



**Submission**

**To**

**Legal and Constitutional Affairs References Committee**

**Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages**

Dear Senators

The National Tertiary Education Union (NTEU) represents staff employed in Australia's higher education sector, at university, vocational education institutions, research institutions and student organisations. While the Union acknowledges that there are a multitude of different temporary work visas, our submission will focus on the use of the Temporary Graduate Visa (subclass 485) post study work stream, as well as the working conditions of international students and graduates more generally. This this is an area unlikely to be reviewed in other submissions but is relevant under the following terms of reference (ToR):

- the relationship between workers on skilled visas and other types of visas with work rights, including the rationale and impact of the 400 visa; and
- the adequacy of current skilled visa enforcement arrangements, with particular regard to wages and conditions and access to information about rights and protections.

In particular, we ask whether the Class 485 visa (particularly the Post Study work stream) is being used as a temporary work visa and, if so, whether it is effectively targeting genuine skills shortages.

**The Post study work stream (subclass 485) visa**

The Post study work stream is part of the Temporary Graduate Visa (subclass 485) scheme, and is an integral part of the international education strategy used by the government and tertiary education sector to attract international students to Australia and help grow the sector.

International education is an important component of the higher education sector and provides exposure to cultural diversity and best practices from other countries. This enriches Australian

education perspectives and practices, which in turn contributes to the country's international competitiveness. However, with the chronic public underfunding of universities and the continued failure by the Government to deliver a realistic, sustainable and equitable funding model for universities, there is a strong incentive for both the sector and the Government to view international student numbers as a solution to our universities' funding difficulties. Furthermore, while universities look to international fee income as a way of subsidising their domestic teaching and research, the Government has also promoted international students as an employment source, stating they are "*...a desirable potential source of skilled labour and can make a significant contribution to Australia's economy.*"<sup>1</sup>

It is this thinking that resulted in the introduction of a new Temporary Graduate Visa (subclass 485) Post study work stream, which offers extended options for working in Australia to eligible international student graduates of a higher education degree. The stream allows successful applicants to be granted a visa of two, three or four years duration, depending on the highest educational qualification they have obtained. It is notable in that, once granted, there are no requirements or restrictions on the visa holder – that is, they may work in any industry, in any job, they may leave the country and return, and they are not required to work in order to maintain the visa. This is important, as it is the point of difference between the post study visa stream and the older graduate stream (which is the other stream in the subclass 485 visa), as the graduate stream is tied to employment in the area of study by the graduate student and must be in an identified area of need.

The Department of Home Affairs (formerly Immigration and Border Protection), which assesses and grants the 485 visa, has stated that the visa is not intended to fill skills gaps, but to enable students to have "work experience" in Australia. However, there is no tracking of the visa holders so it is not possible to determine if the visa is fulfilling the intended role of providing practical "work experience". In addition, the fact that employment under the visa does not have to be in the area of the graduate's expertise leads to questions as to how this visa is limited to "work experience" only.

What is clear is that since its introduction several years ago the post study work stream has proven to be highly popular and is fast outpacing the old graduate working visa stream. According to s at 30 June 2018, there were 71,157 Temporary Graduate (subclass 485) visa holders in Australia, a 32.8% per cent increase compared to 30 June 2017 (53,582), with the growth occurring in the post-study visa category. The table below shows the numbers for the

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<sup>1</sup> Commonwealth Government, *Draft National Strategy for International Education* (for consultation) April 2015. Canberra, pg 40.

temporary graduate visa (subclass 485) lodgements and grants for 1<sup>st</sup> July 2017 to 30<sup>h</sup> June 2018, compared to the previous program year:

**Table 1: Temporary Graduate Visa (subclass 485) Lodgements and grants**

Lodgement/Grants	1 July 2017 to 30 June 2018 compared to the previous program year
<b>Overall lodgements</b>	<b>+27.1% to 54,863</b>
Graduate work lodgements	-6.5% to 9,534
Post-study work lodgements	+37.5% to 45,329
<b>Overall grants</b>	<b>+24.8% to 51,656</b>
Graduate work grants	-13.6% to 8,142
Post-study work grants	+36.1% to 43,507
Grant rate	Increased from 95.8% to 96.3%

