

Submission to the Australia Law Reform Commission Inquiry ‘Grey Areas – Age Barriers to Work in Commonwealth Laws’

Federation of Ethnic Communities’ Councils of Australia (FECCA)

About FECCA

FECCA is the national peak body representing Australians from culturally and linguistically diverse (CALD) backgrounds. 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 designed around the concepts of empowerment and inclusion, and are formulated with the common good of all Australians in mind.

Introduction

The Federation of Ethnic Communities’ Councils of Australia (FECCA) welcomes this Inquiry into age barriers to work in Commonwealth laws. FECCA hopes that any legal reforms will recognise the additional issues that amplify age barriers to work for people from culturally and linguistically diverse (CALD) backgrounds.

This submission has been informed by feedback from FECCA’s friends and members. FECCA would like to express particular thanks to the Ethnic Communities’ Council of Victoria and the Action on Disability within Ethnic Communities (ADEC) for their contributions to this submission.

Summary of barriers faced by older people from CALD backgrounds when trying to access employment

Skills recognition

Recognition of skills and qualifications earned overseas is an issue frequently cited by immigrants as a major barrier to accessing employment in Australia. Having to retrain due to non-recognition of qualifications, through costly and often lengthy courses is a particularly significant barrier to older immigrants, who may see completing such courses as having little financial worth given their age and the cost and time it would take to complete them¹.

Many skilled immigrants move to Australia in their early to mid-40s with significant experience, however their qualifications and experiences are not recognised. It is often the case that they will do any kind of work to survive. By the time they become financially secure enough to re-train and find a job that matches their previous skills and qualifications, they are likely to be over the age of 50. By this time they often lack confidence after a long absence from their profession and may face age discrimination in trying to find a suitable job, in addition to the barriers already faced by being from a CALD background².

¹ Ethnic Communities’ Council of Victoria, personal communication, 8 November.

² Action on Disability within Ethnic Communities (ADEC), personal communication, 5 November 2012.

Measures to support the employment of older CALD people in aged care roles, including through addressing barriers such as non-recognition of skills (including those acquired through caring roles) would also be helpful. This would help address both issues of skill-recognition and problems around a shortage of bilingual/bicultural workers in CALD aged care.

Action points:

- Legal reform is needed around recognition or partial recognition of skills and experience earned overseas.
- Older immigrants need greater support to re-train and stay in the workforce, rather than being driven out by age discrimination and a perception that re-training is not worth the time and effort at their age.

Understanding of Australian culture and workplace structures

Many older immigrants have spent the majority of their careers working in an employment system that is very different from that of Australia. A complex web of cultural experience, lack of knowledge and fear of unemployment restricts older CALD people's ability to understand and access many mechanisms that established Australians take for granted, such as anti-bullying and complaints mechanisms, workers' rights and avenues for more flexible employment conditions³.

Many older CALD immigrants (aged over 60) report facing severe age discrimination, as well as other forms of discrimination in the workplace. Many people prefer not to complain about poor treatment at work for fear of losing a job that was difficult to come by in the first place and because they are not fully informed about the complaints procedures and remedies, and support mechanisms available to them. In addition to the loss of productivity associated with workplace discrimination and bullying, many older CALD workers may simply choose to leave the workforce entirely rather than pursue strategies to improve their situation. Addressing these barriers involves providing access to information, support and confidence-building.

Action points

- Information about workforce bullying and discrimination and complaints mechanisms, including complaints procedures within an organisation as well as external avenues such as the Commonwealth Ombudsman, need to be more accessible to CALD people.
- The assumption that immigrants and CALD workers are aware of Australian workplace laws and rights such as minimum wage is incorrect. Information campaigns need to target both recent immigrants and people who have lived in Australia for many years, who may be changing jobs or re-entering their former profession after re-training.
- Information about employment laws, workers' rights and complaints mechanisms needs to be culturally and linguistically appropriate. This means that information must be bilingual and expressed in a way that is understandable and appropriate to the recipient's culture.

The confidence to ask

³ FECCA 2012, *Opening the door to access and equity: FECCA Access and Equity Report 2011-2012*, FECCA, Canberra, p. 25.

Many structures that are well established in Australia, such as minimum wage, unfair dismissal, anti-discrimination legislation, workplace insurance, workers' compensation and superannuation are unfamiliar concepts to older immigrants, most of whom have spent their careers working in an employment system where such structures do not exist or are not enforced, or are organised in a different way⁴. For this reason, many older CALD people are unaware of or do not understand the value of mechanisms such as superannuation. Furthermore, they may not have the confidence to assert their rights, even if they are aware of them, for a range of inter-linked reasons such as unfamiliarity, distrust of institutions and a lack of confidence.

Uptake of superannuation and workers' compensation

Insurance, workers' compensation and superannuation are predominantly Western concepts in origin. Many older CALD workers may be unaware of their existence in Australia or, even if they are, require additional support to access these services and navigate complex systems. Without such support, lodging a claim for insurance/workers' compensation may seem too costly or not worth the effort. Many workers lack the confidence to assert rights that are relatively new to them, and may fear that asserting their right to such services will jeopardise their future workplace relations.

The superannuation system is confusing to most Australians. However in addition to the complexity of the superannuation system, CALD communities are often distrustful of government schemes and institutions. This is particularly the case among former refugees and people who have experienced war and other upheavals⁵. Concepts such as superannuation, where workers are asked to rely on the government and financial institutions to manage their retirement savings, may be considered foreign and distrusted. Many older CALD workers may have a poor understanding of how superannuation works and therefore are reluctant to take up options such as voluntary salary sacrificing or exhibit little ownership over their superannuation funds.

