Australian Government

Department of Home Affairs

Freedom of Information Request: FA 21/12/00662

Question 2

How many times a DHA decision maker has exercised discretion pursuant to the Assurance Protocol with the Fair Work Ombudsman relating to visa holders who have not complied with their visa conditions due to workplace exploitation; and what were the outcomes of these exercises of discretion, including how many have resulted in visa cancellation.

a. Please provide these figures broken down by year 2017-2021

Response

Between 1 February 2017 (when the Assurance protocol was established) to 30 November 2021, there have been 76 referrals made by the Fair Work Ombudsman to the Department of Home Affairs under the Assurance Protocol. Of the 76 referrals made, none have resulted in visa cancellation.

a. Please provide these figures broken down by year 2017-2021

2016 – 2017 FY	2017 – 2018 FY	2018 – 2019 FY	2019 – 2020 FY	2020 – 2021 FY	2021 – 2022 FY (as at 30 November 2021)
10	25	15	15	9	<5

Questions 4 and 5

- The number of work sponsors that have been subject to actions taken by the Department pursuant to s 140K for each of the years between 2011 and 2021, broken down by the type of action taken.

- The number of prosecutions, referrals for prosecution, other enforcement actions and investigations taken by the Department for contraventions of each of ss 245AB-245AEB for each of the years between 2011 and 2021.

  The number of visas that have been cancelled for each of the years between 2011 and 2021 as a result of Department investigations of breaches of work sponsorship obligations or contraventions of ss 245AB-245AEB.

Response

Data relevant to points 4 and 5 may be sourced in the Department of Home Affairs Annual Reports: www.homeaffairs.gov.au

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Student Visa Cancellations - subclass 500 - by cancellation ground and fin year

A visa may be recorded as cancelled more than once. An example of a visa being recorded as cancelled more than once is if the visa is cancelled, the cancellation is subsequently revoked or set aside, and then the visa is cancelled again.
- A cancellation may be revoked or set aside for A number of reasons, including further legal proceedings, and administrative or jurisdictional errors, etc. Duplicates may exist.

As data has been drawn from a dynamic source, any historical figures provided may differ slightly in previous or future reporting.

Note the table below provides a count of all grounds associated with a cancellation and is not a count of individual cancellations. A cancellation may have multiple grounds associated to it and as a result the figures may not match with those provided through other reporting products.

Student visa cancellations - subclass 500 - by cancellation ground and fin year

Ground	Fin Year					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022 to 30 Nov
s116(1)(a) - fact/circumstance no longer exists	129	2,873	6,563	12,620	8,752	5,243
s116(1)(g) prescribed ground - r 2.43 (1)(g)	483	2,664	4,405	5,566	3,244	1,165
Not Applicable	58	453	869	1,272	674	355
s116(1)(d) non-compliance with Subdivision C - s103	6	26	21	31	84	265
s116(1)(b) breach of condition - 8202	15	480	1,281	1,257	97	48
s116(1)(g) prescribed ground - r 2.43 (1)(h)	<5	16	35	62	127	25
S116(1)(g), reg 2.43(1)(oa)	<5	12	38	43	46	23
s116(1)(fa)(i) not a genuine student	7	27	69	55	11	12
s101 incorrect information - application form	<5	127	139	23	29	8
s116(1)(e)(i) - risk to the health, safety or good order (community or segment of the community)	<5	29	34	79	17	<5
s103 bogus document	<5	75	30	10	15	<5
s116(1)(g) prescribed ground - r 2.43 (1)(f)	<5	0	0	33	24	<5
s116(1)(d) non-compliance with Subdivision C - s101	19	51	106	46	18	<5
s140(1) family unit member - s128	<5	19	12	9	7	<5
s116(1AA) - identity is unclear	0	0	<5	0	0	<5
s116(1)(e)(ii) - risk to the health or safety of an individual	<5	20	14	28	5	0
s116(1)(aa) - fact/circumstance leading to visa grant never existed	<5	7	0	23	<5	0
s116(1)(b) breach of condition - 8102	0	0	<5	5	<5	0
S116(1)(g), reg 2.43(1)(ob)	0	<5	0	<5	<5	0
s102 incorrect information - passenger card	0	0	<5	<5	<5	0
s104 changes in circumstances not notified	0	<5	<5	0	<5	0
s116(1)(b) breach of condition - 8104	0	<5	0	<5	<5	0
s116(1)(b) breach of condition - 8516	<5	<5	<5	<5	<5	0
s116(1)(e) risk to health, safety or good order	<5	6	<5	5	<5	0
s116(1)(g) prescribed ground - r 2.43 (1)(a)	0	0	0	0	<5	0
s116(1)(g) prescribed ground - r 2.43 (1)(b)	0	0	0	0	<5	0
s116(1)(g) prescribed ground - r 2.43 (1)(t)	0	0	<5	6	<5	0
s140(2) associated visa holder - s128	0	<5	0	0	<5	0
s116(1)(b) breach of condition - 8101	0	0	0	<5	0	0
s116(1)(b) breach of condition - 8105	<5	11	27	29	0	0
s116(1)(b) breach of condition - 8203	0	0	<5	0	0	0
s116(1)(b) breach of condition - 8204	0	0	<5	0	0	0
s116(1)(b) breach of condition - 8514	<5	<5	0	<5	0	0
s116(1)(b) breach of condition - 8524	0	<5	0	0	0	0
s116(1)(b) breach of condition - 8532	5	<5	0	<5	0	0
s116(1)(b) breach of condition - 8560	0	<5	<5	<5	0	0

