



18 July 2018

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

Submitted via email: eec.sen@aph.gov.au

Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies

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 strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistically diverse backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

FECCA would welcome the opportunity to expand on this submission to the Committee as required. For enquiries please contact the FECCA CEO, Dr Emma Campbell

Key Message

The provision of cleaning services is critical to the safety, wellbeing and comfort of our society. Cleaning work is low paid, insecure, isolating, dangerous and difficult. Evidence shows that workers are routinely exploited – underpaid, denied basic work rights and unfairly dismissed.

Migrants and CALD Australians constitute a significant proportion – if not majority – of Australia's cleaning workforce. This includes Australian citizens and permanent residents of migrant and refugee background, international students, migrant workers and other temporary visa holders such as partners of students and skilled migrants.

The exploitation of migrants and Australians from CALD background in the cleaning industry has been frequently highlighted by migrant organisations, parliamentary inquiries, unions and the Fair Work Ombudsman.

FECCA calls on the Committee to address the continued exploitation in this sector of some of Australia's most vulnerable people and send a message to other industries where levels of exploitation of CALD Australians and migrant workers are similarly high.

Recommendations

FECCA recommends the following that:

1. The Fair Work Ombudsman (FWO) is provided with increased and significant resources to investigate and prosecute breaches of Australian law in high-risk industries including general and specialist cleaning
2. Government and its agencies make use of the *Fair Work Amendment (Protecting Vulnerable Workers Act) 2017* and ensures the imposition of robust and meaningful penalties where exploitation takes place
3. Further research be conducted into the specific challenges and barriers which contribute to keeping CALD Australian and migrant workers in insecure employment and an exploration of good practice in the provision of sustainable, safe and secure employment. This should include the collection of disaggregated data on CALD insecure workers
4. The expansion of culturally and linguistically appropriate information provision regarding worker rights within CALD communities in Australia with a particular focus on new arrivals and temporary visa holders
5. Australia become a signatory to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Discussion

Meaningful, legally remunerated and sustainable employment is one of the most effective way of ensuring refugees and migrants to Australia are empowered and included in the community. Migrants and CALD Australians can face barriers in the employment market due to a lack of Australian work experience, difficulties in achieving recognition of overseas qualifications, racism and discrimination, and limited professional and social networks. Other challenges include English language proficiency and limitations to employment opportunities based on visa status. Because of these challenges, migrants and CALD Australians find themselves overrepresented in sectors like cleaning – notwithstanding individual skill and experience – because jobs in these industries have low barriers to entry.

The 2016 Census highlighted:

- 50% of workers within the cleaning industry were born overseas
- 40% of workers spoke a language other than English (LOTE) at home. Of those who spoke a LOTE 19% percent did not speak English at all or very well
- 28% did not have Australian citizenship
- 12% were current students¹.

A 2013 report on the exploitation of international students in Melbourne's office cleaning industry estimates that more than half (56%) of cleaners in Melbourne CBD are international students from countries including India, Sri Lanka, Bangladesh and Colombia².

¹ Fair Work Ombudsman, <https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets/background>

² United Voice Victoria, CBD Office Cleaners: A Dirty business: The exploitation of International Students in Melbourne's Office Cleaning Industry, 2013, p. 3

Terms of Reference

1. *Frameworks at Commonwealth and industry level to protect workers from harm, including exploitation, wage theft, underpayment, wage stagnation and workplace injury*

A range of Commonwealth and industry level frameworks and initiatives exist to protect migrant workers and Australians from CALD backgrounds working in the cleaning industry including:

- Fair Work Act 2009
- Fair Work Ombudsman
- The Migrant Workers' Taskforce
- The Cleaning Accountability Framework (CAF)
- Commonwealth, state and territory work, health and safety legislation

Migrant workers on temporary visas are also impacted by the *Migration Act 1958* and associated regulations.

It is clear from the pervasive level of exploitation of workers in the cleaning industry that existing frameworks are failing to protect CALD workers from harm including exploitation, wage theft, underpayment, wage stagnation and workplace injury.

