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Select Committee on Job Security
Department of the Senate
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FECCA Submission into Job Security

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing people from culturally and linguistically diverse communities and their organisations in Australia. 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 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, Mohammad Al-Khafaji on (02) 6282 5755.

Recommendations

1. Increase research and data collection on workers from culturally and linguistically diverse backgrounds in insecure jobs. Data must be disaggregated by country of birth, cultural background, language, gender and people with disability.
2. Ensure that workforce reform addresses existing barriers that discriminate against workers from culturally and linguistically diverse backgrounds, and does not create additional barriers.
3. Conduct research into the specific challenges which contribute to keeping employees from culturally and linguistically diverse backgrounds in insecure employment as well as into effective pathways for individuals to find sustainable, safe, and secure employment.
4. Ensure efforts to improve access to recognition of overseas qualifications for migrants, which will enable individuals to work in their area of expertise.
5. Develop and pilot a language allowance model to recognise and remunerate bilingual aged care workers and consider rolling this out to other sectors to support the delivery of culturally responsive care.
6. Enact a whole of government mechanism to overhaul the Australian migration program resulting in a fair, timely and transparent pathway to citizenship. This must include restoring the alignment between temporary and permanent migration.
7. Increase protections for temporary visa holders and consequences for employers who breach workplace laws.
8. Ensure the proposed Aged Care Workforce Planning Division addresses the challenges and vulnerabilities faced by workers on temporary visas in collaboration with the Department of Home Affairs.
9. Ensure Government workers and institution have an adequate level of cultural competency by increasing the Average Staffing Level Cap to reduce staff turnover and knowledge loss.
10. Ensure that people most affected economically by COVID, such as people on temporary visas, are prioritised during economic and social recovery plans.
11. Implement the recommendations from FECCA's 2017 [Access and Equity Report](#) on feedback and complaints mechanisms to ensure culturally and linguistically diverse people in Australia have equal access to, and receive equal outcomes from, Commonwealth Government service feedback and complaints mechanisms.
12. Enact a national comprehensive worker rights education plan that is designed and delivered in partnership with multicultural and ethno-specific organisations, to ensure migrants from multicultural backgrounds are given information on workers rights, complaints mechanisms and are empowered to pursue their rights.
13. Australia to consider signing on to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.
14. Provide increased resources for the Fair Work Ombudsman to investigate and, where appropriate, prosecute companies engaged in illegal practices and exploitation using its existing and enhanced powers under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

The extent and nature of insecure or precarious employment in Australia

FECCA believes that employment is an effective way of empowering individuals. Employment assists in creating dignity, self-confidence and stability. It also benefits the physical and mental health and well-being of individuals and families. These positive consequences are integral for participation and social inclusions of people from culturally and linguistically diverse backgrounds beyond the immediate settlement period and throughout the life course.¹

Extent

Secure employment creates stability, networks and safety for people to be able to plan for a future and engage in their community. Meaningful, legally remunerated and sustainable employment is one of the most effective ways of ensuring migrants and people from refugee background are empowered and included in the community.

Alternatively, insecure work can have a negative impact on people's quality of working life and according to the Australian Council of Trade Unions (ACTU), is often accompanied by 'low pay, less access to opportunities for training and skill development, lack of career path or promotional opportunities, a lack of voice in the workplace and a higher risk of occupational illness and injury'². Further, the ACTU notes how 'People in insecure work are less likely to be aware of and to enforce their rights and entitlements. Insecure work is often experienced by those in our workforce with the least bargaining power. This includes those with lower skills, young workers, women, indigenous workers, migrant workers and workers with disabilities'³.

Data shows that in August 2020, there were 2.3 million casual employees in Australia (defined by ABS as those without access to paid leave).⁴ Further, casual workers accounted for around two-thirds of people who lost a job early in the COVID-19 period.⁵

Limited data and research on multicultural people in insecure employment makes it difficult to provide a clear overview of the problem, although it is likely that multicultural people are overrepresented in insecure employment. This gap in data is due to limited disaggregation of statistics, such as country of birth and linguistic background, that are crucial to identifying and understanding intersectional social determinants contributing to participation in insecure working arrangements. Including these factors in data collection is also integral to fostering a deeper understanding of the unique challenges migrants and people from refugee background face in participating in more sustainable and better quality employment.

