

## Queensland labour-hire operator slammed for “appalling and egregious treatment” of visa-holders

28 March 2017

A Queensland labour-hire company and its director have been penalised \$227,300 for deliberately exploiting vulnerable foreign workers after luring them to Australia with a string of false promises.

Twenty-two seasonal workers from Vanuatu were underpaid \$77,649 over just seven weeks when they were employed to pick fruit and vegetables at sites in the Lockyer Valley, Sunshine Coast and Bundaberg areas.

Maroochy Sunshine Pty Ltd has been penalised \$186,000 and its sole director, Emmanuel Bani, a further \$41,300 in the Federal Circuit Court in Brisbane following legal action by the Fair Work Ombudsman.

In his judgment, Judge Michael Jarrett described Bani’s “appalling treatment” of the workers as having deprived them of the appropriate basic living standards expected in Australia and causing a “profound impact” upon them and their families.

“The offending conduct was clearly designed to exploit this group of vulnerable workers,” Judge Jarrett said.

The workers were recruited by Bani as fixed-term employees on special class 416 visas as part of Australia’s Seasonal Worker Programme in July 2014 after they attended a workshop with Bani in Vanuatu in May 2014.

Judge Jarrett said Bani had promised the workers higher wages than they could have hoped to have earned at that time in Vanuatu and each worker travelled to Australia in response to Bani’s offer at considerable expense.

Bani required each of the employees to fund the costs of obtaining a visa, airfares to Australia, a medical check-up and a police check.

Many of the workers took out loans with the National Bank of Vanuatu to cover these costs.

“The promises made to the employees by Mr Bani... were for the most part false. Most received no wages while in Australia and had to endure appalling treatment by Mr Bani,” Judge Jarrett said.

Under the terms of the Seasonal Worker Programme and his agreement with the employees, Bani was obliged to provide each of the workers with at least 30 hours of work each week and weekly wages of more than \$500.

However, Maroochy Sunshine and Bani paid 13 of the 22 workers nothing at all while they worked in Australia. The others were given individual cash payments of between \$50 and \$300.

The Fair Work Ombudsman began investigating Maroochy Sunshine after receiving a referral from the Department of Employment, which was responsible for administering the Seasonal Worker Programme.

Acting Fair Work Ombudsman Michael Campbell says the investigation discovered serious exploitation, which was evidenced by the Court ordering near maximum penalties.

“The experience endured by these workers was particularly harrowing,” Mr Campbell said.

“One of the workers gave evidence that working for Bani’s company was like “slavery times” and that he had “never before experienced working a full day without even a cup of tea and only being fed tomatoes”.

“Workers were sometimes forced to work entire days harvesting produce without any food or drink and for no pay.

“In addition, the workers spent much of their time in remote and isolated transient accommodation, sometimes sleeping in a bus on the side of the road or on chairs in a bedroom owned by a friend of Bani,” Mr Campbell said.

The Court heard that Bani would get angry and scream if workers asked him about their pay, sometimes threatening to call police and have the workers thrown in jail.

The Court held that Bani, in addition to underpaying the men, also underpaid annual leave entitlements and breached pay-slip and frequency-of-pay laws, and knowingly failed to comply with a Notice to Produce.

The Court has also ordered Maroochy Sunshine to back-pay the workers their outstanding entitlements of \$77,649. In the event that the company does not make the back-payment, the Court has ordered that the penalty imposed on Bani go towards partially rectifying the underpayment of the workers.

The Seasonal Worker Programme helps to contribute to the economic development of participating countries, while also offering approved Australian employers in the horticulture industry the ability to employ workers from selected Pacific Island countries and Timor-Leste when they cannot find enough local labour to satisfy seasonal demand.

"Seasonal workers have the same rights at work as other employees in Australia – they are covered by the minimum wage and condition entitlements under the Fair Work Act. Using vulnerabilities to exploit workers is completely unacceptable," Mr Campbell said.

"Those employers in the labour-hire and horticulture industries who source migrant workers for seasonal work need to understand that compliance with workplace laws is not optional and that underpaying workers will result in hefty penalties," he said.

The Fair Work Ombudsman's Harvest Trail Inquiry was launched in 2013 in response to ongoing requests for assistance from employees in the horticulture sector, persistent underpayments and confusion among growers and labour-hire contractors about their workplace obligations.

The Inquiry involved Fair Work Inspectors making field trips and conducting audits in growing regions around the country, meeting with growers, labour-hire contractors, hostel operators, seasonal workers, industry bodies, local councils, unions and other relevant stakeholders. The findings and outcomes of the Inquiry are due to be released later this year.

Employers and employees seeking assistance regarding their workplace rights and obligations can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) ([http://twitter.com/fairwork\\_gov\\_au](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>).

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The Fair Work Ombudsman is committed to providing advice that you can rely on.

The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional.

Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.

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**Fair Work**  
OMBUDSMAN





# Boonah business caught ripping off foreign workers

Contractor forced to pay back \$16,000, apologise to Korean backpackers



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A LABOUR contractor in the Scenic Rim has underpaid more than 90 Korean backpackers who were employed to sort and pick carrots at Tarome.

