



**National Tertiary
Education Union**

National Tertiary Education Union (NTEU)

Submission to the

**Exposure Draft Migration Amendment (Protecting
Migrant Workers) Bill 2021**

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Introduction

The NTEU welcomes the opportunity to provide feedback in relation to the Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

The NTEU represents the professional and industrial interests of over 27,000 people working in Australian tertiary education and research sectors. Our members teach several hundred thousand international student visa holders every year.

The NTEU welcomes government action over the widespread exploitation of migrant workers including international student visa holders and supports measures to introduce new penalties for dishonest employers where these are coupled with new protections for visa holders.

The Welfare of International Students

The welfare of our international students is of high priority to NTEU and its members. International students are amongst the largest groups of migrant workers and as noted by the Taskforce Report, non-sponsored visa holders such as international students and working holiday makers often experience exploitation in Australian workplaces, and therefore deserve considerable attention from policy makers

NTEU's own members know that it is common practice for employers to underpay international students and simultaneously require these international students work more hours than permitted under their visa conditions (of 40 hours per fortnight during periods of study). They are then able to threaten to report the student worker for violating their visa conditions if they do not continue to work in the exploitative conditions required by the employer.

NTEU notes the package of actions proposed by the Student Service Delivery Taskforce under the Council for International Education to address student exploitation. These actions included mandating that student support services provide education on workplace rights to international students via the National Code of practice. While this is not the direct subject matter of the Bill the NTEU would like to note that there is a vast difference in capacity and effort between small private providers and large public universities in providing advice and pastoral care to students. It is not likely that small for-profit providers will have the capacity or knowledge to provide industrial advice to students as implied by the recommendations of the SSDT.

Further, we know that a large number of international students *know* that they are being underpaid but do not act on this information.¹ This suggests that action beyond education is needed, such as protections for whistle-blowers.

¹ 73-86% of international students surveyed were aware the minimum wage was higher than the wage they were receiving

Berg, L. and Farbenblum, B., Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey November 2017, Migrant Worker Justice Initiative <http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf>

The Bill

Part 1

Part 1 of the Bill introduces new penalties for employers who coerce visa holders into accepting employment in breach of their visa conditions. NTEU welcomes measures to hold employers responsible. However, NTEU also notes that contraventions of the Fair Work Act or Visa conditions are unlikely to be detected by any party unless reported directly by the employee.

International students are in an extremely vulnerable position when it comes to reporting their employer. They may lose employment and may become blacklisted for future employment in their local networks.

We note that the Bill does not provide any protections for whistle-blowers and therefore does not encourage such reporting. Under this amendment a visa holder may report their employers' contravention only to find themselves penalised for the same condition breach, or in the case of international students being underpaid, the breach of the 40 hours per fortnight work condition. Employers are aware of this condition and use it as a source of leverage over international students who they are underpaying. The combination of these factors creates a strong disincentive for visa holders to report any contraventions.

Recommendation 1: The DHA should remove restrictions that disempower temporary visa holders in the workplace. There should also be a review of the conditions that limit the lawful working hours of Student Visa holders.

Recommendation 2: The DHA should add protections to indemnify temporary visa holders who report contraventions of the Migration Act. When an employer is convicted under the Act any visa holders subject to the contraventions should be immune from deportation or visa cancellation as a result of that contravention.

Part 2

Part 2 of the Bill gives the Minister powers to prohibit certain employers from employing additional non-citizens. NTEU generally supports this provision.

Recommendation 3: The DHA should notify trade unions and the Fair Work Ombudsman of the list of prohibited employers and check in with trade unions about the activities of prohibited employers.

Part 3

Part 3 of the Bill introduces new penalties for employers who fail to confirm the visa conditions of a visa holder using DHA computer systems. These penalties further increase the risk and complexity for employers in employing temporary visa holders and may act as a deterrent for many employers to do so. This deterrent effect could lead to a further pushing of temporary visa holders into fringe work under employers who have no intention of complying with their legal obligations in the first place.

These penalties may also encourage racial profiling as there is no way for an employer to know if someone is a visa holder unless they disclose this information. Employers are likely to demand workers who appear to be from non-english speaking backgrounds provide information about their status to avoid penalties while assuming white English speakers are not visa holders.

Recommendation 4: Further consideration should be given to the consequences of imposing penalties around employer knowledge, noting that while there should be consequences for employers who knowingly exploit visa workers, this particular provision may in effect have the unintended consequence of further marginalising visa holders and increasing the risk of exploitation. The NTEU recommends that the Government undertakes employer and public education that reinforces all employees have the same rights and entitlements under the Fair Work Act. Unions and community groups should be resourced to provide education around workplace rights in their local areas.

To discuss this submission further please contact Kieran McCarron Kieran.mccarron@nteu.org.au