



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

BILLS

**Fair Work Amendment (Protecting
Vulnerable Workers) Bill 2017**

Second Reading

SPEECH

Tuesday, 9 May 2017

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

<p>Date Tuesday, 9 May 2017 Page 59 Questioner Speaker O'Brien, Ted, MP</p>	<p>Source House Proof Yes Responder Question No.</p>
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Mr TED O'BRIEN (Fairfax) (17:25): All talk and no action. The member for Gorton, the first speaker from the opposition, has again reinforced that that is the general predisposition of the opposition: all talk and no action.

We saw from the former speaker that he started his delivery with a personal attack against the Prime Minister for being a self-made man, believing that somehow the Prime Minister, through his own endeavours and his own enterprise in the real world economy, is ineligible to be leading the country in making decisions on economic matters. This is despite the fact that the former member himself and most of his colleagues are all unionists. They will kick and scream if there is any suggestion that the unions they represent, in particular the CFMEU that has caused nothing but disruption across workplaces in Australia, are challenged. It is also a pity that the member for Gorton has decided to suggest that, in going further, this bill should be looking at improving the resourcing of the ombudsman's office. This is an opposition that when in government stripped the budget of the ombudsman's office by 17 per cent. That is equivalent to 200 people. And now they have the gall to suggest that not only should this bill be going further but—wait—we should be providing further resources to the ombudsman's office. At the end of the day, this is all talk but no action. The only reason, I suggest, that the opposition wish to make further changes to this bill is so that they can kick the can down that time-honoured road and never deal with the issue, because it is only the coalition that is protecting workers. It is clearly not very Labor with their proud traditions, and it is certainly not very Australian.

This bill, the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, is wonderfully Australian. It is all about protecting the little guy who cannot stand up for himself to be sure that he or she does not get ripped off. What could be more Australian than that? What is a little unusual, however, is that most of the beneficiaries of this bill—which aims to curtail the exploitation of workers, especially in relation to employers cheating them on wages—will not even be Australians. The Fair Work Ombudsman has made very clear that the vast majority of complaints about this sort of underpaying behaviour by employers involves overseas workers who are in our country as visitors on various forms of short-term visas. The beneficiaries of the crackdown on this practice through this bill will be backpackers from all corners of the world, here on working holidays, whose rights have been abused. It will also be skilled workers here on temporary visas. Many will be drawn from the legions of foreign students here for an education, working nights to help pay for their fees and rent, while their decision to study in Australia, in turn, collectively boosts the economy by billions.

It is a sad fact that some Australian employers, far too many in fact, are taking advantage of these people. They take advantage, in many instances, of the fact that some vulnerable workers do not have highly-developed English language skills. Some may not even have proficiency in our language at all, let alone any familiarity with our laws or institutions. They take advantage of the fact that they are mostly young and inexperienced in relation to their rights in our workplaces or in relation to any workplace.

Some employers take advantage of the fact that many of these visitors, and also the new permanent arrivals similarly targeted by such wage scams, have no tradition of modern workplace relations in their former countries, where workers' rights are perhaps either inadequate or non-existent. Such employers take advantage of the fact that exploited employees, so desperate for a job or so concerned about maintaining their visas, will be uncomplaining. That is a point the Fair Work Ombudsman highlights. The ombudsman's office struggles to get cooperation from many victims, because they are fearful of reprisals.

This sort of behaviour is un-Australian. Treating people like this, whether they are Australians or short-term visitors to our country, is not the Australian way, and that is what makes this bill very Australian. The Aussie fair go, especially in relation to rights at work, is a core Australian value, and not just as a birthright. We will protect it and enhance it even when the main beneficiaries may not be Australians, because that is who we are as a people and as a nation.

The scale of the problem became apparent from the point where the 457 visa program really took off during the mining boom, which roughly coincided with the huge increase in foreign student numbers as our tertiary sector became one of the biggest suppliers of education services worldwide, with great benefit to our economy. There was also a simultaneous increased reliance on backpacker labour in the horticulture sector as Australians deserted such work. Over the last decade, these circumstances combined to generate a significant increase in temporary foreign labour in the economy, and the problem of the treatment of some of these people by unscrupulous employers was becoming apparent. The well-known, infamous exploitation of workers by 7-Eleven franchisees, with inadequate attention from headquarters, came to most people's attention when there was a series of media reports in the Fairfax media and on the ABC in 2013, but the Fair Work Ombudsman and its predecessor had been trying to act on concerns around the behaviour of that particular franchise since 2008. To many people, the seemingly systemic abuse of mainly foreign workers by 7-Eleven franchisees, and some of the well-publicised exploitation of 457 visa holders in the horticultural sector, will have been their biggest exposure to this sort of practice, but you only have to go to the Fair Work Ombudsman's website to see that the problem is, sadly, far more widespread and is deserving of the sort of response that this bill represents, which was a coalition policy taken to the last election.

