



Submission to the Legal and Constitutional Affairs Committee inquiry on the Migration Amendment (Strengthening Employer Compliance) Bill 2023

Summary and Recommendations

Democracy in Colour is a national racial and economic justice organisation. As part of our work Democracy in Colour works with and organises past and present migrants. These people are working together to identify injustices in Australia's migration system and create a fairer system where everyone in this country has the opportunity to exercise their rights fairly and safely.

While Democracy in Colour and our supporters are in favour of the aims of this bill and have identified a need for these kinds of changes, we do not support this bill due to concerns that there is a lack of protection against visa cancellation. Organisers, migrant workers and migrants who have direct experience with the Australian migration process have made it very clear that unless there is a guarantee against visa cancellation they will not feel safe or empowered to raise common workplace issues related to exploitation and discrimination. It is the view of these past and present migrants that the key to any of these changes being successful is the workers themselves knowing and feeling that they are safe to raise issues in the first place.

Specifically, Democracy in Colour recommends that the proposed amendments to the cancellation power at subsection 116 of the Migration Act (1958) not be passed. Rather, the Minister should have prescribed circumstances under subsection 116 (2) where a visa must not be cancelled if there is any evidence of workplace exploitation. This change must allow for migrant workers to be protected at the earliest opportunity. Without these protections concerns related to an onerous and complicated process will prevent workers from seeking a remedy and render the rest of the proposed amendments meaningless.

About Democracy in Colour

Democracy in Colour is a national racial and economic justice organisation in Australia. Democracy in Colour is a movement made by, and for, people of colour. We advocate on behalf of people of colour and multicultural communities across the country. Currently, we have a supporter base of over 16,000 people and have active member groups in different states in Australia. Read more at democracyincolour.org

About this Submission

Members of Democracy in Colour have been organising for and with migrants and people descended from migrants across the country to advocate for a fairer and more equitable society through Democracy in Colour's Migration with Dignity campaign. Together, we are

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working to create a migrant experience that is accepting and ensures that, at a minimum, migrants have the same rights and experiences that we would expect of all Australians. Where the sacrifices involved and the contributions made are acknowledged, understood and respected. It is our hope that through this work all migrants can expect to be treated with dignity and humanity.

Our supporter base is made up of over 16,000 people including people of colour that have recently migrated to Australia or lived here for generations. Additionally, our members are supported by a broader base of allies in the community. Many of our supporters have regularly experienced racism, exploitation, discrimination and vilification and support a proactive approach to address these issues directly and prevent them from happening to others.

To inform this work Democracy in Colour members ran community listening sessions throughout 2022. Community members from across Sydney and Melbourne participated in 5 separate community listening sessions focused on the current challenges associated with being on a temporary visa or going through the Australian migration system. This work was crucial in determining our campaign direction and priorities while ensuring that the work we are doing is led by those with lived experience. The continued input from these community members in addition to an advisory group made up of a diverse group of past and present migrants informs our work and priorities today.

The community listening sessions revealed that the migration system in Australia has become more hostile and exploitative over the years. In particular, people of colour face barriers when settling in Australia due to systemic racism when applying for jobs, within the workforce and within the migration system itself.¹

This submission will directly address the Migration Amendment (Strengthening Employer Compliance) Bill 2023, within the context of the needs identified by past and present migrants that Democracy in Colour is in continuous consultation with.

Workplace exploitation and discrimination

Many people of colour on temporary visas work in industries that are essential and keep our economy and society running. These include horticulture, hospitality, healthcare and care work. Unfortunately, this has not been appropriately acknowledged by governments that have seemingly abandoned this cohort resulting in negative impacts and disincentivisation from a system that has subjected migrant workers to exploitative and discriminatory conditions for too long.

Democracy in Colour's listening sessions clearly identified workplace exploitation and discrimination as key areas of concern for past and present migrants. Many migrant workers identified that they feel like they are unable to speak out about workplace exploitation, for fear it may put their personal visa status, their family's visa status or a future visa at risk. This has been reinforced by research that has shown that temporary visa holders are unwilling to

¹ Mladen Adamovic, Andreas Leibbrandt (2023). Is there a glass ceiling for ethnic minorities to enter leadership positions? Evidence from a field experiment with over 12,000 job applications. *The Leadership Quarterly*, Volume 34, Issue 2.

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seek emergency support out of fear that it will affect their visa.² Additionally, the lived experience of our members reinforced this, highlighting that the fear of visa cancellation coupled with the complexities of the visa system is directly dissuading temporary visa holders from seeking protection or support. Common experiences included:

- increased scrutiny at work
- being forced to do free “trial shifts”
- persistent fear of deportation
- further discrimination based on racial or cultural grounds
- exploitative conditions such as coerced underpayment.

