March 14, 2008

Dear Ms Taylor,

The Federation of Ethnic Communities’ Councils of Australia (FECCA) welcomes the opportunity to provide comment regarding the 2008 Minimum Wage Review.

FECCA is the national peak body representing Australians from diverse cultural and linguistic backgrounds. Our role is to advocate and promote issues on behalf of our constituency to government, business and the broader community. Our goal is to enrich and enhance Australian society through the fullest participation of all members of our community.

FECCA has drawn on its consultations with CALD community members and service providers across Australia in addition to receiving input from its members for the submission. In particular, FECCA gratefully acknowledges input for this submission from Ms Carol Andrades, Consultant to Ryan, Carlisle Thomas Lawyers.

In relation to CALD workers, FECCA reiterates its position outlined in its previous 2006 and 2007 wage review submissions to the AFPC that it is important to ensure that pay rates in real terms are maintained for employees from CALD and other vulnerable workers.

Please find our submission attached. We welcome the opportunity to discuss or clarify any of the issues raised in this submission. Please do not hesitate to contact me on 0414 532 529 or the FECCA Director, Leonie-Ruth Acland, on (02)6282 5755 should you wish to do so.

Yours Sincerely

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SUBMISSION OF THE FEDERATION OF ETHNIC COMMUNITIES’ COUNCIL OF AUSTRALIA (FECCA) TO THE 2008 MINIMUM WAGE REVIEW

Executive Summary

1. FECCA reiterates the position articulated in its submissions to the 2006 and 2007 review, namely, that it is important to ensure that pay rates in real terms are maintained for employees from CALD and other vulnerable workers.

2. FECCA notes with concern the continuing emphasis in the AFPC’s “Guide to Making a Submission” to the 2008 Minimum Wage Review, on ‘promoting the economic prosperity of the people of Australia”, with no balancing reference to s 222 or the wider obligations on the AFPC. In FECCA’s view, this tends to distort the function of the AFPC and, at worst, suggests that the AFPC has not understood its obligations under the legislation.

3. In its submission to the 2006 and 2007 reviews, FECCA noted that the AFPC has a duty under the Act to safeguard the interests of the vulnerable. FECCA reiterates its request that, as a concomitant of this duty and in particular because of s 222 of the Act (anti-discrimination considerations) the AFPC, in its next decision, state unequivocally that the prevention and elimination of both direct and indirect discrimination are comprehended in its obligations.

Underpinning Principles

4. In setting wages for the Australian workforce, the Fair Pay Commission should be guided by the human rights conventions to which Australia is a signatory, namely the Universal Declaration of Human Rights (UNDHR 1948). In which article 23 (2)(3) states that:

   (2) Everyone, without any discrimination, has the right to equal pay for equal work.

   (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

5. It is important also that the AFPC decisions be non-discriminatory and fair in accordance to section 222 of the Act, and to ensure that all areas with the potential to bring about bias are addressed. FECCA reiterates
its concerns outlined in the 2006 and 2007 reviews, that the AFPC has a duty under the Act to safeguard the interests of the vulnerable and its request the AFPC, in its next decision, state unequivocally that the prevention and elimination of both direct and indirect discrimination are comprehended in its obligations.

**Low Paid and Vulnerable Workers**

6. As a result of the legislative framework in which it operates, the Australian Fair Pay Commission has among its responsibilities, in effect, the role of protecting the real value of wages of vulnerable workers in Australian society.

7. People from CALD communities are among the most vulnerable in the workplace. They tend to be concentrated in the sectors of the job market which create a potential for exploitation. The cost of this to individuals, families and the community is high.

8. In a joint submission responding to the Australian Fair Pay Commission in 2005, the Victorian and Northern Territory Governments noted that “…certain groups were over represented in the ranks of the low paid. They include workers from non-English speaking back grounds. Others over represented in the ranks of the low paid include women, young and older workers, workers with lower qualifications, and non-unionized workers…”.

9. This was also highlighted in the HREOC submission to the inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, when they stated that:

   “Evidence clearly demonstrates a number of groups of workers are over represented among the low paid - these are women, Indigenous employees, young people, People with disability [sic], migrant workers, those employed in small business and non-unionised employees. In an ACIRRT study [which] looked at ‘black spots’ where low pay was most common, it found that three quarters of low paid employees were women and between a fifth and three quarters were from non English speaking backgrounds”.

