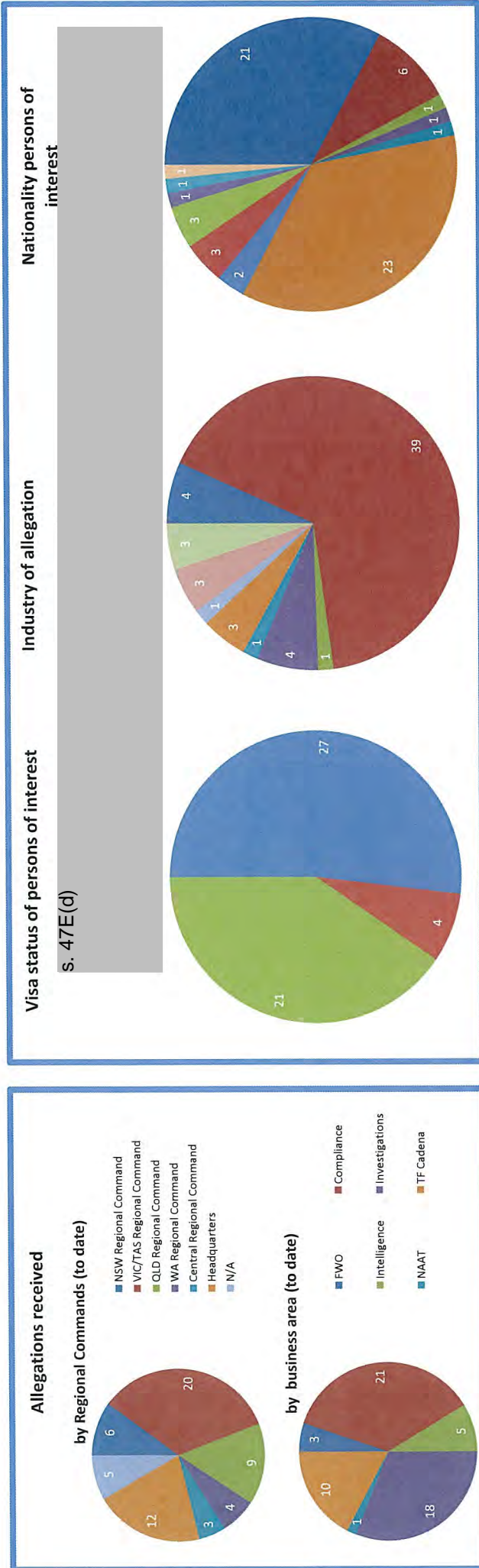
FOR OFFICIAL USE ONLY

TASKFORCE CADENA DASHBOARD

Data Current as at: 10:00, Friday 27 November 2015



This Dashboard provides a snapshot of Taskforce Cadena activity. It includes information relating to allegations, referrals, and entities and persons of interest. This product is currently subject to ongoing operational activity. It must not be disseminated beyond the attached distribution list without the written consent of the Op Chief.



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Ref No: MC15-249858

36T Michaelia Cash
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service
Senator for Western Australia
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 2 October 2015 concerning a new Ministerial Working Group on Protecting Vulnerable Visa Holders. I look forward to participating in the first meeting of the Ministerial Working Group on 20 October 2015.

I commend you on this important initiative and agree there is potential for a holistic response that deals with workplace relations, migration and corporation laws and their enforcement.


My Department will continue to liaise with the Department of Employment to support the activities of the Ministerial Working Group.

Thank you again for your letter.

Yours sincerely

PETER DUTTON

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Freedom of Information Act 1982



Dept of Immigration & Citizenship

<input type="checkbox"/> Priority A - 7 days	<input type="checkbox"/> Reply by Asst. Min.
<input type="checkbox"/> Priority B - 14 days	<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> Priority C - 28 days	<input type="checkbox"/> Reply by Sen. Adviser
<input type="checkbox"/> Priority D - Intervention	
<input checked="" type="checkbox"/> Info/No Resp	
<input type="checkbox"/> Non Portfolio	

RECEIVED 17 DEC 2015

Action Area
ICP

Reply by Dept
☐ FAS
☐ AS
☐ EL 2
☐ State/Territory

Parliament House
CANBERRA ACT 2600

Received 17 DEC 2015

*With Compliments
of the
Assistant Minister
for Productivity*



THE HON DR PETER HENDY MP
ASSISTANT MINISTER FOR PRODUCTIVITY

Reference: C15/126667

Ms Kelly O'Dwyer MP
Minister for Small Business and Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Dear Minister *Kelly*

Thank you for your letter to the Prime Minister dated 3 December 2015 regarding Taskforce Cadena. The Prime Minister has asked that I reply on his behalf.

