

IARC and Unions NSW Submission

A migration system for Australia's future

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Submission

Background

1. The Immigration Advice and Rights Centre (**IARC**) is a specialist community legal centre in NSW that provides free immigration advice and assistance to people experiencing vulnerability. IARC is the only community legal centre that provides advice and assistance on **all** immigration and citizenship issues.
2. Unions NSW is the peak body for trade unions and union members in New South Wales with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW and its affiliated unions have a proud history of engaging in the parliamentary process to protect and represent the interests of union members. Unions NSW frequently makes submissions to inquiries involving industrial relations and other issues which may impact members. The plight of temporary migrant workers is one such issue, and one with which this organisation has a deep and ongoing engagement.
3. IARC in partnership with Unions NSW has developed a project called “Visa Assist”, which is currently in its fourth year of operation. Visa Assist was created on the basis that everyone should be safe regardless of their visa status. To date, Visa Assist has provided more than 2,000 legal services to union members, many of whom have faced workplace exploitation while on temporary visas in Australia.
4. Through our work, IARC and Unions NSW have come in contact with:
 - a) Migrant workers having their visa cancelled and/or being ineligible for future substantive visas due to severe workplace exploitation, workplace injury and slavery-like treatment by their Australian employer.
 - b) Migrant workers being subject to severe workplace exploitation, injury and slavery-like treatment by Australian employers and being unable to speak out due to the precarious nature of their visa status and the lack of protections afforded to the visa status of migrant workers.
 - c) Migrant workers failing to obtain a further substantive visa or permanent residency even though they have critical skills (e.g. Registered Nurses) and having to leave Australia due to their reliance on false promises of nomination made by their Australian employer.
 - d) Migrant workers having their Australian employer not uphold their sponsorship obligations and weaponising their visa status against them to deter them speaking out against their employer (i.e. threats of visa cancellation or no nomination for permanent residency or other substantive visas).
 - e) Temporary visa holders being unsure about their own visa status, pathways to permanent residency and subsequent substantive visas and workplace rights, due to the confusing nature of the visa system and/or their employer withholding relevant and vital information from them.

- f) Temporary visa holders being subject to changes in law and policy that adversely affect migration outcomes through no fault of their own (for example the changing of skilled occupation lists and policy around work restrictions).
 - g) People in Australia being forced to remain separated from their family for extended periods of time as they are unable to sponsor family members to reside with them in Australia either within a reasonable amount of time or at all.
 - h) Victim-survivors of domestic, family and sexual violence (**DFSV**) with Australian citizen children having no substantive visa options and being faced with unlawfulness in Australia or leaving Australia and being separated from their child.
 - i) Temporary visa holders being forced to stay in abusive and violent relationships with a family member (i.e. the primary applicant) as their visa can be subject to refusal or cancellation if they leave the relationship.
 - j) Victim-survivors of DFSV who have applied for a partner visa being unable to successfully rely on the family violence provisions as they don't have the right types of evidence to meet the family violence provisions or to prove they were in a genuine and continuing relationship.
 - k) People experiencing vulnerability unable to afford merits review at the Administrative Appeals Tribunal – Migration Review Division (**AAT-MRD**) (even with the fee reduction) despite having reasonable prospects of success.
 - l) People with strong ties to Australia being unable to come to Australia on humanitarian grounds either at all or within a reasonable period of time.
5. We consider that the above situations arise because the migration system is overly complex and opaque, does not empower temporary visa holders to leave abusive/exploitative situations and makes family and humanitarian migration a long and difficult process to navigate.

Policy proposals

6. We submit that the Australian Government should consider the following suite of changes to address the issues identified above:
- a) Create a firewall between the Fair Work Ombudsman (**FWO**) and Department of Home Affairs (**DHA**) to ensure that complaints made to FWO are not shared with DHA so that migrant workers can speak out without fear of adverse migration outcomes.
 - b) Remove certain visa conditions that can and have led to migrant workers being exploited, including:
 - i) Condition 8104 which restricts student visa holders to work a maximum of 40-hours a fortnight while their course is in session; and
 - ii) Condition 8547 which requires working holiday makers not to remain with any one employer for more than 6 months.