The backpackers, employed by Boonah Packing Pty Ltd, were in the country on 417 working holiday visas.

Boonah Packing Pty Ltd supplied labour to one of Australia's leading carrot producers, Scott Moffat & Co, trading as Moffatt Fresh Produce who supply carrots to major supermarket chains like Woolworths and Aldi.

A Fair Work investigation, launched after an employee complained he was underpaid, found the price paid by Moffatt to Boonah Packing was sufficient for the labour-hire contractor to meet its obligations to pay minimum wages under the Horticulture Award 2010.

However it also found Boonah Packing had short-changed the original complainant by \$512 and had underpaid another 95 casual workers, 93 of whom were Korean visa-holders, by \$16,198. 96 between July last year and January this year.

As casual employees, they were entitled to receive \$21.61 for ordinary hours and \$38.90 an hour on public

holidays.

The workers were sometimes paid a flat rate of \$21.08 and "piece rates", at other times.

A piece rate is where an employee gets paid for the amount picked or packed.

However, Boonah Packing did not have written piecework agreements in place, and therefore employees should have been paid minimum hourly rates.

Boonah Packing also contravened workplace laws by failing to keep proper records, which prevented Fair Work inspectors from assessing whether some employees had received their full lawful entitlements.

Fair Work pointed out that the company was cooperative during the investigation.

Boonah Packing has begun paying back its employees and entering into an Enforceable Undertaking (EU) with the Fair Work Ombudsman.

Fair Work Ombudsman Natalie James said the EU was aimed at encouraging behavioural change and future compliance with federal workplace laws.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but

where the employer has acknowledged this, accepted responsibility and agreed to co-operate and fix the problem," she said.

Ms James said fruit and vegetable growers rely heavily on seasonal labour – and these workers are often visa-holders from non-English speaking backgrounds who may be unaware of their workplace rights.

"Outsourcing is a legitimate business arrangement – but in my experience, in highly

competitive markets for low-skilled work, it also increases the risk that workers will be underpaid, sometimes quite deliberately," she said.

Boonah Packing has agreed to implement a range of measures to ensure future compliance with their workplace obligations.

As part of the agreement, the company will continue to try to locate the only three workers it is yet to back-pay.

The workers are owed a total of \$40.

The company will also introduce systems and processes to meet workplace requirements and send a letter of apology to affected employees.





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# FEEDLOT ACCUSED OF RIPPING OFF BACKPACKERS

Fair Work Ombudsman has Goomeri operator in its sights



A GOOMERI feedlot operator is being pursued by the Fair Work Ombudsman for allegedly underpaying six backpackers a total of \$38,000.

The six from the UK and Ireland were in Australia on a 417 working holiday visa when they worked at the farm in order to qualify for a second-year extension to their visa.

The Fair Work Ombudsman alleges they were paid a flat rate of \$17 an hour and collectively short-changed more than \$38,000.

The agency announced today it had begun legal action against Robert Maudsley, who owns and operates a cattle feedlot at Goomeri.

Also facing court is Mr Maudsley's company, Waterfall Feedlot Pty Ltd.

The backpackers, five men and one woman in their 20s, were allegedly underpaid a total of \$38,254 for work they performed on the farm between January, 2014 and September, 2015.

They went to work on the farm after responding to advertisements on the Gumtree website because

they wanted to stay in Australia for two years.

To be eligible for a

second year, 417 visa-holders must undertake 88 days specified work in a designated regional area and in certain industries in their first year.

The backpackers allegedly worked up to 13 hours a day, six-or-seven days a week, performing

duties including driving tractors and dump trucks, feeding and mustering cattle and assisting to





remove dead animals from pens.

It is alleged that three of the backpackers did not have a single day off during their employment, respectively working 64, 80 and 88 consecutive days.

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# Backpackers lodged request

## Six people allegedly underpaid

FROM PAGE 1

Under the Pastoral Award 2010, the backpackers should have been paid between \$16.37 and \$17.79 for ordinary hours and up to \$37.96 for overtime work.

Public holiday pay and leave entitlements were allegedly also underpaid.

The largest alleged individual underpayment is \$11,592.

Mr Maudsley and his company also allegedly failed to comply with a requirement to ensure a copy of the Pastoral Award was made available to employees on the farm.

The Fair Work Ombudsman investigated after the backpackers lodged requests for assistance.

The Fair Work Ombudsman said the agency had previously received complaints from four other workers at the farm, including two backpackers, alleging underpayment of wages.

The previous matters resulted in almost \$4000 being reimbursed to

workers who had been underpaid.

The agency said Mr Maudsley has previously been advised of his

obligations under federal workplace laws and the need to comply with minimum wage rates.

Fair Work Ombudsman Natalie James says the decision to litigate over the latest alleged contraventions followed concern that Mr Maudsley was allegedly continuing to recruit and underpay vulnerable overseas backpackers.

Mr Maudsley faces maximum penalties of up to \$10,800 per contravention and Waterfall Feedlot Pty Ltd faces penalties of up to \$54,000 per contravention.

The Fair Work Ombudsman is also seeking a court-ordered injunction restraining Mr Maudsley and his company from underpaying workers in future and an order for him to ensure employees have access to a copy of the

Pastoral Award.