10. FECCA would also like to highlight that many barriers do exist for people who may appear at first glance to be in a strong bargaining position, for example, skilled migrants, but who in fact due to employer discrimination or lack of recognition of qualifications, are in a powerless position. It has been noted that CALD workers are vulnerable, with

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multiple disadvantages and are less likely to be in a strong bargaining position over wage entitlements.³

**Barriers for the CALD Community in Work Force Participation**

11. Typical workplace disadvantage for some members of the CALD communities stems from factors such as having history of multiple displacements which has denied many CALD people normal benefits (such as educational opportunities) associated with continuity of life patterns.

Others include:

- lack of English language proficiency
- different levels of education and literacy
- unfamiliarity with a new culture and customs,
- heavy responsibility to provide financial support for family in the country of origin
- likely life-experience of trauma (such as torture, dispossession, abuse by those in authority) which makes it difficult for CALD people to assert themselves in a situation of power imbalance
- a greater likelihood of exploitation by unscrupulous employers
- being the target of negative stereotypes and racist behavior at work
- a diminished idea of self-worth
- difficulties with having qualifications recognised
- skills atrophy
- humanitarian entrants from small and emerging communities being unable to demonstrate previously held qualifications due to their inability to bring relevant documents from their country of origin
- limited knowledge of services available
- limited education opportunities
- higher unemployment of young adults
- lack of childcare (including lack of access to an extended family who would normally have provided this)
- difficulty accessing services which are predicated on a “white Anglo-Celtic” paradigm.

12. It follows that people from CALD are more likely to experience exploitation and harm in the workplace. This obviously becomes a

³ FECCA submission to the AFPC 2006
crucial factor in identifying the phenomenon of indirect discrimination, whereby a protected group (such as people from CALD) are likely to suffer the disparate, negative impact of a minimum wage if set too low.

**Providing a Safety Net for the Low Paid**

13. The Federal Minimum Wage plays a significant role in setting a safety net for the low paid workers. This can be viewed in terms of its effect on individual incentive to remain in employment or move in or out of employment. It may have a direct effect on performance of the low paid workers. It also has a direct effect on the individual and household earnings. These are all important elements of an economy, where decisions should be made with caution with the aim of striking the right balance.

14. FECCA believes that, reducing or setting the minimum wage too low would provide a disincentive for people to work or enter into employment. This would negate some of the AFPC objectives, namely to enhance the capacity for the unemployed and the low paid to obtain and remain in employment.

15. In the AFPC *Economic and Social Indicators- Monitoring Report 2008*, it has been stated that “Income safety net in Australia comprises not only wages, but also income transfers through social security system (pensions, benefits and family payment).”

16. However, FECCA would like to highlight that for the first two years in Australia, new migrants do not have access to social security payments. Given that migrant workers are among the groups of people over represented in the low paid work category, they are greatly disadvantaged by lower wages. These conditions are more likely to force them to work extra hours in order to meet their basic requirements, which consequently reduce their capacity to engage in parenting and carering for family.

17. Further to these, we believe that full time paid employees should receive an adequate wage to cover their cost of living and not rely on tax cuts and income transfers.

18. We also believe that real wages must be set higher than welfare payments. People (especially those with families) may have a disincentive to cease welfare if the real value of their wage is eroded.

19. In FECCA’s submission to the AFPC in 2006, we stated that having too low a wage would militate against the obligation of fairness and equity, and would be detrimental to the welfare of the people of Australia, especially those from the CALD communities given the factors highlighted above.

20. Analysts have noted that research by the OECD, in its 2006 unemployment outlook report indicates that, “the fact that a

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considerable number of studies have found that the adverse impact of minimum wages on employment is modest or non-existent, also suggests that there may be scope to use minimum wages as one part of employment-centered social policy intended to mitigate poverty while fostering high employment rates"\(^5\), and there is "no significant direct impact of the level of the minimum wage on unemployment". \(^6\)

21. When making decisions, specifically on encouraging people to move into the workforce, the AFPC should consider the broad relationships between low paid employment, the barriers to participation in the workforce and the consequences of these especially in relation to the CALD community, given that they are over represented in the low paid sector of the Australian labour force, and also that they have the lowest participation rates

**CALD Participation in Low Skilled Work Force**

22. The AFPC Economic and Social Indicators- Monitoring Report highlighted five demographic groups that contain a relatively high proportion of low-skilled workers, one of them being migrants from non-English speaking background.\(^7\)

23. Despite an overall improvement in participation, the report shows that through the period 2001-2007, migrants from non-English speaking background in low skilled groups have consistently had the lowest participation rates\(^8\) in the work force. This indicates the presence of barriers to greater CALD participation that need to be addressed.

