

Answers to Questions on Notice

Senate Committee on Human Trafficking, 15 June 2017

Question 1:

From Page 12 of Proof Hansard:

Mr O'SHEA: Sure. A specific reference to the human trafficking and sex slavery situations would need to come from the Attorney General. What I can do is give our agency's understanding of an industry-based breakdown of what we are seeing. If we are talking about vulnerable visa holders, we see very little in the sex industry. Traditionally, sex industry workers are not employees; they are deemed to be other than that—they are normally contractors, under case law. We receive almost zero complaints from sex industry workers as well. Our work is focused on receiving complaints and doing work in the following industries: by far and away, vulnerable visa holders come to us from the accommodation and food services industry—32 per cent of migrant workers come from that industry; administrative and support services, which include clerical and cleaning—

The Hon. GREG DONNELLY: Could I ask you what you are quoting from there?

Mr O'SHEA: From internal Fair Work Ombudsman data.

Mr DAVID SHOEBRIDGE: Can you give us the numbers? Can you give us those documents and table them?

Mr O'SHEA: I can. I cannot give you these because I have made annotations on them, but this is public information.

Answer:

Top 5 industries for completed dispute forms from visa holders (all visa types)			
	1 Jul 2016 – 31 Mar 2017	2015-16	2014-15
1	Accommodation and Food Services – 32%	Accommodation and Food Services – 30%	Accommodation and Food Services – 26%
2	Administrative and Support Services - 14%	Administrative and Support Services - 20%	Agriculture, Forestry and Fishing – 15%
3	Agriculture, Forestry and Fishing – 9%	Agriculture, Forestry and Fishing – 8%	Administrative and Support Services – 10%
4	Manufacturing – 9%	Manufacturing – 7%	Retail Trade – 8%
5	Retail trade – 6%	Retail Trade – 7%	Construction – 6%

Question 2:

From Page 14 of Proof Hansard:

Mr DAVID SHOEBRIDGE: So you are largely chasing those complaints; that is the bulk of your work?

Mr O'SHEA: No, we also have a very strong audit and proactive compliance as well that does four national audits a year and I think 12 State-based audits a year.

Mr DAVID SHOEBRIDGE: Perhaps you could give us a breakdown—if you could do it now that would be great but otherwise on notice—

Mr O'SHEA: I do not have it with them.

Mr DAVID SHOEBRIDGE: —of what proportion of your workforce is based upon the complaints-based model and what proportion is proactively getting out there and doing audits?

Mr O'SHEA: Sure.

Answer:

In the 2015-16 financial year the FWO had over **25 million interactions** with members of the public and helped customers resolve over **29 900 instances of alleged non-compliance**. Of these **29 900, 14 329** were raised through a **dispute form**.

In the same period, the FWO commenced four **national** campaigns and sixteen **regional** education and compliance campaigns. Overall, more than **4530** individual campaign audits were conducted in 2015-16. Campaigns are proactive activities run in response to emerging issues across various geographic locations and industry sectors. A proportionate and evidence-based approach determines where to focus our attention and which workplace relations issues to target.

The FWO also completed **three proactive inquiries** in the 2015-16 financial year. They were the:

- Inquiry into 7-Eleven
- Inquiry into the procurement of housekeepers by Starwood Hotels and Resorts, The Accor Group and Oaks Hotels & Resorts; and the
- Inquiry into trolley collection services procurement by Woolworths Limited.

Question 3:

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Mr DAVID SHOEBRIDGE: What are the four referrals all about? What triggers a referral?

Mr O'SHEA: We distribute to all of our Fair Work inspectors, who are in the field, the Australian Federal Police [AFP] indicators of slavery documents. We also run refresher training and we have partnered with Anti Slavery Australia to educate our inspectors about the indicators of slavery.

Mr DAVID SHOEBRIDGE: What proportion of your inspectors have been trained in that?

