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National Inquiry Team
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FECCA submission regarding the National Inquiry into Sexual Harassment in Australian Workplaces

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 linguistic 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 as required. For enquiries please contact FECCA Acting CEO Mohammad Al-Khafaji ■

Recommendations

- FECCA recommends an investigation into the impact of visa status and conditions on a worker's vulnerability to experiencing sexual harassment in the workplace including; the seasonal worker program, international students and those whose visa status relies on an agreement with their employer.
- FECCA is concerned that the economy-wide structural changes in the labour market with the trend towards casual employment will continue to increase the disproportionate balance of power between employer and employee.
- FECCA is concerned that the reduction of visa pathways to permanency increase the opportunity for immigration status to be used a tool of abuse.
- FECCA believes that the Australian Human Rights Commission and researchers must ensure data collection methodology adequately measures and represents the experiences of people from a CALD background including survey provision in plain English and in cultural appropriately translated formats to inform any future policies.

- It is FECCA's view that accessible (outside of work hours) consultations with communities and individuals from diverse backgrounds who have lived experience in sexual harassment in the workplace must be completed to understand this issue.
- FECCA recommends that complaints processes should not disadvantage those from non-English speaking backgrounds or with diverse cultural backgrounds ensuring the process is accessible through the use of plain English and in cultural appropriate formats.
- FECCA believes that adequate redress, through complaints mechanisms, must be available to people from CALD backgrounds who experience sexual harassment.
- FECCA recommends the adoption of measures to ensure that professionals working with complaints of sexual harassment from CALD backgrounds are equipped with the appropriate training.
- FECCA recommends the use of ethno-specific and community channels in improving the understanding of Australia's laws regarding sexual harassment in the workplace and the rights of the individual to people from CALD backgrounds in Australia.
- FECCA recommends that resources and funding be provided towards free, culturally appropriate community education on worker rights regarding sexual harassments for people on temporary and permanent visas.
- FECCA recommends that all people working in Australia have appropriate access to relevant information in their preferred language and where necessary are provided the support of accredited interpreters especially in specified 'high risk industries'.

Discussion

The Drivers of Workplace Sexual Harassment

Many factors contribute to increased vulnerability to and heightened risk of experiencing sexual harassment in the workplace. These factors include age, gender, sexual orientation, culturally and linguistically diverse (CALD) background, Aboriginal and/or Torres Strait Islander status or disability. Where these factors intersect the vulnerability also increases. For example, a woman with a disability or a young person who identifies as homosexual and is from a CALD. The factors mentioned also intersect with workplace characteristics that increase the vulnerability to sexual harassment, such as employment which is casual or insecure in nature as well as the type of industry a person is employed in.

Compounding factors contributing to the likelihood of a CALD Australian finding themselves vulnerable to sexual harassment include:

- limited knowledge of the Australian workplace and law including knowledge of their rights and entitlements
- lack of support networks and social isolation
- language barriers
- visa limitations
- lack of trust in the complaints system.

Casual/Insecure Work

The Australian Council of Trade Unions (ACTU) states 'around 40% of workers are engaged in insecure work arrangements such as casual work, fixed term work, contracting or labour hire.'¹ It is unclear from this data how many of these workers are from a CALD background

¹ https://www.australianunions.org.au/about_actu

however many people from a CALD background are employed in insecure work, which is often low paid, unsustainable, dangerous and isolating.

Insecure work has a significant effect on:

- occupational health and safety of workers and workplaces due to limited knowledge and limited access to information because of workload intensification, bullying on the part of employers, and threats to employment security
- social inclusion due to isolation, racism, bullying, instability and low pay that do not create feelings of belonging nor do they foster trust and feelings of security
- the ability to influence workplace standards, report illegal practices and harassment, or engage in dialogue due to fear
- financial security due to low wages, fluctuating working hours and limited paid leave entitlements.