I support your proposal to list Taskforce Cadena as a prescribed taskforce, as outlined in your correspondence. Your proposal to release draft legislation and explanatory materials publicly is also agreed, providing all measures in the legislation have policy authority.

A copy of this correspondence has been provided to the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, and the Fair Work Ombudsman, Ms Natalie James, for their information.

Yours sincerely

P. Hendy
DR PETER HENDY

17 / 12 / 2015

Released by DIBP under the
Freedom of Information Act 1982



Minister for Small Business
Assistant Treasurer
 The Hon Kelly O'Dwyer MP

The Hon Malcolm Turnbull MP
 Prime Minister
 Parliament House
 Canberra ACT 2600



Dear Prime Minister

Malcolm

I seek your approval to declare Taskforce Cadena as a prescribed taskforce.

The Government established Taskforce Cadena in June 2015 to address fraud and worker exploitation involving temporary visa holders. The taskforce brings together a range of agencies led by the Department of Immigration and Border Protection and the Fair Work Ombudsman.

This prescription will allow taxation officers to share protected taxpayer information to Taskforce Cadena officers, or with a court or tribunal, on a continuing basis.

I also seek your agreement to consult publicly on any draft legislation and explanatory materials.

Based on advice from the Office of Best Practice Regulation, a regulation impact statement is not required.

Yours sincerely

Kelly O'Dwyer
 Kelly O'Dwyer

Released by DIBP under the
 Freedom of Information Act 1982



Senator the Hon Michaelia Cash
 Minister for Employment
 Minister for Women
 Minister Assisting the Prime Minister for the Public Service

Reference: MS15-000798

The Hon Michael Keenan MP
 Minister for Justice
 Parliament House
 CANBERRA ACT 2600

- 2 OCT 2015

Dear Minister

Ministerial Working Group on Protecting Vulnerable Visa Holders

I am writing to invite you to participate in a Ministerial Working Group on Protecting Vulnerable Visa Holders. This Ministerial Working Group will also include the Hon Peter Dutton MP, Minister for Immigration and Border Protection, the Assistant Treasurer, the Hon Kelly O'Dwyer MP; along with departmental officials from relevant agencies including the Department of Employment, the Department of Immigration and Border Protection, the Fair Work Ombudsman, the Australian Taxation Office, the Australian Federal Police and the Australian Investment and Securities Commission.

The Working Group will examine potential Government initiatives to address the very concerning allegations arising from the Senate Standing Committee on Education and Employment's Inquiry into 'The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders' on the alleged underpayment and exploitation of international student and working holiday visa holders.

The Australian Government takes such allegations seriously and has already implemented a number of measures to strengthen the integrity of its temporary migration programmes. This includes the establishment of Taskforce Cadena and the introduction of stronger rules to support the integrity of the working holiday programme. However, I believe that more can be done, particularly on the complex issues that arise where workplace relations, migration and corporations laws intersect.

In order to meet potential legislative and Budget timeframes, I propose that this Ministerial Working Group meet once during each Parliamentary fortnight between now and the end of the year, with policy work being progressed by departments between meetings. To assist my office to formalise arrangements and coordinate logistics for this Ministerial Working Group, can you please confirm your availability and identify a departmental contact by Friday, 9 October 2015.

Please contact my office on (02) 6277 7320 to discuss this further.

