

Redfern Legal Centre



Mr Chris Crewther, MP
Chair
Foreign Affairs and Aid Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jscfadt@aph.gov.au
5 May 2017

Dear Mr Crewther,

Inquiry into establishing a Modern Slavery Act in Australia

RLC welcomes the opportunity to contribute to this inquiry and supports the introduction of an Australian Modern Slavery Act. The Australian Government has an opportunity to show leadership domestically and in the region to protect the victims of the crime that is modern slavery.

Our submission focuses on exploitation of international students working in Australia, given our extensive experience in this area and would be happy to discuss this submission with you further.

Yours faithfully,
Redfern Legal Centre

Jacqui Swinburne
Acting CEO

**Inquiry into establishing a Modern Slavery Act in Australia
Submission**

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

We have confined our comments and recommendations to terms of Reference 6 and 7 of the Inquiry. The focus of this submission is the proposal of law reform to address unscrupulous employment practices and exploitation of international students, who are very unlikely to report breaches of workplace laws when there is a risk to their visa status.

RLC'S Recommendations

6. Whether a Modern Slavery Act should be introduced in Australia

RLC recommends that Australia introduce a Modern Slavery Act, drawing on the United Kingdom's *Modern Slavery Act 2015* (MSA 2015)

7. Any other related matters

The introduction of a new Ministerial Direction, pursuant to section 499 of the Migration Act 1958. The direction would provide for a decision making protocol which, in appropriate cases, provides for a warning or financial penalty as an alternative to visa cancellation where there has been a breach of working conditions under a student visa. The aim is to encourage reporting by international students of workplace exploitation. This will also allow relevant agencies, including the DIBP, FWO and AFP, to be apprised of unscrupulous employers and labour hire companies and so buttress current and ongoing workplace investigations.

Introduction:

It is estimated that there are 45.8 million individuals in modern slavery worldwide, making the prevalence of modern slavery one of the greatest human rights issues of our time.¹

RLC has been providing advice to international students through its international student advice service since October 2011. Based on our extensive experience working with the international student community we know that there is a never-ending demand for cheap labour and, in certain industries, this is the economic norm, as also frequently reported by the media.²

International student workers play an important role in the Australian labour market, comprising, according to one estimate, between 1 and 2 per cent of the Australian workforce.³ This is not surprising, given the hundreds of thousands of international students presently in Australia, and the high proportion of them undertaking paid work – more than half, according to the best evidence.⁴

Our experience tells us that modern slavery is widespread and hides under a cloak of respectability. We hear countless stories from international student clients who enter into the workforce via seemingly legitimate routes, and quickly become trapped into bonded or forced labour conditions. Many are unaware that such conditions are illegal, and almost all are reluctant to seek legal assistance or are fearful of asking authorities for help.

A depressingly regular feature of this practice is that our clients, fearing repercussions for their visa status, do not press clear entitlements claims. Consequently, RLC has a well-informed perspective as to the failure of judicial mechanisms in Australia to provide a remedy to these victims of employment rights abuses.

¹ Minderoo Foundation. (2016). *The 2016 Global Slavery Index*. Retrieved from: www.globalslaveryindex.org

² For example, Ferguson, A 'Blackmail, extortion and slavery at a restaurant near you', *Sydney Morning Herald* (25 March, 2017). Retrieved from: <http://www.smh.com.au/business/workplace-relations/blackmail-extortion-and-slavery-at-a-restaurant-near-you-20170324-gv5usu.html>

³ Tham, J-C. (2015, 19 August). Australia grows richer by exploiting foreign students. *The Age*. Retrieved from: <http://www.theage.com.au/comment/tackling-the-exploitation-of-international-student-workers-20150818-gi1ge3.html>.

⁴ United Voice, *A Dirty Business: The exploitation of international students in Melbourne's office cleaning industry*, 2013.

Whether a Modern Slavery Act should be introduced in Australia

RLC proposes that Australia should introduce a Modern Slavery Act, and furthermore, that Australia can do more than simply copying the United Kingdom's *Modern Slavery Act 2015* (MSA 2015). This would ensure that immigration and labour laws do not contribute to the vulnerability of migrant workers.

RLC in particular, sees that Australia should improve its responses to human trafficking, by:

- (i) providing formal protection, for victims of domestic coercion, deception, of abuse of power
- (ii) providing a suitable visa system that supports victims and encourages protected testimony against traffickers
- (iii) setting out a framework for appeals.

We consider this should be addressed, both via the introduction of legislation specifically targeting modern slavery and via a Ministerial Direction, issued pursuant to the *Migration Act 1958*.

Proposal for a new Ministerial Direction

Many international students who experience serious exploitation at work are constrained from taking action if they have worked over their 40-hour-per-fortnight visa condition, the breach of which is a clear threat to their visa status.

The Senate Report, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* ('the Senate Report'), released in March 2016, addressed this issue in detail at Chapter 8.

The Report noted, at [8.45]:

... one of the key points emphasised by several submitters and witnesses were the draconian consequences under the Migration Act that flowed from a temporary visa worker breaching a condition of their visa. The severity of the consequences was seen as a structural incentive for an employer to entice or coerce a temporary visa worker into breaching a condition of their visa in order to gain leverage over the worker.

See also the Productivity Commission 2015 report *Workplace Relations Framework* regarding threats by employers to report migrants who have breached visa conditions, even where there has been coercion, as deterring complaints of exploitative work conditions. (Productivity Commission Inquiry Report No. 76, 30 November 2015, at 921.

In response, to encourage reporting by international students of workplace exploitation, we propose the introduction of a new Ministerial direction. It would provide for a decision making protocol which, in appropriate cases, provides for a warning or financial penalty as an alternative to visa cancellation where there has been a breach of working conditions under a student visa.

Section 499(1) of the Act empowers the Minister for Immigration and Border Protection (the Minister) to give written directions to a person or body having functions or powers under the Act, if the directions are about the performance of those functions or the exercise of those powers. A Ministerial direction made under s499 is binding on a DIBP delegate as:

- a. s499(2A) provides that a person or body having functions or powers under the Act must comply with directions made under s499(1); and
- b. s496(1A) provides that persons to whom the Minister's powers under the Act have been delegated (under s496(1)) are subject to the directions of the Minister.

Basis of direction

Where the DIBP is apprised of a student's details in which there has been a breach of visa condition 8105, this will not trigger cancellation of the visa unless there has been serious non-compliance. In determining whether this is the case, the decision maker could have regard to factors such as:

- whether the non-compliance/contravention occurred with knowledge of its unlawfulness on the part of the visa-holder;
- the frequency of the non-compliance/contravention;
- the gravity of the non-compliance/contravention;

- whether the non-compliance/contravention was brought about by conduct of others, including employers; and/or
- whether visa-holder previously warned by the Immigration Department in relation to the non-compliance/contravention. (Senate Report at [8.57])

Further, we propose the reference to ‘conduct of others’ would take into account the relative bargaining position of the parties, including importing accepted contractual considerations such as duress, legality, consent. This would allow for relevant considerations to incorporate socio-economic, cultural, educational and other factors influencing the capacity of the visa holder to have consented to the employment contract.

We would see great benefit in such a Direction on the basis that it:

- a. would provide greater transparency as to the visa cancellation process and the factors that a delegate will take into account within the context of exercising the legislative discretion whether to cancel the student’s visa under s116(1)(b) of the Act; and
- b. would be binding at both primary decision and merits review decision level.

We would welcome the opportunity to discuss our proposal in more detail.