



Federation of Ethnic Communities' Councils of Australia

Submission to the Migration Act 1958 Amendment
(Strengthening Employer Compliance) Bill 2023

21 July 2023

Foreword

The Federation of Ethnic Communities' Councils of Australia (FECCA) thanks the Committee for the opportunity to make this submission. We welcome the introduction of a Migration Act 1958 Amendment (Strengthening Employer Compliance) Bill 2023 to strengthen protection for temporary migrant workers, however we believe the proposed model as it stands will not provide the necessary visa protection guarantee needed to encourage migrant workers to report exploitative employers.

For further enquiries, please contact FECCA CEO Mohammad Al-Khafaji at ceo@fecca.org.au or on (02) 6282 5755.

Who we are

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing people from multicultural communities and their organisations across Australia. Through the membership of state, territory, and regional councils, we represent over 1,500 community organisations and their members.

What we do

For over 40 years, FECCA has proudly worked alongside culturally and linguistically diverse communities, the broader Australian society and government to build a successful, productive and inclusive multicultural Australia where everyone, no matter their background or how long they have lived in this country, can belong equally and reach their full potential.

FECCA draws on the lived experiences of the people and their descendants that have migrated to Australia and the expertise of its extensive and diverse membership to develop and promote inclusive, innovative and responsible public policy that reflects the needs and perspectives of multicultural Australia to build a strong, innovative and inclusive nation that harnesses its greatest strength, the diversity of its people.

The FECCA network is FECCA's greatest strength. Through our network we can enhance the capacity of governments to strengthen public policy to meet the needs of the diverse Australian population. FECCA is a proven trusted partner to both communities and government, operating as a sophisticated conduit by mobilising communities to work with government to develop and enrich public policy through community-led expertise and action.

Endorsement

The organisation below endorses this submission:



FECCA pays its respects to Aboriginal and Torres Strait Islander Elders past and present and recognise the land we live and work upon was never ceded. FECCA proudly supports the Uluru Statement from the Heart and its call for the establishment of a First Nations Voice protected by the Constitution.

FECCA acknowledges that our work on behalf of multicultural Australia has learnt from and been enriched by First Nations peoples and organisations. We are committed to continuing to listen, learn and support First Nations peoples in the journey to a more inclusive society.

Creating supportive employment settings

Creating supportive and inclusive secure workplace to protect temporary migrant workers is critical for the successful settlement in Australia. It also benefits employers and the economy by utilising a diverse and talented workforce, leading to better productivity and innovation.

In a 2018 survey of migrant workers, a quarter reported reluctance to pursue action for breacher of workplace law due to a fear of visa cancellation.¹ A 2022 survey of migrant workers reported that 58 per cent experienced wage theft and that in 74 per cent of the reported cases, wages were not recovered.² Such exploitation not only adversely affects migrant workers but also contributes to a decline in overall wages and deteriorates working conditions for all workers.³ To address this requires strong protection laws for workers and strengthening employer compliance.⁴

Promising Bill but needs guarantee against visa cancellation, enhanced compliance measures and greater support for migrant workers

FECCA supports the intention of the *Migration Act 1958 Amendment (Strengthening Employer Compliance) Bill 2023* is to protect temporary migrant workers against exploitation by implementing recommendation 19 and 20 of the *Report of the Migrant Workers' Taskforce 2019*⁵ and align with the sectors calls for strengthening employer compliance. By imposing greater obligation on employers and creating greater transparency of non-compliant employers, the Bill will support the rights and dignity of migrant workers and assist in recognising their significant contributions to sustaining vital sectors of the Australian economy. However, unless the amendments provide an explicit guarantee against visa cancellation of a migrant worker who reports exploitation, reporting will continue to remain low and exploitative workplaces will go unaddressed.

We support the establishment of new criminal offences and associated civil penalty provisions for a person who unduly influence, pressures or coerces a non-citizen to breach a work-related condition of their visa or accept an exploitative work arrangement. While the proposed penalties are intended to deter employer exploitative behaviour, we urge the Government to keep in mind that penalties alone will not generate compliance as evidence shows that despite increased penalties, cases of non-compliance continue to rise.⁶ To ensure the Bill achieves its objective to strengthen employer compliance, further consideration of measures beyond raising penalties is needed, including greater certainty of detection and enforcement of exploitation⁸, and greater support for migrants workers who report exploitation.

Recommendations

Recommendation 1: Provide guarantee against visa cancellation

FECCA commends the repeal of section 235 of the Migration Act 1958 which makes it a criminal offence to breach a work-related visa condition.⁹ This will assist in encouraging migrant workers to report exploitation. However, we know that migrant workers are reluctant to come forward to report and assist with investigations of exploitation without having a guarantee their visa won't be cancelled.¹⁰

¹ Migrant Justice Institute, [Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia](#) .