Recommendation 1: Increase research and data on insecure workers from culturally and linguistically diverse backgrounds. This needs to be disaggregated by country of birth, cultural background, language, gender and people with disability.

¹ FECCA 2011, *Settlement is a Life-Long Process*, Submission to the Department of Immigration and Citizenship on Achieving social inclusion and participation for new and emerging communities beyond the immediate settlement period, FECCA, Canberra p. 13

² <https://www.actu.org.au/media/1449502/actu-sub.pdf>

³ <https://www.actu.org.au/media/1449502/actu-sub.pdf>

⁴ <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/latest-release>

⁵ <https://www.abs.gov.au/media-centre/media-releases/casuals-hardest-hit-job-losses-2020>

Nature

Since 1996, changes to immigration policy, including the nature and use of temporary visas and the increasing delay in achieving permanency, have led to a program that increasingly resembles a guest work regime characterised by restricted rights and a suppressed ability to achieve decent working conditions.⁶

Precarious working conditions for migrant aged care workers

The aged care sector's dependence on migrant workers to form its workforce, has seen a shift towards the employment of a mix of temporary migrants on partner visas, international students and working holiday makers to meet labour supply challenges.⁷ This is a change from previous patterns of migrant labour in the sector, which was previously primarily reliant upon more recently arrived permanent migrants.

Data from the 2016 Census indicates a significant increase in the proportion of overseas-born workers employed as aged and disability carers (ABS Occupational Definition 4231) from 33% in 2011 to 37% in 2016, and as personal care assistants (ABS Occupational Definition 423313) from 43.7% to 50.2%. In the same period, the share of overseas-born workers in Australia's total workforce increased only slightly, from 28% to 30.6%.⁸

At the same time, the workforce has become increasingly casualised. As Australia's aged care system shifts towards a casualisation of the workforce, migrant workers who are already more exposed to economic security, are more vulnerable to significant pay and job insecurity.⁹

Within Australia's CALD communities, certain jobseekers and workers are particularly at risk of insecure employment. These include:

Refugees and humanitarian entrants

Refugees and humanitarian entrants, particularly during the initial years of settlement, are highly vulnerable to insecure employment conditions. This is often a result of extended periods spent in refugee camps where education is often interrupted. This factor may also be perpetuated by financial and housing insecurity, as well as limited recognition of skills and qualifications gained overseas. Low levels of English language and literacy also contribute to exclusion from sustainable employment options, as do recruitment and workplace discrimination and racism.

⁶ <https://journals.sagepub.com/doi/abs/10.1177/1035304619897670?journalCode=elra>

⁷ [Migration Pathways for Frontline Care Workers in Australia and New Zealand: Front Doors, Side Doors, Back Doors and Trapdoors, accessed 6th October 2021](#)

⁸ Markets, migration & the work of care in Australia

⁹ [Charlesworth, S., & Isherwood, L. \(2020\). Migrant aged-care workers in Australia: Do they have poorer-quality jobs than their locally born counterparts? Ageing and Society, 1-21.](#)

Women	Women are more likely to be low paid employees earning below, at, or just above the minimum wage. Multicultural women are overrepresented in insecure employment fields, which include industries such as manufacturing, accommodation, food services, cleaning and in aged care. They are more likely to be employed on a casual basis and to be at a disadvantage negotiating terms of employment.
Older multicultural people	Older migrants may be more vulnerable to insecure work environments. In some cases, this is a result of long-term employment in insecure conditions, which can create career stagnation and limits upskilling opportunities. This susceptibility can also be a consequence of cultural attitudes towards ageing and new skill acquisition which discourage older migrants from actively pursuing upskilling opportunities. These have knock-on effects once older migrants decide to no longer participate in the paid workforce.
Youth	Concern over young multicultural jobseekers being channeled into insecure employment by employment services is frequently expressed by multicultural community members in FECCA’s Access and Equity consultations and reports. ¹⁰ This was a particular issue for new and emerging community members, who felt that this process is isolating for youth and could limit their future professional development opportunities. One solution to this challenge could be to ensure improved cultural competency of job service providers who understand the complexities of seeking employment as a young person from a culturally and/or linguistically diverse background, and who are therefore better equipped to assist CALD unemployed youth to successfully negotiate the employment sector.