Migration Amendment (Strengthening Employer Compliance) Bill 2023

Democracy in Colour welcomes the bill’s aims of strengthening employer compliance and ensuring that law-abiding Australian employers are not undercut by unscrupulous competitors as outlined in the explanatory memorandum and the Minister for Immigration, Citizenship and Multicultural Affairs’ second reading speech. While there are contentious elements of the Assurance Protocol that is to be codified as part of these amendments (discussed below), the aims referred to are desperately needed by migrant workers experiencing exploitative and discriminatory conditions right now. Specifically, Democracy in Colour and its members are encouraged by the intent to enact recommendations 19 and 20 of the Migrant Workers’ Taskforce (2019). This would go a long way to addressing some of the issues referenced above when enacted in concert with other migration-related reforms.

Acknowledging that further work is being done to address broader issues around migration and migrant protection, we hold concerns that sections of this bill, in its current form, would not alleviate the pressures and concerns that migrant workers have raised with us, or provide sufficient assurances to migrant workers as referenced above. It is important to note that migrants have told us that any sense that there could be visa uncertainty is the only thing that unscrupulous employers would need to impart on migrant workers to quell or contest any potential complaints of exploitation. Consequently, without adequate guarantees against visa cancellation, there is little to dissuade exploitative employers to carry on in a business-as-usual manner.

Specifically, we are concerned about the implementation of the proposed amendments relating to cancellation powers. The proposed amendments to Part 6, Div 1, item 37 related to the Minister’s visa cancellation powers do not provide confidence that exploited workers will have any kind of guarantee against visa cancellation. Specifically, subsection 116, 1A, B and C have the potential to create conditions where the migrant worker could potentially be at higher risk due to the Minister’s discretion and the manner in which determining the weight of factors and the factors themselves are considered. This could enable the Minister to assess grounds for cancellation in a discretionary manner under subsection 116, but without providing any certainty to the exploited worker. In this way, it is not clear how this would shift the cancellation mechanism in a manner that would provide assurances to migrant workers and contribute to the removal of visa cancellation as an initial cause for concern. As

² Migrant Workers Centre. 2021. Lives in Limbo: The Experiences of Migrant Workers Navigating Australia’s Unsettling Migration System. Migrant Workers Centre, Melbourne, VIC, Australia.



mentioned above, migrant workers have been clear that without a clear guarantee against visa cancellation, they will not feel safe to remedy exploitative conditions.

Similarly, the intention to codify the Assurance Protocol carries additional problems. Currently, the Assurance protocol is not all-encompassing and does not extend to government regulators outside of the Fair Work Ombudsman and the Department of Home Affairs. It is unclear if the proposed amendments would be applicable to migrant workers in all manner of exploitative situations. Additionally, the Assurance Protocol heavily relies on the migrant pursuing their employer. That is, the migrant worker must navigate a complex work rights system, have demonstrated that their claim of exploitation is valid and be at the stage of an investigation taking place by the Fair Work Ombudsman to access the protections it provides. Needless to say, the exposure that this opens the migrant worker up to, let alone the complexities of progressing a complaint to this stage, act as layers of disincentive upon disincentive. Ultimately, this will prevent the worker from seeking a remedy for the situation they find themselves in.

Conclusion

While Democracy in Colour agrees with the aims and intentions of this bill as they are described in the explanatory memorandum and the Minister's second reading speech we are not satisfied that the Bill achieves them. As migrant workers have told us the single greatest factor that influences their feelings of confidence and safety when considering a remedy to an exploitative or discriminatory workplace is the security of their visa. For too long, migrant workers in Australia and in particular temporary migrants have been forced to accept these conditions or risk deportation. The risk of deportation is very real and constant for these workers. This risk is a result of a complex system that has historically been unclear in its intent and resulted in an often traumatic experience for those who must navigate it.

While we applaud the reform and intent, the issues outlined above are too significant for us to support this bill in its current form. For the reasons we have outlined, this bill will not make migrant workers feel any more secure or safe to exercise their work rights. This is due to uncertainty about how it will impact their visa status. It is this uncertainty, coupled with the complexity and perceived risk of navigating the system that results in many migrant workers accepting the exploitative conditions they find themselves in.

If passed, there is a chance that this bill will result in positive changes and more migrant workers seeking fair work conditions. However, the legislation should be all-encompassing and provide clear avenues for all workers to experience the same rights that Australians expect. This would mean strong, clear and robust protections for migrant workers against visa cancellation. These protections could be legislated in a clear manner, that would allow for even clearer implementation. Unfortunately, that is not the case with this bill. For this reason and the reasons referenced above we do not support this bill in its current form.

Contact

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