Yours sincerely

Michaelia Cash
 Senator the Hon Michaelia Cash
 2 / 10 2015

MIN - RECEIVED	
<input checked="" type="checkbox"/> Priority A (Date)	<input type="checkbox"/> Reply by MIN
<input type="checkbox"/> Priority B	<input type="checkbox"/> Reply by AG
<input type="checkbox"/> Priority C	<input type="checkbox"/> Reply by PS
<input type="checkbox"/> Information	<input type="checkbox"/> Sub Required
<input type="checkbox"/> App. Action	<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> NFA	<input type="checkbox"/> Reply by Dept
<input type="checkbox"/> Invitation	<input type="checkbox"/> Action Area
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Date: <i>7/10</i>	

07 OCT 2015



Senator the Hon Michaelia Cash

Minister for Employment

Minister for Women

Minister Assisting the Prime Minister for the Public Service

Reference: MS15-000957

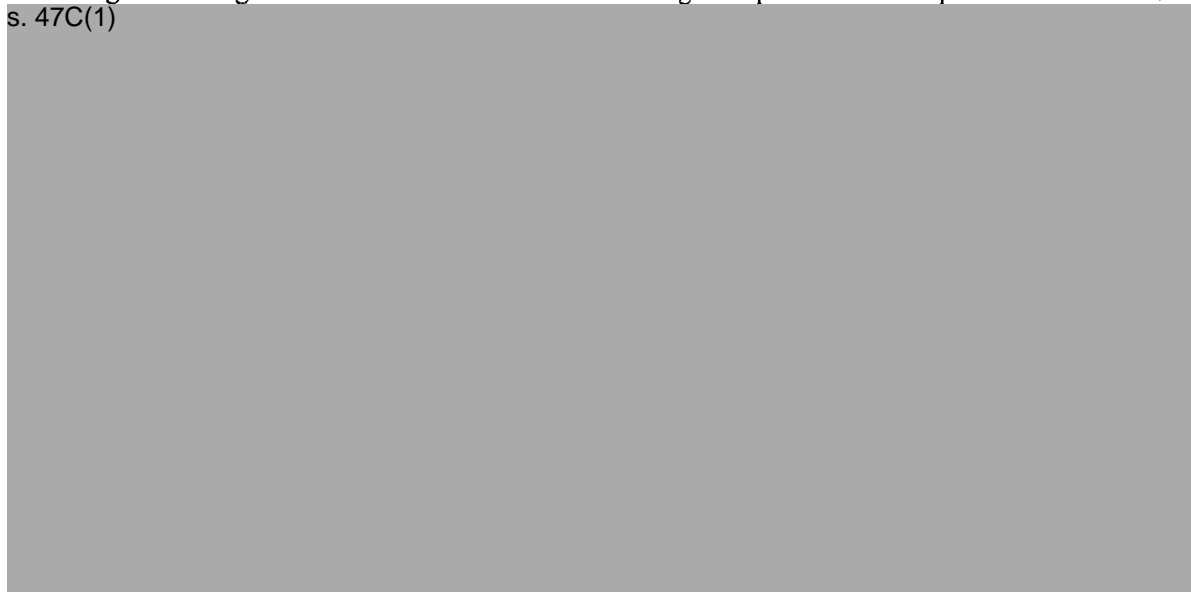
The Hon Peter Dutton MP
Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dear Minister

Ministerial Working Group on Protecting Vulnerable Visa Holders

Thank you for participating in the Ministerial Working Group on Protecting Vulnerable Visa Holders. I look forward to working with you and other Ministers to develop a holistic solution to the issue of visa holder exploitation by unscrupulous employers and labour hire companies. I believe our discussions at the first meeting on 20 October 2015 provided clear directions for further work between our agencies, including pooling our existing regulatory powers and resources.

I seek your endorsement of the key priorities for action discussed at the Working Group meeting, including the lead agencies on each work area. The Working Group discussed five priorities for action:
s. 47C(1)



I propose that our agencies continue to work together on these issues, including an exploration of whether there is further opportunity to tackle the worst cases of employer exploitation of workers using the sanctions available under the provisions of the *Migration Act 1958*. I also request that the Department of Immigration and Border Protection provide advice on this issue to the Ministerial Working Group at the next meeting.

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The next meeting of the Working Group is scheduled for 12 November. I look forward to seeing you or your representative then.

The contact officer in the Department of Employment is Ms Helen Innes, Branch Manager, Workforce Strategies on S. 22(1)(a)(ii). Please contact my office on S. 22(1)(a)(ii) if you would like to discuss this letter. I look forward to continuing to work with you on this important issue.

