Australian Government
Department of Home Affairs

Department of Home Affairs Submission to the Inquiry into the Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]

Senate Legal and Constitutional Affairs Legislation Committee

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1. Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Migration Amendment (Protecting Migrant Workers) Bill 2021 (the Bill).

The Bill was introduced in the House of Representatives on 24 November 2021. This submission provides an overview of the measures in the Bill and explains the rationale for the Bill and its intended operation.

2. Background

As part of the Government's commitment to protecting vulnerable workers, the Migrant Workers' Taskforce (the Taskforce) was established in 2016 to propose enhancements to legislation, law enforcement and investigation capability, and other practical measures to address migrant worker exploitation. The Taskforce Report was released on 7 March 2019 and is available at Migrant Workers' Taskforce Report.

The Taskforce Report made 22 recommendations and the Government has agreed, in principle, to all of the recommendations. In 2019, the Department agreed to lead the implementation of the following two recommendations:

- Recommendation 19: that the Government develop legislation so that a person who knowingly unduly influences, pressures or coerces a temporary migrant worker to breach a condition of their visa is guilty of an offence; and
- Recommendation 20: that the Government explore mechanisms to exclude employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specific period.

The Bill addresses these recommendations by amending the *Migration Act 1958* (the Migration Act) to strengthen and build on existing compliance mechanisms and sanctions against unscrupulous employers, labour hire intermediaries and others who misuse Australia's visa programs and immigration status to exploit migrant workers in the workplace.

The Bill complements existing protections for vulnerable workers under the national workplace relations system including:

- the *Fair Work Act 2009* (Fair Work Act) and the *Fair Work Regulations 2009*, which establish a safety net of minimum entitlements and conditions of employment for employees in Australia, regardless of a person's immigration status;
- the Fair Work Commission, which is the independent agency responsible for setting minimum standards at industry and occupational levels under modern awards; and
- the Fair Work Ombudsman (FWO), which is the lead agency for advice, education, compliance and enforcement activities under the Fair Work Act.

Measures proposed in the Bill build on existing cross-portfolio collaboration to protect migrant workers. For example:

- The Department has been working with the FWO to encourage migrant workers to report exploitation in the workplace. The Department and the FWO are responsible for separate but intersecting, parts of the regulatory framework which impact the experiences of migrant workers in Australia. To achieve whole-of-government outcomes, the Department and the FWO work collaboratively within the regulatory framework to assist vulnerable workers and to take effective action against those who exploit them. Agencies also work across other forums, networks and inquiries that bring together key government and non-government organisations to combat exploitation of vulnerable workers.

- In January 2017, the Department and the FWO implemented an Assurance Protocol. Under the Assurance Protocol, the Department and the Australian Border Force (ABF) will not cancel a temporary visa with work rights where the visa holder has reported exploitation to the FWO and is assisting with investigations, provided they agree to comply with their visa conditions in the future and there is no other basis for visa cancellation (such as character or health concerns). To date, none of the visa holders referred under the Assurance Protocol have had their visa cancelled.
- In 2018, the Department and the FWO completed a review of the Assurance Protocol. The review found that, on balance, the Assurance Protocol is largely a positive initiative - it provides meaningful and visible support to encourage migrant workers to report their exploitation while also hindering the ability of employers to use threats of visa cancellation as a means to exploit workers. The Review identified opportunities for improvements which are being considered and implemented.

3. Purpose of the Bill

The Bill proposes amendments to the Migration Act to implement the Government's response to recommendations 19 and 20 of the Taskforce report. These amendments seek to address the misuse of Australia's visa programs as a cheap alternative source of labour, thereby enhancing protections for migrant workers. The amendments will enable Australia to position itself as a globally competitive work destination of choice and support the economic recovery from COVID-19.