If the injunction is granted, Mr Maudsley and his company could face contempt of court proceedings for any further underpayment contraventions that are proven in court.

In addition, the Fair Work Ombudsman is seeking court orders requiring Mr Maudsley to commission a professional external audit of his company's compliance with workplace laws and workplace relations training for himself and other management staff.

A directions hearing is listed for October 24 in the Federal Circuit Court in Brisbane.

Last financial year, 1820 visa-holders contacted the Fair Work Ombudsman seeking assistance with workplace issues and the agency recovered more than \$3 million for them in back wages and entitlements.

Almost half (44%) of visa-holders who sought the Fair Work Ombudsman's assistance in 2015-16 were 417 visa-holders.

The Fair Work Ombudsman has a number of inquiries underway to identify and address the structural and behavioural drivers of non-compliance in various industry networks and supply chains in which overseas workers are heavily represented.

Ms James says the agency is concerned that the vulnerability of 417 visas-holders to exploitation is heightened during the

88-day working period to get the second-year visa because they need the employer's sign-off that they have met the

requirements for an extension.

An inquiry into the wages and conditions of workers in Australia on the 417 visa, which began in 2014 in response to allegations that some unscrupulous operators were exploiting backpackers, has concluded and the findings will be released soon.

The Fair Work Ombudsman is also conducting a Harvest Trail Inquiry into the horticulture and viticulture sectors nationally in response to ongoing requests for assistance from employees in the sector, persistent underpayments and confusion among growers and labour-hire contractors about their workplace obligations.

Ms James says the Fair Work Ombudsman treats underpayments of overseas workers particularly seriously.

"Visa-holders can be vulnerable if they are not fully aware of their rights or are reluctant to seek help, so we place a high priority on taking action to ensure their rights are protected," she said.

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“Minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable.

Employers and employees can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or phone the Fair Work Infoline on 13 13 94.



**LITIGATION:** The Fair Work Ombudsman is taking action against a Goomeri feedlot owner and his company. PHOTO: REBECCA GEORGE





# Furious about FIFO plan

## Casual staff and union outraged about Townsville jobs

Jarred Sferruzzi

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COAL workers and the mining union are outraged by BHP Billiton's bid to increase its labour hire fly-in, fly-out workforce at two of its Bowen Basin mines at the expense of existing casual staff.

While the international mining giant claimed it needed "flexibility" in its Peak Downs and Saraji mines workforce, one casual worker who has been employed for up to six years said the company didn't want to create permanent jobs.

On Tuesday, BHP announced it would look to Townsville to recruit 200 vacancies it hadn't been able to fill in the Mackay and Isaac regions. However, the temporary jobs, mostly for truck drivers and mobile plant operators, are only FIFO through labour hire companies.

A casual worker, who wished to remain anonymous as he feared losing his job, said while the company was investing in its infrastructure, it was neglecting its workers.

"BMA are buying a new fleet of trucks, dozers, water carts and excavators," the worker explained.

"But when coal prices go up they just put on more casuals, they don't make anyone permanent."

The coal price is now in the \$US170-a-tonne range, which is almost double what

it was about mid-last year.

The worker believes the last permanent worker at the two mines was hired in 2012, which was just before BHP axed hundreds of full-time employees in 2014 and re-advertised the positions through labour hire companies.

A letter seeking government intervention against FIFO jobs was sent to Premier Anastacia Palaszczuk and Minister for Natural Resources and Mines Anthony Lynham yesterday by the

Construction, Forestry, Mining and Energy Union.

In the letter, the union's mining division Queensland district vice-president Mitch Hughes said it was disgraceful companies continued to make permanent workers redundant, only to replace them with labour hire staff.

In December 2015, the State Government initiated an inquiry into the labour hire industry. The findings were issued on June 30 last

year with only one recommendation, "that the Minister progress this issue through COAG meetings to work together with the Federal Government to address the issuance of ABNs to employees as a way for labour hire companies to avoid their employer obligations."

However, as labour hire workers at the Peak Downs

and Saraji mines earn up to \$60,000 less a year than their permanent counterparts and have no annual or sick leave entitlements, there's no reprieve in sight.







# FWO needs more enforcement power

## COMMENT Growcom

GOVERNMENTS should pay close attention to the details of the latest Enforceable Undertaking announced by the Fair Work Ombudsman last week with the labour hire contractor, Boonah Packing Pty Ltd. It clearly points the finger once again at the labour hire contractor as a significant source of ill treatment of seasonal workers in our industry.

Growcom does not condone the underpayment of workers in our industry by anyone. We actively educate our members on what they must do to ensure their businesses are compliant with the Fair Work laws. We hold regular seminars and offer the correct documentation on our website. That has paid off for the grower in this case.

The FWO found that more than 90 Korean backpackers had been underpaid thousands of dollars by the labour hire company while they were working on a farm in South East Queensland.

However, the investigation by the FWO in May found that the price paid by the grower to Boonah Packing for the labour to harvest carrots was sufficient for the labour hire contractor to in turn meet its obligations to pay the correct minimum wages under the Horticulture Award 2010.

Moreover, the farm business had a written labour hire agreement in place and had kept clear records of its dealings with the labour hire company.

