ALECOMM-EM-MWVP-2026-001 ·

Explanatory Memorandum
Migrant Worker and Visitor Protection (Passport Autonomy and Safe Exit) Bill 2026

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Document Reference	ALECOMM-EM-MWVP-2026-001
Document Title	Explanatory Memorandum: Migrant Worker and Visitor Protection (Passport Autonomy and Safe Exit) Bill 2026
Document Type	Explanatory Memorandum
Organisation	Australian Legislative Ethics Commission (Alecomm)
Version	1.0
Date	15 October 2026
Status	Final for Advocacy Use
Classification	Public — Advocacy and Policy
Prepared by	Alecomm Legislative Reform

General Outline

The Bill creates a stand-alone prohibition on employer custody of original worker passports irrespective of purported consent. It couples the prohibition with a practical urgent recovery process, independent digital immigration-status access and early protective referrals. The policy aims to prevent exploitation before it escalates, rather than relying solely on later criminal litigation.

Problem Being Addressed

A foreign national whose passport is held by an employer may fear leaving, reporting underpayment or asserting immigration rights. Consent obtained within an unequal employment relationship may not reflect genuinely free choice. An employer could use identity documents and claims about visa status to exert continuing control even after work has ended.

Existing Legal Setting

The Criminal Code Act 1995 includes trafficking and slavery-like offences, and its trafficking provisions expressly address confiscation of travel or identity documents in specified contexts. Commonwealth migration and workplace legislation contain further worker protections. Department of Home Affairs public guidance has stated employers may inspect passports but cannot take them without consent. This Bill proposes an unambiguous employer-specific prohibition that does not depend on proof of broader trafficking or on a disputed assertion of consent.

Key Change: No Consent Defence

Clause 6 prevents employers, recruiters, sponsors and persons acting for them from taking custody of original documents even if an apparent worker consent exists. Genuine inspection remains possible in the holder’s presence. This narrowly directed absolute rule avoids shifting the evidentiary burden onto

vulnerable workers to demonstrate coercion. It does not prohibit individuals from independently deciding where to store their own documents.

Why Not Mandatory Passport Carrying?

Mandatory carriage risks punishing a person whose documents have already been seized and increases theft and loss risks. Clause 8 instead guarantees practical personal control while preserving lawful identity-verification requirements arising elsewhere.

Urgent Enforcement

Clauses 11–15 prioritise safe, confidential reporting, immediate triage and document-return notices. Recovery is pursued under lawful powers and judicial warrants where appropriate. Administrative intervention supplements rather than replaces prosecutions, civil remedies and judicial safeguards.

Digital Verification

Clause 16 creates a voluntary independent digital interface, preferably using existing visa verification infrastructure. It allows workers to check their status without an employer, obtain official verification and contact protective services. It is not a substitute for a travel document and does not create an obligation to own a phone, supply new biometrics or submit to tracking.

Safe Exit And Immigration Law

Clause 20 requires referral and anticipates consequential Migration Act and regulatory amendments for appropriate temporary status and work rights. As drafted, it does not purport to grant a visa by mere allegation or override the statutory visa framework. Detailed eligibility, decision-making, time limits and review rights would need to be settled by legislative counsel.

Online Exposure And Intimidation

Clause 22 addresses publication or threatened publication of passport and non-public immigration details for coercive or retaliatory purposes. Such conduct may occur in person or online. The provision is intention-based and retains exceptions for lawful disclosures, confidential reports and legal process to avoid unduly suppressing legitimate speech.

Criminal, Civil And Administrative Structure

Civil contraventions encourage early compliance without requiring proof beyond reasonable doubt. Deliberate withholding and aggravated coercive conduct attract criminal liability; established prosecutorial safeguards remain necessary. Enforcement regimes must be reconciled with existing offences to avoid double punishment and constitutional inconsistency.

Human Rights Considerations

The Bill advances protections against slavery, servitude, arbitrary interference with liberty and privacy. Relevant international instruments include the ICCPR, ICESCR and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Search powers, information handling, employer restrictions and procedural fairness must be proportionate and subject to independent oversight.

Regulatory And Financial Implications

Costs may arise from 24-hour triage, staffing, translation, accessible reporting, digital system security, enforcement and emergency support. Exact costs cannot be reliably estimated without departmental data. A regulatory impact assessment should test the effect on legitimate businesses and whether the design can reuse existing infrastructure.

Implementation And Safeguards

Stage introduction: initial rights information and agency protocols; then custody prohibition and recovery notices; then digital service and enhanced risk-based worker safeguards. Provide interpreter training, independent audits, whistleblower channels and offline access to avoid exclusion.

Matters For Parliamentary Counsel

Settle constitutional foundations and cross-border application; clarify treatment of accommodation providers with no employment connection; harmonise penalty units and corporate liability; specify notice review and offences; identify existing warrant powers; design consequential migration amendments; and confirm compatibility with privacy, fair work and state and territory criminal laws.

Review And Expected Outcomes

Success should be measured by faster document return, worker awareness, safe-exit outcomes, reduction in retaliatory threats and improved access to lawful remedies, not only by the number of convictions. An independent review after three years should test both effectiveness and unintended consequences.

Related Documents

- ALECOMM-BILL-MWVP-2026-001 — Migrant Worker and Visitor Protection (Passport Autonomy and Safe Exit) Bill 2026
- ALECOMM-POL-MWVP-2026-001 — National Passport Autonomy, Digital Identity and Anti-Trafficking Protection Policy 2026

Sources And Legislative References

- Department of Home Affairs, Information for migrant workers — https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/migrant-worker-protections/information-for-migrant-workers
- Criminal Code Act 1995 (Cth), Divisions 270–271 — https://www.legislation.gov.au/C2004A04868/latest/text
- Migration Act 1958 (Cth) — https://www.legislation.gov.au/C1958A00062/latest/text
- Fair Work Act 2009 (Cth) — https://www.legislation.gov.au/C2009A00028/latest/text
- Department of Home Affairs, Visa Entitlement Verification Online (VEVO) — https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/check-conditions-online

Note: This is a proposed reform, not enacted law. Legislative counsel should settle constitutional heads of power, offences, penalty units, procedural safeguards and consequential amendments before introduction.