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s116(1)(d) non-compliance with Subdivision C - s102	<5	18	24	<5	0	0
s116(1)(d) non-compliance with Subdivision C - s105	<5	0	0	0	0	0
s116(1)(d) non-compliance with Subdivision C - s107 (2)	0	0	<5	<5	0	0
s116(1)(fa)(ii) conduct not contemplated by the student visa	<5	<5	0	0	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(aa)	0	<5	0	<5	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(d)	<5	0	<5	0	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(e)	0	0	0	8	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(ea)	0	0	<5	0	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(o)	0	30	0	0	0	0
s116(1)(g) prescribed ground - r 2.43 (1)(q)	0	0	0	<5	0	0
s140(1) family unit member - s109	0	<5	0	<5	0	0
s140(1) family unit member - s116	<5	12	<5	11	0	0
s140(2) associated visa holder - s116	0	<5	0	<5	0	0
Total	**761**	**6,977**	**13,688**	**21,244**	**13,165**	**7,160**

**Subclass 500 did not come into effect until 1 July 2016.*

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Fair Work Ombudsman and Department of Home Affairs

Review of Assurance Protocol

August 2018

Introduction

In early 2017, the Migrant Workers' Taskforce acknowledged that visa holders are sometimes fearful of contacting Government agencies to report workplace exploitation due to concerns about their visa status. [1]

To encourage visa holders to come forward, the FWO and Home Affairs established an 'Assurance Protocol.' The protocol provides a level of assurance for visa holders that their visas will generally not be cancelled by Home Affairs if the visa holders reports their circumstances to the FWO, assists the FWO with its investigation, commits to abiding by visa conditions in the future, and, there is no other basis for visa cancellation (such as national security, character, health or fraud grounds).

As the Assurance Protocol has been in operation for over 12 months, in early 2018 the FWO and Home Affairs agreed to undertake a review of the effectiveness of the arrangement. The review took place in June and July 2018.

The FWO and Home Affairs have completed the review and found, on balance, that the Assurance Protocol is largely a positive initiative. Specifically, it provides meaningful and visible support to encourage migrant workers to report their exploitation, while also hindering the ability of employers to use threats of visa cancellation as a means to exploit workers.

This paper sets out the detailed findings of the review and the steps that the FWO and Home Affairs have agreed to take to ensure the ongoing effectiveness of the Assurance Protocol.

Background

The FWO and Home Affairs are responsible for separate, but intersecting, parts of the regulatory framework which impact the experiences of migrant workers in Australia. To achieve whole-of-government outcomes, the FWO and Home Affairs work collaboratively within the regulatory framework to assist vulnerable workers and to take effective action against those who exploit them. Agencies also work across other forums, networks and inquiries that bring together key government and non-government organisations to combat exploitation of vulnerable workers.

Interactions between the FWO and Home Affairs may involve sharing information, referring relevant matters and undertaking joint operational activities. Some interactions are in relation to, and in accordance with, the Memorandum of Understanding between the agencies, s. 37(2)(b) and the FWO's role to monitor employer compliance with certain 457 TSS sponsorship obligations under the *Migration Act 1957*. Other interactions may relate to operational, compliance, policy or communication matters.

The FWO and Home Affairs acknowledge that some stakeholders favour the creation of an information 'firewall' between the agencies, to address the reluctance of migrant workers to report

[1] https://www.jobs.gov.au/chairs-public-statement-january-2017-meeting

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exploitation. [2] The key benefit would be migrant workers may more willingly report exploitation if they know their details would not be shared with Home Affairs. This approach however is not favoured by either the FWO or Home Affairs, noting it is contrary to the collaborative whole-of-government approach to tackling exploitation, would hinder joint compliance operations, including s. 37(2)(b) and generally limit the effectiveness of investigations and enforcement.

