

Response to the Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

Department of Home Affairs | August 2021

Introduction

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 delivers jobactive employment services in Victoria and some areas of Western Sydney (with a higher proportion of clients from a culturally and linguistically diverse background compared to the national average) and supports other cohorts of migrant workers across a range of industry and skill settings.

AMES supports the Department of Home Affairs' proposed amendments to the Migration Act 1958 (the Migration Act) contained in the Schedule to the Migration Amendment (Protecting Migrant Workers) Bill 2021 (the Bill). AMES believes this Bill will strengthen protections to migrant workers through proposals that include prohibiting employers declared as 'prohibited employers' from employing additional non-citizen workers (excluding permanent residents) and expanding protections to migrant workers who are not employed through employer sponsorship, such as international students and graduates, and temporary humanitarian entrants. The Bill will send a strong message to employers that wage underpayment and other exploitative practices against migrant workers are unacceptable and will not be tolerated by the Australian Government and community.

While the Bill is a positive step forward to addressing migrant worker exploitation, our submissions details areas where further work may be needed, such as: providing appropriate and accessible information on workers' rights and support; improving support for vulnerable cohorts such as temporary visa holders; and addressing migrant worker exploitation in the COVID-19 recovery. We provide two case studies of recent migrant worker experiences of exploitation which highlight some of these issues.

Appropriate and accessible information on workers' rights and support

Migrant workers from culturally and linguistically diverse (CALD) backgrounds are disproportionately exploited in the Australian labour market. Factors that contribute to this exploitation can be that many cohorts of migrant workers, such as newly arrived migrants and refugees, lack understanding of their rights in Australian workplaces and society. The following examples demonstrate AMES approach to addressing this issue.

AMES has extensive experience delivering information sessions on employer and employee work rights, in partnership with firms such as Maurice Blackburn Lawyers. These sessions cover topics such as worker rights, minimal wage, superannuation, and the Fair Work Act 2009. To support knowledge transfer AMES also delivers an annual 'Working the Australian Way' workshop for professionally qualified migrants in collaboration with corporate partners, covering topics such as the Fair Work Act.

AMES has collaborated with the Fair Work Ombudsman to improve access to Fair Work Legislation online resources. The resources have traditionally been difficult to locate online and not available in languages appropriate or accessible for new and emerging communities, or those with low language and literacy skills. In recognising that migrant workers 'don't know what they don't know', or what supporting resources to look for, once migrant workers know their rights AMES has found that they are more willing to come forward to report exploitation by employers.

While the Bill proposes to publish information about 'prohibited employers' on the Department's website to provide transparency to prospective migrant workers and the Australian community generally, migrant workers

need to be supported to understand, engage, and access this information in first language and in a timely manner – before and during employment.

Vulnerable cohorts – temporary visa holders

While unscrupulous employers exist across all industries, AMES more often hears about migrant worker exploitation in the agriculture, hospitality, and construction industries. AMES understands that migrant workers also commonly experience exploitation by employers when they have a shared cultural or linguistic background (as observed by the Migrant Workers' Taskforce). In addition to lack of understanding of their rights, this may be due to a natural dependence on those from one's own community, and an unfortunate willingness on behalf of some employers to treat workers from their own community with lower regard.

Migrant workers who reside in Australia temporarily often lack access to work rights (or have specific work-related visa conditions) which is fundamental to their financial security and independence. Temporary residents also have increasingly limited and complex pathways to permanent residency, with many facing long periods of uncertainty and financial insecurity. These circumstances force many migrant workers into precarious work offering cash-in-hand payments from employers who have been known to exploit their vulnerability or coerce them into breaching a work-related condition of their visa (for example, working longer hours than permitted). Many migrant workers are hesitant to report employers for fear that their visa application or conditions will be negatively impacted. Many temporary migrants also rely on this work for their survival, due to their limited eligibility for government support.