Recommendation 2: Ensure workforce reform does not impose additional barriers that would discriminate against workers culturally and linguistically diverse backgrounds.

The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis
Discrimination in the workplace

Research suggests that migrants and refugees represent some of the most educated, driven and entrepreneurial members of our society¹¹, and are eager to contribute to Australia through meaningful employment. However, many people in Australia from culturally and linguistically diverse backgrounds, in particular those recently arrived as migrants from new and emerging communities or as refugees,

¹⁰ <https://fecca.org.au/publications/multicultural-access-and-equity-reports/>

¹¹ CGU, Migrant Small Business Report (2018), https://www.cgu.com.au/migrantsmallbusiness/assets/CGU_Migrant_Small_Business_Report.pdf.

face a number of barriers to obtaining employment. FECCA's own research has highlighted some key challenges including:

- difficulties obtaining recognition of skills, qualifications and experience earned overseas
- English language proficiency, including employer discrimination with regards to accent
- experiences of discrimination, prejudice or racism
- lack of networks for seeking and securing employment
- limited familiarity with the Australian workforce, employment systems and culture
- pre-migration experience, including experiences of torture and trauma.

The 2016 census data support the presence of these challenges noting how around one third (31 per cent) of recent migrants who have had a job in Australia reported experiencing some difficulty finding their first job. The most common difficulties were:

- a lack of Australian work experience or references (65 per cent).
- a lack of local contacts or networks (31 per cent).
- language difficulties (25 per cent).¹²

Experiencing these barriers, often in combination, means that many people from culturally and/or linguistically diverse backgrounds find themselves in lower-skilled and low-paid jobs. For example, the inability to have one's overseas qualifications recognised or to find acceptance in the Australian job market means that many migrants take jobs below their skill level – a phenomenon termed 'occupational skidding' by the renowned demographer the late Professor Graeme Hugo of the University of Adelaide.¹³ The concern that young multicultural job seekers are channelled into insecure employment by employment services – notwithstanding the job seeker's skill level and experience – is frequently expressed by multicultural community members in FECCA's Access and Equity consultations.¹⁴ This was a particular issue for new and emerging community members, who felt that this process is isolating for youth and could limit their future professional development opportunities.

Recommendation 3: Conduct research into the specific challenges and barriers which contribute to keeping employees from culturally and linguistically diverse backgrounds in insecure employment as well as into effective or good practice pathways for individuals to find sustainable, safe and secure employment.

Recommendation 4: Ensure efforts to improve access to recognition of overseas qualifications for migrants, which will enable individuals to work in their area of expertise.

Impact of insecure work

For people, from refugee background, women, older multicultural people and youth, insecure work has a significant effect on:

- financial security due to low wages, fluctuating working hours and limited paid leave entitlements. Keeping up with costs of day-to-day living and affording basic necessities such as housing, groceries and transport can be difficult to manage without a reliable income.

¹² See <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>

¹³ Hugo, Graeme, Economic, Social and Civic Contributions of First and Second generation Humanitarian Entrants, First Report to the Department of Immigration and Citizenship, May 2011.

¹⁴ <https://fecca.org.au/wp-content/uploads/2021/02/FECCA-Access-and-Equity-Report-2020.pdf>

- occupational health and safety of workers and workplaces due to limited knowledge and access to information because of workload intensification, bullying by employers, and threats to employment security.
- wellbeing and health of workers outside the workplace, including impact on family and other relationships due to demanding work hours, stress, physical injury and financial insecurity. This inhibits the capacity for employees to engage, contribute and build family and community relationships both within and outside their workspaces.
- training and skills development leading to career stagnation, skills reduction and inability to enter more sustainable work opportunities.
- career progression and opportunities due to many workers in insecure jobs considered expendable with little recognition of skills needed and acquired in such employment.
- social inclusion due to isolation, racism, bullying, instability and low pay disrupting feelings of belonging, trust and security.

Seasonal Work

Australia relies heavily on the labour of seasonal migrant workers to complete agriculture tasks throughout the year. This reliance was exemplified during the international border restrictions of the COVID-19 pandemic.¹⁵

Both those participating in the seasonal worker program and holding working holiday visas have told FECCA of unethical treatment. For example, FECCA heard: ‘Major problems with seasonal workers who can only work on orchids and pay high tax rates. Australia needs them and won’t give them anything in return so people take their money and they leave. The treatment is often unethical. The opportunity to have education or learn a skill would be more beneficial’.