Unfortunately the grower was named by the FWO and suffered reputational damage as a consequence of the farm business's association with the labour hire company. However, the grower could prove that he had done the right thing and had thereby escaped a hefty fine from the FWO.

The onus is always on the labour hire company to pay the employees the correct minimum hourly casual rates. In this case, in addition to not paying its employees enough, the company did not have written agreements in place nor did it keep proper records for its employees.

Growcom's experience is that on most occasions it is the labour hire contractors that are at fault. In our view enforcement against labour hire contractors needs to be stepped up and the FWO needs to be better resourced to ensure it can focus efforts on the people who are doing the wrong thing.

In recent days, the issue of substandard accommodation for backpackers has been raised again. Growers have no control of the arrangements a labour hire company makes to house its

workers. In fact, Growcom and our growers actively report those instances of appalling conditions that they hear of to the authorities.

It is clear that governments need to explore options whereby better accommodation is provided to seasonal workers, independently of the labour hire companies; accommodation that is economically priced and properly regulated by local councils.

— PAT HANNAN, CEO





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## Getting correct workers

GROWCOM has supported Immigration and Border Protection Minister Peter Dutton's statement that those who employ illegal farm workers and abuse working holiday maker visa programs should continue to be investigated and prosecuted.

This follows the detention and removal by the federal Department of Immigration of nearly 30 farm workers on a strawberry farm on the Granite Belt.

Chief Advocate Rachel Mackenzie said while most growers were doing the right thing, there were a few bad apples who were tarnishing the horticulture industry's reputation and driving down prices for fruit and vegetables by undercutting their neighbours.

"There are no excuses for growers doing the wrong thing, either directly or through unscrupulous Labour Hire Contractors where backpackers are underpaid and exploited and visa fraud committed," she said.

"There are plenty of opportunities for growers to educate themselves and get their operation in order through us."

In dealing with labour hire contractors, growers are required to do their due diligence and look for well known and legitimate LHC

and not to even consider offers that were clearly in breach of the Award.

They should also carry out random checks with workers to ensure they are being paid correctly and receiving entitlements as well as appointing an overseer or supervisor to watch over the work of

contract workers.

"The Fair Work Ombudsman holds growers responsible for ensuring that people working on their farms, whether directly employed or via a labour hire provider, are receiving the correct entitlements," Ms Mackenzie said.

"There is a clear avenue for action where intent to enter into a sub-standard arrangement can be shown.

"Growers need to enter into a written agreement with a labour hire company which clearly establishes the respective rights and responsibilities of each party, including correct payment of wages, superannuation and WorkCover, as well as visa checking."

Ms Mackenzie said Growcom called on the Queensland Government to support national recommendations on the regulation of labour hire companies through the Council of Australian Governments, rather than set up a State based system.



| IMPORTANT: Backpackers play a vital role. PHOTO: THINKSTOCK





# Holiday visas: rules must be followed

## COMMENT GROWCOM

GROWCOM supports Minister for Immigration and Border Protection Peter Dutton's statement this fortnight that those who employ illegal farm workers and abuse working holiday maker visa programs should continue to be investigated and prosecuted.

This follows the detention and removal last week by the federal Department of Immigration of nearly 30 farm workers on a strawberry farm on the Granite Belt.

While most growers are doing the right thing, there are a few bad apples who are tarnishing the horticulture industry's reputation and driving down prices for fruit and vegetables by undercutting their neighbours.

There are no excuses for growers doing the wrong thing, either directly or through unscrupulous Labour Hire Contractors where backpackers are underpaid and exploited and visa fraud committed. There are plenty of opportunities for growers



While most growers do the right thing, a few bad apples are tarnishing the industry's reputation.

to educate themselves and get their operation in order through us.

Growcom continues to work diligently with growers to ensure they are informed of their obligations.

We currently have Workplace Essentials Seminars running in major horticultural areas in Queensland. Growers who are not sure whether what they are doing meets their obligations should attend or ring us for advice. Growers need only visit the Growcom website - [www.growcom.com.au](http://www.growcom.com.au) - to find a workshop near them, including a meeting in Stanthorpe on March 23.

The Fair Work Ombudsman holds growers responsible for ensuring that people working on their farms, whether directly employed or via a labour hire provider, are receiving the correct entitlements. There is a clear avenue for action where intent to enter into a sub-standard arrangement can be shown.

Growers need to enter into a written agreement with a labour hire company which establishes the rights and responsibilities of each party, including correct payment of wages, superannuation and WorkCover, as well as visa checking.

- PAT HANNAN, CEO







## Licensing scheme for labour hire an option

THE State Government is seeking public comment on a range of options to protect vulnerable labour hire workers in Queensland from mistreatment and exploitation.

The Parliamentary Committee's report released on June 30 contains disturbing evidence of exploitation and mistreatment of labour hire workers in Queensland.

Similar evidence of exploitation and mistreatment has also been provided to inquiries held in other Australian jurisdictions.

"The labour hire industry in Australia is fast becoming a national disgrace," Minister for Employment and Industrial Relations Grace Grace said.

