

Landmark protections for migrant workers in Australia

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Today marks the coming into force of the final component in a series of Australian legislative reforms geared towards improving protections for migrant workers. These reforms, which encompass changes to both [domestic labour law](#) and [migration law](#), aim to tackle migrant worker exploitation by providing protection to vulnerable non-citizens pursuing claims for violations of labour rights and enforcing their workplace rights and entitlements, as well as ensuring that employers do not misuse migration laws to exploit and abuse migrant workers. The measures follow recommendations contained in a 2019 report of a federal government taskforce established to identify potential legislative reforms and other practical measures to more quickly identify and rectify cases of migrant worker exploitation.

The suite of reforms commenced with changes to the *Fair Work 2009*(Cth) in July 2023 to provide that the validity of a contract of employment or services contract for the purposes of that Act would not be affected by any breach of Australian migration laws. The effect of these amendments is that Australian workplace laws, entitlements and conditions now apply to migrant workers regardless of whether a worker has breached a work-related visa condition, does not have the right to work in Australia, or is not entitled to be in Australia.

These protections are confirmed and further built upon by the reforms that came into force today, which amend Australia's *Migration Act 1958* (Cth) to repeal the criminal offence of working in breach of visa conditions or working after the expiry of a visa. The reforms also establish new criminal offences and civil penalty provisions for employers that unduly influence, pressure or coerce migrant workers - including those without a valid visa - to agree to or accept an arrangement in relation to work which involves a breach of a work-related condition of their visa, or to accept a working arrangement in order to avoid an adverse effect on their migration status, to satisfy requirements relating to their visa, or to avoid an adverse effect on their continued presence in Australia. A broad definition of "arrangement in relation to work" has been adopted to ensure that employers cannot lawfully pressure or coerce workers to accept or agree to an exploitative arrangement in respect of both work-related and non-work-related activities, such as accepting unsafe housing, surrendering a passport, or performing sexual favours. These criminal and civil penalties will operate without prejudice to the rights of migrant workers to seek redress or compensation under workplace laws or by way of other causes of action.

In addition to criminal and civil penalties, the reforms also provide for other novel sanctions for employers that exploit migrant workers. These include a mechanism enabling authorities to prohibit an employer that is found to have engaged in exploitative conduct in relation to a migrant worker or to have committed slavery or trafficking offences from employing any additional non-citizens for a period of up to five years, ten years or indefinitely, depending on the nature of the conduct leading to the prohibition. The names and details of employers, company directors and associated third parties made subject to any such prohibition will also be published on the Department of Home Affairs' website. Further, a new criminal offence and associated civil penalty will now apply for any employer that employs additional migrant workers while subject to a prohibition of this nature.

In tandem with the legislative reforms, the Australian government has also launched [two pilot programs](#) geared towards addressing barriers which prevent migrant workers from speaking out against exploitation and seeking redress. The programs were informed by recommendations made in a [2023 report](#) co-authored by the Migrant Justice Institute and Human Rights Law Centre. The first of these pilots is focused on the introduction of formal protections against visa cancellation for migrant workers that report or seek redress for abuse or mistreatment by employers, while the second pilot will test the concept of a workplace justice visa, designed to allow migrant workers to remain in Australia while they pursue claims for workplace exploitation.

Though the exact parameters and conditions of the pilot programs have not yet been publicly confirmed, there can be no doubt that the programs will represent a significant advancement for the rights of migrant workers in Australia. While protections (including temporary visas) for migrant workers that have suffered exploitation are currently available in other jurisdictions, including [Canada](#), [New Zealand](#), [Malaysia](#) and [the United States](#), it is expected that the Australian pilots will be significantly broader in scope, and as such have been described as a "global first" by the Migrant Justice Institute. Programs in place in other jurisdictions are often subject to strict temporal limits, only apply to certain visa types or categories of migrant workers, and/or have stringent eligibility

criteria. In contrast, the visa and protections under the Australian pilot will be made available to a broad range of migrant workers. Further, the Australian scheme will specifically encourage migrant workers to pursue claims against exploitative employers and ensure that workers are afforded protections and rights during this process.

In this way, the new laws and pilot programs will have the effect of placing Australia at the forefront of global efforts to strengthen protections for migrant workers. Indeed, the reforms were recently described as the "most robust visa protections for temporary migrant workers anywhere in the world" by the Human Rights Law Centre. The measures also bring Australia in line with its commitments under international human rights law by guaranteeing migrant workers the same working conditions and protections as all other employees, regardless of their migration status, enabling migrant workers to more readily enforce their workplace rights and entitlements and facilitating their access to justice, and ensuring that the absolute prohibitions on forced labour and slavery apply equally to all workers, including those in irregular status.

Further, a key principle underpinning the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is parity of treatment in basic conditions and rights of employment between national workers and all migrant workers, regardless of their migration status. Although Australia is not presently a signatory to this convention, the reforms nevertheless represent a promising step towards achieving the rights it enshrines, and towards securing equality and justice for migrant workers more broadly. However, while the Australian reforms represent an important step towards breaking entrenched cycles of exploitation of migrant workers and enhancing the government's enforcement of domestic labour law, their success depends on rigorous enforcement, improved public awareness, and effective coordination with other stakeholders, including business and civil society.

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