The Bill includes five key measures:

- new criminal offences for using a person's migration status to exploit them in the workplace;
- a mechanism to prohibit employers that have engaged in serious or repeated non-compliance, from accessing temporary migrant works for a period of time;
- positive obligations on employers and third party providers to ensure the status and work related conditions of all migrant worker employees is verified using specified departmental systems prior to employment;
- increases to pecuniary penalties for existing work-related breaches and offences under the Migration Act; and
- new compliance tools to better support the ABF to respond proportionately to cases of non-compliance.

The measures proposed in the Bill will strengthen the regulatory framework available under the Migration Act with a particular focus on employers of temporary migrant workers, including international students, temporary graduate visa holders, working holiday makers, some bridging visa holders and provisional visa holders whose visas have not been sponsored by an employer.

4. Consultation

The Government released an exposure draft of the Bill on 26 July 2021, inviting stakeholders to provide feedback on the proposed measures. The Department received 32 submissions in the course of the consultation process. Views were also sought from the Ministerial Advisory Council on Skilled Migration. Public submissions have been published on the Department's website for transparency. Feedback on the exposure draft has enabled Government to refine components of the Bill including clarifying certain measures and addressing particular issues of concern.

Public submissions reflected a diverse range of views from peak bodies, industry and civil society. Many stakeholders articulated their support for the reforms, acknowledging that the Bill addresses recommendations 19 and 20 of the Taskforce Report and contributes to whole-of-government initiatives to combat migrant worker exploitation. Some stakeholders expressed frustration about the limited scope of the Bill (with the primary focus being implementation of Taskforce Report recommendations 19 and 20). Some dissenters contested the recommendations from the Taskforce Report and articulated views about alternative reforms.

The Attorney-General's Department (as the lead agency for industrial relations) and the FWO (as lead on compliance and enforcement activities under the Fair Work Act) have been engaged throughout the drafting of the Bill.

5. Overview of Measures in the Bill

5.1. New employer sanctions

The Bill establishes two new work-related offences, and related civil penalty provisions. Both offences relate to conduct by a person where that person coerces or exerts undue influence or undue pressure on a non-citizen to accept or agree to an arrangement in relation to work, in circumstances where that work is carried out, or is to be carried out, by the non-citizen in Australia, whether for that person or for someone else.

The first offence arises where, as a result of the work arrangement, the non-citizen breaches a work-related condition of their visa, or there are reasonable grounds to believe that, if the non-citizen were to agree to the arrangement, they would breach a work-related condition.

The second offence arises where the non-citizen believes, or there are reasonable grounds to believe, that the non-citizen must accept or agree to the arrangement, either:

- to satisfy a work-related visa requirement; or
- to avoid an adverse effect on the non-citizen's immigration status.

A work-related visa requirement means a requirement under the Migration Act or the *Migration Regulations 1994* (the Migration Regulations) for the non-citizen to provide, in connection with a visa held by the non-citizen or an application by the non-citizen for a visa, information or evidence about work the non-citizen has undertaken in Australia.

Case Study 1 – New Employer Sanctions

John came to Australia as a student to study a degree in business management. While studying, he worked for a restaurant to earn additional money. When John started the job, he was assured that he would only be scheduled for 40 hours a fortnight, in line with the work-related condition of his student visa. However, three months after John had started working for the restaurant, the restaurant owner was facing financial difficulties. The restaurant owner identified John as one of his better waiters, so he let one of the other waiters go, and increased John's hours to 70 hours a fortnight and slightly reduced his hourly wage, making sure John would take home more money, but on a reduced hourly rate. When John approached the owner of the restaurant to remind him of his visa conditions, the owner threatened John that if John did not accept the new arrangement, he would let him go and he would also report John to the ABF and have his visa cancelled, because he had worked in breach of his student visa conditions.

The restaurant owner has contravened both new work-related offence provisions. The restaurant owner has exerted undue pressure on John to accept a work arrangement resulting in John breaching the work-related condition of his visa (working more than 40 hours per fortnight while his course is in session). By threatening to report John to the ABF for breaching his visa condition if he does not keep working the hours, the restaurant owner is also exerting undue pressure on John to agree to the work arrangement to avoid an adverse effect on his immigration status (such as possible visa cancellation).