These consequences of insecure work all contribute to the increased vulnerability of these workers and the resulting power dynamic between employer and employee. Additionally, the 2018 Sexual Harassment Survey (National Survey) reported that only (19%) of casual employees made a formal complaint about a harassment as compared to those who have permanent jobs (66%)² showing that employment type effects reporting behaviour.

Imbalance of Power

Adding to the increased vulnerability to sexual harassment in the workplace produced by insecure/casual work is the disproportionate power dynamic experienced between employers and newly arrived migrants as employees. Often a person's visa type and conditions will exacerbate their reliance on their employer with many newly arrived requiring their employers sign-off to allow them to remain in Australia. Changes to legislation having been passed or currently before parliament, 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 will only exacerbate this problem further.

Another reason for this disproportionate balance of power between a newly arrived migrant employee and their employer is where that employee has struggled to find employment. 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 job³. 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.

This disproportionate balance of power diminishes the ability for workers to report illegal practices and harassment due to fear of losing their job, income, safety at work and their right to live in Australia.

Industry

Women from CALD backgrounds are overrepresented in insecure employment fields, which include industries such as manufacturing, accommodation, food services, cleaning and labouring. The Human Rights Commission revealed, through their National Survey on sexual harassment in the workplace that sexual harassment was most likely to occur in the health and community services (14%), accommodation, café and restaurant (11%), retail (11%) and education (10%) industries. This indicates that women from CALD backgrounds often have an

² https://apiar.org.au/wp-content/uploads/2016/08/35_APJABSS_APCAR_BRR777_BUS-447-455.pdf

³ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>

increased vulnerability or are at heightened risk of experiencing sexual harassment in the workplace.

In a study titled *Sexual Harassment: The Characteristics of a Pervasive Workplace*⁴ there is consensus that attitudes and perceptions about the legitimacy of, and about what constitutes, violence against women varies according to class, ethnicity, age, gender, and disadvantage. Given that the definition sexual harassment is even more nuanced than acts of violence, these perceptions may make women from CALD backgrounds more vulnerable to sexual harassment and its impacts with a present variety of attitudes and perceptions.

Addressing Sexual Harassment in Australian Workplaces

Australia is increasingly diverse with a quarter of Australia's population born overseas, 43 percent of people having at least one overseas-born parent and more than one-fifth (21 per cent) of Australians spoke a language other than English at home (ABS 2016). Sexual harassment in Australian workplaces is pervasive and has dire consequences for those affected including, loss of income, fear, shame and diminishing mental wellbeing. To address this common occurrence in Australia, all people living and working in this country should be considered, including those from CALD backgrounds who are often not considered in policy considerations. To begin recommending solutions to this problem, more must be done to investigate its size and nature.

FECCA understands that the National Inquiry will review and report on the National Survey of the prevalence, nature and reporting of sexual harassment in Australian workplaces. The 2018 report claimed that people who speak mainly English at home (71%) were more likely to have been sexually harassed in their lifetime than those that mainly speak a language other than English at home (64%) but given the factors described above, FECCA would expect the incidence rate to be higher amongst this population.

To understand the problem of sexual harassment amongst workers from CALD backgrounds and conduct the assessment three years after the release of the National Inquiry Report, targeted research must be conducted into the incidence rate amongst this population. The National Survey conducted by the Australian Human Rights Commission is inadequate in addressing Australia's diverse population for a number of reasons – reasons which also limit people from CALD backgrounds in their reporting capacity of sexual harassment in the workplace.

These reasons include but are not limited to the:

- language of the National Survey being restricted to English
- use of technical and nuanced English in the National Survey
- lack of quota for people from CALD, migrant and/or refugee backgrounds
- use of Non-English Speaking Background (NESB) to measure people from CALD backgrounds.