The FWO and Home Affairs consider that the Assurance Protocol is the most effective way to encourage visa holders to report workplace exploitation. Primarily, this is because the Assurance Protocol provides support to visa holders where they have worked in breach of their visa's work conditions and an employer or a third party threatens to have their visa cancelled. Threats of this nature are a key driver of migrant worker exploitation, which the Assurance Protocol addresses.

Review methodology

The review of the Assurance Protocol was conducted in accordance with Terms of Reference established by the FWO and Home Affairs (see **Attachment A**).

In undertaking the review, information was considered from a range of sources via mixed methods, as follows:

- Analysis of data held by the FWO in relation to visa holders who have accessed the Assurance Protocol;
- Telephone interviews with visa holders who have accessed the Assurance Protocol and Fair Work Inspectors who have interacted with visa holders who have accessed the Assurance Protocol;
- Analysis of queries received by the FWO in relation to the operation of the Assurance Protocol;
- Review of previous activities to communicate the Assurance Protocol to migrant workers;
- Review of processes for referring and reporting between Home Affairs and the FWO; and
- Review of external stakeholders' published views of the Assurance Protocol.

Analysis and findings

As outlined previously, the FWO and Home Affairs have found that the Assurance Protocol is a largely positive initiative that provides meaningful and visible support to encourage migrant workers to report their exploitation, while also hindering the ability of employers to use threats of visa cancellation as a means to exploit workers.

The review has enabled the FWO and Home Affairs to identify opportunities for improvements in the design, practical operation and promotion of the Assurance Protocol. In particular, the FWO and Home Affairs will focus on ensuring that the Assurance Protocol is able to be accessed by additional cohorts of vulnerable workers and that the benefit and impact of the arrangement is properly understood by visa holders, employers, the community and government.

[2] For example, recommendations in the Senate Education and Employment Committee's report 'A National Disgrace: The Exploitation of Temporary Work Visa Holders' and in the Joint Standing Committee on Foreign Affairs, Defence and Trade's report 'Hidden in Plain Sight'

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Need for improved clarity on the operation of the Assurance Protocol

The Assurance Protocol was designed through interactions and subsequent agreement between the FWO and Home Affairs, and publically formalised through content published on both the FWO and Home Affairs website (see **Attachment B**). The review revealed that this method of publishing the arrangement might not always ensure that the arrangement is communicated effectively to those most in need.

Some stakeholders have described the Assurance Protocol as an 'informal arrangement' and many have requested the FWO to clarify aspects of the operation of the Assurance Protocol as well as the visa status of migrant workers to whom the arrangement has been applied. This is potentially because existing website content is bureaucratic and overly technical. Simpler messages, translated into key languages could address this.

At the same time, in the absence of detailed information, some stakeholders have proceeded to theorise about the operation of the Assurance Protocol, which has led in turn, to incorrect media reports that the FWO is offering amnesty to temporary workers and exposing workers to deportation.

Further, as part of the review the FWO conducted telephone interviews with visa holders who have sought to access the Assurance Protocol. Only one visa holder had knowledge of the Assurance Protocol by name and all visa holders interviewed received no communication from Home Affairs regarding the status of their visa following the application of the Assurance Protocol. These interviews also revealed that many visa holders view the FWO as the agency protecting their visa status.

Action Items

1. FWO and Home Affairs will amend the name of the Assurance Protocol, along with website content about the arrangement to ensure that it is easily understood by visa holders, employers and the community, with particular reference to simplicity and translation into key languages.
2. FWO and Home Affairs will provide the community with more detailed information on the formal operation of the Assurance Protocol, including through consideration of a publicly available 'Exchange of Letters' or 'Memorandum of Understanding.'
3. Home Affairs and FWO will jointly develop procedural instructions (PIs) in respect to how each agency communicates with visa holders who have sought access to the Assurance Protocol. These PIs will also consider how and when an individual's visa status is communicated.

Improved access for Working Holiday Makers (WHMs)

The review found that the design of the Assurance Protocol could be improved to provide better access to Working Holiday Makers (WHMs), particularly those who are exploited while completing their 88 days of specified work in order to obtain a second visa.

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The Migrant Workers' Taskforce has prioritised its efforts on unsponsored visas, and has canvassed the issues experienced by WHMs in Australia. The Taskforce has heard that WHMs may be more likely to experience exploitation and underpayment at work, when compared to other cohorts of workers. Factors such as inexperience in the workplace, language barriers, remoteness of working locations and the requirements placed upon them in order to obtain a second visa can heighten their vulnerability.

At the same time, media has highlighted a small number of instances where first year WHMs have been exploited at work and as a consequence have been unable to provide evidence of lawful remuneration[3] and in turn are not granted a second year visa by Home Affairs (see article at **Attachment C**).