5.1.1. Fault elements

Both offences expressly provide that the fault element in relation to the circumstances and results covered by the offence are knowledge or recklessness. This approach is consistent with the existing work-related offences under the Migration Act's Employer Sanctions Framework. Relevantly, if the new offences did not expressly specify knowledge or recklessness in this way, the *Criminal Code* provides that recklessness would be the relevant fault element in relation to a circumstance or result.

In relation to the conduct by the first person under each offence – involving coercion, undue influence or undue pressure on a non-citizen to accept or agree to a work arrangement – neither offence expressly identifies a fault element. In line with the *Criminal Code*, if an offence does not expressly identify a fault element for a physical element of the conduct, intention is the applicable fault element.

5.1.2. Coercion, undue pressure and influence

Coercion may involve compelling a non-citizen to agree to a work arrangement by use of force or threat, through conduct that may be unlawful, illegitimate or unconscionable. Undue influence or pressure set a lower threshold than coercion, and may involve unwarranted, unjustified or excessive action, harassment or oppression to impel a non-citizen to act in a particular way, to accept or agree to a work arrangement.

Case Study 2(a) – New Employer Sanctions

Heidi has just finished school and has travelled to Australia on a working holiday maker visa. During her stay, Heidi decides she would like to stay longer in Australia. She travels to a remote area to spend some time working on a farm in order to meet the 'specified work' requirements to support her application for a second working holiday visa. While working on the farm, she is sexually harassed, including being directed to perform tasks in inappropriate clothing. Heidi's employer indicates that he may not sign-off on evidence that she has been working on the farm if she does not cooperate. Heidi feels unduly pressured into performing these tasks in inappropriate clothing, as she is approaching the end of her current working holiday visa and needs this evidence as a requirement for her second working holiday visa application.

Heidi's employer has contravened the second new work-related offence provision relating to a non-citizen who believes, or there are reasonable grounds to believe, that the non-citizen must accept or agree to the arrangement to satisfy a work-related visa requirement.

NOTE: While the case study focuses on the contravention of the new criminal offences, this wouldn't preclude court proceedings under other relevant state or commonwealth laws.

5.2. Prohibition on certain employers allowing additional non-citizens to begin work

The Bill establishes a power for the Minister to declare a person to be a prohibited employer. A prohibited employer is not permitted to allow additional non-citizens to begin working for them, while the prohibited employer declaration remains in effect. The prohibition applies in relation to all non-citizens except permanent residents.

A person can only be declared a prohibited employer if they are subject to a 'migrant worker sanction' – that is, where they are:

- convicted of a work-related offence under the Migration Act;
- the subject of a court order for contravention of either a work-related provision of the Migration Act, or certain remuneration-related civil remedy provisions of the Fair Work Act; or
- the subject of a bar, as an approved work sponsor, under the Migration Act's Sponsorship Framework.

Data for context

Current data on employers subject to a bar under section 140M of the Migration Act as an approved work sponsor under the Sponsorship Framework:

- 2017-2018 - 105 employers
- 2018-2019 - 156 employers
- 2019-2020 - 87 employers
- 2020-2021 - 79 employers

Note: If the Bill passes, such cases may be considered for a prohibited employer declaration.

The prohibition would not automatically apply.

Cases would be identified for referral to the Minister for consideration. The approved work sponsor would then have an opportunity put their case to the Minister to inform the prohibition decision through statutory procedural fairness processes.

Where a barred work sponsor is also declared a prohibited employer, the prohibition effectively ensures that they cannot circumvent the sponsorship bar by employing non-citizens who hold temporary visas without a sponsorship requirement (eg. students and working holiday makers).

