

Submission to the Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]

The Legal and Constitutional Affairs Legislation Committee | January 2022

Overview

AMES Australia (AMES) is a statutory body of the Victorian Government and a significant provider of settlement, education, and employment services to newly arrived migrants and refugees in Australia. The overarching purpose of AMES work is to support migrants and refugees as they move from early settlement to independence and greater social and economic participation in Australia. We partner with professional, community and corporate organisations to ensure that refugees and migrants are connected to the networks and services that will best meet their goals and aspirations.

AMES welcomes the opportunity to make a submission to the Committee regarding the Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions] and refer the Committee to our response to the Exposure Draft in August 2021 (available [here](#)). Our submission to the Exposure Draft, while supportive of the Bill in principle, details areas where further work is needed to protect migrant workers, such as: providing appropriate and accessible information on workers' rights and support, and improving support for vulnerable cohorts such as temporary visa holders. It includes case studies of recent migrant worker experiences of exploitation which highlight some of these issues.

We note that most submissions to the Exposure Draft highlight the importance of the proposed measures being supported by a proactive approach to compliance and enforcement in order for the Bill to be effective.

This submission to the Committee again provides an interpretation of the Bill that is foremost in the interest of migrant workers, considering a number of recommendations that have been put forward in other submissions that we believe support the best outcomes for migrant workers experiencing exploitation. The following addresses our support for and/or concerns with the Bill from this position based on our experience and knowledge.

Response to the Bill

1. There is no framework to support temporary visa holders who report exploitative employers.

Migrant workers who reside in Australia temporarily often have specific work-related visa conditions which may restrict their employment to a specific employer or restrict their working hours. Temporary residents also have increasingly limited and complex pathways to permanent residency, with many facing long periods of uncertainty and financial insecurity.

Migrant workers are far less likely to report exploitation and access legal remedies than local workers, as they fear that reporting such exploitation may negatively impact their current visa status (example; visa cancellation due to breach of visa condition) or jeopardise their pathway to permanent residency. Many temporary migrants also rely on this work for their survival, due to their limited eligibility for government support.

Therefore, the lack of incentives for migrant workers to report exploitation under the proposed Bill is likely to impact the effectiveness of the proposed changes. We therefore support the following recommendations put forward by West Justice that were similarly represented in other submissions to the Exposure Draft¹:

- That the Federal Government provide temporary migrant workers with access to a secure visa and well-regulated pathways to support, empowering these migrants to stand up and enforce their workplace rights.
- That temporary migrants who report exploitative employers are adequately supported (and should not face deportation) if they can no longer fulfill the work conditions of their visa because their employer

¹ West Justice Community Legal Centre submission (pg. 14); Associate Professor Joanna Howe submission (pg.17) and Migrant Worker Centre submission (pg. 3); Migrant Worker Justice Initiative submission (pg. 3 & 4)

has been declared a prohibited employer (or have otherwise engaged in exploitative workplace conduct).

2. Improved cultural responsiveness of agencies is needed to support migrant workers experiencing exploitation.

A key factor that contributes to migrant workers from culturally and linguistically diverse (CALD) backgrounds being disproportionately exploited in the Australian labour market is that many lack understanding of their rights in Australian workplaces and society.

As a result of low rights awareness, language, literacy, cultural and practical barriers, migrant workers rarely contact mainstream agencies for help. While government agencies such as the Fair Work Ombudsman (FWO) have undertaken work to target newly arrived communities, further action is required to ensure they are accessible and responsive to migrant workers. Community legal centres, such as West Justice, have noted that they assist many clients who are turned away from the FWO and were unable to enforce their rights without support. Given this some of the worst forms of exploitation are likely to continue undetected.

We therefore support the recommendation put forward by West Justice²:

- That government agencies improve their cultural responsiveness frameworks including specific protocols and checklists for staff, engage dedicated staff, and participate in/resource education and engagement programs.

3. There is a narrow scope for defining a ‘prohibited employer’ that does not reflect the widespread issue of migrant worker exploitation.

The proposed provisions permit the Minister to declare an employer a ‘prohibitive employer’ if they are subject to an order under the *Fair Work Act 2009* (Cth) for contravention of a civil remedy provision in respect of a non-citizen. This sets a very high bar which many vulnerable migrant workers will not be able to pass. As noted by community legal centres such as West Justice, litigation to obtain such an order can take many years and requires significant legal support. This is often inaccessible to many temporary migrants.

As a result of the barriers to obtaining an order, in addition to fear of retribution by an employer, many migrants only make an anonymous complaint. The current scope of the Bill does not take into account this kind of engagement with the regulator – even if the FWO has received multiple credible or substantiated complaints.

Furthermore, the exploitation of migrant workers includes those who are vulnerable to unsafe working conditions, sexual harassment, and discrimination at work. West Justice and others note that these issues are widespread and often underreported by migrants who may not know that such behaviour is prohibited under Australian law.

We therefore support the recommendations put forward by West Justice³ to

- Amend subclauses 245AYA(2) and 245AYD(4) of the Bill such that the grounds for a person to be declared a ‘prohibited employer’ include circumstances in which:
 - i. an employer has been subject to multiple compliance notices issued by the Fair Work Ombudsman; or
 - ii. an employer has been subject to any other regulatory action indicative of a pattern of exploitation.
- Expand the grounds on which an employer is declared a prohibited employer to include circumstances in which an employer has breached other workplace laws (including anti-discrimination laws and laws that govern OHS).

For more information, please contact Catherine Scarth, AMES Australia Chief Executive Officer on scarthc@ames.net.au

² West Justice Community Legal Centre submission (pg. 23)

³ West Justice Community Legal Centre submission (pg. 17)