In the 2016-17 financial year, 38 per cent of all visa holders who the FWO assisted to resolve a dispute were WHMs. In the same period, of all litigations commenced by the FWO, 24 per cent involved a WHM, meaning that the conduct the FWO is seeing in relation to these workers involves serious non-compliance with workplace laws.

However, the high number of WHMs seeking assistance from the FWO is not reflected in the application of the Assurance Protocol. As of 30 June 2018, at the request of the FWO, Home Affairs had applied the Assurance Protocol to 35 visa holders. Of these visa holders:

- Almost 60 per cent advised they were on a form of student visa; and
- Almost 23 per cent advised they were subclass 457 visa holders.

There may be a number of factors contributing to international students accessing the Assurance Protocol, while WHMs are generally not. One factor at play is the increase in FWO's targeted communication to international students, through its dedicated International Students Engagement Strategy which has deliberately sought to encourage this cohort to approach the agency for help.

Another factor at play is in the design of the Assurance Protocol, which assures visa holders that their visa will not be *cancelled* (providing there is no other basis to cancel their visa and they commit to abiding by visa conditions in the future). This may not be appealing to exploited first year WHMs, who are primarily seeking a second year visa to be *granted*. Further, the current text and public promotion of the Assurance Protocol has not specifically targeted WHMs.

The FWO can assist first year WHMs to obtain the evidence of lawful remuneration to satisfy requirements for a second year visa, however this relies on the visa holder seeking the FWO's assistance early in their first year and their employer being willing to rectify non-compliance with workplace laws.

In the FWO's experience, WHMs are not always aware they have been exploited until their employment relationship ends or they are applying for their second year visa, and some employers are not willing to voluntarily comply with their obligations. Where this is the case, the FWO can conduct an investigation to determine whether a breach of workplace laws has occurred, however the forensic nature of this work means investigations are unlikely to be completed before a WHM's first year visa expires and they are required to leave Australia, unless they can obtain another visa.

[3] From 1 December 2015, to be granted a second year visa first year Working Holiday Makers are required to have been remunerated in accordance with Australian workplace laws while completing 88 days of specified work, and to provide Home Affairs with evidence that this has occurred in order to obtain a second year visa.

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The vulnerability of first year WHMs undertaking 88 days of specified work in Australia is well documented, however the extent to which they leave Australia without seeking or obtaining redress is relatively unknown. Information and data which provides some insight is provided below:

- The WHM visa is un-sponsored, meaning that visa holders are free to move in and around Australia as they wish - they are not 'tied' to an employer nor required to submit any information to authorities about their intention to complete their 88 days of specified work or otherwise.
- In order to successfully submit a second year visa application to Home Affairs, as part of the application process a WHM must make a declaration of being lawfully remunerated and pay a fee of $440.
- The number of WHMs who make an application for a second year visa is a relatively small proportion of the total number of WHMs in Australia. There were 20,118 second year visa applications lodged between 1 July 2017 and 31 December 2017 however there were 131 557 WHMs present in Australia as at 31 December 2017. Of all WHM visa applications submitted, approximately 97 per cent are approved (including second year visa applicants).

Home Affairs and the FWO agree that more needs to be done to encourage and support WHMs to report exploitation before they leave Australia. It is recognised that education can help, and both agencies are undertaking activities which are aimed at ensuring WHMs are able to recognise and potentially avoid exploitative workplace practices and know where to go to seek help. However, it is acknowledged that this alone will not prevent unscrupulous employers exploiting WHMs, in some cases promising a second year visa, and then denying them the evidence they need to obtain it.

In summary, there are opportunities for WHM visa holders to be better targeted (for application of the Assurance Protocol) while still maintaining visa integrity and lawful decision-making.

Action Items

4. As part of completing Action Items 1 and 3, Home Affairs and FWO will specifically target information at WHMs to encourage reporting of exploitation, while maintaining visa integrity and lawful decision-making.
5. As part of completing Action Item 4 the FWO and Home Affairs will be informed by data held by both agencies about where WHMs are working and who they are working for, to enable targeted communication.

Requirement to report to and actively assist FWO in an investigation

The review also found that the requirement for visa holders to report their circumstances to the FWO and to be actively assisting the FWO in an investigation is unnecessarily limiting access to the Assurance Protocol.

The initial intention of the requirement to report to the FWO and to assist in an investigation was to prevent unmeritorious claims from visa holders who were potentially seeking to abuse the visa system. However, it is recognised that this prevents exploited visa holders who are participating in other FWO services, such as mediation or dispute resolution, from accessing the Assurance Protocol.

