



ethnic
communities'
council of
victoria

Statewide Resources Centre
150 Palmerston Street
Carlton
Victoria 3053

21 December 2012

To Whom It May Concern,

On behalf of Ethnic Communities' Council of Victoria (ECCV), I am pleased to present this submission to the Senate Standing Committee on Legal and Constitutional Affairs.

As the state-wide peak advocacy body for culturally and linguistically diverse Victorians, the ECCV is very pleased to have participated in this process.

For more information regarding this submission, please do not hesitate to contact:

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We thank you for taking the attached submission under consideration.

Yours sincerely,

Joe Caputo OAM JP

Chairperson



Submission to the Senate Standing Committee on Legal and Constitutional Affairs regarding:

The Human Rights and Anti-Discrimination Bill 2012 (Exposure Draft Legislation)

December 2012

About the ECCV

The Ethnic Communities' Council of Victoria (ECCV) is the statewide peak advocacy body representing ethno-specific agencies and multicultural organisations. For more than 35 years the ECCV has remained the principal liaison point between culturally and linguistically diverse (CALD) communities, government and the wider community in Victoria. The ECCV has over 210 members, representing groups with an ethnic or multicultural focus, organisations with an interest in these areas, or individuals who support the ECCV. The majority of our members are not-for-profit community service organisations. The ECCV advocates and lobbies all levels of government in areas such as human rights, access and equity, racism, discrimination, employment, education, health and justice. We advocate on any issue that is of concern to our members. The ECCV has been a key player in building Victoria as a successful, harmonious and multicultural society.

Background to this submission

The ECCV welcome the opportunity to make the following comments and recommendations with relation to the Exposure Draft of the Human Rights and Anti-Discrimination Bill (2012). The ECCV was also pleased to make a submission, featuring a number of recommendations, during the initial phase of this consolidation process. A copy of our initial submission, which has already been recorded and taken under consideration by the Committee, remains available at:

[http://eccv.org.au/library/file/policy/Final ECCV Submission on Consolidation of Cwealth Anti Discrimination Laws Feb 2012.pdf](http://eccv.org.au/library/file/policy/Final_ECCV_Submission_on_Consolidation_of_Cwealth_Anti_Discrimination_Laws_Feb_2012.pdf)

Having had the opportunity to examine the Exposure Draft in detail, we are pleased to observe that many of the recommendations made in our previous submission have been incorporated into the legislation and many of the concerns we raised have been addressed.

With that said, we feel that the Bill might still be improved and are pleased to provide further advice and recommendations, in order to assist the Committee in this process.

Recommendations

The ECCV recommend:

1. That the Federal Government initiate a public inquiry regarding the experiences and needs of CALD Victorians with regard to employment, as well as the factors that can inhibit employment, career advancement and skill recognition among certain CALD populations.
2. That the Federal Government uses the findings of the public inquiry proposed above to identify where Special Measures are required, in order to achieve equality.
3. That the new Human Rights and Anti-Discrimination Act should consider discrimination that is based on any protected attribute (or combination thereof) to be unlawful, in all areas of public life.
4. That 'status as a victim of domestic violence' be added to the list of attributes that will be protected by this legislation.
5. That 'status as a person with caring responsibilities' be added to the list of attributes that will be protected by this legislation.
6. That the Federal Government resource a training and recruitment strategy, aimed at enhancing the availability of bilingual, culturally competent, accredited mediators.
7. That in order to encourage Australians to take up their rights and responsibilities under the new legislation, the Commonwealth Government should resource site specific education campaigns, with a view to identifying and eliminating discrimination, racism and access barriers in a number of sites and contexts, including:
 - workplaces
 - educational institutions
 - health related services
 - the labour market,
 - the housing market
 - Government supports and services
 - during interactions with the police
8. That the Australian government ratify the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, in order to demonstrate the State's commitment to protecting and respecting CALD workers.

Comments regarding Discrimination, Racial Vilification and Special Measures

Racial Vilification

As stated in our previous submission, the ECCV believe that freedom from racism is a fundamental human right and we are pleased to note the strong focus on racial vilification in the Exposure Draft, as detailed under Section 51. We are also reassured to see that racial vilification will continue to include behaviors which are “reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people”¹.