"Unscrupulous labour hire operators are exploiting vulnerable workers right here in Queensland, and Malcolm Turnbull is turning a blind eye to the rorts.

"Those labour hire operators doing the wrong thing aren't even on Malcolm Turnbull's radar.

"Queensland is determined

to lead the way nationally and weed out those unethical operators that are plaguing the labour hire industry."

Ms Grace said evidence to Parliamentary inquiry included underpayment of workers; cases of sexual harassment of workers; workers housed in overcrowded and substandard accommodation; unauthorised deductions from pay; lack of proper safety equipment and appropriate training; and phoenixing of companies

leaving workers stranded without their entitlements.

Minister Grace said that a labour hire issues paper, which has now been released, outlined a range of options the government was considering in its efforts to clean up the industry — including regulation through a licensing scheme.

"In Queensland you need a licence to hire out accommodation, but you don't need a licence to hire out a worker," Ms Grace said.

"We believe the introduction of regulation of the labour hire industry through a licensing scheme would make for

greater transparency and raise standards across the industry.

"In turn, we will also protect and support those labour hire businesses who are doing the right thing, operating ethically and responsibly."

The Regulation of Labour Hire Industry issues paper is available at [treasury.qld.gov.au](http://treasury.qld.gov.au), and public comment is welcome until Monday 6 February 2017.



Minister for Employment and Industrial Relations Grace Grace.





# Upskill compliance practices on-farm

## COMMENT GROWCOM

GROWCOM does not condone illegal workplace practices concerning the employment of backpacker labour and is working hard to help members fully understand and comply with their obligations.

The news in this area continues to be bleak with the Fair Work Ombudsman (FWO) last week releasing an indicting report on the experiences of all backpackers (417 working holiday visa-holders) in Australia, after a two-year national inquiry. The report includes findings of a survey of more than 4000 overseas workers, the majority of which (66 per cent) felt that employers take advantage of people on working holiday visas by underpaying them.

In the face of the increasing scrutiny of employers of backpacker labour, Growcom urges growers and farmers to ensure their business would pass a Fair Work inspection or audit by attending the free workshops

for agribusinesses supported by the Queensland Agriculture Workforce Network and currently being delivered throughout Queensland.

The aim of the seminars is to help agricultural businesses achieve Fair Work compliance and better man-

age employment risks using a best management practice (BMP) approach.

The Workplace Essentials workshops are being delivered by workplace relations expert, Donna Mogg and funded by the Queensland Government.

These workshops will provide agricultural businesses with a solid foundation for both compliance with the laws and future workforce development.

At the end of the seminars growers leave with a clear understanding of their obligations under the Fair Work laws.

They also recognise where the gaps are in their policies and practices. Growcom's Workplace Relations team is providing them with a set of resources to address these

gaps, including links to Fair Work and industry best practice programs. The workshops are already proving to be of benefit with 100 per cent of respondents saying they will be implementing workplace management improvements.

Remaining seminars are scheduled for - **Bowen:** Wednesday, November 9, 2016; **Charters Towers:** November 11; **Gympie:** November 17; **Glass House Mountains:** November 18; **Mackay:** Wednesday, February 8, 2017; **Yeppoon:** February 14; **Emerald:** February 15; **St**

**George:** March 1; **Kingaroy:** March 15.

Register online: [www.growcom.com.au/wes](http://www.growcom.com.au/wes)

The Queensland Agriculture Workforce Network (QAWN) is an industry-led rural jobs and skills initiative funded by the Queensland Government. The QAWN Workplace Essentials Workshops 2016/17 are funded by the Queensland Government and sponsored by AustSafe Super.

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- PAT HANNAN, CEO |







## 'Learn finer points of employing backpackers'

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The Workplace Essentials workshops are being delivered by workplace relations expert, Donna Mogg and funded by the Queensland Government.

As many agricultural businesses cannot afford a full-time human resources staff member, these workshops will provide them with a solid foundation for both compliance with the laws and future workforce development.

At the end of the seminars growers leave with a clear understanding of their obligations under the Fair Work laws.

Remaining seminars are scheduled to be held in the

following locations:

- Bowen - Wednesday, November 9.
- Charters Towers - Friday, November 11.
- Gympie - Thursday, November 17.
- Glass House Mountains, - Friday, November 18.
- Mackay - Wednesday, February 8, 2017.
- Yeppoon - Tuesday, February 14, 2017.
- Emerald - Wednesday, February 15, 2017.
- St George - Wednesday, March 1, 2017.
- Kingaroy - Wednesday, March 15, 2017.

Register via [growcom.com.au/wes](http://growcom.com.au/wes)





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# Laws target dodgy bosses

## Study finds wage earners ripped off

JESSICA MARSZALEK

BIG businesses found to be avoiding paying proper wages and entitlements by using unscrupulous labour hire companies could be made liable under a new Queensland scheme.

**Employment** Minister Grace Grace is considering a crackdown on the industry after a host of complaints that workers were being duded of wages, made to work for free and in unsafe conditions and even subjected to sexual harassment by companies preying on the vulnerable.

An issues paper released by the Queensland Government

features examples of shonky cases, including the Fair Work Ombudsman's finding that Woolworths trolley collectors were being paid as little as \$10 an hour through a labour hire company.

