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Migration Amendment (Charging for a Migration Outcome) Bill 2015

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 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.

Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme

The independent review of the 457 programme recommended that it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework (recommendation 10.7). While the report notes that its examination of compliance revealed that some sponsors have been paid by visa applicants for a migration outcome, it does not go into detail on this issue.

Vulnerability of temporary visa holders

There were 1,008,930 temporary visa holders in Australia on 30 June 2015, including:

- 374,570 student visa holders
- 143,920 working holiday makers
- 188,000 temporary skilled (subclass 457) visa holders.¹

Temporary visa holders are among the most vulnerable in the workplace and tend to be concentrated in the sectors of the job market which create a potential for exploitation. Lack

¹ Department of Immigration and Border Protection, 'Temporary entrants and New Zealand citizens in Australia as at 30 June 2015', 1-2.

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.

The reliance of 457 visa holders on their employers for the continuance of their visa is a significant vulnerability and means that employers continue to have significant control over an employees' presence. The 2013 Migration Council of Australia report, *More than temporary: Australia's 457 visa program* showed that 48% of all 457 visa holders surveyed indicated the reason for applying was to live in Australia or become a permanent resident, and 71% intended to apply to become permanent residents after their visas expired. Referring to these findings in its submission to the Senate Committee inquiry on Australia's temporary work visa programs, the ACTU said:

This desire for permanent residency is perfectly understandable on the part of those visa holders, but it also makes them more susceptible to exploitation and reluctant to make any complaint that may put their employment at risk. It is a vicious circle where the fact that they are unlikely to report any exploitation that occurs makes them all the more likely to be exploited in the first place.²

Penalties for visa holders in the Bill

Under changes made by this Bill to the *Migration Act*, visa holders who have asked for, received, offered or provided a benefit for a sponsorship-related event will:

- be subject to the discretionary power of the Minister to cancel their temporary or permanent visa; and
- be subject to a civil penalty provision which carries a maximum penalty of 240 penalty units.

The Bill fails to take into account circumstances where visa holders pay for sponsorship of their visa because they were led to believe that this payment was legally required, or because of coercion. Many temporary visa holders lack knowledge about Australian workplace relations and migration law, making them vulnerable to this type of exploitation.

The Senate Committee on Education and Employment recently heard that franchise owners of 7-Eleven chain stores charged workers up to \$70,000 to help them secure a working visa.³ These workers were forced to work in contravention of their visa conditions and thus feared deportation if they reported their treatment to authorities.

Many visa holders fear losing their visa or being deported if they report misconduct and mistreatment to Fair Work Ombudsman and/or Department of Immigration and Border Protection. Visa holders will be less likely to come forward about payment for sponsorship arrangements if they fear the cancellation of their visa and/or being subject to substantial civil penalty provisions. These penalties give employers leverage over their employees; if temporary visa holders report their employer for unlawful conduct, it may result in their own visa cancellation.

² ACTU, Submission to Senate Education and Employment References Committee inquiry on the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, 65

³ ABC News, '7-Eleven workers paid franchisee owners up to \$70k for visa, inquiry told' <http://www.abc.net.au/news/2015-09-24/7-eleven-workers-paid-up-to-70k-for-visa-inquiry-told/6801194>

The Salvation Army has recommended that rather than focusing on compliance monitoring, the current nature of compliance activities need to be reviewed to consider whether they encourage workers to come forward with concerns.⁴

Conclusion

FECCA supports the implementation of the independent review of the 457 programme recommendation to make it unlawful for a sponsor to be paid by visa applicants for a migration outcome. However, we believe that the implementation of this recommendation should recognise the vulnerability of 457 visa holders and focus penalties on employers who engage in unconscionable behaviour.

FECCA believes that the Government should adopt measures that will encourage reporting of exploitation and mistreatment of unlawful migrant workers, including linking temporary workers with existing community-based supports including settlement services, allowing migrant workers who have been trafficked or subject to significant exploitation to remain in Australia to pursue civil remedies of compensation from their employer or participate in Fair Work processes, and considering an amnesty for mistreated workers who come forward about their employers.

Recommendation: FECCA recommends that the Bill be amended:

- **to focus the penalty and conviction framework primarily on sponsors**
- **to recognise the vulnerability of temporary visa holders, including that these visa holders may unwillingly or unknowingly be breaching the law**

⁴ Salvation Army, Submission to Senate Education and Employment References Committee inquiry on the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, 16.