Source: Department of Home Affairs, 2018 <https://www.homeaffairs.gov.au/research-and-stats/files/student-temporary-grad-program-report-jun-2018.pdf>

It would appear that, given the numbers of applications and grants (detailed above), the less restrictive Post study visa stream is preferred by graduates and would naturally be used by a number of industries (such as food, hospitality, cleaning, retail and transport services) that, for numerous reasons, are reliant on international student labour. So, to that effect, we are concerned that the Post study work visa might be being used as a means to fill jobs for employers find it difficult to find domestic employees, rather than providing graduate ‘work experience’. Whether it is effective in targeting graduate skills shortages, is unknown.

We are further concerned, that the Post study visa is contributing to the already high levels of exploitation of international students as workers in this country.

### **Government support for International students (and graduates) as temporary workers**

The post study visa came out of the Henry review into international education, which recommended that graduates be given the opportunity to undertake practical work experience while here in Australia as a way of complimenting their studies.

Following the visa stream’s introduction in 2015, the Government shortly after released a discussion paper entitled *Draft National Strategy for International Education (for consultation)* which included proposals to increase the number of international students working during, and after, their studies. This included the commitment that the Australian Government would:

- work with institutions to provide information about the work eligibility of international students and graduates to build employer awareness of the benefits of engaging international students in their organisations and help promote their employment;
- gain a better understanding of the factors preventing students from participating in work experience programmes and post-study work arrangements;
- ensure Australia's visa settings enable international students to gain valuable work experience both during and after study.

Institutions were encouraged to (if they didn't already)

- provide important on-campus career advice services and are improving these services, including based on international examples of best practice;
- work with employers and peak business and industry bodies to expand the potential, scale and breadth of relevant work-integrated learning opportunities for international students and graduates, including through the National Strategy on Work-Integrated Learning in University Education;
- work with the Australian Government to provide information about work eligibility to employers to help promote the employment of international graduates to Australian businesses and industry.

While the discussion paper makes mention of encouraging institutions to "*keep international students well informed of their work rights under Australian law*"<sup>2</sup> the reality is that, given the current levels of international students reporting exploitative practices by employers, this does not appear to be the general practice for the majority of education providers, who (at best) may have a link on a webpage to Fair Work Australia (in the same way the Government does with its visa information pages). Furthermore, evidence shows that generally, international students are aware of their work rights – but it is other factors, including work insecurity, financial pressures and the need to keep the employer happy which lead to visa breaches. Employer requiring the student to work more hours than permitted are not reported and create the environment for exploitation (see below).

The pressure to work is further exacerbated by a lack of opportunity for meaningful work. Anecdotal evidence from international students reported to the NTEU and other organisations indicated that many post study visa holders are finding it difficult to compete with domestic graduates, and that employers in many professional areas are reluctant to take on an

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<sup>2</sup> Ibid, pg 42

international graduate. As such, these graduates are ending up in (or continuing to work in) areas outside their fields of expertise, and many are working in low wage/underpaid jobs.

Despite these problems (and research shows that the exploitation of international student workers is widespread), the Government's current policy approach to marketing international education is in keeping with that outlined in the 2015 draft strategy.

### ***Evidence of the exploitation of international student workers***

The report *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey*<sup>3</sup> found that wage theft and other forms of exploitation is rife for temporary working migrants in Australia. Drawing from 4,322 students, backpackers and other temporary migrants, the survey addressed the characteristics of temporary migrants' lowest paid job, rates and method of pay, working conditions, how they found low paid work, their knowledge of Australian minimum wages and perceptions of their labour market. Most participants (55%) were international students, with three quarters (77%) enrolled at a university and 23% were studying at vocational and English-language colleges.

Key outcomes of the survey included the finding that while 43% of international student workers earned \$15 or less, almost a quarter (25%) earned \$12 per hour or less in their lowest paid job. In addition, the research found that students who worked more than 20 hours per week (potentially breaching their visa conditions) earned substantially lower wages than other students. Two thirds (64%) of international students reported that they worked between 9 and 20 hours each week, and a further 13% worked 21 hours or more.