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Only a relatively small percentage of workers end up assisting the FWO in a formal investigation, as only a relatively small percentage of requests for assistance result in a formal investigation. In 2016-17, of the 26 917 requests for assistance to the FWO involving a workplace dispute, 94 per cent (25 332) were resolved through education and dispute resolution activities.

A visa holder whose request for assistance is resolved through other means may, in some scenarios, still have been subject to exploitation. Indeed, most of the wages recovered by the FWO are recovered through education and dispute resolution activities ($16.7 million out of $30.6 million in 2016-17).

The requirement to report to the FWO may also inadvertently discourage visa holders from reporting exploitation to Home Affairs, and to other organisations who can provide assistance, such as community legal centres and unions.

Home Affairs acknowledges that it interacts with exploited visa holders during the course of business as usual, including as part of s. 37(2)(b) operations, and is well placed to identify workers who meet the criteria for the Assurance Protocol, for referral to the FWO.

Action Items

6. Home Affairs and FWO will jointly develop Procedural Instructions (PIs) to assist Australian Government officials, to 1) identify potential exploitation, 2) promote awareness of the Assurance Protocol amongst the target audience, and 3) appropriately refer to FWO individuals who seek access to the Assurance Protocol.
7. Home Affairs and FWO will consider further analysis on whether visa holders participating in a broader range of FWO services can access the Assurance Protocol.

Opportunities to increase awareness of the Assurance Protocol among migrant workers, their employers and the community

The FWO and Home Affairs are committed to harnessing opportunities to raise awareness of the Assurance Protocol among migrant workers, their employers and the wider community. The review found there are opportunities to develop the awareness of the protocol with additional communications activities, and that activities led by Home Affairs may have greater impact as the decision maker with the jurisdiction to apply the protocol.

To date, the FWO and Home Affairs have promoted the Assurance Protocol through a range of methods, including:

- A dedicated visa holders & migrants page on the FWO's website, where content about the Assurance Protocol is set out under the heading 'visa protections';
- A dedicated page for migrants working in Australia on the Department of Home Affairs' website. Information about the Assurance Protocol is set out under the heading of 'breaches of work related visa conditions';
- Connectivity between the respective web pages, including a link from the FWO's Assurance Protocol to the Home Affairs webpage outlining the Assurance Protocol;

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- Several FWO-led social media campaigns, including;
    - A Facebook and Twitter campaign between 31 May and 27 June 2017 resulted in over 1.1 million impressions, resulting in 4430 visits to the FWO's visa & holder migrants page on the FWO website;
    - A Facebook and Twitter campaign between 25 September and 14 October 2017 promoted then-Ombudsman Natalie James' open letter to international students, which contained a reference to the Assurance Protocol, and was seen 698,023 times;
    - The FWO's corporate Twitter account has tweeted about the Assurance Protocol five times, and its Facebook account has indirectly promoted the Assurance Protocol twice;
- Internal promotion of the Assurance Protocol at FWO, including provision of information to FWO's Fair Work Infoline advisers to assist them to educate customers about the protocol during relevant interactions; and
- Provision of information on the Assurance Protocol to FWO's community and government stakeholders via a number of methods.

Despite these communications activities, the review indicated that most visa holders who have accessed the Assurance Protocol became aware of it through direct or indirect contact with the FWO. That is, visa holders became aware when they approached the FWO for assistance with a workplace dispute and a Fair Work Inspector advised them of the Assurance Protocol, or by speaking to colleagues at their workplace who had been told about the Assurance Protocol by a Fair Work Inspector.

While a visa holder's willingness to approach the FWO and promote the Assurance Protocol is positive, the fact that most only learn about the Assurance Protocol once contact with the FWO has been made is an indicator that further promotion of the protocol may be required.

FWO and Home Affairs will continue to promote the Assurance Protocol internally to ensure that staff are aware of the arrangement and know how to implement it, and identify visa holders who may be eligible.

Home Affairs has developed a communications strategy, which could be used as the basis for further promoting the Assurance Protocol. One of the focus points could be on telling the 'story' of how the Assurance Protocol can assist exploited visa holders, incorporating recommendations and findings arising from the research project commissioned by the Migrant Workers' Taskforce into the Information Needs of Vulnerable Temporary Migrant Workers. In particular, the communications strategy will address:

- Timeliness of communication activities acknowledging that migrant workers are somewhat more receptive to workplace rights information after arrival in Australia and in particular, when applying for and starting a job;
- Opportunities to work with intermediaries, acknowledging that employers, family and friends, and educational institutions are important and trusted sources of information;
- Communication channels, noting that advertisements on radio, YouTube videos and community social media groups are sometimes preferred over official Government channels, or more effective given that many migrant workers often do not seek out information from official sources, as they believe that the information does not apply to them; and

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- Language barriers, noting that migrant workers often have a misapprehension that contact with Government agencies will require the use of English which appears to drive some migrant workers to potentially less reliable sources of information.
- Considering the use of fact sheets on work rights and worker exploitation to be delivered in the field during ABF enforcement activities.

