



16 August 2021

Submission to the Department of Home Affairs on Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

About Redfern Legal Centre

Redfern Legal Centre (**RLC**) is an independent, non-profit, community-based legal organisation with a particular focus on human rights and social justice. Our specialist areas of work are employment, discrimination, tenancy, domestic violence, credit and debt, and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct casework, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

RLC runs the International Student Legal Service NSW, which provides free legal advice and advocacy to all international students enrolled to study in NSW, including those completing their studies from offshore. This service provides legal advice across almost all areas of law.

Since 2019, RLC has provided free employment law advice and representation to migrant workers across NSW as part of a collaborative legal services project.

If you have any questions or wish to discuss this submission, please do not hesitate to contact Sharmilla Bargon, Employment Law Practice, at sharmilla@rlc.org.au.

Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

1. This submission is informed by our expertise in advising and representing migrant workers who have been exploited by their employers. We are in a unique position to comment on the impact of the exposure draft of the Migration Amendment (Protecting Migrant Workers) Bill 2021 (**the Bill**).

Recommendation and endorsement

2. We endorse the submissions made by Laurie Berg and Bassina Farbenblum.
3. RLC generally supports law reform initiatives that empower workers to reclaim their workplace entitlements, improve access to justice and deter employers from exploiting their employees. However, we have concerns that the Bill will not remove significant barriers for migrant workers or address the conditions that allow for their exploitation. We agree with Berg and Farbenblum's observations, made on page 2 of their submission, that:
 - a. *In focusing on the criminalisation of this conduct, the Bill assumes that the key problem to be addressed is employers' use of immigration requirements to coerce or exert undue pressure on non-citizens to accept exploitative working arrangements. It assumes that criminalising this conduct will give migrant workers confidence that the government is combating exploitation and they can feel secure to work in Australia. Both these assumptions are false for the large majority of migrant workers.*
 - b. *Underpayment and other forms of labour exploitation extend far beyond the group of migrant workers who are directly coerced to work in breach of visa conditions or explicitly coerced to accept exploitation in exchange for a future immigration benefit. The far greater problem which this Bill should address is the structural coercion of migrant workers to accept exploitation in order to participate in the Australian labour market.*
4. In our experience, a key driver for migrant workers in deciding whether to pursue employers for unpaid entitlements and other entitlements is the fear of jeopardising their current or future visa status. We further agree with the following concerns on pages 2 and 3 of Berg and Farbenblum's submissions,
 - a. *The Bill does not provide victims of coercion with protection from visa cancellation, and it does not provide victims with access to remediation of the underlying exploitation (e.g. recovery of unpaid wages). Without any mechanism to incentivise greater labour compliance or the reporting of non-compliance, it is difficult to see how this offence would increase workers' confidence about working in Australia.*
 - b. *It is highly likely that temporary migrants who have been coerced into breaching their visa conditions will similarly hold these misplaced perceptions of complicity with their employer in breaking the law, and would be extremely reluctant to report the misconduct. Given the unwillingness of most victims to testify against their employer, even with increased resources, this offence is unlikely to be enforced on a scale sufficiently large to have systemic deterrent effect.*
 - c. *Confusion about which government agency is involved may further inhibit workers from reporting non-compliance to FWO.*

5. RLC supports Berg and Farbenblum's recommendations. We have long supported recommendation 5 to remove the 40-hour fortnightly work condition on student visas (Condition 8104/8105) for all students, or at least for students enrolled in longer-term courses that require more intensive study and greater financial investment.

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