The report found that while underpayment was widespread across numerous industries it was especially prevalent in food services, which has a high density of international student workers. Two in five survey participants (38%) had their lowest paid job in cafes, restaurants and takeaway shops. Furthermore, the study found that it was common for employers to pay temporary migrant workers (including international students) in cash and to not provide pay slips, with 44% of survey participants reporting that they were paid in cash, and 50% reported that they never, or rarely, received pay slips. Not surprisingly, the 'cash in hand' payment practice rose to almost three quarters of those paid \$12 per hour or less (70% paid in cash and 74% rarely or never received pay slips). The worst industry for the practice was in food

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<sup>3</sup> Berg, L. and Farbenblum, B., *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* November 2017, Migrant Worker Justice Initiative  
<http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf>

services where two in three (65%) waiters, kitchen-hands and food servers were paid in cash and with no documentation of wages.

The survey found that, contrary to popular assumptions, underpaid international students knew they were receiving less than the Australian minimum wage. Among those earning \$15 per hour or less:

- Three quarters of students (73%) knew that the minimum wage was higher than what they were earning;
- 86% of students at vocational and English-language colleges knew the minimum wage was higher than what they were earning, a higher proportion than among students at universities (69%);
- underpaid survey participants believed underpayment is endemic among people on their visa. At least 86% of temporary migrants who earned \$15 per hour or less believed that many, most, or all other people on their visa are paid less than the basic national minimum wage.

Finally, the survey reported that International students, backpackers and other temporary migrants also experienced other indicators of exploitation and criminal forced labour:

- 91 participants had their passport confiscated by their employer (3%) and 77 by their accommodation provider (2%). Most were in food services (28%) or horticulture (18%);
- 173 participants (5%) paid an upfront 'deposit' for a job in Australia;
- 112 participants (4%) indicated that their employer required them to pay money back in cash after receiving their wages.

The findings of the National Temporary Migrant Work Survey were also supported by a survey of international students conducted by the Council of International Students Australia (CISA) in 2018. The as yet unpublished survey was presented at the CISA National Conference (2018) and noted that:

- the majority of students surveyed reported exploitation, with around 70% reporting wage theft and approximately 15% claiming 'ill treatment';
- the majority of students, when asked why they were working even though they were aware of being exploited, said they were in need of money, and/or could not find other job opportunities.

When asked in the survey why international students might be susceptible to exploitation in the workplace, respondents cited:

- lack of support from the education provider;

- the need for money (which is exacerbated);
- perceived compliance of international students, particularly in cultures where respect for authority is ingrained;
- social cohesion, which sees new students integrated into their communities but also potentially exploited by employers from those communities.

Respondents to the CIISA survey who reported exploitation were also asked if they contacted any authority regarding their treatment (eg Fairwork, ombudsman) but only a small number stated that they had. This supports the low reporting rates cited by authorities, in comparison to the overall numbers of vulnerable international student workers – in September 2017, the Fair Work Ombudsman, Natalie James, called for international students to seek help when dealing with workplace exploitation, stating that “*The number of international students reporting issues to the Fair Work Ombudsman is disproportionately low compared to other categories of visa holders, despite the fact that international students represent a significant proportion of overseas visitors with work rights.*”<sup>4</sup> The Fair Work Ombudsman further noted that the cases reported were often serious and highly exploitative, and that a large percentage of the cases litigated by the Ombudsman’s office involved one, or more, international students<sup>5</sup>.

In addition to underpayment, International student workers have also reported bullying and intimidation by their employer to the Fair Work Ombudsman, with cases of employers threatening to deport or “blacklist” the student workers for future work if they complained. Research commissioned by the Ombudsman’s office also found that 60 per cent of international student workers believe that if they report a workplace issue to their employer, the situation will either remain the same, or get worse, and thus are reluctant to raise matters in the first place.

These issues are hardly new, however. A decade ago, a 2008 report<sup>6</sup> by Nyland entitled *International Student-Workers in Australia: A New Vulnerable Workforce* confirmed that international students were a highly vulnerable and exploited workforce. Nyland found that while student workers in general were an ‘at risk’ group for abuse and injury due to their limited

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<sup>4</sup> *New strategy to raise international students’ awareness of workplace rights*, 25 September, 2017. Fair Work Ombudsman Office <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release>

<sup>5</sup> In the financial year 2016-2017, 49 per cent of litigations the Fair Work Ombudsman filed in court involved a visa holder, and over a third of these involved an international student.