Yours sincerely



Senator the Hon Michaelia Cash

E / **H** / 2015

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MEETING BRIEF

Meeting Date: 03/12/2015	Meeting Time: 15:30-16:10	Item: 2
Ministerial Working Group on Protecting Vulnerable Visa Holders		

The Ministerial Working Group on Protecting Vulnerable Visa Holders (Ministerial Working Group) has requested an update on the work of Cadena at each meeting. The Secretariat has requested that the update provide information on operations being referred and how the prescribing of TF Cadena is progressing.

- As of 30 November 2015 Taskforce Cadena has received 58 allegations relating to the organised and significant exploitation of foreign workers, visa fraud or illegal work.
- A further 39 allegations have been recorded by the National Allegations and Assessment Team. These are currently being reviewed by the Command Group. Some of these 39 have been previously assessed.
- The Taskforce Cadena Command Group has provided 16 assessments to the Fair Work Ombudsman for endorsement of the activity as Cadena activity.
- Nine referrals have been forwarded to operational areas for their planning and actioning between September and November 2015.
- Since July 2015 there have been seven operations 'badged' Taskforce Cadena, with a further four being of interest to the taskforce. Some of these operations were before the formation of the current processes.
- As at 1 December 2015 the Taskforce Command Group has:
 - 7 allegations to receive further analysis;
 - 19 assessments underway;
 - 6 referrals with operational teams for planning and execution;
 - 6 operations in the "post operation" phase, whereby intelligence is still being assessed;
 - 18 finalised referrals; and
 - 5 allegations currently on-hold due to engagement with the FWO by the entities of interest.

s. 47C(1)



- The key benefit of the taskforce will be the sharing and pooling of intelligence, resources and operational capabilities in regions and industries where allegations of unlawful practices are most common. Taskforce Cadena will also see greater cooperation on disruption, enforcement, and litigation utilising a whole-of-government approach.
- Taskforce Cadena is intended to complement, not replace or duplicate, work of other areas and provides an enhanced level of support to existing business practices.
- The intent of Taskforce Cadena is to target those involved in the organisation of visa fraud and illegal workers and not the victims of these practices. The taskforce is coordinating strategic analysis of the problem and how the visa and migration programme is being used to facilitate exploitation. This will feed back into relevant policy discussions and system changes to thwart efforts of those who seek to abuse the visa and migration programme.
- Taskforce Cadena does not focus on any one industry in any one state. An enhanced level of support has been provided by the Taskforce to ABF compliance and investigations teams across all mainland states and territories in Australia on multiple industries.

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Operation	Dates	Location	Section 251 warrants	Section 3E warrants	UNCs detained	FWO Inspections
LOCUST	6 - 25 August 2015 5 – 28 July 2015	Melbourne	3	Nil	32	Nil
TAHOE	29 July 2015	Victoria	3	Nil	Nil	Nil
ARISTOTLE	5 August 2015	Melbourne	Nil	11	Nil	Nil
IMPERIAL	12 August 2015	Mildura and Irymple (VIC)	2	Nil	11	Nil
GRASSBY	2-3 September 2015	Bowen region (QLD)	2	Nil	17	Nil
KARAOKE	23 October 2015	Melbourne and Perth	Nil	Nil	Nil	5
NAIL SALONS	12 November 2015	Newcastle (NSW)	Nil	Nil	1	Nil
Total	7		10	11	61	5

AUTHOR:	s. 22(1)(a)(ii)
POSITION:	Taskforce Cadena, Immigration and Customs Enforcement
CLEARING OFFICER:	s. 22(1)(a)(ii), Superintendent Taskforce Cadena
CONTENT PROVIDED BY:	Fair Work Ombudsman and TF Cadena Command Group
DATE:	06 November 2015

