



MIGRATION AMENDMENT (EMPLOYER SANCTIONS) BILL 2006
Second Reading
6 February 2007

Ms GRIERSON (Newcastle) (8.26 p.m.)—The [Migration Amendment \(Employer Sanctions\) Bill 2006](#) provides for a scheme of sanctions relating to employers, labour suppliers and others who knowingly or recklessly employ illegal workers or refer them for employment. The introduction of these new sanctions against those who do deliberately engage in that behaviour will replace the current system of voluntary compliance, a system which has manifestly failed to protect vulnerable workers, whether they be legal or illegal, from dodgy employers and labour hire companies who seek to profit from human exploitation. This bill, then, goes some way to redressing a gross imbalance in our current immigration laws, an imbalance that this government acknowledged back in 1999 but has until now failed to act upon, an imbalance that has magnified every year as new ways of exploiting legal and illegal workers in Australia keep coming to light.

Currently it is an offence under section 235 of the Migration Act for unlawful non-citizens to work in Australia. Likewise, there are existing penalties for non-citizens who work in breach of their visa conditions. That is fair enough. But the full weight of those migration laws currently rests squarely on the shoulders of the illegal worker. Unscrupulous and exploitative employers have, to date, escaped any form of sanctions. There have been no primary offences that apply to employers or others who allow or induce or even force non-citizens to work illegally. Although some commentators have argued that it is possible to prosecute such employers using existing ancillary offences, the fact that only one employer has ever been prosecuted under these provisions adds increased weight and credibility to the calls for these new employer sanctions. The one employer who was prosecuted, interestingly, was convicted on two counts of being knowingly concerned in visitors working without permission and two counts of misleading department of immigration officers. This was back in 1993, 13 years ago, and that guilty employer was placed on a \$1,000 bond to be of good behaviour for two years. A slap on the wrist is hardly an effective deterrent for those unscrupulous employers who stand to profit handsomely from human misery and misfortune, and unfortunately there have been many.

Maintaining the status quo is not acceptable, and Labor has long argued the need for sanctions. We went to the last election with a policy to combat the use of illegal workers in Australia and have long called for the introduction of a foreign worker ID card, demonstrating a real entitlement to work. This card would, of course, work in a similar fashion to the American green card, which has been in place for more than 60 years. Labor remains committed to the imposition of penalties and sanctions on exploitative employers, so we are supporting this bill. But it is by no means perfect. It does not go as far as we would like in some areas, whilst other areas remain completely untouched.

Why has it taken so long for the government to bring this bill before the parliament to debate? Its origins date back to at least 1999, when the then minister for immigration, Philip Ruddock, commissioned a study to gauge the problems associated with illegal workers in Australia. This government has been very good on commissioning reports. The study resulted in the report *Review of illegal workers in Australia: improving immigration compliance in the workplace*, which was released with much fanfare by the minister in December 1999 but conveniently buried soon thereafter.

One of the report's recommendations was that a system of sanctions, just like the ones we have tonight, be introduced in relation to employers and labour suppliers and that there be a range of offences and penalties reflecting the seriousness of the offences committed. It also recommended infringement notices for lesser offences. It has been seven long years since those recommendations came down. The Australian people were assured then that appropriate measures to deal with employers who breached immigration law would be put in place.

What a lazy government! Only now, on the first day of parliamentary sittings for 2007, has the government bothered to deal with the serious issue of employer sanctions. Thousands of illegal workers have been seized in the interim years, but not a single exploitative employer has been held to account since 1999. Despite the tough talk of successive ministers, Australians know that addressing inequity between workers and employers has never been a high priority of the Howard government.

As the 1999 report made clear, illegal work causes a number of problems for the Australian community as well. It denies Australians opportunities to work, it burdens the Australian taxpayer and it results in the exploitation of vulnerable people. Illegal work is almost invariably bad for the person working, but it is also bad for the decent business men and women that have to compete with such unscrupulous employers—no level playing ground there. It is also bad for Australian workers who have been denied that opportunity to work or who now have to compete with those lower rates of pay—not a chance. The only people to benefit from this illegal activity are the dodgy employers, who have so far got off scot-free.

According to the government's own estimates, there are around 46,000 people who have overstayed their visas and are now living in Australia. Of these, some 26,200 people have been in Australia unlawfully for more than five years. There is little doubt that a substantial proportion of just those people are working illegally to support their stay here. I do not think they come with bags of money.

In 2004-05 the department of immigration located 18,341 persons who had either overstayed their visa or were in breach of their visa conditions. Many of the people located by the department worked illegally in Australia but, as the minister for immigration admitted in response to a question on notice, DIMA does not have definitive statistics on those working illegally. In 2004-05, the total number of people confirmed by DIMA as illegal workers was just 3,870, or 21 per cent of the total number of unlawful non-citizens and people found breaching their visa conditions. These figures do not reflect the true extent of illegal work in Australia.