While the proposed amendments aim to improve conditions for temporary migrant workers by prohibiting certain employers from employing additional migrant workers, an unintended consequence of these changes is that it may further push certain vulnerable migrant workers into financial insecurity. Improved eligibility for government services across temporary visa classes, so that vulnerable migrant workers are not forced to choose precarious employment or be coerced into breaching the work-related conditions of their visa, is needed to alleviate this problem.

COVID-19 recovery

AMES understands that exploitation of migrant workers has been exacerbated by the COVID-19 pandemic. Temporary residents with work rights (such as international students and graduates, and temporary humanitarian entrants) have not had access to COVID-19 relief payments such as JobKeeper and often have little choice but to accept precarious employment arrangements or cash-in-hand work. Yet this has created further difficulties when it comes to their need to provide proof of employment (eg. obtaining payslips). The closure of Australia's borders over the last 18 months has resulted in migrant workers already in Australia, such as international students, being in high demand – and many students in Melbourne have picked up additional work during this period. In AMES experience the exploitation of international students is rife - including underpayment and unpaid labour.

While the Bill proposes new sanctions on employers it is essential that in the COVID-19 recovery, as borders open and new cohorts of migrant workers arrive, all migrant workers are protected. Migrant exploitation can impact whole families and cause compounding issues such as homelessness which needs recognition and further attention.

Case study 1 – Exploitation of migrant workers in Mildura, Victoria.

AMES has recently supported a refugee family (mother, father, and twelve-year-old son) from Tibet who relocated to the regional city of Mildura in early 2021 and experienced exploitation while working on a farm. The family has lived in Australia for over five years, and did not relocate as part of a regional resettlement program.

The adults found agricultural work on a farm (eg. fruit picking) and the child was enrolled in school in Mildura. The adults had good English, educational backgrounds, and a reasonably good understanding of their rights as workers in Australia and the support services available to them.

The family were offered a room to rent on the farm, which was a shared accommodation arrangement. The employer was however exploitative and abusive to the workers, often speaking down to, and underpaying, them. The family complained about these conditions and were immediately dismissed and told to vacate their accommodation, rendering them homeless.

The adults soon found work on a different farm, but their precarious accommodation situation led them to moving into a dilapidated, unhygienic building on the farm that did not have running water or electricity. The child continued to go to school. The family contacted a homelessness service in Mildura but they did not qualify for support because they still had an active lease on record in Melbourne, that had not yet expired.

Once AMES was aware of the family's situation, support was provided to apply for Specialised Intensive Services (SIS) through the Humanitarian Support Program (HSP). The family were assigned a HSP Case Manager to support them into suitable accommodation.

This case study is an example of how the exploitation of migrant workers can impact more than the immediate worker – often families suffer the consequences. In this example, the welfare of a child is also a potential concern. The family found themselves in this situation because they stood up for their rights as workers. Many migrant workers are also forced into precarious accommodation arrangements and homelessness as a result of worker exploitation.

Case study 2 – Exploitation of an international student in Melbourne.

An international student in Melbourne experienced exploitation during the early months of the COVID-19 pandemic, when she was working for a cleaning sub-contractor during the lockdown period. The student also lived with the employer, who was from the same cultural and linguistic background as the student.

The sub-contractor (employer) would charge the company that the student cleaned a certain fee (eg. \$30 per hour) while paying the student a reduced amount (eg. \$18 per hour). The sub-contractor did not verify the student's immigration status and claimed that she was eligible for the JobKeeper subsidy. The employer would make the JobKeeper payment to the student and then force her to take cash out to re-pay the amount, threatening to not continue to give her work if she did not oblige.

The student was also asked to do additional unpaid work at the employer's home, such as cooking and cleaning. When she asked to also be paid for this work, she lost her cleaning job and was told to move out.

This case study is an example of how certain cohorts of temporary migrants, such as international students, are at increased vulnerability to worker exploitation due to the limited support services available to them, especially during the COVID-19 pandemic.

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