The confidence to assert one's rights

Furthermore, many older CALD workers have been shaped by workplace cultures where complaining about discrimination or bullying, or demanding compensation for an injury, would put them at risk of losing their jobs. In many countries, while legal mechanisms such as minimum wage, workers' compensation and unfair dismissal may exist on paper, they are not enforced in practice. For this reason, even when they are aware of Australian workplace laws many older CALD workers are reluctant to assert their right to such services for fear that they will lose their job or face further discrimination⁶.

Flexibility and carers

A major issue faced by older CALD people is the incompatibility between full-time work and informal caring roles⁷. This issue is particularly common in CALD communities due to strong cultural expectations that older people will be cared for by family members rather than outsiders as they age. In many communities, formal aged care services, particularly nursing homes, are considered

⁴ FECCA, *Opening the door to access and equity*, p. 25.

⁵ FECCA, *Opening the door to access and equity*, p. 23.

⁶ Action on Disability within Ethnic Communities (ADEC), personal communication, 5 November 2012.

⁷ Ethnic Communities' Council of Victoria, personal communication, 8 November.

taboo and a strong source of community shame. Many older CALD workers therefore find themselves dealing with the significant burden of maintaining paid employment while caring for an ageing spouse or other family member. Inflexible working conditions, and a lack of confidence to ask for greater flexibility, results in a premature exit from the workforce for many older CALD workers. Addressing cultural resistance to formal aged care in CALD communities is closely linked with this issue.

Furthermore, like people of non-CALD backgrounds, many older CALD workers would prefer to transition out of the workforce through part-time work and/or more flexible conditions, rather than being forced to choose between full-time work and retirement. Older CALD workers wishing to transition out of employment as they get older through reduced hours, or needing greater flexibility to support informal carer roles, lack the confidence to ask for this flexibility. These workers need to be made aware of their right to ask for greater flexibility, and supported to do so, in order to prevent many CALD workers choosing to simply exit the workforce early when faced with what they perceive to be a blunt choice between full-time work and retirement. Fear of losing pension entitlements in retirement if they choose to switch from full-time to part-time work is a related issue⁸.

Action points:

- Culturally and linguistically appropriate information about rights mechanisms needs to be made available to, and promoted to, older CALD workers. This information needs to address CALD-specific barriers such as distrust of government institutions and cultural tendencies toward accepting one's lot instead of complaining.
- Mechanisms that provide CALD workers with additional support to access services such as insurance and workers' compensation are needed.
- Informal carers should be legally entitled to more flexible working conditions to allow them to continue working while carrying out their caring role. If such an entitlement already exists, this needs to be better promoted to older CALD workers.
- Greater flexibility in general would allow older CALD workers to stay in the workforce for longer.

Finding an entry point into the employment system

Finding that first job in Australia can be a major challenge for many immigrants. These challenges are amplified for older people, who often face significant age discrimination in addition to other barriers. Language barriers are an initial issue, as lack of interpreters and translated information for form filling, work compliance and inductions restricts CALD people's ability to access jobs⁹.

Another commonly cited issue is the difficulty in gaining initial work experience in a job market that generally demands Australian experience as a prerequisite for most jobs, particularly professional positions¹⁰. It is difficult for older immigrants to gain this experience through volunteer work given the financial pressures faced by many new immigrants¹¹.

⁸ Ethnic Communities' Council of Victoria, personal communication, 8 November 2012.

⁹ Ethnic Communities' Council of Victoria, personal communication, 8 November 2012.

¹⁰ FECCA, *Opening the door to access and equity*, pp. 24-25.

¹¹ Action on Disability within Ethnic Communities (ADEC), personal communication, 5 November 2012.

Age and racial discrimination in recruitment agencies is another significant issue. At present, incentives do not exist for recruitment agencies to have a certain proportion of people from CALD backgrounds on their books. In a contracting job market, even a person with strong English skills and significant experience and qualifications gained overseas is unlikely to be considered a competitive applicant by recruitment agencies; the combination of a strange surname, heavy accent, qualifications that are not recognised in Australia and the fact that they are nearing conventional retirement age effectively place many older CALD people at the back of the queue in trying to access the job market in their chosen field.

Action points:

- Mechanisms that provide older immigrants with the opportunity to gain initial work experience in the Australian job market should be investigated.
- Greater incentives need to be investigated to encourage recruitment agencies to take on a greater proportion of older people from CALD backgrounds.

Other issues

The cost of re-entering the workforce and misinformation about pension entitlements

The perceived cost (in terms of loss of pension entitlements) of re-entering the workforce, and misinformation about the effect that working will have on pension entitlements, often dissuades people from re-entering the workforce or transitioning to part-time work before retiring¹².

Culture shock and loss of confidence

Due to the shock associated with adapting a new culture and employment system, older immigrants are at particular risk of suffering a loss of self-esteem and confidence in relation to job-seeking. A loss of confidence can prevent people from gaining employment as well as asking for asserting their rights or asking for better conditions in the workplace¹³.

Multiple barriers

The issues discussed above are even more amplified for older people facing multiple barriers, such as older CALD people with a disability¹⁴. Similarly, just as the discussion paper discusses the conflation of ageism and sexism, older CALD women face a triple risk of encountering racism, sexism and ageism in the workplace.

¹² Ethnic Communities' Council of Victoria, personal communication, 8 November.

¹³ Action on Disability within Ethnic Communities (ADEC), personal communication, 5 November 2012.

¹⁴ FECCA, *Opening the door to access and equity*, pp. 25-26.

References

Ethnic Communities' Council of Victoria, personal communication, 8 November.

Action on Disability within Ethnic Communities (ADEC), personal communication, 5 November 2012.

FECCA 2012, *Opening the door to access and equity: FECCA Access and Equity Report 2011-2012*, FECCA, Canberra.