5.2.1. Procedural fairness

Given the consequences of being declared a prohibited employer, the prohibited employer measure includes provisions to ensure that procedural fairness will be afforded consistently in all cases. The procedural fairness provisions balance the rights and interests of the person being considered for declaration as a prohibited employer (including to be heard before a declaration is made) and the need to ensure serious matters concerning the mistreatment of migrant workers are dealt with promptly. This approach guarantees that when a person is being considered for declaration as a prohibited employer, standard processes will be followed, and standard timeframes will apply.

If a person is being considered for declaration as a prohibited employer, the Minister is required to give that person written notice of the intention to make a declaration. This notice must include the reasons for the proposed declaration. The Minister must invite the person to make a written submission, setting out reasons why the Minister should not make the declaration. For example, the Minister may consider:

- the potential impact on the viability of the person's business if declared a prohibited employer, particularly in relation to the person's capacity to attract and recruit new employees while subject to the prohibition under new subsection 245AYH; and
- the seriousness of the offence or contravention leading to the person being the subject of the migrant worker sanction (including consideration of any aggravating factors).

The provision sets a minimum period of 28 days for the affected person to respond, and it includes flexibility for the Minister to specify a longer period. This ensures that the affected person has an opportunity and a reasonable period of time to consider and respond to the Minister.

Case Study 2(b) – Prohibition

Heidi's employer (refer to the case study 2(a)) has contravened section 245AAB and, following court proceedings, is ordered to pay a civil penalty.

Following the court order, the case is referred to the Minister to consider declaring the employer a prohibited employer.

The Minister invites Heidi's employer to make a written submission, setting out the reasons why the Minister should not make the declaration. The employer is given 45 days to respond.

The employer's response:

- outlines his remorse for his behaviour,
- commits to change, including removing themselves from any direct supervisory positions,
- states that he acted alone, and
- pleads that if subjected to a prohibition, the business (business partners and other employees) would be unduly penalised for his errors. This is due to labour shortages in the farming sector, making it difficult to recruit the workers needed.

The Minister considers the employer's response. Given the seriousness of the conduct, the Minister declares the employer to be a prohibited employer.

5.2.2. Publishing information about prohibited employers

When a person is declared to be a prohibited employer, certain information is required to be published on the Department's website. This includes the person's name, ABN, and a summary of the migrant worker sanction applying to the person. This is consistent with the categories of information that would, in respect of convictions and civil penalties imposed, be ordinarily publicly available through the publication of court findings, or published on the ABF Register of sanctioned sponsors.

The Department commissioned a Privacy Impact Assessment to support the implementation of these amendments, and to ensure that privacy considerations are addressed appropriately. The recommendations of this assessment have been considered, and will be actioned where appropriate, in the context of implementation.

5.2.3. Exceptions to the prohibition

The prohibition is subject to limited exceptions. In particular, the prohibition does not apply in relation to work that a non-citizen is allowed to do if the work is merely incidental to a business of the person or the body corporate. This exception is intended to cover circumstances where a person may engage the services of a non-citizen temporarily or on an ad hoc basis as an independent contractor. For example, to undertake repairs at the prohibited employer's business premises, or to provide occasional catering services for meetings and events. The prohibition is not intended to impede a person's capacity to contract for such services during the period that a prohibited employer declaration is in effect.

Case Study 3 – Prohibition of Employers Allowing Additional Non-citizens From Employing New Workers

Following a court order against the employer Bubble Tea X for payment of a financial penalty for breaching work-related provisions under the Migration Act, the Minister considers whether to declare Bubble Tea X as a prohibited employer. Bubble Tea X is notified and invited to make a written submission setting out reasons why the Minister should not make the declaration.

Following this process, the Minister makes a decision to declare Bubble Tea X as a prohibited employer. The declaration takes effect on 1 April 2022, for a period of 12 months. As a result, Bubble Tea X is prohibited from employing additional non-citizens (except permanent residents) until 31 March 2023. The prohibition does not apply in relation to the employment of Australian citizens. Bubble Tea X then continues to hire employees who are on student visas, but claims that they believed that the employees were permanent residents. There are no records of any Visa Entitlement Verification Online (VEVO) checks by Bubble Tea X after 1 April 2022.

