



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Australian Catholic Migrant and Refugee Office



Submission from the Australian Catholic Migrant and Refugee Office

Australian Catholic Bishop Conference

to the Minister for Immigration and Citizenship, the Hon Chris Bowen, MP

on

The review of the *Migration Amendment (employer sanction) Act 2007*

The Australian Catholic Migrant and Refugee Office (ACMRO) affirm its solidarity with the Australian Federal Government's initiative to address the situation of irregular migrant workers. The Australian Government has the right and the responsibility to promote just immigration law, manage migrant workers and control its borders as a sovereign nation.

Mr Howell's report on 'the migration amendment' has recognised many important aspects which are imperative while formulating a new policy framework. The following points are of particular importance:

- Australian government's obligations to monitor and guard against forced labour, sexual servitude, slavery and other kinds of exploitation as a party of UN Convention against transnational organised crime and the protocol against human trafficking, especially women and children.
- The report recognises the fact that the proportion of illegal migrants in the Australian workforce is very small (about 50,000 to 100,000) when compared internationally. The report further adds that the majority of illegal migrant workers in Australia are from America and Britain.

ACMRO considers the policy amendment at this stage as a visionary decision that would contribute to prevent irregular migration as well as to protect rights of the persons who would end up in irregular status through illegal trade of human being, particularly those who have suffered by war, persecution, discrimination, famine, flood, disease and poverty.

Irregular migration is not a choice of many people and most of them are trapped either by traffickers or smugglers or by their difficult circumstances. Because of their so-called illegal identity, they become victims of many kinds of injustice. They often end up in sweat shops or are trafficked into illegal activities, and live under deplorable conditions; and many are without their families. Many, mostly women and children, are exploited and their human rights violated. These workers are deprived of access to medical services and legal protection as well as not receiving compensation in the event of industrial accidents because they are so-called 'illegal's'. Often they do not receive competitive wages or are trapped into modern-day slavery. If they are caught, they are held in detention centres without understanding their legal rights. The legal system, in many cases, victimises the victims and the culprits continue victimising others.



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Australian Catholic Migrant and Refugee Office



In the forthcoming migration amendment, there are some areas that require specific attention:

1. **Categorisation of Illegal workers:**

The report has broadly lumped illegal migrants into three groups¹. However, there are two distinct groups, that is a) legal migrants who are working in breach of their visa condition (e.g., students and tourists), and b) illegal migrant workers (e.g., over stayers). Instead of keeping three categories in one group, identification of irregular migrants by circumstances would assist the government to make appropriate legal responses to both employer and workers. ACMRO recommends penalty provisions based on circumstances of illegal workers, for example sexual exploitation, non-payment/ underpayment, taxation and welfare fraud and related crime. The nature of these different crimes demands great scope of penalties as per the offence rather than the visa status.

2. **Humanitarian response to irregular migrants:**

As mentioned above, many migrant workers become irregular not by intention but by their circumstances. These people need counselling, care and support as well as a guarantee of protection of their fundamental human rights. Therefore, ACMRO recommends ensuring the provisions that provide spaces to community organisations and Churches to assist irregular migrant workers who are victims of exploitation or in detention facilities.

Regarding students who breach their visa conditions with employment, ACMRO recommends their academic circumstances and length to completion be taken into account before enforcement of any penalties. ACMRO is aware of students that have breached their visa conditions and subsequently forfeited the opportunity to complete their tertiary studies even though they were within a semester of finishing. ACMRO acknowledges the need to enforce visa conditions through penalties however recommends that alternative penalties (perhaps monetary) be investigated which allow for the completion of education.

3. **Complementary protection**

The Australian Government has assumed the responsibilities of non-citizens on the concept of complementary protection as a party of international human rights treaties. Among the several causes of migration, some migrants become irregular because of war or prosecution or violence or civil unrest, and deporting them back to their country of origin keeps their life under threat. Therefore, the provision of 'complementary protection' is recommended to safeguard the life of irregular migrants, in the forthcoming amendment.

4. **Irregular migrant and their dependents**

The Australian Government has committed that no children or the families of these children would be detained in an immigration detention facility. ACMRO recommends harnessing of this provision in the migration amendment to ensure the rights of families and children in illegal status.

5. **Short term and long term solutions**

It is important to make illegal migration workers part of the solution. Some countries, for example, have given illegal migrants an opportunity to disclose themselves voluntarily with some provisions

¹ a. Non-citizens who have a current visa that does not permit them to work, b) non-citizens who have remained in Australia after the expiry of their visa, and c) non-citizens whose visa permits work subject to certain conditions but in breach of those conditions



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Australian Catholic Migrant and Refugee Office



of amnesty. This saves the government precious resources from tracking illegal migrants. Therefore, short term and long term solutions of illegal migrant workers are required:

- As a short term solution, as experienced in some other countries, provisions of amnesty with some short term options (e.g. temporary visa) and safety assurances are recommended. These encourage illegal workers to register with the government. The short term solution option helps for the respectful management of illegal migrant workers. This provision requires dissemination of information and communication by inviting them to register and benefit from it.
- The proposed amendments with effective implementation of VEVO requires adequate infrastructure with small businesses, and reflects a long term strategy. The proposed amendment is recommended to develop as an educational tool rather than reactive actions against employers and employees.

6. Further research

The report acknowledges that there is gap of information about illegal workers and recommends further research to identify the circumstances of migrants and reasons why the breach of their visa conditions has occurred. Of particular interest is the likely number of students who are working in excess of their limited hours and their working conditions. ACMRO has encountered many workers who are forced to join risky trade because of the restrictions posed on them. ACMRO recommends further research to identify the impacts on the living standards and welfare of migrant workers. It is the obligation of the Australian government to endeavour to ensure that migrant workers are not exploited or subject to unjust penalties in light of their particular circumstances. ACMRO supports Mr. Howells' recommendation and recommends further to explore the circumstances of students for policy decision.

Once again, we would like to share our sincere thanks for this opportunity to make this submission. If you have any enquiries related to this submission, please contact Fr. Maurizio Pettena CS or Joe Moloney on 02 6201 9848.

Yours sincerely in Christ

A handwritten signature in blue ink, reading 'Gerard Hanna', with a small cross symbol to the left.

Most Rev Gerard Hanna DD
Delegate for Migrants and Refugees
Bishops Commission for Pastoral Life