Of the matters before the ombudsman that have been the subject of public comment so far in calendar year 2017, the vast majority involve wage exploitation of workers who were, or indeed are, in this country as visitors. They have involved breaches by employers across many areas of the economy. For example, the ombudsman commenced legal action in March 2017 against the owner of a Japanese restaurant on the Gold Coast who paid foreign workers as little as \$8 an hour and used false records to suggest he was paying higher rates. A supermarket trolley collection operation in Bendigo is facing court for exploiting two recent immigrants from Afghanistan and Pakistan. The operator of a childcare centre in Melbourne, at Glen Waverley, is facing court action for a repeat offence of having cheated workers out of thousands of dollars. A supermarket operator in Melbourne is going to court for the underpayment of wages, despite the fact that he had previously been put on notice by the ombudsman about his obligation to pay staff properly and keep appropriate records. A Western Sydney homeware retailer was fined after paying a Chinese employee \$12 an hour. The list goes on, detailing rip-offs involving every sort of business from nail care salons to retailers of mobile phone accessories to bus operators, migrant agencies, car windscreen repairers and cleaning companies from all across the country.

It is not difficult to work out why it is that most of the victims of this sort of behaviour, and indeed many of the perpetrators, are either not Australian citizens or have only recently become Australians. Australians, as a generalisation, are a pretty forthright mob: we are not easily fooled, we are not easily intimidated and typically we are not afraid to speak up when we believe that we have been wronged. Employers, even those who might consider standover tactics or other forms of skulduggery to cheat workers, will often back off in the knowledge that intimidation is not likely to work for very long, if at all, with most Australians. Australians, typically, just will not put up with it. Over the decades, that attitude has led to a body of law based on those ideals, and generally the rule of law stands up pretty well in this country in workplaces—give or take rogue outfits like the CFMEU or the occasional Marxist-style ramblings of people like the current head of the ACTU. Most Aussies know that. They appreciate that and they would not have any other way, but if the victim is a visitor or a recent arrival, for whom the job is crucial and who may well be operating from a position of very little, possibly even zero, knowledge of their rights in an Australian workplace, then exploitation is made easier. It is made even easier if employers themselves are unfamiliar with the Australian way, yet know their victims' weaknesses all too well. The coalition is determined to stamp out this practice.

This bill includes a range of measures that will enable the Fair Work Ombudsman to crack down more rigorously on unscrupulous employers, who will face significantly enhanced fines for transgressions against vulnerable workers. There is a view among many employers who have already been caught out and dealt with that the price of the current penalty regime is so low that it can be absorbed as a simple cost of doing business. The fact that a number of employers are repeat offenders gives credence to this. The maximum civil penalty for a serious transgression by an individual leaps to \$108,000 and for bodies corporate to \$540,000—over half a million dollars. That will get rogue employers' attention. That will definitely get their attention. You cannot regard penalties at that level as a viable cost of doing business.

The second leg of the disincentives for unscrupulous employers in this bill is to make sure that franchisors, and not franchisees, are held more accountable—not just franchisees, but also the franchisors. They will become liable for underpayment of wages in those instances where they exercise significant control over their franchisees or subsidiaries: if they turn a blind eye or if they are themselves complicit. Going further still, franchisors will

also be held accountable under this bill if they reasonably should have known about a breach. So simply saying, 'We did not know' will no longer cut it.

The third leg of the measures in the bill go to strengthening the Fair Work Ombudsman's evidence-gathering powers to put it on a level with agencies like ASIC and the ACCC. People will be compelled to provide information and to answer questions. Currently, it is too easy for them to brush off the Fair Work Ombudsman. This will no longer be the case if this bill is passed. These measures are on top of the fact that the coalition, fulfilling another election commitment on this issue, has already restored some \$20.1 million to the Fair Work Ombudsman's budget to enable the agency to restore its strength and take the fight up to dishonest employers, after Labor had stripped it of nearly 200 staff, cutting its budget by 17 per cent, as I mentioned earlier. It is ironic, to say the least, that it was the current Leader of the Labor Party who oversaw those cuts. He was the responsible minister when Labor cut the staff of the Fair Work Ombudsman from 900 in 2009-10 to 723 in 2013. He was the responsible minister when the ombudsman's budget shrank by 17 per cent, from \$150 million to \$124 million. And so it is left to the coalition to legislate, through a bill such as this, to restore the rights of workers and give them a fair go.