Attachment A – Taskforce Cadena Dashboard

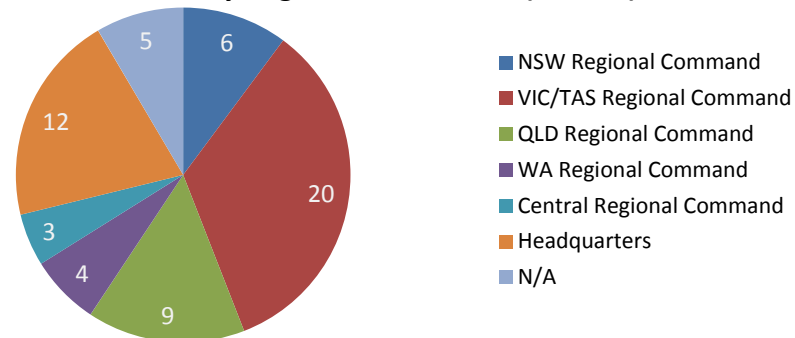
TASKFORCE CADENA DASHBOARD

Data Current as at: 10:00, Friday 27 November 2015

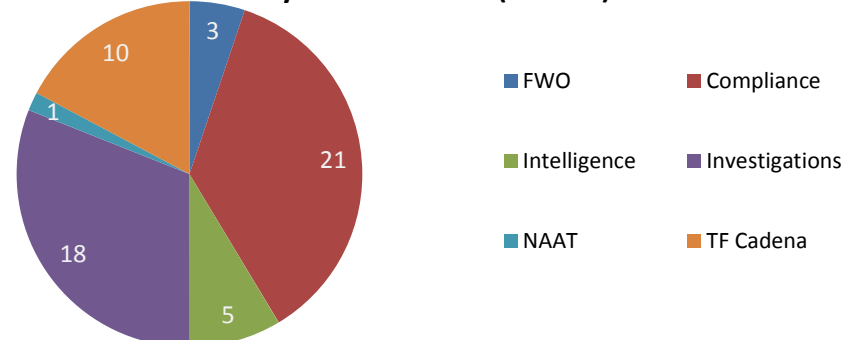
This Dashboard provides a snapshot of Taskforce Cadena activity. It includes information relating to allegations, referrals, and entities and persons of interest.
This product is currently subject to ongoing operational activity. It must not be disseminated beyond the attached distribution list without the written consent of the Op Chief.

Allegations received

by Regional Commands (to date)

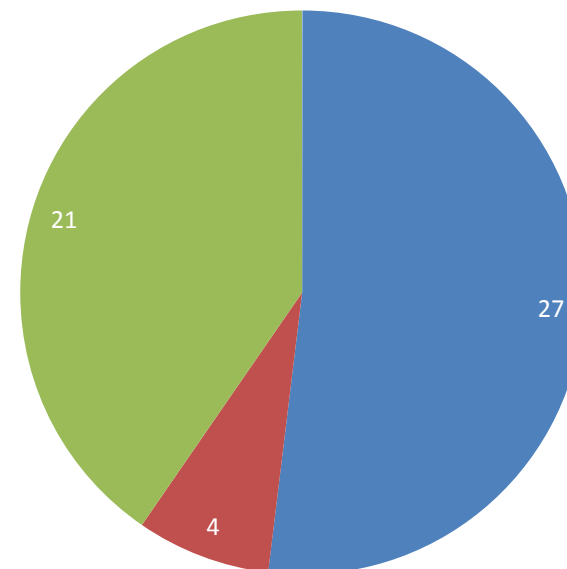


by business area (to date)