Mr O'SHEA: I will take that on notice. I am not sure. "Most" is the answer, but I will take it on notice. Armed with that information, when they are in a workplace within their own jurisdiction, which is a workplace relations matter, and if they see something that they think fits those indicators, they refer it.

Answer:

The FWO has established operational processes, created educational resources and delivered training to ensure that staff identify and respond to potential instances of human trafficking and slavery. This includes:

- The National Technical Training for Fair Work Inspectors which is required to be completed upon commencement in the Inspector role. Since 2015 it has contained information and guidance on the referral of matters which are outside the FWO's jurisdiction, including suspected human trafficking and slavery. The training sets out indicators of human trafficking and slavery and alerts new Inspectors to referral processes.
- The creation of a detailed Knowledge Article for all staff which sets out the AFP's indicators of human trafficking and slavery, along with processes for handling suspected instances of human trafficking and slavery.

Further, recently the agency has collaborated with Anti-Slavery Australia to develop a new refresher training package for Inspectors, which contains a number of new resources to further ensure that staff identify and respond to potential instances of human trafficking and slavery. The package will be available for all operational staff to complete in the first half of the 2017-18 fiscal year.

Question 4:

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Mr O'SHEA: We definitely have seen that. We have seen cases of extreme exploitation and underpayment in the agricultural and horticultural industries.

The Hon. Dr PETER PHELPS: Do you have a demographic breakdown of where these workers are most likely to come from?

Mr O'SHEA: We may. We may be able to cut our data that way.

The Hon. Dr PETER PHELPS: Are we talking about New Zealanders, Filipinos, Indonesians, Indians, Bangladeshis, Africans?

Mr O'SHEA: We would have data on the nationalities of some visa holders.

The Hon. Dr PETER PHELPS: Would you be able to provide that on notice?

Mr O'SHEA: If it is available, I would be happy to.

Answer:

The FWO does not routinely capture information about the country of origin of workers, as it does not affect a person's entitlements under workplace relations legislation.

Question 5:

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Mr O'SHEA: They are the ones I said I did not have with me.

Mr DAVID SHOEBRIDGE: Perhaps you could provide on notice a rationale why your media release, which suggests that it was slavery under a calculated scheme, was wrong and how your assessment of those indicators says it is not slavery?

Mr O'SHEA: I am happy to.

Answer:

The word "*slaves*" was used by her Honour Judge Katzmann of the Federal Court of Australia in her reasons for a decision in relation to compensation penalty in the matter of Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2) [2017] FCA 557 (the GPS matter) handed down on 24 May 2017.

The FWO had commenced proceedings in 1 July 2014 against GPS as well as Rosario Pucci and Enrico Pucci after receiving more than 300 complaints against GPS and its related entities from workers alleging, among other things, sham contracting and underpayments. The GPS matter affected 51 employees who the Court ultimately found had been underpaid (amongst other things).

In her judgment, Judge Katzmann made strong statements about the way GPS behaved, including statements to the effect that some employees were treated like "*slaves*" and that workers were abused merely for pursuing their legal entitlements (see paragraph 456 of the Judgment).

A decision was made within FWO to quote Her Honour's use of the word "*slaves*" in her judgment in the Agency's media release. This reference was supported by text in the media release which clearly stated that the term used by the Judge and not an assessment made by the FWO. Further, the term "*slaves*" was included in quotation marks and attributed to the judgment.

Whilst the GPS matter was referred to both ASIC and the ATO for consideration, the particulars of the matter did not trigger a FWO referral to the AFP for human-trafficking or slavery based on the AFP guidelines.

The FWO is an agency that relies strongly on important messages getting out to the broader community through the various media channels. Our media releases are a critical compliance tool of the agency as they both highlight our activities and act as a deterrent.

Ultimately, the key outcome sought by FWO in issuing this media release was to bring this behaviour and subsequent penalty to the attention of the community in order to act as a deterrent against future non-compliance.