

Migration Amendment (Strengthening Employer Compliance) Bill 2023

Second Reading Speech

There is a crisis of exploitation in Australian workplaces. Too many workers are forced to confront vulnerability created by our visa system.

This means more wage theft for workers. Australians and people who hold temporary visas alike.

People too terrified to speak out when they are mistreated. We all know this happens.

There is clear evidence of the systemic nature of exploitation in Australia's labour market. Unscrupulous employers and facilitators have misused visa rules to exploit workers.

According to a recent report by the Grattan Institute, up to one in six recent migrants are paid below the minimum wage.

Another report from Unions NSW released today found over one in five workers are paid a lower salary because of their visa status or nationality.

So, it's not just a bad apple or two. The Government is particularly concerned about the vulnerability of people who hold a temporary visa.

Empty promises of permanent residency, wage theft, sham contracting, threats of a phone call to the Australian Border Force, stories where people have had their passports locked away, been sexually harassed and sexually assaulted.

This Bill aims to strengthen employer compliance and ensure that law-abiding Australian employers are not undercut by unscrupulous competitors.

This Bill will implement recommendations 19 and 20 of the Report of the Migrant Workers' Taskforce, and includes several additional measures.

Importantly, it will help remove barriers that stop exploited temporary migrant workers from speaking out and seeking support.

This is an election commitment of the Albanese Government. And we are keeping our word.

The Migrant Workers' Taskforce should have been actioned earlier, as it was delivered by Professor Allen Fels to the then Government in 2019.

New criminal offences

In its Report, the Migrant Workers' Taskforce recommended making it an offence for a person to knowingly pressure, influence or coerce a worker to breach a visa condition.

This Bill will implement this recommendation. It will be a criminal offence to coerce someone into breaching their work-related visa conditions.

Employers who deliberately coerce vulnerable workers must face the consequence.

We are also going further.

At the moment, the only bar under the Migration Act on hiring is for sponsored workers, such as those who hold a Temporary Skill Shortage visa. The new measure will prevent prohibited employers from hiring non-sponsored workers who hold any form of temporary visa, such as international students.

This prohibition will be in place for a specified period of time and a list of prohibited employers will be published on the Home Affairs website.

This prohibition is necessary to protect workers from employers who have engaged in serious, deliberate or repeated non-compliance with their obligations.

Prohibition notices will be triggered by breaches under both the Migration Act and the Fair Work Act, as well as certain offences under the Criminal Code.

The Albanese Government wants to ensure employment law and migration law work towards the same goal, that they are not pulling in opposite directions.

Triggers include remuneration related non-compliance, but they also extend to other forms of exploitation, recognising the corrosive behaviour of some unscrupulous employers.

And it will be a criminal offence where prohibited employers have been found to have employed an additional worker on a temporary visa whilst prohibited.

The decision to prohibit will be a decision for the Minister for Immigration, Citizenship and Multicultural Affairs or Minister for Home Affairs and it can be delegated to a relevant decision maker. I will be consulting and collaborating with my colleagues on how the Fair Work Ombudsman can play a role in this process.

- any extenuating circumstances outlined by the employer, including the impact the prohibition would have on the ongoing viability of the business and how that might impact existing workers and the broader community.

This is a really significant measure. In industries where exploitation is particularly widespread – such as accommodation, food services, cleaning, and construction – this is a necessary step to show we can tackle exploitation where it is most prevalent.

It demonstrates that the Albanese Government is committed to protecting workers from employers who have broken the trust of our community.

Increasing pecuniary penalties and civil penalties

This Bill also increases the penalties for unscrupulous employers misusing our migration programs and misusing migration rules.

For penalties to have a deterrent effect, they must be set at a level that actually deters people from offending.

This Bill will see penalties under the Migration Act significantly increased to better deter these unscrupulous employers.

Increasing penalties reflects the significant damage that the actions of unscrupulous employers can have on Australia's visa program integrity, and public confidence in our migration system more broadly.

However, this criminal offence has not been prosecuted since it was introduced over two decades ago.

A major issue raised by stakeholders is that Section 235 of the Migration Act has undermined the ability of workers on temporary visas to have recourse to their rights under certain workplace laws such as workers' compensation laws.

A key element of this Bill is to repeal this offence.

We understand that workers are afraid to speak out because if they do so, they would be liable for prosecution for this offence.

We recognise that section 235 acts as a barrier for them to report exploitation.

Beyond this, section 235 has seen other unintended consequences.

Despite not being prosecuted since introduction, the mere presence of section 235 has resulted in adverse effects for non-citizens, even when they have not been prosecuted for this offence, such as in cases of workers' compensation.

The national workplace relations system and other workplace laws should apply to workers in Australia, regardless of their immigration status. This is critical for the protection of all workers in our community.

We are repealing this section to assist in closing this loophole that gives unscrupulous employers leverage over vulnerable non-citizens.

Stakeholders have told me that the reason they don't trust this initiative is because it is not transparent and because it is not legislated.

It is too secretive to instil the necessary trust and confidence.

The final measure included in the Bill will allow the Albanese Government to make regulations to legislate the protections that are currently only available under policy.

I have instructed my Department to work with industry, union and civil society organisations to consider the protections available to workers who hold temporary visas to encourage them to speak out when they face exploitation in the workplace.

Just this week they have come together to work through the existing settings and consider whether other protections are needed. I thank those in business, civil society, unions, researchers, legal practitioners and other experts who have participated in these important conversations.

I intend to consider their advice – in consultation with my colleagues – and together we will ensure the protections achieve an appropriate balance, encouraging workers to come forward and report exploitation while also maintaining the integrity of our visa programs.

The measures in this Bill will help give people confidence to speak out and seek help without fear of visa cancellation.

This commitment requires them to adapt to new working environments, new laws and for some, a new language. Australia has for decades benefited from migrants that have demonstrated resilience, hard work, and who have made substantial contributions to our country.

We all witnessed this first hand during the pandemic. People who held visas stacking shelves, delivering essential care, staffing hospitals, and delivering food.

I believe there is a greater appreciation today in this country for people who hold temporary visas than there has been in the past.

It is unconscionable that some employers target these very workers as cheap and exploitable labour.

It is unacceptable.

So many of these workers contribute to important jobs across the country.

This Bill recognises that when people vulnerable to exploitation are mistreated, we all suffer. It recognises the contribution being made by so many workers and the importance of addressing the corrosive nature of exploitation in workplaces across the country.

Additionally, the Bill acknowledges that Australia can't take for granted being a destination of choice for prospective migrants. We are in a global competition for talent.

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