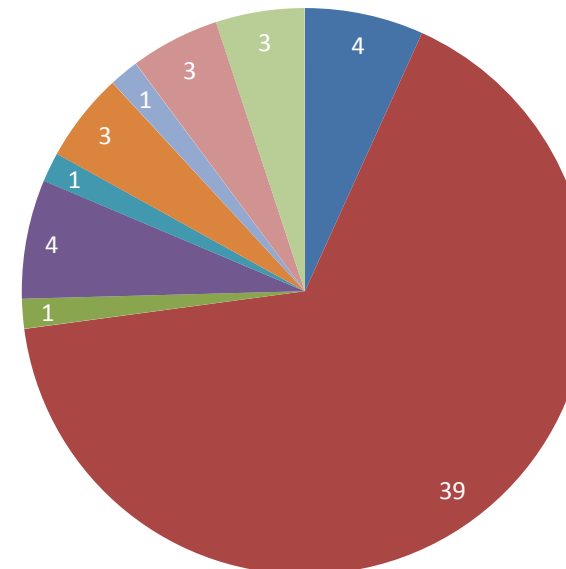


Visa status of persons of interest

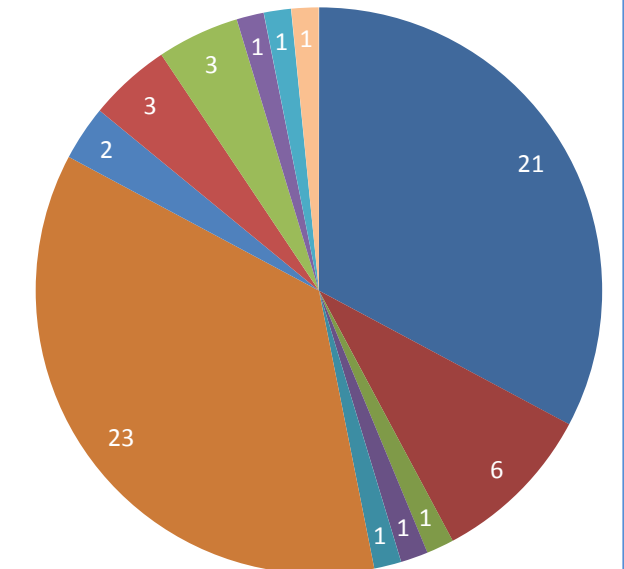
s. 47E(d)



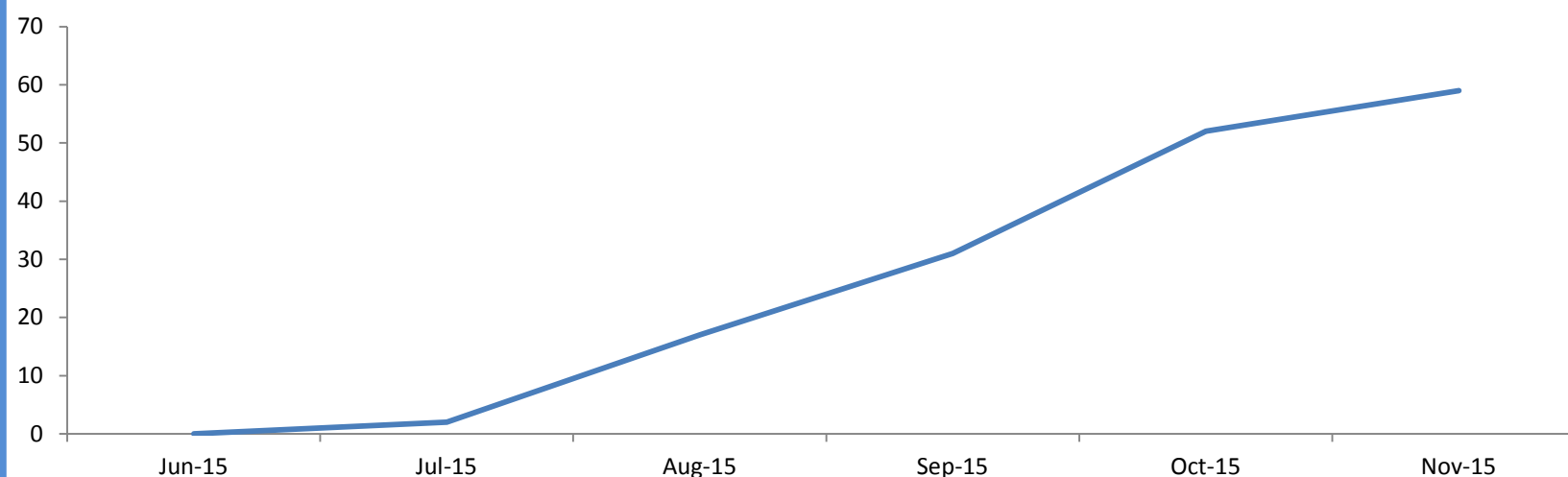
Industry of allegation



Nationality persons of interest



Allegations received - cumulative



Cadena allegations, assessments and referrals



An allegation is information that meets Cadena Thresholds for notification about persons or businesses that may be involved in the organisation of labour exploitation and is provided to the Command Group for further assessment. Not all allegations will become assessments.