In this example, Bubble Tea X has contravened the prohibition and may be liable to a civil penalty of 240 penalty units.

5.2.4. Reporting requirements for former prohibited employers

After a person's prohibited employer status ends, they are subject to additional reporting requirements for the following 12 months. During that 12-month period, the employer will be required to give the Department certain information in relation to any new non-citizen employees (other than permanent residents). This will include:

- the name of the non-citizen;
- a description of the work for which the non-citizen is employed;
- if the non-citizen holds a visa that is subject to a work related condition – details of the condition; and
- any other information prescribed by regulations.

The exception for 'incidental work' that applies in relation to the prohibition also applies in relation to the reporting requirements. A former prohibited employer is not required to provide information about non-citizens who are allowed to begin work in the 12-month reporting period, where that work is merely incidental to a business of the person.

5.2.5. The meaning of *work* and *allows to work*

The prohibited employer amendments in the Bill, as introduced, include definitions of the expressions to *work* and *allows to work* for the purposes of the prohibition. Although defined specifically for the purposes of new Subdivision E, the definitions of both expressions deliberately mirror the equivalent expressions in current Subdivision C of Division 12 of Part 2 of the Migration Act. Subdivision C covers offences and civil penalties in relation to work by non-citizens.

This reinforces the relationship between current Subdivision C and new Subdivision E, and ensures there is a consistent approach to dealing with work by non-citizens between the two Subdivisions, including where a person allows a non-citizen to work, or refers a non-citizen for work. It ensures alignment between the scope of the prohibition, and related reporting requirements, with the various offences and civil penalties under existing Employer Sanctions Framework. It also ensures that the breadth of work relationships and arrangements covered by the Employer Sanctions Framework is dealt with in the same way in relation to the prohibition.

5.3. Use of computer system to verify permission to work

The Bill amends the Migration Act to build on and reinforce the long-established role of VEVO system as the single source of truth for employers of non-citizens, and others involved in referring non-citizens for work, when confirming a non-citizen's immigration status and work-related visa conditions.

The Bill establishes civil penalty provisions that require a person to use VEVO to determine whether a non-citizen is lawful and has the necessary permission to work, either when starting to allow a non-citizen to work or when referring a non-citizen to another person for work.

A non-citizen has, or would have, the required permission to do particular work if:

- the non-citizen is a lawful non-citizen; and
- the non-citizen is not, or would not be, in breach of any work-related condition of their visa solely because of doing that work.

These new requirements focus on the use of a prescribed computer system, the VEVO system, to conduct the necessary checks. The onus is on the employer (or referrer) to determine whether the prospective worker would have the required permission to work; however, the new provisions generally allow flexibility for the VEVO check to be undertaken either directly by the person, or under an arrangement where another person logs into and uses VEVO to source the information.

Such alternative arrangements could include, for example:

- an arrangement by contract under which the contractor logs into and uses the prescribed computer system to source information that is supplied to the first person; or
- an arrangement between an employer and a prospective worker where the prospective worker logs into VEVO and arranges for a system-generated email to be sent by VEVO directly to the employer.

By clarifying the requirement to use VEVO, these new measures provide employers with clarity and assurance about how to comply with their obligations

5.3.1. Required system users

Importantly, these alternative arrangements are not available if a person is a 'required system user'. If a person is a required system user, they will be required to conduct VEVO checks directly; they cannot rely on another party to conduct the check on their behalf.

Required system users include:

- former prohibited employers, for the 12-month period after their 'prohibited employer' status ceases;
- members of a class of persons specified by the Minister as required system users (in a legislative instrument); and
- a person who is declared by the Minister to be a required system user.

