



NTEU Submission

Senate Legal and Constitutional Affairs Legislation Committee

**Inquiry into
the New Skilled Regional Visas (Consequential Amendments) Bill 2019
[Provisions]**

Committee Secretary
LegCon.Sen@aph.gov.au

The National Tertiary Education Union (NTEU) welcomes the opportunity to make a submission to Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the New Skilled Regional Visas (Consequential Amendments) Bill 2019 [Provisions].

The NTEU represents the industrial and professional interest of some 28,000 people working in tertiary education and research, including universities, vocational education and training, adult education, with private providers and at research institutions. As a progressive trade union, we advocate for the rights of both our members and workers more broadly, which include the rights to education.

The Bill which is the subject of this Inquiry amends a number of legislative instruments to give effect to the amendments to the *Migration Regulations 1994* by the Migration Amendment (New Skilled Regional Visas) Regulations Bill 2019. We also note that these visa regulations created the Skilled Work Regional (Provisional) (Subclass 491) visa and the Skilled Employer Sponsored Regional (Provisional) (Subclass 494) visa (collectively referred to as the provisional skilled regional visas).

While the NTEU is broadly supportive of the intent of the Bill, in that it specifically provides the same access to welfare payments and government services that permanent visa holders

have (where eligible), there are a number of more relevant points around the use of temporary work visa that the NTEU wishes to make more broadly.

For much of the 20th century, Australia's history of migration was largely based on permanent skilled, refugee and family reunions. Since the 1990's however, migration policies have turned from permanent state-sponsored migration to that of temporary and employer driven migration, changing the relationship between workers and businesses. The balance of the system has been shifted in favour of employers who, for profit reasons, have chosen to use precariously employed overseas workers in preference to employing and training local employees. In effect, our current migration policy structures the labour market in economic terms, with emphasis less on the rights and safety of workers than on the convenience, growth and profits of employers. The Government's current focus on industrial relations changes, which includes their attack on the democratic structures of unions and the right of workers to organise, through the deeply flawed Ensuring Integrity Bill, is another example of the shifting balance in the workplace relations system, increasingly in favour of employers.

It might be argued that changes to the migration system has added to the erosion of workers' rights more generally, resulting in stagnant wage growth, wage theft and the growth of exploitative work practices. The NTEU notes that research has shown abuses of temporary workers include:

- Underpayment of wages and superannuation, including being forced to pay back wages
- Abuse ranging from psychological to physical
- Threats of deportation if complaints are made or workers join unions
- Being forced to live in sub-standard conditions

This exploitation has been documented not only by the ACTU in its 2018 report *Wage Theft: The exploitation of workers is widespread and has become a business model*, which reported that an audit of job advertisements with particular language criteria found 78% of businesses advertised rates of pay below the minimum Award wage, but also by the Government's Migrant Worker's Taskforce, which was established as part of the Government's response to the revelation of significant wage underpayments in numerous industry sectors. That report specifically notes that:

Despite the gaps in evidence, we have sufficient understanding to conclude that the problem of wage underpayment is widespread and has become more entrenched over time. The most comprehensive academic survey to date on the issue suggests

as many as 50 per cent of temporary migrant workers may be being underpaid in their employment.¹

The Productivity Commission has found that the profit of industries employing workers on temporary work visas is greater and the wage growth is slower than those in comparable industries who do not use them. Instead of being treated as workers with industrial rights, temporary workers are treated as visa holders under migration law, meaning our labour laws and migration laws are intertwined. It is the NTEU's view that both need to be changed, as this linkage can be easily exploited by employers, and workers reluctant to report due to concerns over violation of visa status (or threats by employers to report for violations – either real or alleged). In some cases, violations of visa conditions are due to demands made by the employer. As the ACTU noted in its submission:

Employers know the chances of being caught are low because unions do not have sufficient powers to check breaches of workplace laws. Additionally many workers are in a weak position to ask for decent wages (i.e, they are casual or temporary visa workers, labour hire or sham contracts) and therefore will 'accept' a wage that is under the legal minimums for their industry.

Furthermore, the protections for workers from adverse action are weak. There are loopholes where employers can avoid liability far too easily (employers just have to show they had some other non-prohibited reason for taking action).²

The creation of additional temporary work visas – even if they have special conditions that allow access to a social welfare safety net and public education, including access to the Higher Education Loans Program (HELP) – only add a further layer to a temporary work system that is fundamentally flawed, with penalties for offending employers (even repeated ones) grossly inadequate, and where unions are legally limited in what they are permitted to do in investigating allegations of exploitation. As a result, the protections for temporary workers that are supposed to be in place are ineffective, regardless of whether they be students, working holiday makers or skilled occupations visa workers.

¹ Report of the Migrant Worker's Taskforce March 2019, Pg 3.

