



6 April 2017

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 Inquiry

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

Key Message

FECCA applauds this Bill's attempt to reinforce Australia's commitment to protecting vulnerable workers by imposing substantial sanctions and by enhancing the investigatory powers of the Fair Work Ombudsman. Further, the provisions regarding the liability of franchisors admirably seek to penalise knowledge of, or wilful blindness regarding, systemic exploitation. FECCA however, maintains its previously stated position that penalties remain ineffective for reducing the incidence of exploitation unless accompanied by measures to address coercion related to the contingency of immigration status upon employment status and the absence of support networks, advocacy and legal services.

Recommendations

- **In addition to increased penalties the legislation should include measures which create immigration-status amnesty for complainant employees whilst claims are being investigated, to be maintained if complaints are upheld.**
- **Measures should be adopted which ensure adequate support for, advocacy on behalf of and provision of information to vulnerable workers about their rights and about how to pursue those rights.**

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FECCA supports attempts to ensure adequate sanctions for employers who engage in systematic patterns of exploitation. FECCA further supports attempts to provide the Fair Work Ombudsman with sufficient authority to conduct investigations where it appears contravening conduct has occurred and it is necessary to do so.

FECCA acknowledges the Bill's attempts to ensure that franchisors are assigned liability for the conduct of franchisees in circumstances where they were aware of systemic exploitation, or ought have been aware of it, and failed to take adequate measures to prevent the occurrence.

However, there are a significant number of issues which remain unaddressed in relation to vulnerable workers. Amongst the most vulnerable of these are temporary migrant workers and those on international student visas. Lack of knowledge about the Australian workplace relations scheme, including their workplace rights and entitlements, lack of support networks, social isolation, and language barriers all contribute to this vulnerability.¹ The reliance of 457 visa holders on their employers for the continuance of their visa is a significant vulnerability² and means that employers continue to have substantial control over an employees' presence.

Accordingly, it is the view of FECCA that the current proposal, whilst admirable, will fail to protect vulnerable workers. Unless the changes are accompanied by better information provision to migrant workers on arrival and unless greater networks of support are available the exploitation will continue. This support includes provision of legal advice and advocacy services. It is also imperative that briefings from the Fair Work Commission and Union organisations occur independently of employers.

In a number of instances workers knew they were being exploited and knew there were mechanisms through which they could pursue their rights but were prevented from doing so because of threats, made by their employers, about reports to immigration regarding contraventions of visa conditions.³ Many of those contraventions only occurred as a result of coercion from the employer.⁴ In some cases there had in fact been no contravention but because visas were contingent upon the employers' continued support, migrant workers were intimidated into accepting conditions tantamount to slavery.⁵

It is widely acknowledged that a punitive approach does not address power imbalances inherent in the employee/employer relationship, nor do they facilitate detection of unlawful conduct.⁶ It is the view of FECCA that unless the proposed changes are accompanied by provisions granting amnesty for a complainant whilst the issue is being investigated, and maintained if the complaint is upheld, victims are likely to remain reticent about making complaints for fear of deportation.⁷

¹ Media Release Federation of Ethnic Communities' Councils of Australia 'FECCA Calls for Balanced Debate on Temporary Migrant Workers' 16 November 2016.

² Ibid.

³ Ferguson, A, Danckert, S. 'Revealed: How 7 Eleven is Ripping Off its Workers' *The Sydney Morning Herald* 2015

⁴ Ibid.

⁵ McKenzie, M. 'Slavery claims as seasonal workers from Vanuatu paid nothing for months' work' *The Sydney Morning Herald* 27 March 2017; *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor* [2017] FCCA 559 per Jarret J at [48] and [57]

⁶ Hemingway, C. 'Not Just Work: Ending the Exploitation of Refugee and Migrant Workers Westjustice Employment Law Project Final Report' Western Community Legal Centre 2016 224 [5]

⁷ Ferguson, A 'Amnesty sought for 7-Eleven's exploited workers' *Australian Financial Review* 7 September 2015

FECCA urges the Committee to recommend that the legislation be amended to reflect a more holistic approach to the protection of vulnerable workers.

FECCA thanks the Committee for the opportunity to provide submission to this inquiry and would welcome the opportunity to provide further information at the request of the Committee. For clarification of anything contained within please contact the Director at