5.3.2. Defences under the Employer Sanctions Framework

The Bill also updates the defences and exceptions to the existing work-related offences and work-related provisions under the Employer Sanctions Framework. Currently, a defence is available where a person takes reasonable steps at reasonable times to verify that a worker is not an unlawful non-citizen, or would not be working in breach of a work-related visa condition. These steps include either:

- using a computer system prescribed by the Migration Regulations (the VEVO system); or
- doing one or more things prescribed by the Migration Regulations – including, for example, arranging for another party, under contract, to undertake the VEVO checks on the person's behalf, or inspecting a document that appears to be the worker's Australian or New Zealand passport.

The revised defences reinforce the importance of using VEVO to check non-citizen workers' immigration status and work-related visa conditions. The new provisions make it clear that employers and people or businesses that refer non-citizens for work are expected to use VEVO. The onus remains on the employer or 'referrer' to be satisfied that the non-citizen is not an unlawful non-citizen, and has the required permission to work.

The revised defences also lift up elements of the alternative checks currently prescribed in the Migration Regulations into the Migration Act. The revised defences will make clear that a person can rely on an arrangement where another person logs into and uses VEVO to source the required information on their behalf (unless they are a required system user). These arrangements may include, for example:

- a contract under which the contractor logs into and uses the prescribed computer system to source information that is supplied to the employer;
- an arrangement between an employer and a prospective non-citizen worker where that non-citizen logs into VEVO and arranges for a system-generated email to the employer providing details of the non-citizen's immigration status and work-related visa conditions.

5.4. Increasing and aligning penalties for work-related breaches

The Bill amends the pecuniary penalties for current work-related offences and civil penalty provisions under the Migration Act. It also includes amendments to the civil penalty for breaches of sponsorship obligations by an approved work sponsor.

The increases align these penalties with the pecuniary penalties available for the offences and civil penalties in relation to sponsored visas under the Migration Act, dealing with giving or receiving a benefit in return for the occurrence of a sponsorship-related event. The increased penalties better reflect the seriousness of illegal work practices and the exploitation of migrant workers as a cheap alternative source of labour, and allow for more appropriate deterrence and punishment of wilful and serious offending or contraventions of work-related provisions.

These increased penalties reflect the severity of the impact of a contravention on the individual migrant worker directly affected by that conduct, but also the significant damage that the actions of unscrupulous employers or labour hire intermediaries can have on visa program integrity and Australia's reputation as a destination of choice for prospective migrant workers. Annex A to this submission lists current penalty units and revised/increased penalties.

5.5. Additional regulatory powers to promote (and enforce) compliance with work-related requirements

The Bill provides additional enforcement powers to influence behavioural change and enhance compliance and enforcement efforts in relation to the work-related offences and civil penalty provisions under the Migration Act.

5.5.1. Compliance notices

The Bill amends the Migration Act to establish a power and framework for an authorised officer to issue a compliance notice where they reasonably believe that a person is engaging in, or has engaged in, conduct constituting a work-related offence or a contravention of a work-related provision of the Migration Act.

Compliance notices will provide the necessary flexibility to require a person to take specific action to address the underlying non-compliance issue, based on the circumstances of the individual case. For example, a compliance notice may specify one or more of the following actions:

- establish or maintain an account to use the prescribed computer system (VEVO), within such reasonable time as is specified in the notice;

- conduct VEVO checks in relation to any current non-citizen employees, and to give the authorised officer evidence of the checks, including the results of those checks; and/or
- cease allowing non-citizens to work in breach of the work-related condition of their visa.

A person who does not comply with a compliance notice is liable to a civil penalty of 48 penalty units.

A person who is given a compliance notice can apply to the Federal Circuit and Family Court of Australia (Division 2) for review of the notice. The Court may stay the operation of the compliance notice while it considers that matter, and decides whether to confirm, cancel or vary the notice.