² ACTU Wage Theft in Australia: the exploitation of workers is widespread and has become a business model,

² ACTU Wage Theft in Australia: the exploitation of workers is widespread and has become a business model, 2018. Submission to the Inquiry into wage theft in Queensland, August 2018. Pg 7.

<https://www.actu.org.au/media/1385221/d170-wage-theft-in-australia-the-exploitation-of-workers-is-widespread-and-has-become-a-business-model-actu-submission-15-august-2018.pdf>

We note that these provisional skilled regional visas are made to address what the Government claims to be “labour/skills shortages” in areas outside of Sydney, Melbourne, Brisbane and the Gold Coast. However, the general claims of skills shortages, which are used to justify large scale temporary migration, are largely based on a profit motive and the unwillingness of employers to train local workers. Indeed, what was previously referred to as an increased demand for labour has been deliberately rebadged as a ‘skills shortage’. In short, instead of increased demand leading to higher wages, more workers undertaking training and seeking to enter the labour market with sought-after skills, many employers and political leaders have promoted a fundamental change to migration settings as a quick solution to ‘skills shortages’.

There is no doubt that many employers work with a business model that relies upon temporary migration workers – and that in some industries, such as hospitality, services, agriculture and in many regional areas, this is the norm. However, the NTEU is suspicious of allegations of ‘skills shortages’ – noting that the ABS’s recent unemployment figures have almost 1.9 million Australians looking for work, or more work, but unable to find it.³ In this context, we note a recent report by the Migration Council of Australia which revealed that, despite hiring 457 visa workers, 15% of sponsoring employers said they didn’t have difficulties finding workers normally, and that 20% said that the benefits of hiring 457 workers was ‘increased loyalty ‘and ‘great control of employees’.

Another concern for the NTEU goes to the nature of these new visas. While we understand that exploitation does occur for all vulnerable workers – which includes temporary workers - research that has shown that particular types of temporary working visas appear to be more prone to incidents of wage theft and exploitation. This includes the *Working Holiday Maker (WHM) visa*, which is often used in regional and rural areas, but has unfortunately become a fertile ground for unscrupulous labour hire companies that abuse their workers. We noted that the March 2016, the Senate Standing Committee on Education and Employment “*A National Disgrace: The Exploitation of Temporary Work Visa Holders*” stated:

The WHM visa program is a poorly-regulated program, and the bulk of the evidence to the inquiry showed that the WHM visa program has been abused by unscrupulous labour hire companies in Australia with close links to labour hire agencies in certain south-east Asian countries (labour hire companies)are in fact not only

³ Australian Bureau of Statistics (ABS) 6202.0 - Labour Force, Australia, Aug 2019.

*using the program to fill potential shortfalls in labour, but also to gain access to cheaper labour.*⁴

The two provisional skilled visa's referred to in this Bill – that is, the Skilled Work Regional (Provisional) (Subclass 491) visa and the Skilled Employer Sponsored Regional (Provisional) (Subclass 494) are specifically created for regional and rural areas, where evidence has shown the risk for worker exploitation to be particularly high. This is of particular concern because, as noted, the current provisions to deal with exploitation of temporary workers have proven to be ineffective.

Finally, the NTEU also wishes to highlight the fact that, given the current focus by this Government on undermining of the union movement; a contributing factor in the continued problems of exploitation of workers is that our current industrial relations system places considerable restrictions on unions' capacity to conduct checks on businesses suspected of underpaying and exploiting workers. Until 1996, unions' investigative powers were governed by the provisions of the Industrial Relations Act and supplemented by Federal Awards. These provisions recognised and provided such rights on the basis of "*ensuring the observance of an award or order of the Commission*". However, subsequent changes to relevant statutory provisions, as well as the requirements of "award simplification" resulted in a far reduced capacity for unions to perform this valuable role. Instead, the emphasis of the system has shifted toward union officials needing to have a prima facie case of non-compliance before exercising such rights, and needing to meet a character test as a pre-condition of being able to access these rights at all. However, these restrictions are only the tip of the iceberg. We are fully aware of the anti-union agenda of the Federal Government, exemplified with the changes to industrial relations laws that this Government is seeking to introduce through the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 Ensuring Integrity Bill currently before the Parliament..

The NTEU believes that our current working visa system, which is predicated overwhelmingly on temporary work, cannot create the 'nation building' benefits that migration has been praised for in the past. Temporary visa workers are more willing to accept lower wages and exploitative conditions as, for most, their right to stay in the country depends on their job. Instead, only a system of safe, regular and independent migration, which balances the wants of employers with the need for investment in training and permanent and secure

⁴ Senate Enquiry "A National Disgrace: The Exploitation of Temporary Work Visa Holders" Education and Employment References Committee, March 2016

employment, where worker's rights and representation are respected and protected, will deliver a secure economic future.