24. To avoid the continued exclusion of the CALD communities from participating fully in economic and development activities, FECCA calls for the AFPC to investigate further the presence of indirect discrimination and its relationship to the low participation rates of the CALD communities.

25. FECCA also notes that research commissioned by the AFPC itself establishes that:

"Relative to the mean, migrants from countries where the first language is not English appear more likely to earn below or around the minimum wage within the distribution of FT employees."\(^9\)

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\(^9\) McGuiness S et al 2007 ‘Characteristics of minimum wage employees’; at p 17
AFPC's Obligations under s222 Act

26. As highlighted in our 2006 and 2007 submission to the AFPC, FECCA considers that s 222, in combination with the principal object of the Act, provides a matrix of fairness within which the AFPC must operate.

27. The Act adverts to the welfare of the people of Australia, to the attainment of both a fair and a flexible labour market, to preventing and eliminating discrimination and gives effect to Australia’s international obligations.

28. The AFPC’s “Guide to Making a Submission”, while emphasising the promotion of economic prosperity of Australians, fails to include reference to s222 of the act and its wider obligations in regards to anti-discrimination. In FECCA’s view, this implies that the AFPC has not understood its obligations under the legislation.

29. FECCA reiterates its request that, as a concomitant of this duty and in particular because of s 222 of the Act (anti-discrimination considerations) the AFPC, in its next decision, state unequivocally that the prevention and elimination of both direct and indirect discrimination are comprehended in its obligations.

Conclusion

30. While FECCA acknowledges an overall improvement in participation in low paid work categories, barriers to workforce participation for CALD workers remains an issue. FECCA believes that the power to set minimum wages carries with it the power and the obligation (as set out in the Act) to ensure that the vulnerable sections of our community, including CALD communities, are given greater support to enable them to both participate in and benefit from Australia’s economic growth.

31. FECCA urges the AFPC to investigate and address barriers to participation, such as indirect discrimination, through greater focus on s222 of the Act.

32. There is also a need to ensure that the minimum wage is set higher than welfare payments to encourage individuals, especially those with families, to move into and remain in paid work.

33. FECCA submits that the AFPC should take into account factors addressed in this submission in framing its decisions for the future.

34. We consider it important that FECCA’s analysis of the AFPC’s statutory obligations remain the backdrop against which this submission is made and include extracts from FECCA’s submissions to the 2006 and 2007 Minimum Wages Reviews, which sets out key sections relevant to the operation of the Act (Attachment A).
Attachment A

The Principal Object of the Act

35. Whatever label one might choose to use, FECCA considers that there is a legislative imperative for the AFPC to take account of broad considerations of fairness. This follows because of the principal object of the Act and the legislative directive that decisions of the AFPC not discriminate against those sectors of the community who are specifically protected under s 222 of the Act.

36. The AFPC is the creature of statute (that is, the Workplace Relations Act 1996). The principal object of a statute binds all entities created by the statute.

37. FECCA considers it vital to note that s 23 of the Act, which sets out the AFPC’s wage setting parameters and which has been given great prominence, is itself embedded in an Act which operates on a number of levels, each one of which is subject to the over-arching, predominant imperative to operate consistently with the principal object of the Act.

38. The principal object reads, relevantly, as follows:

“The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

(a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and

(b) providing an economically sustainable safety net of minimum wages and conditions for those whose employment is regulated by this Act; and ...

(m) respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

(n) assisting in giving effect to Australia’s international obligations in relation to labour standards.” (emphasis added)

39. Crucially, the principal object of the Act makes it clear that there can and do coexist parallel duties to combine a regard for economic prosperity with welfare; for flexibility with fairness; for safety nets with freedom from discrimination, and for international conventions to be observed, within the scheme in which the Act operates.