



21 July 2023

Committee Members  
Senate Legal and Constitutional Affairs Committee  
c/o Committee Secretariat  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By online lodgement only**

Dear Committee Members

***Migration Amendment (Strengthening Employer Compliance) Bill 2023***

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to comment on the *Migration Amendment (Strengthening Employer Compliance) Bill 2023 (Bill)*.

Circle Green endorses the joint submission in relation to the Bill made by the Migrant Justice Institute (**MJI**) and the Human Rights Law Centre (**HRLC**) (**Joint Submission**).

Further, in this submission we highlight some specific issues that we have observed in the course of our work with vulnerable and disadvantaged Western Australians, specifically migrant workers experiencing exploitative working conditions.

**About Circle Green**

Circle Green is a community legal centre in Western Australia (**WA**) providing state-wide specialist legal services in the areas of employment, tenancy, humanitarian, and family and domestic violence to the WA community. Within these specialist areas, Circle Green provides services including legal advice, casework, representation, duty lawyer services, outreach, community legal education, information, referrals, advocacy, and law reform. Our services are aimed at assisting people who face vulnerability or disadvantage in their access to justice. More information about Circle Green's services can be found on our website: <https://www.circlegreen.org.au/>.

***Humanitarian Stream***

Circle Green's Humanitarian service is focused on empowering vulnerable people by providing professional and accessible specialist immigration assistance, legal advice, legal representation, and education. Our Humanitarian service helps people new to Australia from culturally and linguistically diverse backgrounds, including humanitarian visa holders, asylum seekers, refugees, people experiencing violence who are otherwise disadvantaged in their access to legal services and are located in WA.

***Workplace Stream***

Circle Green is the only community legal centre in WA which has a specialist workplace law practice assisting vulnerable and disadvantaged non-unionised WA workers. Our workplace law services include legal advice, casework, representation, and education on state and federal employment and workplace discrimination laws.

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## Further comments

As addressed in the Joint Submission, Circle Green echoes that migrant workers and their representatives cannot trust discretionary protections against visa cancellations. Circle Green does not, and would not, feel comfortable or confident advising our clients to pursue legal claims, such as unpaid workplace entitlements, in the absence of a hard protection against visa cancellation that is clearly stated legislation and without discretionary uncertainty. The recommendation made in the Joint Submission would allow us to clearly advise clients that have faced exploitation that they could speak up without fear of having their visas cancelled.

Circle Green has provided legal advice to migrant workers who have faced exploitative working conditions, including being significantly underpaid. Particularly where the client may have been in breach of work-related conditions of their visa, Circle Green is unable to definitively advise clients to pursue their workplace entitlements because of the unreliable and discretionary nature of the Department of Home Affairs' decision to cancel visas, and the inadequacies of the current Assurance Protocol (as detailed in the Joint Submission).

Further, Circle Green notes that the Joint Submission's recommendation is just the first step in protecting migrant workers. In future, Circle Green hopes to see reforms that provide broader protections to migrant workers for their future visa pathways. For example, a reliable protection that prevents the Department of Home Affairs from considering past breaches of visa conditions in exploitative circumstances in the application process for a different or subsequent visa.

### Case Study: Isa

Isa arrived in Australia with her husband and young daughter on a tourist visa arranged by her childhood friend. Isa was assured by her friend that she was allowed to work, and she started working at a fast-food shop. Isa did not have any work rights.

Isa worked at the shop for around 6.5 hours a day, seven days a week. Isa was paid \$200 in cash per week. Isa also provided domestic work (eg cleaning, cooking, and childcare) at the friend's house, but was not paid for this work.

A further visa was arranged on her behalf which provided work rights.

Isa was referred to Circle Green for immigration and workplace law advice. The Workplace Stream advised Isa that she was being significantly underpaid under Australian workplace laws. However, Circle Green was unable to definitively advise Isa to pursue a legal claim to recover her unpaid entitlements because Isa had breached the work-related conditions on her visa, and this combined with her current visa having been arranged for her by her employer may present a risk to Isa's future visa options due to the breadth and discretion afforded to the Department of Home Affairs under the "character" test.

Circle Green currently cannot confidently advise Isa to pursue her potentially significant underpayment claims under Australian workplace laws due to the significant risks to her future visa pathways. Even if Isa chooses to pursue

her underpayments, after receiving advice from a migrant lawyer, she will still be taking a risk.

Circle Green sees this law reform as the spearhead for future migration law reforms. Specifically, Circle Green submits that the certainty which the legislative protections that the Joint Submission recommends could be adopted in the context of reforms in relation to visa cancellations in family and domestic violence (**FDV**) circumstances. We urge the Committee to see this law reform as an opportunity to set the standard for visa cancellation protections for some of our most vulnerable clients and community members.

### **Conclusion**

Thank you for considering Circle Green's endorsement and comments in relation to the Bill.

Yours sincerely

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