In our initial submission, the ECCV highlighted the importance of an anti-discrimination Act that is able to protect areas of public life and uphold non-discriminatory media reporting. In this regard we are particularly pleased that racial vilification will include sounds, images or writing that is communicated to the public, engaged in either in a public place, or in the sight or hearing of people who are in a public place.

Discrimination and Special Measures

As noted in our earlier submission, the ECCV has received significant feedback regarding the discrimination that is experienced by many Australians of non-English speaking background, with regard to employment and job advancement. Unfortunately, people from CALD backgrounds continue to experience unemployment and underemployment at disproportionate levels. Often, this is because their skills and qualifications are not recognised in Australia.²This lack of recognition does not appear to be evenly spread. It has been found that OECD-origin degree-qualified migrants achieve good representation in their own or other professions within the first five years of migration, yet starkly different outcomes are evident for migrants from other birthplace groups.

Of particular concern to the ECCV is the fact that degree-qualified individuals who have come to Australia as refugees are disproportionately affected by lack of skill recognition and, as a result, are much more likely than other cohorts to be unemployed in the first five years of settlement.³ It has been observed that “migrants qualified in marginally known systems are at disproportionate risk of rejection, while subject to higher levels of unemployment and skills discounting despite it being unclear whether it is the immigrants racial origin, gender or post-secondary degree that is being undervalued”.⁴

Given the growing concern among our membership regarding employment issues in CALD communities, the ECCV Board of Directors recently convened a Workforce Participation Policy Subcommittee. Some of the concerns and anecdotes communicated to the ECCV include:

- CALD individuals receiving better responses to job applications after anglicising their names. In one case known to the ECCV, one young man of African background submitted identical applications for a government position. On the first application he used his real name and he received a very quick rejection notice. On the second application he anglicised his name and was short listed and interviewed for the position.
- Cases of CALD workers being passed over for promotions and other opportunities in the workplace, despite equal (and at times superior) qualifications and time with employer.

¹ Commonwealth Government of Australia, Attorney-General's Department, November 2012, *Human Rights and Anti-Discrimination Bill (2012) Exposure Draft Legislation*: 63

² Hawthorne, L., 2008, *Migrant Education: Quality Assurance and Mutual Recognition of Qualifications*, Summary of Expert Group Meeting (Nine Country Audit), prepared for UNESCO Expert Group Meeting on Migration and Education: Quality Assurance and Mutual Recognition of Qualifications, 22-23 September 2008, Paris.

³ Hawthorne, L., 2008:5

⁴ Owen, T & Lowe, S J (2008), 'Labour Market Integration of Skilled Immigrants: Good Practices for the Recognition of International Credentials – Canada', World Education Services-Canada, www.wes.org/ca, as cited in, Hawthorne, L., 2008: 6

- Experiences of workplace bullying that are specifically related to culture, religion and ethnicity. Those experiencing this type of harassment report that they are unsure how, or where to report incidents and fear losing their jobs, or angering their co-workers or employer by complaining.
- Increasing concern over the lack of diversity in the public sector, at all levels.
- The exploitation and degradation to which CALD workers are vulnerable due to the Federal Government's decision not to ratify the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families

In light of this, the ECCV welcomes the provision of Special Measures, (clauses 79–82) and the recognition made in Section 21 of the Exposure Draft that **Special Measures to achieve equality are not discrimination**. As discussed above, many CALD Victorians are subject to inequality and discrimination when seeking employment, career advancement, or the recognition of their skills. The ECCV are encouraged by these Special Measure provisions and are hopeful that these will be applied in order to enhance equality in this area, via initiatives and programs aimed at encouraging the active recruitment of those who are underrepresented in particular sectors of the Australian workforce.