It asks whether labour hire workers should be able to pursue employers for unpaid entitlements and sue over the terms of their contract.

The paper canvasses a new licensing regime that would prohibit people of bad character running businesses, particularly if they have criminal convictions or have previously flouted workplace health and safety laws.

It also suggests com-

panies be required to put up substantial bonds – ranging anywhere up to \$60,000 – as security deposits in case they underpay employees.

Ms Grace said the Palaszczuk Government would prefer a national scheme but was prepared to enact its own if the Federal Government wouldn't act after "disturbing evidence" about what was going on in the industry.

"The labour hire industry in Australia is fast becoming a national disgrace," she said. "Queensland is determined to lead the way nationally and weed out those unethical operators that are plaguing the labour hire industry."







# Boss shocked at labour hire claims

A CENTRAL Queensland business has hit back at claims that labour hire workers were being mistreated in the region.

CTC Labour Hire general manager Darryl Lapworth said labour hire workers were the foundation of its business.

"It is shocking to hear that some of our Queensland labour hire workers have gone through mistreatment and exploitation in the workplace," Mr Lapworth said.

"We focus on giving back to the community which is reflected in the way we treat our labour hire employees."

His response comes after Keppel MP Brittany Lauga last week said the industry was "fast becoming a national disgrace" as she spoke about a State Government inquiry.

The inquiry is being held after a Parliamentary Committee report last year revealed evidence of exploitation and mistreatment of labour hire workers.

It will examine issues such as underpayment of workers, cases of sexual harassment of workers, workers housed in sub-standard accommodation, unauthorised pay deductions and more.

**“There are a number of things that would assist with cleaning up the industry.**

— Darryl Lapworth

It will also include discussion on whether a labour hire licensing scheme should be implemented.

Mr Lapworth said CTC already performed regular safety checks, as well as offering counselling, mentoring, training and administration support.

"We encourage the Queensland Government to

take a closer look at the labour hire industry before introducing a licensing scheme," he said.

"CTC has a long list of labour hire contacts and connections within the industry which shows that we follow an ethical recruitment model and look after our employees."

He said CTC offered regular weekly payments, monthly superannuation entitlements, casual loading including sick leave and public holidays, pay as per award, and Enterprise Bargaining Agreement or above for correct wages

"CTC believes that there are a number of things that would assist with cleaning up the industry rather than something that is costly, time consuming and labour intensive and would be happy to be part of the discussions.

"With all the community events CTC takes on, we use local resources and labour hire ensuring that the Rockhampton economy is sustained."



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## Fair Work to target dodgy farmers

SHONKY fruit and vegetable growers who exploit workers will be targeted in a new Fair Work Ombudsman program to be rolled out this year.

Queensland's peak horticulture advocacy body, Growcom, gained funding to help the region's vulnerable workers through workshops and one-on-one risk assessments with farmers.

The organisation's chief advocate Rachel Mackenzie (above) said many workers were mistreated due to the industry's transitory workforce and seasonal nature.



"Labour is the single biggest cost for most growers so shonky operators who treat their workers poorly can significantly undercut the many growers or labour providers doing the right thing and push prices down," she said.

"Our industry employs large numbers of working holiday makers and people from non-English-speaking backgrounds who tend not to engage with employee support services."

In its 2016-17 Budget, the Federal Government committed \$7.3 million over four years to fund the Community Engagement Grants Program.

The program involves the Fair Work Ombudsman pro-

viding funding of \$1.8 million a year for four years to not-for-profit community organisations to undertake a range of services, projects and programs of work to supplement the agency's statutory functions.

Ms Mackenzie said the goal was to build a "beyond compliance" culture in the industry.

"It is our objective to engage with the big players in the supply chain to gain recognition of this certification systems that are less relevant in the Australian context and just add another compliance burden on to growers," Ms Mackenzie said.







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# Abusers hit visa workers

## EXCLUSIVE ANTHONY TEMPLETON

AN INQUIRY into overseas backpackers working in Australia found they were regularly underpaid, forced to work in poor conditions and faced sexual harassment.

The Fair Work Ombudsman examined the conditions travellers on a 417 visa (working holiday) experienced during employment in Australia.

The inquiry found major issues – particularly for those looking to secure a year extension which requires being in work for 88 days before it is granted – such as workers paying for their jobs, working for free in exchange for non-certified accommodation and underpayment.

Taiwanese nationals were the highest users of the second-year working holiday visa, followed by the United Kingdom and South Korea.

Most of the work for those on a second-year visa is performed in Queensland.

Fair Work Ombudsman Natalie James said a backpacker survey found those trying to secure an extension to their visa were particularly vulnerable to exploitation.

"In particular, the desire for

a second-year 417 visa can drive vulnerable workers to agree to work for below minimum entitlements and in some circumstances enter into potentially unsafe situations," she

said. "The backpacker labour force is vital to some industries associated with food production in regional areas, but we are at risk of it being a black market, exploited labour force if the settings remain the same."

The survey found many workers were reluctant to report sexual harassment, unsafe working conditions or underpayments because they were concerned an employer would not confirm the 88 days of work required.