² [Insecure by design - Migrant Workers Centre](#)

³ [Albanese Government to tackle worker exploitation](#)

⁴ [Policy Platform 2022](#)

⁵ [Report of the Migrant Workers' Taskforce March 2019](#)

⁶ [Ombudsman recovers record back pay of half a billion dollars](#)

⁷ [Legal action urges as Ombudsman pursues underpayment of wages](#)

⁸ [Hardy, Tess, Digging Into Deterrence: An Examination of Deterrence-Based Theories and Evidence in Employment Standards Enforcement \(May 25, 2021\). International Journal of Comparative Labour Law and Industrial Relations, 2021, Available at SSRN: <https://ssrn.com/abstract=3852481>](#)

⁹ [Explanatory Memorandum](#)

The amendment to the Bill seeks to allay visa cancellation fears and encourage migrant workers to report exploitation. We are concerned the amendments to the Bill in its current form may fail to achieve this objective as the proposed amendment to subsection 116(1A) does not provide an explicit guarantee against visa cancellation and instead provides for Regulations that that specify matters that a delegate 'must', 'may' or 'must not' take into account without specifying that the discretion must be excised one way or another.¹¹ This essentially would continue to allow discretionary cancellation of a visa of an exploited worker.

Recommendation 2: Violation tracker mechanism

We support the introduction of a mechanism to publish names and relevant details of prohibited employers as the lack of a centralised mechanism for disclosure of non-compliant employers may have perpetuated the exploitation of temporary migrant workers¹², with employees lacking the information needed to verify a prospective employer. Access to comprehensive and relevant information on prospective employers will enhance transparency, accountability, and ultimately the protection of temporary migrant workers.

The mechanism could be modelled after the violation tracker used in the UK, Canada and the USA which is reporting tool that exposes employer misconduct.¹³¹⁴¹⁵ The tracker covers multiple violation areas including banking, consumer protection, false claims, environmental, wages and hours, safety, discrimination, price-fixing, and other cases resolved by Federal regulatory agencies and justice departments. Disclosing non-compliance for public scrutiny can deter employer misconduct and reduce worker exploitation. We note consideration may be needed for preventing prohibited employers from setting up new businesses and re-offending.

Recommendation 3: Funding for legal proceedings

The implementation of the Bill which aims to increase reporting of exploitation, will potentially lead to increased legal proceedings and consequent increase in demand for legal services. This will likely put additional pressure on volunteer legal services, with legal proceedings beyond the reach of many migrant workers due to their expense and time consuming processes and lengthy duration.¹⁶ To ensure this does not act as a deterrent to reporting exploitation, measures to support migrant workers to report and pursue legal action should be explored including more funding for Legal Centres and the establishment of an Industrial Court co-located with the Fair Work Commission to expedite redress on wage and superannuation theft claims.¹⁷

Recommendation: Adequately resource the Fair Works Ombudsman

As per recommendation 3, the implementation of the measures in the Bill aimed at increasing reporting of exploitation will necessitate an increase in capacity, proper resourcing, and tools for the Fair Work Ombudsman to effectively carry out their functions. Currently, it is reported that the Fair Work Ombudsman is resource constrained and attends to few cases.¹⁸ To ensure fair, fast, and efficient implementation of the measures, the Fair Work Ombudsman will need sufficient resourcing to undertake their role in supporting the implementation of the proposed measures in the Bill.

Recommendation 5: Conduct education campaign on migrant workers' rights

While Australia's employment legislation contains many protections for workers, workplace rights and responsibilities can be complex for some employers and temporary migrant workers to fully

¹¹ Ibid 9

¹² [Short-changed, how to stop the exploitation of migrant workers in Australia](#)

¹³ [USA: Violation Tracker database](#)

¹⁴ [Violation Tracker UK \(goodjobsfirst.org\)](#)

¹⁵ [Violation Tracker Canada](#)

¹⁶ Grattan Institute, [Short-changed](#)

¹⁷ [Australian Council of Trade Unions](#)

¹⁸ Migrant Justice Institute, [Breaking the silence](#)

comprehend. For some employers and workers, language barriers, limited time, and limited knowledge of where and how to access information could hinder effective implementation of the Bill. It is worth noting for example, that over one third of small businesses in Australia are owned by migrants, this equates to 620,000 migrant-owned businesses across the country.¹⁹²⁰

We urge the Government to ensure employers and workers have access to information about their rights and obligations including those in the Bill. This should be available in a variety of formats and in their preferred language and be disseminated from a trusted source. Communicating important information is proven to be most effective when it occurs through known and trusted networks such as multicultural community organisations and community leaders.

¹⁹ [FECCA-Employment-White-Paper-Submission](#)

²⁰ [Business Council of Australia](#)