

# New criminal offences for exploiting a migrant worker

The Australian government has introduced new laws with serious penalties to punish employers who exploit migrant workers.

## Three new criminal offences under the Migration Act

Under the Migration Act, it is now a criminal offence for employers, labour hire providers and others in an employment chain to:



1

Coerce or pressure a temporary visa holder to breach their work-related visa condition.

2

Coerce or pressure a non-citizen without a valid visa to accept or agree to an arrangement in relation to work.

3

Use a worker's temporary visa status to exploit them in the workplace. This includes coercing or pressuring a temporary visa holder in relation to existing visa conditions or requirements to support future applications.

In addition to the new migration offences, from 1 January 2025, intentionally underpaying a worker's wages or entitlements can be a criminal offence. The Fair Work Ombudsman can now investigate suspected criminal underpayment offences and refer matters to the Commonwealth Director of Public Prosecutions or the Australian Federal Police for possible criminal prosecution.

## Who the new laws apply to

The new laws apply to employers, labour hire providers and others in an employment chain.

The laws protect all migrant workers including people who have:

- a visa with work rights
- an expired visa or
- those working in breach of their visa conditions



Migrant workers could include:

- backpackers
- international students
- temporary graduates
- PALM scheme workers and
- sponsored migrants



## What actions are now a criminal offence under the Migration Act?

### 1 Coercing temporary migrants to breach their visa

It is now an offence for employers and third-party providers to pressure temporary visa holders to break their work-related visa conditions. This could include a threat to report an international student in to immigration Authorities if the student does not agree to working more than 48 hours per fortnight allowed on their visa. It is already against the law to allow a worker to work in breach of their visa conditions. Under these new rules, there could be additional criminal charges for coercing a worker to breach their visa.

### 2 Pressuring undocumented migrant workers to accept work arrangements

It is now an offence for employers and third-party providers to pressure a non-citizens without a valid visa to accept work arrangements. This could include threatening to report in an undocumented migrant worker to immigration authorities if they don't accept underpayment. It is already against the law to underpay a person without a valid visa, or to allow a worker to work without a valid visa. Under these new rules, the additional offence is also triggered.

### 3 Using temporary visa status to exploit a worker

It is now an offence for employers and third-party providers to use a worker's temporary visa status (or any future visa aspirations) to pressure temporary visa holders to accept or agree to exploitative work arrangements. This could include pressuring a backpacker to sexual harassment under threat of the employer not signing off on their 88 days of specified work to be eligible for a second visa.

## Sexual harassment is already against the law

Under these new rules, the additional offence is also triggered by the use of a worker's visa conditions to pressure them into complying with the harassment.



## The meaning of coercion and work arrangements

The new offences cover coercion of migrant workers in relation to both work matters and also non-work related matters that could arise in a workplace.

### This could include pressuring a worker to:

- hand over their passport
- accept inadequate living conditions (such as poor housing, inadequate meals or access to running water and electricity)
- engage in unwanted sexual acts
- accept underpayment or poor working conditions or;
- breach visa work restrictions

### Examples of ways employers could coerce workers are:

- threatening to do them into immigration
- not provide necessary documentation or;
- withhold immigration sponsorship

## Examples of criminal conduct by employers

The following actions are now criminal offences under the new migrant worker protection laws:

- *An employer sponsors an employee on a skilled visa, and threatens to withdraw this sponsorship unless the employee accepts certain arrangements such as underpayment or performing work that is outside of their job description. This would lead to the employee breaching their visa condition and the sponsor breaching their sponsorship obligation. It is also now a criminal offence by the employer.*
- *A Working Holiday Maker has already worked six months for a single employer (this is the maximum duration of a job permitted on this visa). The employer then threatens that, if the Working Holiday Maker does not work an additional month, the employer will not sign off on the workers' completion of 88 days to be eligible for a second year visa. This would lead to the employee breaching their visa condition and the employer breaking the law by employing a visa-holder in breach of their visa condition. It is also now a criminal offence by the employer. The employer would also commit a criminal offence if they demand the worker accept a range of other improper arrangements as a condition for signing off on the worker's completion of 88 days (e.g. sexual favours, unsafe work, agreeing to not report/complain, unsafe accommodation etc).*
- *A labour hire firm pressures someone to work on a Visitor visa (this is not permitted on that visa). The firm threatens that unless the worker does so, the labour hire firm will tell immigration authorities that the worker's cousin worked unlawfully earlier in the year. This would lead to the employee breaching their 'no work' visa condition and the employer breaking the law by employing a visa-holder who does not have permission to work. Coercing the migrant to work is a criminal offence by the employer.*
- *An employer makes ongoing sexual comments to an international student, saying that unless the worker submits to this sexual harassment, the employer will cancel their visa (employers cannot cancel visas). Sexual harassment can already constitute a crime in Australia. By coercing this worker by threatening that they may lose their visa, this employer commits an additional criminal offence.*
- *A labour hire firm underpays a sponsored worker, and threatens to withdraw sponsorship if the worker reports the underpayment to the Fair Work Ombudsman. Underpaying this worker would already lead to the labour hire firm breaching their sponsorship obligation. By threatening to withdraw sponsorship, this labour hire firm now commits a criminal offence.*
- *An employer provides overcrowded unsafe accommodation to a PALM worker, deducting the monthly rent from their salary. The employee complains about the quality of the accommodation and the employer threatens to dismiss the PALM worker and ensure they are sent home unless they continue to live in and pay for the accommodation without further complaint. This is now a criminal offence.*



# Penalties

It is already against the law to allow a non-citizen without a valid visa to work in breach of their visa condition, underpay a worker, or engage in sexual harassment and other forms of workplace exploitation.

These new offences add extra penalties for using someone's immigration or temporary visa status (or eligibility for future visa applications) to coerce them to do these things. They also establish criminal penalties for coercing a migrant to breach their visa.

An employer who engages in these activities may receive a compliance notice from Home Affairs directing them to take specific action or stop doing something in order to follow the law. In other circumstances, an employer may be prosecuted and face serious consequences.

## These offences carry criminal penalties of:

- 2 years' jail and/or a 360 penalty unit fine (currently \$118,800), or
- a civil penalty of a 240 penalty unit fine (currently \$79,200).



## Every employee in Australia has basic workplace protections

Every employee in Australia has basic rights and protections in the workplace, including minimum pay and conditions, regardless of their visa status. No employment contract can take away these rights, regardless of what the worker has agreed to.

# How to report exploitation

[The Fair Work Ombudsman](#) is an independent statutory body that monitors, investigates and enforces compliance with Australian workplace laws for every worker in Australia, including migrant workers, regardless of visa status.

Anyone can report exploitation anonymously to the [Fair Work Ombudsman](#).

Any business in Australia can help a worker stand up for their rights. Reporting workplace exploitation early means a worker can get the support they need as soon as possible, and it helps to create a level playing field for all businesses in Australia.



# New protections enable migrants to report exploitation without risking their visa

Some workers on a temporary visa are fearful that their visa may be cancelled if they have worked in breach of their visa condition and come forward to report exploitation, or support an investigation into their employer. **Some visa holders can now apply for their visa to not be cancelled if:**

- They have experienced workplace exploitation in the last 12 months
- They have sought legal advice or support from the Fair Work Ombudsman or an accredited third party, and they are receiving help to resolve the issue
- They have breached a work-related visa condition and there is a link between the visa breach and the workplace exploitation; and
- There is no other reason for the visa to be cancelled (eg national security or fraud).

The government has also introduced a new visa - a temporary visa that allows some temporary visa holders, or recent temporary visa holders, to stay in Australia to take legal action if they have been exploited at work. The worker must hold, or have held, a temporary visa with work rights to obtain a Workplace Justice visa.

To be eligible for a Workplace Justice visa, the worker must have sought legal advice or support from the Fair Work Ombudsman or an accredited third party on the workplace exploitation, and be receiving help to resolve the issue.

Home Affairs provides a [public list of Accredited Third Parties](#), which are organisations qualified to certify the worker's claim of workplace exploitation to qualify for these protections.



For further information, see: <https://immi.homeaffairs.gov.au/visas/working-in-australia/work-rights-and-exploitation/strengthening-reporting-protections-pilot>