An assessment is an initial analysis of the allegation. The assessment is provided to the FWO for their endorsement for the activity to be badged Cadena.

A referral expands on the assessment and provides a succinct intelligence product for actioning by operational areas of DIBP/ABF and the FWO. The referral is provided in the form of a concept of operations and provides guidance on reporting, operational planning and required actions post operation.

Subject	Taskforce Cadena Update MWG 3/12/2015
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TALKING POINTS

- Taskforce Cadena operations continue to be coordinated nationally and to date have included operations executed in the following regions: New South Wales, Queensland, Victoria, and Western Australia
- To crack down on illegal work and the exploitation of foreign workers in Australia, Taskforce Cadena continues to utilise intelligence from a range of sources to identify and investigate major targets of interest. These operations also involve influencing Australian businesses to enhance compliance with Australian workplace laws and regulations in relation to foreign worker rights and obligations.
- Taskforce Cadena continues to involve collaboration with other agencies, such as the Australian Federal Police, Australian Crime Commission, AUSTRAC and the Australian Tax Office, as well as State and Territory agencies. Information exchange between these agencies continues to be healthy and is increasing in regularity.
- The intent of Taskforce Cadena is to target unscrupulous Labour Hire Intermediaries and those involved in the organisation of visa fraud and illegal workers - not the victims of these practices. While there has been an enhanced focus within the Agriculture sector, Cadena is not restricted by industry.
 - Taskforce Cadena operations have also targeted the beauty and the arts and recreation services industry. Other industries also the target of further intelligence assessment include hospitality, security & construction.

Achievements to date

- Between September and November 2015 Taskforce Cadena has forwarded **9** referrals to operational areas for their planning and actioning. A further **19** assessments are currently being completed by the command team
- Since its establishment in July 2015, Taskforce Cadena has:
 - received 102 threshold based notifications from multiple sources
 - **6** active investigations in various stages of operational planning for resolution; and
 - **7** completed taskforce badged operations, resulting in significant disruption of illegal work practices by unscrupulous labour hire intermediaries.
- Engagement with industry by Taskforce Cadena agencies has seen further positive outcomes in regards to labour hire practices. Major enterprises have begun making significant changes to their labour hire practices to restore compliance with legislative requirements. s. 47G(1)(b)

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January 2016

Mr/Mrs/Ms/Dr XXX [*post nominal if applicable*]

Title


Organisation Name

XX Street Name/GPO Box XX

City STATE Post Code

Dear Mr/Mrs/Ms/Dr

s. 47C(1)



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s. 47C(1)




Yours sincerely

Stephen Lancaster
Assistant Commissioner
Investigations Division
Australian Border Force

Michael Campbell
Deputy Fair Work Ombudsman
Operations
Fair Work Ombudsman

s. 22(1)(a)(ii)



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s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Thursday, 3 December 2015 10:45 AM
To: s. 22(1)(a)(ii)
Cc: Taskforce Cadena
Subject: High Level Points [DLM=For-Official-Use-Only]

For-Official-Use-Only

- Taskforce Cadena operations continue to be coordinated nationally.
 - Cadena operation have been executed in the following regions:
 - New South Wales
 - Queensland
 - Victoria
 - Western Australia
- Between September and November 2015 Taskforce Cadena has forwarded nine referrals to operational areas for their planning and actioning.
 - A further nineteen assessments are currently being completed by the command team
- Taskforce Cadena does not focus on any industry in any state. Due to the nature of the allegations however there has been a larger focus on the agriculture industry.
 - Taskforce Cadena operations have also targeted the beauty and the arts and recreation services industry.
- Taskforce Cadena continues to have an enhanced level of information exchange between government agencies.
 - Partner agencies that have a healthy approach to information exchange with the taskforce include AFP, ACC, AUSTRAC and the ATO.

Regards,

s. 22(1)(a)

(A/g Senior Border Force Officer | Taskforce Cadena

Immigration and Customs Enforcement Branch | Investigations Division

Border Operations Group

Australian Border Force

Telephone: s. 22(1)(a)(ii)

Email: s. 22(1)(a)(ii)

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