"Participants, often vulnerable and in the main from non-English speaking backgrounds with significant cultural differences to the host country, are exposed to rogue employers looking to gain a competitive edge or commercial advantage through the reduction of a business's most significant expenditure – labour costs," the Fair Work report says.

"The survey findings identify there are especially vulnerable nationalities within this visa cohort who are being tar-

geted to undertake work in contravention of their workplace rights, in particular those visa holders from Asian countries."

The report recommends several changes including establishing a federal-state inter-agency to consider new rules, greater information sharing, better educational material and new technology to better record hours worked.





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# Calls for change in labour hire industry

Emily Smith

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THE CFMEU has renewed calls for the Federal Government to increase scrutiny of the labour hire industry servicing the mining sector.

On August 29 Mackay labour hire firm ComLek Group was advised it would no longer be employed by BMA, meaning the total number of labour companies approved by the mining

giant would drop from six to five. In a letter, BMA said it would cease its relationship with ComLek from Friday, September 2. BMA said ComLek employees working on BMA sites would have to sign up with "an approved maintenance provider" to continue working in their current role. If they didn't sign up with other companies, they would no longer be able to continue working on BMA sites.

However, ComLek general manager Simon Gallagher said it was a simple process to sign up with other companies. When asked why ComLek lost the contract, he said "it's just the way the contracts are" and that ComLek had only been employed by BMA about two months.

The remaining BMA approved companies were HMS Labour, Workpac, One Key, Haynes Mechanical and

Hayes. CFMEU Mackay

district president Stephen Smyth believes the loss of ComLek is a sign all labour hire employees will be dealt a pay cut in the future.

"Otherwise, why would they be made to change shirts?" he said. He also reiterated ongoing concerns about the lack of job security and entitlements for those in the labour hire sector, and called on the Federal Government to increase scrutiny. "We've

got some labour hire workers who should be getting long service leave. How is that casual?" he said.

Federal Member for Dawson George Christensen was not available yesterday, but prior to the election he expressed concerns about the sector. Minister for Resources Matt Canavan was also unavailable. Government has not introduced a new policy in regard to labour hire.





  
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## Contract concern

MINING contractors have been the biggest casualty of the industry downturn and rise of the labour hire sector, Mastermyne managing director Tony Caruso believes.

While there has been concern raised over the number of permanent workers replaced by labour hire, he said the same trend was impacting contracting companies. He said mining contractors went to mine sites and managed specific projects, while labour hire workers showed up on site and did any work required. But as mining company margins tightened, he said contracts were increasingly being shifted to labour hire. "The contracting companies have born the brunt of this downturn," he said. However, he said it was a normal part of the cyclic mining industry and diversifying into specialised skill sets helped them survive.





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## Grieving parent corrected on backpacker conditions

# MIA'S MUM 'HAS GOT IT WRONG'

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A GRIEVING English mother's "inaccurate" claims about working and living conditions for backpackers labouring on Queensland farms could deter visitors from coming to Australia, community leaders fear.

Rosie Ayliffe, from Derbyshire in the UK, is the mother of Mia Ayliffe-Chung, 20, who was stabbed to death at a hostel in Home Hill on August 23.

Fellow Briton Tom Jackson, who tried to defend Ms Ayliffe-Chung, later died from wounds sustained in the attack, allegedly committed by Frenchman Smail Ayad, 29.

Horticultural industry leader Carl Walker and Burdekin MP Dale Last have both expressed concerns that, while they understood Ms Ayliffe was mourning the death of her daughter, some of what she

was saying about working conditions on Queensland farms and the lifestyle offered by hostels needed to be corrected.

In blogs and interviews in the UK, Ms Ayliffe has made claims of exploitative work practices on Australian farms and an "aggressive atmosphere" in hostels.

Ms Ayliffe has said her daughter had described her life working on farms and living in a hostel as though she was in a "prison camp". In one interview Ms Ayliffe said the working environment and the hostels "had a febrile, intense, aggressive atmosphere caused by competition for work, but also a complete lack of entertainment in the evening".

"Anyone who looks after

young people knows they need things to do in the evening or they start scrapping," she said.

Ms Ayliffe said her daugh-

ter had undertaken to do 88 days farm work in order to meet strict Australian government requirements for overseas' workers seeking a second-year visa.

In a blog in the UK newspaper *The Independent* Mrs Ayliffe wrote about the risk of snake bite and the hard work done by backpackers on farms.

She has called on the Australian Government to regulate the farming industry to protect employees. She said the unregulated nature of the industry was partly to blame for her daughter's death.

Mr Last said Mrs Ayliffe's criticisms were unfortunate, but stressed that he understood she was grieving.

He said backpackers enjoyed a healthy social life in the Burdekin. "They bring their cultures to our community. They come from all over the world and contribute socially

and economically to all the towns along the coast," he said.

Mr Last said Ms Ayliffe did not understand farm working arrangements and the recreational opportunities open to backpackers in Queensland.

"Doing this work is part of the adventure. It is part of an experience they will value the rest of their lives," he said.