Aged Care Sector

There has been an increasing reliance upon migrant workers from the aged care sector largely due to the decline of permanent residents or Australian citizens participating in the care workforce. It has even been suggested that, without the temporary migrant workforce, the current aged care system would collapse. This dynamic has gone largely unrecognised by recent reforms in aged care, including the Royal Commission into Aged Care Quality and Safety.¹⁶

FECCA’s work in the aged care sector demonstrates how poor sector working conditions and visa conditions compound to enable vulnerability to exploitation and poorer care outcomes for older people.

As recognised the by the Royal Commission into Aged Care Quality and Safety, the aged care workforce does not receive wages and enjoy terms and conditions of employment that adequately

¹⁵ <https://www.theguardian.com/australia-news/2021/nov/07/australian-farmers-await-overseas-workforce-as-locals-are-too-spoilt-for-choice>

¹⁶ Royal Commission into Aged Care Quality and Safety Final Report - Care, Dignity and Respect: Volume 2

reflect the important caring role they play. The sector does not offer competitive pay and employment conditions which disincentivise workers in the sector and aggravate staffing shortages.

Recommendation 5: Develop and pilot a language allowance model to recognise and remunerate bilingual aged care workers and apply successful model to other sectors to support the delivery of culturally responsive care.

Impact of Temporary visas

Over time the balance between permanent and temporary migrants has changed. The number of temporary entrants in Australia increased from 1.605 million in December 2011 to 2.433 million in December 2019 (increase of over 0.8 million)¹⁷. The combination of the permanent residency cap and uncapped temporary migration, along with complicated policy and processes, has led to the pathway to permanency becoming increasingly convoluted and constrained.

Temporary migrants do not have access to the full rights and protections afforded to permanent residents and Australian citizens, including social protections such as Medicare and income support. Temporary migrants have less flexibility and options to afford costs of living, including health care. This in turn creates an enabling environment for poor working conditions such as temporary or limited and variable hours of work, poor understanding of entitlements under relevant awards, limited pathways to permanent residency and inadequate training and support.

Disproportionate power dynamic

The disproportionate power dynamic experienced between employers and temporary migrants as employees increases vulnerability to exploitation, wage theft and sexual harassment in the workplace. Often a person's visa type and conditions exacerbate their reliance on their employer with many newly arrived migrants requiring their employers sign-off to allow them to remain in Australia. In Respect@Work: Sexual Harassment National Inquiry Report (2020), migrant workers were identified as at increased risk of workplace exploitation due to their reduced power in the labour market, difficulties in securing alternative employment, social isolation, and power imbalances that arise from their immigration status and visa conditions¹⁸.

Another factor contributing to this imbalance of power between a temporary migrant employee and their employer, is where that employee has struggled to find employment often due to discrimination. The 2016 census data shows 31 per cent of recent migrants who have had a job in Australia reported experiencing some difficulty finding their first job.¹⁹ This time searching for their first job, without any income, often leaves migrant workers in a fragile financial situation that they do not want to risk repeating.

¹⁷ <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/temporary-entrants-in-australia>

¹⁸ <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

¹⁹ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>

Wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking are not innate risks to any particular group. It is structural barriers, restrictions and deprivation of power which impact the lives of temporary migrants and institutionalise inequality.

Changes to legislation like increasing the wait time for newly arrived residents to qualify for social security and increasing the wait times for eligibility for permanent residency and Australian Citizenship has only aggravated this problem. This imbalance of power diminishes the ability for workers to report illegal practices including exploitation, wage theft and harassment due to fear of losing their job, income, safety at work and ultimately their right to live in Australia.

Recommendation 6: A whole of government mechanism to overhaul the Australian migration program resulting in a fair, timely and transparent pathway to citizenship. This must include restoring the alignment between temporary and permanent migration.

Recommendation 7: Increase protections for temporary visa holders and consequences for employers who breach workplace laws.