Action Items

8. FWO will consider promotion of the Assurance Protocol in all future communications strategies where visa holders are the target audience.
9. FWO and Home Affairs will increase promotion of the Assurance Protocol within their respective agencies and with community intermediaries.

Next Steps and Further Contact

FWO and Home Affairs will progress the action items identified in this paper. A list of the Action Items can be found at **Attachment D.** For further information, contact:

s. 47F(1)

Nigel Muir
A/g Assistant Secretary, Immigration Integrity and Assurance Branch
Department of Home Affairs
s. 22(1)(a)(ii)

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ATTACHMENT A – TERMS OF REFERENCE FOR THE REVIEW OF THE EFFECTIVENESS OF THE ASSURANCE PROTOCOLS

In early 2017, the Migrant Workers' Taskforce acknowledged that visa holders are fearful of contacting Government agencies to report workplace exploitation due to concerns about their visa status. [4]

To encourage visa holders to come forward, the FWO and Home Affairs established an 'Assurance Protocol.' The protocol provides a level of assurance for visa holders that their visas will generally not be cancelled if they report their circumstances to the FWO, assist the FWO with their investigation, commit to abiding by visa conditions in the future and there is no other basis for visa cancellation (such as national security, character, health or fraud grounds).

At the March 2018 meeting of the Migrant Workers' Taskforce the FWO and Home Affairs agreed to revise the Assurance Protocol given it has now been in operation for over 12 months. [5]
These Terms of Reference set out the roles, responsibilities and reporting arrangements of FWO and Home Affairs in undertaking this review.

Role and responsibilities

The Review will identify opportunities for improvements in the design, practical operation and promotion of the Assurance Protocol to further encourage migrant workers to report workplace exploitation to Government. The Review will support the effective ongoing collaboration between agencies to ensure that activities have a whole-of-government focus.

The Review will:

1. Consider whether there are issues with the design and / or practical operation of the Assurance Protocol that may discourage or prevent visa holders, including certain subclasses of visa holders, from accessing the Assurance Protocol.
2. Identify opportunities to increase awareness of the Assurance Protocol among migrant workers, their employers and the community, and to develop a plan for a corresponding high-level communications plan.
3. Identify and harness opportunities for FWO and Home Affairs to better collaborate to increase ongoing monitoring and analysis of the effectiveness of the Assurance Protocol.

The Taskforce will achieve this by:

- Analysing the case data of visa holders who have accessed the Assurance Protocol to date with a view to identifying visa subclasses where access it limited / underutilised. Where possible, this will include talking with visa holders directly.
- Reviewing the channels through which visa holders currently access the Assurance Protocol and identify additional channels (for example, through s. 37(2)(b) operations).

[4] https://www.jobs.gov.au/chairs-public-statement-january-2017-meeting
[5] https://www.jobs.gov.au/chair-s-public-statement-march-2018-meeting

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- Reviewing existing efforts to communicate the Assurance Protocol to migrant workers, their employers and support networks.
- Reviewing and analysing the implementation of the Assurance Protocols within Home Affairs and the FWO, including efforts to generate a shared internal understanding of the existence and practical operation of the Assurance Protocol.
- Reviewing existing processes for referring and reporting between Home Affairs and the FWO.
- Reviewing and taking into consideration the published views of relevant external stakeholders, including their views on barriers to accessing the Assurance Protocol.

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ATTACHMENT B – WEBSITE CONTENT

FWO's website content

Visa protections

Your employer can't cancel your visa, even if it's been breached. Only the Department of Home Affairs can grant, refuse or cancel visas. We've set up an arrangement with the Department of Home Affairs to support and encourage migrant workers to come forward to request our assistance and provide us with any evidence or information about exploitation. This will help us to better understand the issues faced by visa holders and migrant workers so that we can educate employers and employees about entitlements and obligations.

We've come to an agreement with the Department of Home Affairs that a person's temporary visa will not be cancelled if they:

- had an entitlement to work as part of their visa
- believe they have been exploited at work
- have reported their circumstances to us
- are actively assisting us in an investigation.

This applies as long as:

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

For temporary visa holders who don't have work entitlements attached to their visa, the Department of Home Affairs will consider the case on its merits.

Home Affairs' Website Content

Breaches of work related visa conditions

If you hold a temporary visa with work rights and have not complied with your visa conditions due to workplace exploitation, we will consider factors that might be relevant to your non-compliance when deciding whether to cancel your visa.