Compliance notices are intended to focus on changing behaviour, providing an alternative to issuing an infringement notice or initiating court proceedings for work-related breaches.

Application of amendments relating to compliance notices

The amendments to introduce compliance notices apply in relation to conduct (including an omission) occurring before, on or after commencement. If an authorised officer gives a person a compliance notice, that notice will specify action that the person must take in order to address the conduct. The effect of the notice is prospective. It will require the person to do something, or stop doing something – it cannot operate retroactively.

If a person has breached an existing work-related provision, an authorised ABF officer could already issue them an infringement notice for that breach. Once the amendments commence, the officer would be able to issue a compliance notice instead. Rather than being liable for a pecuniary penalty, the employer would have an opportunity to address the breach and improve their compliance with work-related requirements under the Migration Act.

5.5.2. Enforceable undertakings

The Bill also includes amendments to provide a mechanism to trigger standard provisions for enforceable undertakings in the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

By triggering the Regulatory Powers Act, enforceable undertakings will be able to be used to address conduct that may have contravened one or more work-related provisions in the Migration Act, where:

- an investigation has identified a likely breach (or multiple breaches) of work-related provisions;
- the other party (for example, the employer or labour hire intermediary) is prepared to address the issue voluntarily; and
- they agree to take preventative actions in the future, by entering into an enforceable undertaking.

Typically, an enforceable undertaking would contain additional obligations focused on addressing breaches, as well as preventing future breaches. For example, an enforceable undertaking might include:

- an acknowledgement by the employer that the law has not been followed;
- an agreement by the employer to do certain actions to fix the breach (for example, providing evidence that they have registered with VEVO, and conducted an audit of employee records and verified the immigration status and work related visa conditions of all non-citizen employees, and put in place training and procedures to ensure those employees will not be allowed to work illegally); and
- a commitment by the employer to future compliance measures.

The Minister, or the Minister's delegate, will be able to accept a written enforceable undertaking from a person who has breached an enforceable provision of the Migration Act. This includes both work-related offences and work-related provisions.

If a person has entered into an enforceable undertaking, and then breaches that undertaking, it is enforceable under the Regulatory Powers Act.

Case Study 4 – Enforceable Undertakings
Employer X has self-reported to the Department that they have conducted a self-review of their recruitment practices and identified that they have unintentionally failed to ensure that employees on student visas were only working the maximum of 40 hours a fortnight. The oversight occurred due to a change in payroll software, which miscalculated working hours. An investigation by the Department (ABF) confirmed that Employer X has scheduled their employees on student visas to work in breach of their visa conditions. In this example, the Minister's delegate (senior ABF officer) may accept an enforceable undertaking from Employer X to ensure that this error does not happen again. The undertaking by Employer X could cover matters, such as providing evidence of an audit of all employees that verifies they are lawful and not working in breach of a work related visa condition, an undertaking to conduct VEVO checks on all prospective non-citizen workers to confirm their immigration status and permission to work, as well as evidence of revised procedures to ensure Employer X will not allow non-citizen workers to work in breach of work-related visa conditions in future. A contravention of the undertaking would be enforceable.

In addition to introducing enforceable undertakings for work-related contraventions of the Migration Act, the Bill also includes consequential amendments to the existing provisions for enforceable undertakings for the Sponsorship Framework. These amendments ensure that the approach to delegation of the Minister's powers and functions under Part 6 of the Regulatory Powers Act is dealt with consistently across the Migration Act, and in line with current drafting practice.

6. Conclusion

The measures in the Bill implement Recommendations 19 and 20 of the Taskforce Report and contribute to whole-of-government efforts to address the exploitation of migrant workers.

The amendments focus on the seriousness of migrant worker exploitation and establish a legislative framework that, if passed, will be supported by policy and procedural guidance that supports decision-makers to appropriately consider relevant matters and circumstances.

The Bill seeks to deter unscrupulous employers from misusing Australia's visa programs as an alternative source of exploitable labour.