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* was introduced with the specific goal of preventing this type of exploitation for example, by:

- strengthening the FWO's powers to collect evidence in investigations
- increasing penalties for 'serious contraventions' of workplace laws
- introducing new penalties for giving us false or misleading information or hindering or obstructing the FWO's investigations.
- holding companies responsible if franchisees or subsidiaries or subcontractors don't follow workplace laws.
- preventing 'cashback' from employees or prospective employees
- increasing penalties for breaches of record-keeping and pay slip obligations.³

FECCA [supported](#) the introduction of this new legislation and congratulates the Government and Parliament for its swift enactment into law. FECCA calls for increased and significant resources for the Fair Work Ombudsman to investigate and, where appropriate, prosecute companies engaged in illegality and exploitation using its existing and enhanced powers under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

Some CALD and migrant workers are hesitant to report exploitation because of their immigration situation. The current case-by-case response to immigration status in situations of migrant worker exploitation gives no certainty to individuals who wish to pursue a remedy but may have breached their visa conditions. An unlawful immigration status has often come about *because* of exploitation by an employer – for example a worker forced to work longer hours than their visa allows to make up for being underpaid – or for other reasons of vulnerability. Often the unlawful migration status of a worker is used by an employer as a means of exploitation and control.

³ <https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/changes-to-help-protect-vulnerable-workers>

FECCA also calls on Australia to become a signatory to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. The Convention will provide an overarching framework and guidance to Australian governments in ensuring that migration and employment legislation promote humane and just working conditions. As a signatory, the Commonwealth Government would be required to regularly report on its compliance with the Convention.

2. Measures to ensure workers have adequate representation and knowledge of their rights

The 2013 report on the exploitation of international students in Melbourne's office cleaning industry found that 'three out of four international students know little or nothing about their rights at work'⁴.

Australia's employment legislation contains many protections for workers. However, Australia's *Fair Work Act* and associated regulations, rules and awards are complex. For vulnerable workers who may have limited capacity in English, limited time, limited knowledge of government infrastructure and where to find information – it is very difficult for them to navigate systems and processes and understand their rights.

More information needs to be provided in simple English, languages other than English, through multiple channels and be industry specific. Efforts should be made to make this information available to all visitors to Australia with rights to work as well as any other visa holders at risk of exploitation. All information provided should give links to advocates, legal services as well as the FWO to help workers to pursue their rights where they believe they are being exploited. Adequate funding of ethno-specific organisations with knowledge in worker rights as well as resources for community legal services for employment-related caseload is essential. Because of the intersection between migrant labour exploitation and immigration issues, cases of worker exploitation involving CALD Australians and migrant workers can be very complex.

Often migrant workers know that they are being underpaid but are unable to challenge their rights because of an unfair balance of power between employer and employee:

- They may not be able to find alternative employment easily and must cover their basic living expenses including food, housing and transport
- Their employment may be linked to their migration status
- If their employment situation has led to non-compliance with their visa situation they may be under threat of deportation if they report exploitation
- Ties to a particular cultural, linguistical, religious or national community may mean that employees feel unable to report more senior members of the community for unfair labour practices
- Exploited migrant workers do not know where to go to report exploitation
- Exploited migrant workers who do not speak English to a high proficiency.

The emphasis, therefore, must be on properly resourcing the FWO and other relevant agencies to implement existing and new powers under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* to investigate and prosecute those employers who do not comply with Australian legislation and who exploit vulnerable CALD Australians and migrant workers.

⁴ United Voice Victoria, *CBD Office Cleaners: A Dirty Business: The exploitation of International Students in Melbourne's Office Cleaning Industry*, 2013, p. 3

3. *Compliance with relevant workplace and taxation laws: the effectiveness of the Fair Work Ombudsman and the Australian Taxation Office*

FECCA welcomes positive developments such as the FWO's online tools for workers and their employers to obtain information or to provide intelligence about their workplace: the Record My Hours smartphone app; the Pay and Conditions Tool (PACT) and the Anonymous Report function.⁵ In particular, FECCA recognises the efforts of the FWO to ensure that these initiatives are available in a range of languages and formats relevant to CALD communities. FECCA also commends the FWO for its engagement with the Australian multicultural sector. FECCA encourages the FWO to continue making this information available through accessible formats and through the provision of culturally linguistically appropriate means.

FECCA also welcomes the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* and applauds the Bill's attempt to reinforce Australia's commitment to protecting vulnerable workers by imposing substantial sanctions and by enhancing the investigatory powers of the FWO. However, without additional resources the FWO cannot adequately use these powers to challenge unfair practices and exploitation.

FECCA understands that the ATO is currently undertaking a review of its communications with CALD Australians. This will enable the ATO to better engage with CALD Australians, particularly vulnerable migrant workers, on understanding the Australian tax system. FECCA also urges the Committee to review FECCA's [submission](#) to the Treasury's Black Economy Taskforce which provides further information on the circumstances that lead to CALD Australians and migrant workers becoming involved in the informal economy.

⁵ For more information, see <https://www.fairwork.gov.au/>