We will generally not cancel your visa, detain or remove you from Australia if you have:

- a temporary visa with work rights (for example a Student visa, Working Holiday Maker visa (subclass 417) or Temporary Work (Skilled) visa (subclass 457), or Temporary Skill Shortage (TSS) visa (subclass 482)
- sought advice or assistance from the FWO and you are assisting them with their inquiries
- not complied with the work-related conditions on your visa and there is no other basis for visa cancellation
- committed to abiding by visa conditions in the future.

If you do not have a legal right to work in Australia, we will still consider your case based on your individual circumstances but cannot guarantee that your visa will not be cancelled.

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ATTACHMENT C – MEDIA

Migrant workers 'left exposed' by workplace watchdog amnesty promise

The Sydney Morning Herald

Migrant workers 'left exposed' by workplace watchdog amnesty promise

By Adam Gartrell

2 April 2018

The federal government's workplace watchdog is offering amnesty to temporary foreign workers who assist in workplace exploitation investigations despite having no clear power to do so, potentially exposing them to the risk of deportation.

For more than a year the Fair Work Ombudsman has been publicly claiming that temporary migrant workers who breach their visa work rights will not be deported if they are also victims of exploitation and go on to help an investigation.

But Freedom of Information documents obtained by Unions NSW show the Ombudsman only has an informal arrangement with the Department of Home Affairs - formerly the Department of Immigration and Border Protection - rather than a binding agreement.

In a document entitled "New FWO/DIBP referral protocols" it is made clear that for temporary visa holders who have a work entitlement Home Affairs "will generally not cancel their visa, detain or remove those individuals from Australia".

Even that comes with conditions, including that the "the visa holder commits to abiding by visa conditions in the future" and "there is no other basis for visa cancellation".

"For any temporary visa holder who has no work entitlement attached to their visa [Home Affairs] will make no commitment other than to consider each case on its merits," the document says.

The document includes another section to help Ombudsman officers decide whether a Home Affairs referral should be made, but it has been entirely redacted by FOI authorities. The Ombudsman claims such information would affect "law enforcement and protection of public safety".

The protocol is supposedly designed to "break down barriers to reporting exploitation and encourage temporary visa holders to approach the FWO for assistance by ensuring that individuals who are assisting FWO in its compliance activities are not deported".

But Unions NSW Secretary Mark Morey said the Ombudsman must immediately clarify the status of migrant workers.

"If these workers are going to come forward and expose workplace fraud, they need an iron-clad guarantee of support from authorities," Mr Morey said.

"We need an immediate and wide-ranging deportation amnesty for foreign workers involved in wage theft investigations until we can find a genuine and lasting solution."

Unions NSW secretary Mark Morey says the underpayment of overseas workers has become routine.

Mr Morey says that when workers ask authorities for a written guarantee that they won't be deported after exposing exploitation, it is rarely provided.

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“It is no wonder migrant wage theft is so common in this country. Migrant workers simply don’t have the power or protection to stand up for workplace rights," Mr Morey said.

Unions NSW is also calling for an urgent roundtable involving unions, relevant Commonwealth departments and the Fair Work Ombudsman to clearly establish the rights of migrant workers to speak out.

Unions NSW says the Ombudsman regularly attends international student events and promotes its deportation amnesty. But when students question the formality of amnesty or request written confirmation the Ombudsman is "evasive".

The FOI documents reveal the Ombudsman made 13 referrals to the Department of Home Affairs up to March 24, 2017, many of them people involved in the 7-Eleven exploitation scandal.

Their fates are unknown.

However an Ombudsman spokesperson said: "We can confirm that to our knowledge no visa holder who has sought the FWO's assistance and has met the above conditions has had their visa adversely affected."

The FOI also shows the Ombudsman ultimately has little control over whether the Department of Home Affairs chooses to cancel a visa following a referral.

"Through these protocols, FWO works with [Home Affairs] to inform the way [Home Affairs] exercises its discretion; however it is ultimately a decision for [Home Affairs]," another FOI document says.

There are an estimated 720,000 international students in Australia and approximately 134,000 migrant workers on 417 working holiday visas.