Recommendation 8: Ensure the proposed Aged Care Workforce Planning Division addresses the challenges and vulnerabilities faced by workers on temporary visas in collaboration with the Department of Home Affairs.

Depletion of Organisational Knowledge and Customer Access and Equity

To increase access and equity for people from multicultural backgrounds to services such as Centrelink, Medicare, Child Support and aged care, it is essential that the organisation and all staff are adequately trained in cultural competency. Cultural competency training gives practical strategies for reducing misunderstandings caused by culture or language, both with clients and internally. It sets a clear organisational agenda for cross-cultural practices and creates an opportunity to make these practices routine. The safety of the customer/client is at risk without all staff receiving cultural competence training regarding programs provided by Services Australia and in aged care. There are notable challenges in providing adequate training to a workforce that has been increasingly casualised and as a result the turnover of staff is high. A workplace may be providing staff with the best training every six months, but if staff only remain in the position for four - five months, they may not receive the training they need to provide services safely. With broad use of casual staff on short term contracts, organisational knowledge is being depleted so organisations as a whole become less culturally competent.

Poorer health outcomes for older people

Precarious working conditions and social insecurity experienced by migrant aged care workers can have direct impacts health outcomes for older people receiving care. Poor employment conditions, insufficient training and staffing shortages affect the quality of care that is provided to older people and can result in neglect.²⁰²¹ Strategies to protect older people from potential neglect and abuse must consider necessary improvements to working conditions for the aged care workforce.

²⁰ [Australian Law Reform Commission. \(2017\). Elder abuse-A national legal response \(No. ALRC Report 131\). Australian Law Reform Commission.](#)

²¹ <https://www.abc.net.au/news/2013-08-13/aged-care-understaffed-as-nursing-home-patient-numbers-rise/4884056>

Several inquiries over the last decade have identified workforce demand, supply and retention as critical issues, with recommended strategies to address wages and working conditions.²² Until migrant workers enjoy employment conditions and job security that adequately reflect the important caring role they play, adequate care cannot be ensured for Australia's older population.

Services Australia

According to Services Australia Annual Report 2019-2020²³, the agency's permanent workforce has reduced from 33,868 in 2013 to only 27,141 in 2020. This reduction in permanent workforce has been replaced by casual staff, privatised labour hire, contractors, consultants and services provider workers throughout Services Australia's program areas. In September 2020, Services Australia engaged 12,184 outsourced non-APS workers²⁴.

FECCA's concern with the decrease in long term permanent workforce with Services Australia is the difficulty for the Agency to maintain a consistent level of training. Whilst the cultural competency training program at Services Australia is robust, the increase in short term workers decreases the likelihood there will be enough time during their employment to access this training on top of the rest of the training they will need to receive to do their job. At Services Australia, phone operators receive training on domestic and family violence and how to listen out for small and nuanced indicators when speaking to a customer/client and how to offer help to someone in distress. Understanding that this is part of the role of a phone operator it is particularly concerning that this person may now have received the DFV training or the cultural competency training prior to receiving such a call and may miss the opportunity to assist someone. Short term contracts mean less robust training for the individual, but where even half a team has been recently hired the capability and knowledge of the entire workforce has been diluted and diminished.

Services Australia Feedback

In FECCA's most recent Access and Equity report, people reported 'there is a mixed up of information, there is no one place to find information and officers usually have no consistent information, no cultural awareness, needs proper staff training' and 'clearer, more consistent and more effective communication.

Messages and information are still quite confusing'. People also reported 'If you are lucky to find someone takes the time to understand your questions and help you, face-to-face is always easier. But very often you just get a piece of paper with the address of a website to go find the answer'.

²² [Productivity Commission 2011, Caring for Older Australians: Overview, Report No. 53, Final Inquiry Report, Canberra; A Matter of Care Australia's Aged Care Workforce Strategy, \(2018\), Aged Care Workforce Strategy Taskforce.; Senate Community Affairs Reference Committee \(2017\) Future of Australia's Aged Care Sector Workforce. Commonwealth of Australia.](#)

²³ Services Australia Annual Report 2019-2020 <https://www.servicesaustralia.gov.au/sites/default/files/annual-report-2019-20.pdf>

²⁴ Senate Standing Committee on Community Affairs Legislation Committee, Answers to questions on notice from the Social Services portfolio, Question SQ20-000263, Budget Estimates 2020 - 2021 – 29 October 2020

FECCA strongly believes that access and equity to services should not only occur due to luck.