Language

Each year the National Survey reports that 'It is important to note that the survey was delivered in English and it is therefore possible that comprehension of the survey questions or cultural differences may have impacted responses to this question.' Given that lack of English contributes to vulnerability to exploitation, capturing the experiences of these people is extremely important. With the current National Survey only being administered in spoken English many challenges may arise for people from CALD backgrounds in participating fully in

⁴ https://apiar.org.au/wp-content/uploads/2016/08/35_APJABSS_APCAR_BRR777_BUS-447-455.pdf

the National Survey. Whilst many newly arrived migrants, refugees and those from the wider CALD population do understand English, the concept and definition of sexual harassment is nuanced and is better explained in the persons preferred language.

The definition and concept of sexual harassment are difficult to completely understand, as noted by only 43% of respondents to the National Survey reporting having been sexually harassed on the basis of the legal definition compared to 71% reporting having experienced one or more of the 16 sexual harassment behaviours listed in the National Survey. In the Armed Forces, survey respondents were three times more likely to make a formal complaint if the behaviour involved sexual assault than for other forms of sexual harassment. This was attributed to sexual assault being a clear and direct physical attempt whilst sexual harassment is often ambiguous and difficult to articulate⁵. This reporting pattern would be exacerbated by a misunderstanding of the definition of sexual harassment due to the nuance of English language used to explain the concept. Results from the National Survey also found that when the 'legal' and 'behavioural' prevalence rates were compared, the degree of increase was substantially higher for those who mainly speak a language other than English at home. This shows that the understanding of the legal definition of Sexual Harassment was even lower for people from NESB than the general population indicating that a survey conducted with culturally responsive translation is required.

The use of plain English and culturally appropriate translated survey questions are required to adequately measure the issue amongst people from a CALD background where words like 'inappropriate', 'intrusive' and 'being watched' are unclear and the subjective nature of discomfort is difficult to articulate.

Quota for People from Culturally and Linguistically Diverse (CALD) Backgrounds

Within the National Survey methodology there are quotas in place for gender, age and location of the respondents however no quota has been assigned to people from CALD backgrounds. This is important as Australia is increasingly diverse with a quarter of Australia's population born overseas, 43 percent of people having at least one overseas-born parent and more than one-fifth (21 per cent) of Australians spoke a language other than English at home (ABS 2016).

Non-English Speaking Background (NESB)

According to the Australian Bureau of Statistics, NESB is no longer considered to be an appropriate measure of culturally related disadvantage for a variety of reasons; the term has many conflicting definitions, it groups people who are relatively disadvantaged with those who are not disadvantaged, it is unable to separately identify the many cultural and linguistic groups in Australian society, it has developed negative connotations and is an oversimplification of people from a CALD background. FECCA would like to refer the Australian Human Rights Commission to the Minimum Core Set of Cultural and Language Indicators as a more effective and consistent measure of cultural and language diversity⁶.

Raising Awareness

Results from the National Survey found that when the 'legal' and 'behavioural' prevalence rates were compared, the degree of increase was also substantially higher for those who mainly speak a language other than English at home. This indicates that people from a NESB need more information on what behaviours constitute sexual harassment in Australia, their legal rights and what process they can follow to make a complaint. More investigation into the

⁵ Rutherford, S., Schneider, R. & Walmsley, A., 2006. Agreement on Preventing and Dealing Effectively with Sexual Harassment: Quantitative and Qualitative Research into Sexual Asia Pacific Institute of Advanced Research (APIAR)

⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1289.0>

prevalence rates between 'legal' and 'behavioural' definitions must be conducted for the broader CALD population. The current legal definition of sexual harassment is inadequate in conveying the often ambiguous and difficult to articulate behaviours which constitute sexual harassment or to dispel the doubt and self-blame often felt by those experiencing sexual harassment. The use of ethno-specific and community channels to improve the understanding of Australia's laws regarding sexual harassment in the workplace and the rights of the individual would reach most people from CALD backgrounds in Australia. Access to this information in an individual's preferred language is essential. Complaints processes must be transparent both in process and in outcomes to encourage those people affected by sexual harassment to pursue their complaints as well as adequately reflect the diversity of Australian workplaces.