In the same 12-month period, DIMA issued 2,280 illegal worker warning notices to employers. This was an increase of 20 per cent over the previous financial year, when 1,900 notices were issued. To date, these warnings have been the only deterrents available. It seems a lot of work for very little outcome. Most warning notices, 34 per cent, were issued to the hospitality sector. Twenty-three per cent were issued to manufacturing; 18 per cent to agriculture, forestry and fishing; 15 per cent to personal and other services, including the sex industry; and 10 per cent to construction. Illegal worker warning notices carry no sanctions. So employers are issued with warnings knowing full well that if they are caught doing it again they will simply be warned yet again.

It is no surprise, then, to find that a total of 90 employers received more than one warning notice in the 2004-05 period—lots of serial offenders and lots of work for people to issue the notices, but, again, little outcome. The effectiveness of this strategy is at best questionable. But a system of warnings which is not backed up by a system of sanctions has absolutely no teeth and, as such, is pointless.

The bill before the House today goes some way to redressing this inadequacy and sets out eight fault based criminal offences relating to employing and referring non-citizens for work. These proposed new offences carry criminal penalties of imprisonment for five years for an aggravated offence and imprisonment for two years in any other case. The higher penalties for offences where aggravating circumstances are present are for incidents where the illegal worker is in a condition of sexual servitude, forced labour or slavery. This penalty is very welcome, although it is worth noting here that there are other examples of exploitation, like the deliberate undermining of minimum salary rates in this country, which are not covered by this legislation.

These new offences will only apply where the employer or labour supplier knew the person was an illegal worker or was reckless to the fact. Like my Labor colleagues, I am concerned that the definition of 'reckless' in this bill may deliberately—or unwittingly; who knows?—allow some employers to escape liability even though they have employed illegal workers. The impact of the term 'reckless' as it is defined in this legislation should and will be closely monitored by us to ensure that it does not allow continuing exploitative employers to get off the hook. Likewise, the comment in the bill's explanatory memorandum that it is expected that first-time offenders would be given a written warning—here we go again!—rather than being prosecuted deserves ongoing attention to ensure its effectiveness. There are no such second chances, of course, for illegal workers. Curiously, the government's zero tolerance for illegal workers apparently does not extend to guilty employers or to labour suppliers.

There are an estimated 1,500 illegal workers based in the Newcastle and Hunter region at any one time, so the issue of illegal work has particular resonance for Novocastrians. With Newcastle and many other parts of the Hunter undergoing a building boom in recent years, the problem of illegal workers in the construction industry has been especially acute. In January 2006, DIMA confirmed that they had picked up another seven illegal workers at a building site at Nelson Bay, in my neighbouring electorate of Paterson. Six of these workers were detained at Villawood detention centre before being sent back to China. Just two months later, another four illegal workers were located on a building site at Soldiers Point, also in the electorate of Paterson. The following day, another illegal worker, a Korean man, was discovered in an operation near The Entrance, on the Central Coast.

More recently, union and industry representatives have expressed concerns about the probable exploitation of Chinese workers by a subcontractor on a building site in Newcastle West. Whilst these workers have been employed in areas of alleged skill shortages, both union and industry representatives insist that they could fill these positions immediately with local employees. I understand that the Chinese employees have been working seven days a week, including after hours and night work, and that they worked throughout the Christmas break, without proper supervision, while all the other workers were away on holidays. These Chinese workers are in a very vulnerable situation. Having been told that they will be sent home if they talk to the union, they have been left with no voice or advocate to ensure fairness and equity. Their occupational health and safety certainly appears to be at risk.

The construction industry is by no means alone in its propensity to employ or to exploit illegal workers. A popular local restaurant chain, with restaurants in both Beaumont and Darby Streets in my electorate, is well known to DIMA's compliance section. Both restaurants have been the site of numerous DIMA raids, which have resulted in illegal workers being found and taken to the Villawood detention centre. Last month, a constituent contacted my office to raise serious concerns about the way in which these workers were treated

during a DIMA raid on their residences. I made representations to the then Minister for Immigration and Multicultural Affairs, seeking her assurance that proper procedures were in fact followed, but I have not received a response yet. My constituent was most upset. He was not associated with the place of employment. As a customer, he had become friendly with the workers and was very concerned about their not being given proper interpreter services, that they were taken without proper support or information and that they were confused and frightened.

This case clearly demonstrates the gross imbalance that currently exists in immigration law. Here we have a restaurant chain that is well known to DIMA officers as a repeat offender when it comes to the employment of illegal workers, yet it is the worker who alone faces the full brunt of our immigration laws. It is the worker, not the employer, who is deemed guilty and punished, and the employer is seemingly free to reoffend without the threat of sanctions. This is the imbalance that we hope this legislation will redress.