Recommendation 9: Ensure Government workers and institution have an adequate level of cultural competency by increasing the Average Staffing Level Cap to reduce staff turnover and knowledge loss.

Impacts from COVID-19

During the COVID-19 pandemic, the Government decisions around eligibility for JobKeeper resulted in destitution for many. Charities became overwhelmed by a huge amount of people who held temporary visas seeking help for basics such as food and shelter. For those who was already facing destitution, the health crisis meant it became even more difficult to bounce back. Many people reached out to FECCA expressing how they were 'feeling so rejected and lost my hope'.

In lieu of support, the Prime Minister advised temporary visa holders 'As much as it's lovely to have visitors to Australia in good times, at times like this, if you are a visitor in this country, it is time ... to make your way home'. At the time, FECCA took the opportunity to encourage further discussion about temporary visa holders to acknowledge their contributions and hopes for their lives in Australia. FECCA warned against the danger of discussing this vast and broad category of visa holders as visitors noting how these discussions were misleading and encouraged a false public perception. Migrants' dedication to becoming Australians is not temporary, their actions towards permanency in Australia are not temporary, and their fiscal, cultural and social contributions are certainly permanent. For many, the temporary nature of their visa is a consequence of the complicated and everchanging pathway to permanency that those wanting to call Australia home must navigate. During the COVID-19 pandemic, FECCA heard: 'I had lost the job and no welfare are given to us being a visa holder whereas we had applied for permanent residency 887 Visa since July 2018 and still waiting due to government increasing the processing time.' (applied for Permanent Residency 21 months ago)

COVID-19 and aged care working conditions and job security

While temporary migrants have been critically relied upon during the pandemic to deliver essential services and serve as frontline workers, they were not adequately protected. They were not eligible for support through the JobKeeper and JobSeeker payments.²⁵ The isolation felt by temporary migrants and international students, contribute to several essential industries was worsened as businesses preferred to keep local workers over temporary migrants because they did not receive subsidies for the salary of workers on temporary visas.²⁶

Older people have been significantly affected by COVID-19, with increased risk of elder abuse, a disproportionate number of deaths in aged care settings and feelings of social isolation and loss of connection.²⁷

²⁵ https://treasury.gov.au/sites/default/files/2020-08/Fact_sheet-JobKeeper_Payment_0.pdf

²⁶ Berg, L., & Farbenblum, B. (2020). As if we weren't humans: The abandonment of temporary migrants in Australia during COVID-19.

²⁷ COVID-19 and older people full report.PDF (respectvictoria.vic.gov.au), p.56

In addition to the direct impacts on their wellbeing, older people in aged care have been put at risk by the insecure working conditions that have given rise to aged care staff working across multiple sites. These precarious working arrangements, particularly seen in Victorian aged care facilities,²⁸ not only dangerously put workers at risk but also those who are in their care.

Temporary migrants and international students continue to feel left behind by Australia in their time of need and that they have not been treated with compassion despite contributing considerably to essential industries at their own expense.

Social protections, safe working conditions and access to social security without discrimination must be afforded to temporary migrants who have served Australia on the frontlines during a global pandemic, including providing care to those in aged care.

Recommendation 10: Ensure those most affected by COVID are prioritised during recovery.

The effectiveness, application and enforcement of existing laws

People in insecure work from culturally and linguistically diverse backgrounds often do not have access to fair, equitable and transparent complaints mechanisms. It is clear from research and reports on casual employment the pervasive level of exploitation of workers that existing frameworks are failing to protect multicultural workers from harm including exploitation, wage theft, underpayment, wage stagnation and workplace injury.

To successfully interact with feedback and complaints mechanisms, a consumer must know that they can complain and be aware of the available complaints mechanisms. Many consumers from culturally and linguistically diverse backgrounds:

- are unaware of their right to complain about Government services in general
- are unaware of departmental or agency-specific complaints mechanisms available to receive a complaint
- do not have access to information (in English or other languages) on complaints mechanisms
- may come from a country which may not have a system whereby the private citizen was empowered to complain
- believe that there may be negative consequences as a result of making a complaint
- are unaware of the protections available to complainants when making a complaint
- are unaware of their rights to redress in complaints processes.