<sup>6</sup> Nyland, C, Forbes-Mewett, H, Marginson, S, Ramia, G, Sawir, L, Smith, S 2009, 'International Student Workers in Australia: A New Vulnerable Workforce', *Journal of Education and Work*, 22(1): 1-14.

work skills, high unemployment and under-employment<sup>7</sup>, it was clear even then that this situation was exacerbated for international students, who had the additional burdens of having relatively poorer language skills, lack of local family support and cultural knowledge, and in many cases, inadequate non-wage income support.

As seen in both the National Temporary Migrant Work Survey and the CISA study, the Nyland study also found that in addition to these burdens, many international students were crowded into a narrower range of jobs than is available to their domestic peers, and they commonly offset their disadvantages by working for less than the legal minimum.<sup>8</sup>

However, instead of addressing the exploitation that the evidence – for over a decade - has clearly shown to have continued unabated, the vulnerability of international student workers appears to be seen as a workforce advantage by government. The 2015 government discussion paper openly canvasses the idea that international students may be willing to work in areas or in jobs that are “*not necessarily in demand from domestic students*” and that institutions are well positioned to provide “*local work experience opportunities*” for international students<sup>9</sup>. There seems to be little concern, if any, as to whether policy initiatives such as the Post study visa stream are being abused by employers, with no interest on investigation or review. Indeed, it appears that the onus is clearly upon the international student (and graduate) workers to be their own advocates in the workplace – despite their lack of power.

## **Conclusion**

As of this year, there are just under 600,000 international students in Australia at any one time, with the majority in universities, VET and English language course (ELICOS). With the support of the post-study work stream visa and other initiatives, the Government has made it clear that it intends to increase the number of international students studying and working.

If we are to see an expansion of the numbers of international students working in Australia, then it is a recipe for not only widespread exploitation, but the undercutting of conditions and entitlements for all young workers. It also risks the reputation of Australia’s international education sector, particularly with the linking of study in Australia with the post-study work stream visa – which has no restrictions or employment checks. Indeed, if anything, there

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<sup>7</sup> CHSICL, Committee on the Health and Safety Implications of Child Labor, National Research Council of Medicine (1998) ‘Protecting youth at work; Health, safety and development of working children and adolescents in the United States’, Washington, D. C.: National Academy Press.

<sup>8</sup> Interestingly, the Nyland report also found that few of the international students interviewed believed that the difficulties they experience in the workplace to a product of racism. The report presumes that this perspective is at least partly explained by the fact that many employers who pay international students less than the legal rate are of the same ethnic background as those they exploit.

<sup>9</sup> Commonwealth Government, Op cit, pg 40



seems to be a desire by both government and industry to promote international students as workers to employers (see Attachment 1), despite the high levels of youth unemployment in Australia.

We understand there is an eagerness, both within the industry and in governments, to see further growth in international education. However, there is a danger in not only relying on international students for fee income, but as a transient workforce either reluctant or fearful of pursuing their rights and entitlements as workers. Furthermore, these young people are inexperienced as workers, often have language and cultural barriers, and many come from countries where membership of a trade union is risky (or illegal), or are part of the operations of the State. It is therefore not surprising that many easily find themselves in situations where they are being exploited and/or exposed to workplace hazards.

While tying the post-study visa stream to Australia's international education marketing and promotion may appear to be an excellent strategy, the support for these students as workers is woefully inadequate. It should be noted that we are inviting these students to come, study, live and work in this country, and as such we have a duty of care to them. Allowing their exploitation as workers, be it as current students or whilst under the post study visa stream as graduates from Australian institutions, fails in this duty of care. As a minimum, more must be done to inform and support international student workers, educate and monitor employers, and actively prosecute cases where employers have exploited their student workers.

If you require any further information of clarification please do not hesitate to contact either myself or NTEU Policy and Research Officer

Yours Sincerely

Alison Barnes

NTEU National President