Notwithstanding the extreme difficulties that unions now face in getting access to workplaces, unions remain a major source of tip-offs about the location of illegal workers and offending employers and companies. I would like to acknowledge the positive contribution of the local Construction, Forestry, Mining and Energy Union and the Newcastle Trades Hall Council in uncovering unscrupulous employers in our region. The union will always stand up for the rights and dignity of all workers, no matter where they come from.

But far from recognising the valuable role that unions play in exposing exploitative employers, the Howard government, with the introduction of its extreme IR laws, remains determined to restrict union entry to workplaces and, thus, to silence those who have a genuine interest in the health and wellbeing of all workers. At a time when record numbers of temporary business visas, including the infamous 457 visa, are being issued, the capacity of DIMA to properly monitor them and ensure that these jobs cannot be filled locally is in serious doubt.

The parliamentary secretary, in his speech on this bill, referred to clause 245AC in the legislation and asserted that it would address concerns where an employer has improperly employed a person under a 457 visa. It is true that in a situation where a worker comes to Australia because of a particular set of skills but ends up being in breach of their visa conditions by working in a different skill set or a lower skilled area, this legislation provides for an extra penalty on the employer. But there are other abuses of the 457 visa system—abuses that are no less exploitative and that remain untouched by this legislation.

Of particular note is the situation where the minimum rate under a 457 visa, while being technically complied with, has been effectively undermined because the worker in question has had to spend thousands of dollars to purchase their job. Cases where people have paid \$20,000 or more for a job

that pays \$42,000 per annum have been well documented in both the media and this parliament. The recent announcement by the Office of Workplace Services that 38 temporary workers in NSW were underpaid \$650,000 is further proof that exploitation of overseas workers is rife under the government's 457 visa program. The day before, the very same Office of Workplace Services announced that it had found that a Melbourne printing firm had underpaid four overseas workers \$93,000 over the past 12 months.

At Senate estimate hearings last October, the Department of Immigration and Multicultural Affairs revealed that 190 companies are now being investigated for possible breaches of the 457 visa program. Regrettably, DIMA's 2005-06 annual report shows that compliance checks on 457 visa sponsors have plummeted by more than one-third in the past three years—even though we have this supposed skills shortage and employment boom—as the number of employer sponsors grew by 20 per cent to nearly 10,000. These examples show just how big the problem of exploitation of overseas workers is and just how little the Howard government has been doing about it.

Unfortunately, when this bill becomes law, we will be in no better position to sanction employers who deliberately undermine minimum salaries. By any measure, this practice is wrong, but this bill will not make it illegal. Nor will this bill help to stamp out the practice of underpaying overseas workers. Such practices are clearly exploitative and should attract serious penalties, but they will not under this legislation. Notwithstanding the government's frustration with Labor's ongoing calls for reform of the 457 visa program, the need for such reform is based on the very same logic that underpins this legislation—namely, that exploitation and abuse in the workplace is unacceptable. All workers in Australia have a right to expect that their workplace will be free of exploitation—the 'fair go' that seems to have been missing from the psyche of this government for a long time.

People with no rights to work in Australia are, of course, especially vulnerable. Sadly, it is precisely their vulnerability which makes them the least likely to report abuse in the workplace. Similarly, people on a temporary work visa are unlikely to report for fear of losing their job and being deported. This bill does, however, put an end to the grossest forms of exploitation in the workplace. It deals specifically with people in some of the worst situations of exploitation, such as those in sexual servitude, forced labour or slavery and, in that way, these provisions are welcome. It is outrageous to think that until now, under the Migration Act, it has been the victim who has been seen as committing an offence, not those who enable such gross violation of human rights.

I am pleased that, once this bill has passed, the persons who are responsible for placing overseas workers in such appalling situations will also be guilty of an offence under the Migration Act. This is a much needed improvement in the act and has Labor's complete support. The real test,

however, will be the number of successful prosecutions, which of course should be closely monitored. Ultimately, Labor wants to see an end to all forms of exploitation in the workplace. When there is a genuine shortage of skills that cannot be filled locally, we want the best people available from around the world to fill those gaps. But we do not want to see the 457 visa program being used in ways that amount to exploitation by any definition and certainly not by the limited definition of this bill.

While this bill is a step in the right direction, I urge the House to accept Labor's second reading amendment. The amendment highlights that the government has failed for more than six years to introduce sanctions for employers who employ unlawful non-citizens and individuals with work restrictions despite the 1999 report that I mentioned. The bill also fails to address the need for higher penalties for employers who are repeat offenders. A toothless warning system has to be avoided. Finally, the legislation's bar on employer culpability may be too low, and the reference to the employer knowingly or recklessly employing illegal workers may be used as wriggle room by unscrupulous employers to escape sanctions.

I urge the House to support this legislation with Labor's amendment. Maintaining the status quo is not an option. The Australian people have the right to demand and expect fairness and equity in the workplace—a point that this government would do well to remember and, unfortunately, one that Australian people now doubt will ever return under the coalition's governance.