



## Guaranteeing Protection Against Visa Cancellation in the Migration Amendment (Strengthening Employer Compliance) Bill

There is now over a [decade of evidence](#) that migrant workers stay silent in the face of workplace exploitation for fear of jeopardising their current or future visa. It is common knowledge that employers push international students to breach their visa conditions (for example, by working in excess of work-hour limits) and threaten them with visa cancellation if they complain. International students and other migrant workers invest thousands of dollars and years building a life in Australia – losing their visa is simply too great a risk for temporary migrants.

**This Bill states an intention to enact a protection against visa cancellation to enable temporary migrants to address exploitation without fear of immigration consequences.** This brief explains why, in its current form, this amendment (to subs 116(1A)) **will not achieve its intended purpose** and why reliable protections should be introduced through an alternate existing provision (subs 116(2)) instead. This requires no amendment to the Migration Act.

**Recommendation – The amendments to s 116 of the Act should not be passed.** Instead, the government should issue regulations under s 116(2), prescribing circumstances in which a visa must not be cancelled, where there is prescribed evidence of exploitation.

### *Breaking the Silence Coalition*

Late last year, our report [Breaking the Silence](#) set out a model for ‘whistle-blower’ protections for migrant workers. That report was endorsed by over 40 organisations – including trade unions, service providers, peak migration bodies, trade union, the NSW Anti-Slavery Commissioner, churches and business leaders.

We proposed two key protections:

1. A **Workplace Justice Visa** of up to 12 months (renewable) to allow temporary migrants to leave exploitative employers and take action against them for breaches of workplace law.
2. An **Exploited Worker Visa Guarantee**: a guarantee against visa cancellation for breach of visa conditions, for temporary workers who take action against employers.

The government [committed, in principle](#), to introducing both these protections.

This Bill intends to create a new legislative vehicle to provide the protection against visa cancellation for exploited workers. **But it does not go far enough.**

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

The Bill proposes to introduce a new sub-s 116(1A), that would allow the Minister the power to specify in Regulations certain information that Department of Home Affairs delegates ‘may,’ ‘must’ or ‘must

not' be considered when deciding whether a ground of cancellation arises before deciding whether to cancel a visa on discretionary grounds. It also allows the Minister to specify the weight to be given to that information.

**This model still allows Department delegates complete discretion to cancel a visa. It does not provide an assurance against cancellation** which is critical to ensure that international students and other temporary visa holders come forward against exploitation. It would, at best, introduce a regime under which the Minister (through his delegates) could give 'significant weight' to evidence of workplace exploitation, when deciding whether or not to cancel a visa.

The Bill would give rise to a regime which is **cumbersome and unworkable** for two reasons. First, it would require Department delegates to sort through information that 'must' or 'must not' be taken into account and assess this evidence of exploitation. Secondly, the Bill specifies that these considerations would go to the task of determining whether a ground of cancellation exists, rather than whether the visa should be cancelled. It is difficult to see how the delegate might use evidence of exploitation to find (for example) that a Student visa holder has not breached their work-related conditions – either they have breached that condition, or they have not.

### Our proposal

Temporary workers must be given a **guarantee against cancellation** for breach of visa conditions, once they produce evidence they are taking action to address exploitation. **There is an existing power under the Act to provide the guarantee that workers need in sub-s 116(2)**. This provision allows the Minister to prescribe circumstances in which a visa *must* not be cancelled. We propose that the Minister issue Regulations to prescribe that a visa must not be cancelled for breach of conditions (under sub-s 116(1)(b)) if there is prescribed evidence that they are taking action to address workplace exploitation. It is possible for the Minister to do this at any time, without any legislative amendment. This would still allow the Minister to cancel a visa for unrelated reasons, such as sustaining a criminal conviction leading the visa-holder to fail the character test.

That position is expressed in [our submission to the Senate Committee inquiry into the Bill](#), which was endorsed by 13 organisations including the Settlement Council of Australia, the Migration Institute of Australia and the NSW Anti-Slavery Commissioner. Our proposal is also [endorsed in submissions to this Senate inquiry](#) by the Grattan Institute, the Law Council of Australia, the ACTU, the Federation of Ethnic Communities Council of Australia, the United Workers Union, Migrant Workers Centre, UnionsNSW, Immigration Advice and Rights Centre, the Synod of Victoria and Tasmania Unity Church in Australia, Scarlett Alliance and Democracy in Colour.

There is a clear precedent for political support for our proposal to use sub-s 116(2) as the vehicle to deliver protections for migrant workers. When the Labor party was in opposition, it tried to introduce an almost identical protection against cancellation. In 2015, the Coalition government created a new [power to cancel a visa if the holder paid for sponsorship](#) (sub-s 116(1AC)). Labor moved amendments to protect visa-holders and provide that their visa must not be cancelled if they had been exploited or coerced into paying for sponsorship. The government said the amendments were to:

*ensure that whistle-blowers who report instances of charging for migration related events are properly protected [because] you simply cannot have a situation where there is a racket going on and someone blows the whistle and is then subject to punitive action.*

We therefore recommend that the government omit amendments to sub-s 116(1A) from the Bill, and instead commit to making Regulations pursuant to subs 116(2) that a visa must not be cancelled when a visa-holder produces prescribed evidence that they are taking action to address exploitation.