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ATTACHMENT D: ACTION ITEMS ARISING FROM THE REVIEW

Number	Action Item
DESIGN AND PRACTICAL OPERATION OF THE ASSURANCE PROTOCOL	
1	FWO and Home Affairs will amend the name of the Assurance Protocol, along with website content about the arrangement to ensure that it is easily understood by visa holders, employers and the community, with particular reference to simplicity and translation into key languages.
2	FWO and Home Affairs will provide the community with more detailed information on the formal operation of the Assurance Protocol, including through consideration of a publicly available 'Exchange of Letters' or 'Memorandum of Understanding.'
3	Home Affairs and FWO will jointly develop procedural instruction/s (PIs) in respect to how each agency communicates with visa holders who have sought access to the Assurance Protocol. These PIs will also consider how and when an individual's visa status is communicated.
4	As part of completing Action Items 1 and 3, Home Affairs and FWO will specifically target information at WHMs to encourage reporting of exploitation, while maintaining visa integrity and lawful decision-making.
5	As part of completing Action Item 4 the FWO and Home Affairs will be informed by data held by both agencies about where WHMs are working and who they are working for, to enable targeted communication.
6	Home Affairs and FWO will jointly develop Procedural Instructions (PIs) to assist Australian Government officials, to 1) identify potential exploitation, 2) promote awareness of the Assurance Protocol amongst the target audience, and 3) appropriately refer to FWO individuals who seek access to the Assurance Protocol.
7	Home Affairs and FWO will consider further analysis on whether visa holders participating in a broader range of FWO services can access the Assurance Protocol.
OPPORTUNITIES TO INCREASE AWARENESS OF THE ASSURANCE PROTOCOL AMONG MIGRANT WORKERS, THEIR EMPLOYERS AND THE COMMUNITY	
8	FWO will consider promotion of the Assurance Protocol in all future communications strategies where visa holders are the target audience.
9	FWO and Home Affairs will increase promotion of the Assurance Protocol within their respective agencies and with community intermediaries.

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HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Senate Select Committee on Temporary Migration

QoN Number:

Subject: Assurance protocol

Asked by: Jess Walsh

Question:

Senator WALSH: I'm wondering whether there's any information about that that you could provide to us. I understand that it may be somewhat sensitive. I'm just trying to get a sense of, if I were a person with a valid claim that's being worked through with the Fair Work Commission but I had breached my visa conditions, and there are no other issues with me—I'm of good character et cetera—how I should understand that assurance protocol in relation to my ability to continue to stay in Australia. If I've breached my visa condition but I've committed to follow my visa conditions going forward, how should I understand that assurance protocol? Should I be assured?

Mr Kefford: Certainly that protocol is in place. I could take on notice the extent to which the material that's provided to workers, as mentioned earlier in the hearing, addresses that issue specifically. It may well be something that comes out in the interactions that the individual might have with the Fair Work Ombudsman first, rather than with us. There's clearly an element where we're working together with our colleagues in that context. But, as far as Home Affairs is concerned, I'm happy to take on notice what information is provided and, without getting into anything that might compromise individual cases or other activities, the extent to which we can provide more information to you on how that protocol actually operates.

Senator WALSH: Just finally on that, would there be any numbers kept on how many times the protocol has been utilised, or is it somewhat more informal than that?

Mr Kefford: I wouldn't describe it as informal. I'm happy to take on notice what information we have and could provide to you on the operation of those arrangements.

Senator WALSH: Thank you very much.

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Answer:

The Assurance Protocol provides a level of assurance for exploited visa holders that their visas will generally not be cancelled where they have:

- a temporary visa with work rights,
- sought advice or assistance from the Fair Work Ombudsman (FWO) and are assisting them with their inquiries,
- not complied with the work-related conditions on their visa due to exploitation and there is no other basis for visa cancellation,
- committed to abiding by visa conditions in the future.

Under the Assurance Protocol, visa holders who have reported worker exploitation to the FWO are referred to the Department of Home Affairs (the Department) for assessment of the visa holder's case. The Department provides an assurance their visa will not be cancelled, provided there is no other basis for cancellation.

The Department makes information about worker rights and entitlements available through a range of channels including:

- a factsheet entitled 'Information for foreign nationals working in Australia' which includes information on Australian working conditions, entitlements, and contact details for the FWO,
- information provided to visa holders about their work conditions and entitlements in their visa grant notices. Visa holders are able to access this information and check their visa conditions at any time through the Visa Entitlement Verification Online system, hosted on the Department's website,
- information about workplace rights and restrictions for general public access on the Department's website, including how to contact the FWO for workplace issues and that visas won't generally be cancelled if workplace exploitation is reported and the visa holder meets the conditions outlined above,
- 'push' messaging sent to Working Holiday Maker visa holders via text messages at different points of their visa pathway, advising them of their workplace rights and protections and how to contact the FWO.

As at 25 September 2020, the FWO has referred 66 foreign workers to the Department since the commencement of the Assurance Protocol in 2017. To date, no-one referred under the Protocol has had their visa cancelled for a breach of work-related conditions.

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Date Approved: 02 September 2020
SES Contact Officer: David Leonard, Assistant Secretary, Immigration Integrity & Assurance Branch, s. 22(1)(a)(ii)
Consultation: Enforcement Command, ABF

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