- c) Create clear and certain permanent residency pathways for temporary visa holders by ensuring permanent residency requirements are objectively achievable by visa holders, including:
 - i) Abolishing skilled occupation lists; and
 - ii) Removing the need for employer nomination for permanent residency and instead relying on work experience alone.
- d) Replace the current employer-sponsored visa framework with an industry sponsorship model to reduce a migrant worker's reliance on employers.
- e) Create a temporary substantive visa that is available to people with outstanding claims for workplace entitlements, including underpayments, to remain lawfully in Australia. The substantive visa should:
 - i) have unqualified work rights;
 - ii) not limit the holder's access to permanent residency and/or subsequent temporary substantive visas;
 - iii) allow family members to be included in the application as secondary applicants; and
 - iv) be accessible to people who may be subject to certain statutory bars and/or do not hold a substantive visa.
- f) Create a temporary substantive visa for victim-survivors of DFSV. This will help ensure that temporary visa holders do not remain in abusive relationships. This temporary visa should also have a pathway to a permanent visa to create safety and certainty for victim-survivors.
- g) Amend visa eligibility requirements (i.e. Schedule 2 of the *Migration Regulations 1994* (Cth) (**Regulations**)) to remove certain drivers for workplace exploitation and to ensure that temporary visas don't stay in abusive relationships, including:
 - i) allowing substantive visas to still be granted in cases of workplace exploitation (where the person would otherwise be ineligible due to, for example, loss of employment);
 - ii) allowing temporary visa holders to leave an abusive family member (i.e. leaving the primary applicant for their visa). This could involve introducing family violence provisions to all substantive visas so that victim-survivors are still eligible for the visa regardless of relationship breakdown;
 - iii) removing the requirement for 'farm work' for subsequent working holiday visas.
- h) Provide protections against visa cancellation in cases of workplace exploitation by:
 - i) Enlivening s 116(2) of the Act through regulations that make workplace exploitation an express factor against visa cancellation;

- ii) Amending visa conditions (Schedule 8 of the Regulations) so that visa holders would not have breached a work-related condition of their visa where there is a credible claim of workplace exploitation;
 - iii) Updating policies associated with visa cancellation (e.g. policy around s 116 of the Act) to ensure that workplace exploitation is an express factor against visa cancellation; and
 - iv) Include workplace exploitation as a factor considered in Ministerial Intervention guidelines.
- i) Increase the humanitarian visa cap to ensure that more people in need of safety and with connections to Australia can come here.
 - j) Expand the evidentiary requirements required for non-judicial evidence under the family violence provisions to ensure that partner visa applicants can access permanent residency and safety.
 - k) Remove capping and queuing from family visas, including, but not limited to, all Parent and Carer visas to ensure that Australian citizens and permanent residents can be reunited with family members and receive appropriate and dignified care.
 - l) Increase access to Parent visas for people with Australian citizen/permanent resident children by:
 - i) Giving access to bridging visas for all Parent visa applicants so they can remain lawful in Australia;
 - ii) Allow for the granting of all Parent visas in Australia;
 - iii) Expanding eligibility criteria so that parents of minor children who are Australian citizens/permanent residents can remain in Australia with their children.
 - m) Significantly decrease/waive merits review fees at the AAT-MRD for people experiencing vulnerability.
 - n) Provide government funding to expand the current Visa Assist program to ensure that migrant workers have access to independent expertise that can inform them about both their workplace rights and visa obligations to ensure compliance with visa conditions.
7. IARC and Unions NSW welcome any opportunity to further discuss the above recommendations.
8. Please note this submission is intended to compliment and not supersede any submission from an affiliate union of Unions NSW.
9. This submission is accompanied by the following previous submission and Unions NSW and IARC publications (hyperlinked below):
- [Annexure A: “Wage Theft: The Shadow Market Empowering Migrant Workers to Enforce Their Rights”](#).

- [Annexure B: “IARC and Unions NSW Submission: Migration Amendment \(Protecting Migrant Workers\) Bill 2021\)”](#).
- [Annexure C: “National Advocacy Group on Women on Temporary Visas experiencing violence, Blueprint for Reform: removing barriers to safety for victims/survivors of domestic and family violence who are on temporary visas”](#)