

Dissenting report from the Australian Greens

1.1 The Senate Inquiry into the Migration Amendment (Charging for a Migration Outcome) Bill 2015 (the Bill) received eleven submissions from lawyers and experts in migration. The vast majority of these submissions raised serious concerns over the manner in which this Bill targets visa applicants / holders as well as employers / sponsors.

1.2 Despite the evidence provided and concerns raised by these experts, the Chair's report has recommended that this Bill be passed.

1.3 The Australian Greens broadly support legislation that makes it unlawful for unscrupulous employers / sponsors to solicit vulnerable workers in exchange for visas and associated payments and take advantage of them in their applications for skilled or permanent visas. This was a concern acknowledged by majority of stakeholders in their submissions. Like the majority of these stakeholders, however, the Australian Greens have serious concerns regarding this Bill.

1.4 The Government claims that the Bill has been drafted in response to a recent independent panel's review into the Temporary Work (Skilled) subclass 457 visa programme¹ (the independent review), specifically the recommendation:

That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework.²

1.5 Firstly, the Bill goes far beyond the independent review's recommendations by penalising visa applicants and holders (rather than just employers / sponsors as the report's recommendation suggests). Visa applicants should not be penalised; many visa applicants / holders are vulnerable and have limited or no English language skills. They may not even know that they have engaged in conduct that is improper or unlawful; it is therefore essential that a mental element be included in any offence seeking to penalise visa applicants / holders.³ The Bill may also extend to particular vulnerable workers coerced into a scheme against their knowledge or will, such as those subjected to human trafficking.⁴

1.6 Secondly, the Bill affords the Minister unreasonable and broad discretion by imposing strict liability offences – meaning that the mental element of the visa

1 John Azarias, Jenny Lambert, Professor Peter McDonald and Katie Malyon, *Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme: An Independent Review into Integrity in the Subclass 457 Programme*, September 2014, <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-programme.pdf> (accessed 5 November 2015).

2 *Robust New Foundations*, Recommendation 10.7, p. 73.

3 For further discussion of this concern, see for example Ernest & Young, *Submission 6*, p. 4.

4 For further discussion of this concern, see, for example Uniting Church in Australia, The Salvation Army, National Union of Workers and Harris Wake, *Submission 5*, p. 4.

applicant / holder is not relevant to the Minister's consideration as to whether they have engaged in an offence. The Minister merely has to be 'satisfied' that a certain factual event has occurred. This is a dangerously low threshold for an exercise of power that will have significant and detrimental effects on the visa holder.⁵ The Chair's report states that it is 'confident that the range of penalties available to the department ensures that penalties are applied in proportion to the alleged offence'.⁶ In the context of a trend towards greater Ministerial discretion and fewer opportunities for meaningful oversight of these decisions in the migration space, the Australian Greens considers it inappropriate to rely on non-compellable discretions as an appropriate safety net to counter the legitimate concerns raised by experts in their submissions.

1.7 Finally, we note that the Bill affords the Minister broad discretionary power to cancel a visa regardless of whether or not the sponsorship event in question actually took place.

Conclusion

1.8 The Australian Greens are concerned that the Chair does not appear to have appropriately responded to and addressed the concerns raised by the vast majority of experts regarding this Bill. The Australian Greens recommend that the Bill be rejected by the Senate.

Recommendation 1

1.9 The Australian Greens recommend that sections (1AC), (1AD) and 245AR of the Bill be omitted.

Recommendation 2

1.10 If the Bill is not amended, as per Recommendation 1, the Australian Greens recommend that it be rejected by the Senate.

**Senator Sarah Hanson-Young
Australian Greens**

5 The Law Institute of Victoria, *Submission 9*, p. 6.

6 *Robust New Foundations* p 15, 1.28.