Mr Walker, the Bowen Gumlu Growers Association chairman, said he agreed with some of things Ms Ayliffe has said, but added that she was wrong in her claim that there was nothing for young people to do and that the work

**BLAME:** Rosie Ayliffe and (left) her daughter Mia Ayliffe-Chung, 20.

itself was too hard. "What happened in Home Hill could have



happened anywhere in the world. In Bowen the workers are picked up from hostels and driven to work and they are driven home in the afternoon. They have beaches here and pubs and shops," he said.

"Home Hill might not have beaches, but it is good with pubs and shops."

Mr Walker said working conditions could be hard but there was no other way to get the fruit and vegles harvested.

In one blog, Ms Ayliffe wrote that her daughter expressed concern about a farm which would only employ young girls. She said there were fears of sexual exploitation.

Asked about this, Mr Walker said there were "bad apples" in any industry. He urged backpackers to report any suspicious activities or unethical work practices to police or to local members of parliament.

Mr Walker did say labour hire contractors who employed backpackers to work on farms needed to be regulated.





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## Backpacker tax

# Fuelling Bowen's ag boom



EMILY  
SMITH

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THE mining industry may be synonymous with a recent boom in the central Queensland region, but as it was taking off six years ago, Bowen's agriculture industry was quietly experiencing a boom of its own.

Bowen Gumlu Growers Association president Carl Walker said in the past six years the region's industry had expanded from \$220m to \$450m in net worth, on the back of rising domestic demand.

While this had not resulted in greater profits for growers because costs had also shot up, the huge increase in production quantities had made the sector increasingly reliant on labour.

But with most Australians opting to chase higher wages in the mines, the sector became reliant on backpackers to pick up the shortfall.

Mr Walker believes backpackers now make up 75% of this Bowen workforce.

But he believes a plan to remove the \$18,200 tax-free

threshold for foreign backpackers, and tax 32.5% of their income, will deter them from taking the job, even if it meant foregoing a second year visa.

The Federal Government's backpacker tax was announced in the 2015 budget, and was due to be implemented July this year.

It aimed to generate \$540m by 2020.

However it was delayed for six months and put under review following outcry from the horticulture sector and regional MPs, who feared produce would be left rotting

in the ground as the workforce fled.

Federal Member for Dawson George Christensen for example stated he would "quit the LNP" if the tax went through.

While he made the claim to "make a point", he said this week that if the tax went through "his position would be untenable as I'd have my electorate going to war".

This week he went on to claim he thought backpacker tax "is dead".

He believes in the next month government will back down from the original policy and propose a tax of 15-19%,

which would bring it in line with Canada and New Zealand's backpacker tax rate.

Not only did the region rely on the labour supply, but Mr Walker said it had adapted during the past six years so it could support foreign backpackers specifically.

He said as many backpackers had only minimal

experience on farms beforehand, growers had adapted their operations to make them friendlier to people who didn't have an inherent knowledge of farming best practice.

"Since we've changed to mostly backpackers, we've had lots of city kids. You have to educate these kids," he said.

"The last thing you want is for them to disappear because of tax or because they weren't educated about safety."

That's why he applauded Workplace Health and Safety farm audits, and raids by the Border Protection and Immigration.

On August 29 the Department of Border Protection and Immigration issued two infringement notices to labour hire





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# Safe workplace a priority

**WORKPLACE** | Eve Reitmajer

WORKPLACE Health and Safety Queensland officers were in Bowen last week visiting local farms in a bid to ensure Bowen farms are a safe place to work.

The visit has been backed by Bowen Gumlu Growers Association, with chairman Carl Walker urging all growers in the region to welcome the teams onto their properties with open arms when they are next in town, and to learn from what they had to say.

He said the association was keen to work with the team to ensure local farms provided a safe place for all farm employees.

"They are not here to make peoples' lives difficult," Mr Walker said.

"They are here to help. They want to work with us, to assist us in becoming compliant.

"They are not the bad guys — they are here to help."

Mr Walker said the team of two which visited Bowen last week had been impressed with local growers' efforts and wanted the growers to feel comfortable calling them up for any workplace health and safety in-

quiry.

"They visit a few times each season and when they are up here, are keen to talk with local growers about any concerns they may have with being compliant with the regulations," he said.

"Really, it's about working together to help make our industry safe.

"It's what we both want so why not work together at it."

Mr Walker said when it came to workplace health and safety the horticultural industry had its own set of challenges.

"We have a constantly changing workforce," he said.

"We employ big numbers of overseas backpackers, and some

are not very safety conscious, so we need to change our business to keep up with that changing workforce.

"Farms are also an environment with a lot of machinery.

"Common sense seems to be a thing of the past now, so we have to make sure our workplace health and safety practices are up to standard and that we are providing adequate information and instruction and training to our workers.

"No one wants to see some-

one hurt or injured or killed.

"At the end of the day we want everyone to be able to come here, work and enjoy

themselves and be safe."

Mr Walker said there was always room for improvement and all growers could benefit from a fresh set of eyes looking over their operations making sure everything was compliant.

"As an association we want our industry to be safe and we support what the Workplace Health and Safety Queensland officers are doing.

"As an association we also support visits from Fair Work, immigration officials, the Australian Taxation Office.

"We have to clean up our industry to make sure it is safe and it is sustainable for the future."