FECCA's 2017 Access and Equity report²⁹ on feedback and complaints mechanisms stated that to ensure culturally and linguistically diverse people in Australia have equal access to, and receive equal outcomes from, Commonwealth Government services, Government Departments and Agencies should:

1. provide capacity for multiple methods for feedback and complaints: voice (e.g. directly to the service provider), private actions (e.g. social media) and third-party methods (e.g. Ombudsman)

²⁸ Agency staff allowed to work across multiple aged care homes during Victoria Covid lockdown | Aged care | The Guardian

²⁹ <https://fecca.org.au/wp-content/uploads/2017/12/FECCA-Access-and-Equity-Report-Final.pdf>

2. provide capacity for multiple channels for feedback and complaints: including face-to-face, telephone and online
3. specifically design feedback and complaints channels to meet the needs of CALD consumers
4. ensure feedback and complaints mechanisms are consistent between departments and agencies
5. prioritise building trust with CALD communities to empower individuals to provide feedback and complaints
6. run a major promotional campaign highlighting the right of redress for consumers of Commonwealth services targeting CALD communities
7. actively promoting feedback and complaints mechanisms in all interactions with consumers from culturally and/or linguistically diverse backgrounds
8. develop materials for multicultural for distribution through appropriate channels, on how to give feedback and make complaints
9. evaluate the appropriateness of their feedback and complaints mechanisms using the FECCA checklist for CALD-friendly feedback mechanisms.

More information needs to be provided in simple English, languages other than English, through multiple channels and that is industry specific. Efforts should be made to make this information available to all visa holders with links to advocates and legal services as well as the Fair Work Ombudsman to help workers to pursue their rights if they believe they are being exploited. Adequate funding of ethno-specific organisations with knowledge in workers rights as well as resources for community legal services for employment-related caseload is essential.

Workers in insecure employment from culturally and linguistically diverse backgrounds must receive appropriate training on complaints mechanisms in a safe and trusted place. A major barrier to people from culturally and linguistically diverse backgrounds interacting with government feedback and complaints mechanisms is lack of trust and fear of negative repercussions. Some migrants, particularly those who are not citizens, report they are fearful of making a complaint in case it has an adverse impact on their immigration status. These results reflect FECCA's broader understanding of the concerns held by many Australians from culturally and linguistically diverse background regarding interactions with government and authority. To build trust, consumers must feel confident that their interactions will be confidential and protected. Consumers must also be reassured that there will be no negative consequences resulting from a complaint.

Fair work ombudsman

FECCA continues to call 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.

A range of Commonwealth and industry level frameworks and initiatives exist to protect migrant workers and Australians from culturally and linguistically diverse backgrounds 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.

Whilst efforts are made to inform temporary visa holders of their rights and protections, the balance of power between an employee and employer where that employee has struggled to find employment and/or relies on their employer for proof of work is one reason people from culturally and linguistically diverse backgrounds are disproportionately victims of exploitation and unsafe work environments. This reliance diminishes the ability for skilled visa holders to influence workplace standards or report illegal practices due to fear of consequences to their visa status. It has been reported that some workers have known they were being exploited and 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 conditions³⁰. 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 slavery³¹.

Some multicultural 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.

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.

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

³⁰ Ferguson, A, Danckert, S. 'Revealed: How 7 Eleven is Ripping Off its Workers' The Sydney Morning Herald 2015

³¹ 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]

- increasing penalties for breaches of record-keeping and pay slip obligations.³²

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

Recommendation 11: Implement the recommendations from FECCA's 2017 [Access and Equity Report](#) on feedback and complaints mechanisms to ensure culturally and linguistically diverse people in Australia have equal access to, and receive equal outcomes from, Commonwealth Government service feedback and complaints mechanisms.

Recommendation 12: Enact a national comprehensive worker rights education plan that is designed and delivered in partnership with multicultural and ethno-specific organisations, to ensure migrants from multicultural backgrounds are given information on workers rights, complaints mechanisms and are empowered to pursue their rights.

Recommendation 13: Australia to become a signatory to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

Recommendation 14: Provide increased 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*.

³² <https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/changes-to-help-protect-vulnerable-workers>