

FECCA responds to Productivity Commission report on Workplace Relations

The Productivity Commission released its final report on Australia's Workplace Relations System today. FECCA made two submissions and appeared before a public hearing of the inquiry.

Chapter 29 of the report examines the ways in which migrant workers interact with the national workplace relations system. The Commission's report acknowledges that temporary workers are more vulnerable to exploitation.

The Commission makes the following recommendations:

- The Department of Immigration and Border Protection and the Fair Work Ombudsman should improve the information available on their websites about migrant workers' workplace rights and conditions. They should also explore other ways of providing migrants with this information, ensuring that it is in easily accessible languages and formats.
- The Australian Government should give the Fair Work Ombudsman additional resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers.
- Penalties for breaching Reg. 3.44 of the Fair Work Regulations 2009 (Cth) by keeping false or misleading documents are required under the Regulations and the Fair Work Act 2009 (Cth) should be increased to be aligned with similar penalties under s. 234 of the Migration Act 1958 (Cth).
- The Australian Government should amend the Fair Work Act 2009 (Cth) to clarify that, in instances where migrants have breached the Migration Act 1958 (Cth), their employment contract is valid and the Fair Work Act 2009 (Cth) applies.
- Subject to arrangements that ensure that this is lawful, the Fair Work Ombudsman should not share any identifying information with the Department of Immigration and Border Protection about a migrant who has only breached their employment-related visa conditions. The Department of Immigration and Border Protection should share any information with the Fair Work Ombudsman about a migrant and their employer, when they suspect an employer has underpaid a migrant.

FECCA is pleased to see that the Commission has placed emphasis on providing information to migrant workers about their workplace rights and entitlements in a variety of formats. The report acknowledges the important role that community groups and outreach programs have in informing migrant workers of their rights and providing them with support. The Commission agrees with FECCA and the Salvation Army's joint recommendation that earlier involvement of community organisations with working migrants could empower them to recognise and report exploitative relationships.

We are encouraged to see that Commission has recommended amending the Fair Work Act to clarify the position of unlawful migrant workers. FECCA's submission recommended that legislative measures be taken to address the gap at the intersection of the Fair Work Act and the Migration Act which creates uncertainty about the applicability of the Fair Work Act to migrant workers who may be unknowingly or unwillingly in breach of their visa conditions.

We believe that further work needs to be done to allow migrant workers who have been trafficked or subject to exploitation to remain in Australia to pursue civil remedies from their employer and/or participate in Fair Work processes.

Additionally, the impact of continuing and possibly expanding Fair Work inspectors' immigration compliance responsibilities for adverse impacts on inspectors' ability to establish trust with workers should be evaluated. FECCA hopes that the Commission's recommendations about the role of the Fair Work Ombudsman are carefully considered by the Government.

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