

## **Submissions on the exposure draft of the Migration Amendment (Protecting Migrant Workers) Bill 2021**

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My submissions are informed by the following observations:

- From the *Exposure Draft Context Paper*, the purpose of the amendment is to further enhance migrant worker protections. More particularly it would put into effect Recommendations 19 and 20 of the Report of the Migrant Workers' Taskforce (March 2019).
- The stated objectives of the Draft Bill are threefold, that is, to strengthen the existing frameworks for (1) penalty, (2) compliance, and (3) enforcement. (*Source: Exposure Draft Context Paper*).
- Employers' non-compliance is pervasive, thus calling for new sanctions and an increase in penalties as deterrents.
- The Bill is aimed at enabling Australian Border Force (ABF) to enforce employer compliance beyond the sponsorship framework.
- The Bill is intended to give force to a long-standing expectation that employers are undertaking appropriate checks of prospective non-citizen employees' work visas and conditions.
- In 2020–21 (to 31 December 2020), the top three industries in which visa holders requested assistance from the Fair Work Ombudsman were accommodation and food services (33 per cent), administrative and support services (12 per cent) and construction (8 per cent). These were also the top three industries represented in all requests for assistance made to the Fair Work Ombudsman. (*Source: Para 208. The Administration of the Immigration and Citizenship Programs*)
- There is a fair representation of small businesses in the above sectors. Migrant employers tend to operate small businesses, employing other migrants from within their own communities. Migrants, particularly new migrants, tend to stay within their own communities due the fact that people with common backgrounds naturally tend to cluster geographically.
- Between 1 July 2014 and 30 June 2020, the main type of workplace exploitation allegations received by the Fair Work Ombudsman for non-citizen visa holders related to the non-payment and underpayment of wages and terminations. (*Source: Para 208. The Administration of the Immigration and Citizenship Programs*).

## SUBMISSIONS:

It is submitted that:

1. The proposed new S245AB(2) and S245AC(2) would have the following effect.
  - Whether intended or not, the amendments would impose a mandatory obligation on every employer to have accessed VEVO to verify every employee's visa status and conditions of work, in order to demonstrate it has taken the requisite 'reasonable steps'.
  - This is because, from a risk management perspective, there is no absolute certainty of an employer being able to distinguish correctly, in any work environment, staff members who are citizens or a non-citizens in the first place, without risking privacy or anti-discrimination employment provisions under other legislation such as Fair Work Act.
  - The amendments remove the previous option of an employer undertaking other reasonable steps to verify the non-citizen's visa status and conditions. This is a significant shift.
  - In shifting the onus on an employer from a defense to an obligation, the long-standing expectation of undertaking appropriate checks of prospective non-citizen employees' work-related visa has effectively become mandatory for all (citizen or non-citizen) employees, in order to meet the new reasonableness test.
  - There is a need to consider further refinement, perhaps by creating some exceptions where it is reasonable for an employer to assume, based on an employee's responses, that the employee is a citizen or permanent resident, and not on any temporary work visa.
  - VEVO registration would make it easier for ABS to monitor compliance on employers at large. However if every employer were to have to register, query whether this could very well make it harder for ABS to identify non-compliant employers.
2. It may be worthwhile to consider the need to define or clarify the meaning of 'undue influence' or 'coercion', the latter in a similar vein to S344 Fair Work Act 2009.
3. Employers in the sectors of accommodation, hospitality, administrative/support services and construction are likely to comprise a significant proportion of small businesses. Small businesses are more likely to be resource-constrained as compared to big businesses, by virtue of lacking economies of scale. An added compliance measure to 'VEVO' all employees is probably not going to be an easy 'sell'.
4. CALD (Culturally and Linguistically Diverse) communities in particular tend to run small businesses and may experience added compliance difficulties due to language barriers, limited digital literacy and a preference for in-person communications. Identifying and understanding

culturally barriers and developing an information roll-out strategy which as culturally appropriate is essential.

5. Overcoming migrant employers' language and digital limitations could in part be offset if they were able to seek their accountants' assistance for compliance. It would be worthwhile to ensure accountants are on the list of organizations able to access VEVO on behalf of their clients.
6. One would recommend having VEVO digital platform registration operational in multiple languages of say, English, Simplified Chinese, Arabic, and Spanish.
7. One observes there are several migrant resource centers addressing housing, language, aged care needs for new migrants and refugees, but there appears to be little available by way of free language-appropriate business support for skilled/business migrants.  
A business support would enhance a better understanding of the regulatory environment in a new country.  
While making available translated materials will go some distance, there is merit in a more holistic, ongoing approach, based on in-person advisory/concierge services, to provide skilled migrants with longer term mentoring in order to establish and grow businesses. It would also help with entrepreneurship, or assist skilled migrants to secure appropriate employment in their areas of expertise, thus addressing the persistent problem of under-utilization of skills.



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