The International Covenant on Economic, Social and Cultural Rights recognises that everybody has the right “to gain his living by work which he freely chooses or accepts” and that “the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment”. This Covenant also recognises the need for “Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence”. The ECCV has spoken to many stakeholders regarding the discrimination that they have experienced in work-related areas. Many feel deeply demoralized by the fact that they have been unable to secure work that is appropriate to their aspirations and capacities. The ECCV submit that more needs to be done in order to protect and ensure the economic, social and cultural rights of CALD Australians.

The ECCV submit that, in order to achieve equality in the workforce, better understanding is needed regarding the discrimination that is being experienced by CALD Australians. In light of this, the ECCV recommend that the Commonwealth Government initiate a public inquiry regarding the experiences and needs of CALD Victorians with regard to skills recognition and employment opportunities and experiences. A public inquiry into these matters would lead to a better understanding of the factors that inhibit employment, career advancement and skill recognition among certain CALD populations. This process would also reveal the areas of public life where Special Measures are most needed, in order to support CALD Victorians and to address inequality.

The ECCV recommend:

1. That the Federal Government initiate a public inquiry regarding the experiences and needs of CALD Victorians with regard to employment, as well as the factors that can inhibit employment, career advancement and skill recognition among certain CALD populations.
2. That the Federal Government uses the findings of the public inquiry proposed above to identify where Special Measures are required, in order to achieve equality.

Comments regarding Protected Attributes

The ECCV are pleased to see the retention of the core protected attributes, particularly those related to migration and multiculturalism, such as immigrant status, nationality, citizenship, race and religion. We also welcome the recognition of discrimination on the basis of a combination of attributes (clause 19), which we advocated for in our initial submission.

With that said, the ECCV are concerned to note that the Exposure Draft identifies discrimination on the basis the following attributes (or combination of two or more) as being unlawful only where connected with work, or work related areas:

- family responsibilities
- industrial history
- medical history
- nationality or citizenship
- political opinion
- religion
- social origin.

The ECCV submit that this differentiation creates a problematic degree of complexity and inconsistency, particularly with regard to discrimination that may be experienced due to the intersection of different attributes. In light of this we recommend that the Act should consider discrimination on the grounds of any protected attribute (or combination thereof) to be unlawful, in all areas of public life.

The need for additional protected attributes:

The ECCV has recently undertaken a great deal of consultation and research in order to better understand the experiences and challenges of those with caring responsibilities. This has included the publication of a report entitled *Refugee and Migrant Young People with Caring Responsibilities: What do we know?* (2011). Our work in this area has made us acutely aware of the discrimination that often faces those with caring responsibilities, particularly with relation to employment and career advancement opportunities. As such, the ECCV recommend that the list of protected attributes provided by the Act should include 'status as a person with caring responsibilities'.

For reasons outlined in our original submission and in that lodged by the Australian Domestic and Family Violence Clearinghouse (ADFVC), we remain concerned that 'status as a victim of domestic violence' is not included as a protected attribute in this Exposure Draft. As noted in the ADFVC submission, victims of domestic experience both direct and indirect forms of discrimination in many areas of public life. In order to empower women and to challenge community misperceptions with relation to victims of domestic/ family violence, the Commonwealth should act, as many other nations have, to protect victims of family violence from discrimination.

The ECCV Recommend:

3. That the new Human Rights and Anti-Discrimination Act should consider discrimination that is based on any protected attribute (or combination thereof) to be unlawful, in all areas of public life.
4. That 'status as a victim of domestic violence' be added to the list of attributes that will be protected by this legislation.
5. That 'status as a person with caring responsibilities' be added to the list of attributes that will be protected by this legislation.

Comments regarding complaints, compliance and the Australian Human Rights Commission.

As stated in our earlier submission, the ECCV believes employers should receive assistance from the Australian Human Rights Commission (AHRC) and relevant state authorities to ensure their policies and procedures are inclusive and fair. In this regard we welcome the additional measures proposed in the Exposure Draft, which would see the AHRC take on an enlarged role in supporting compliance via co-regulation, the certification of compliance codes and reviewing organisational compliance (upon request). The ECCV suggest that this voluntary process would be incentivised were corporations and organisations encouraged to 'market' their commitment to equality and human rights on the Commissions' website and on their own website.

With regard to the making of complaints, the ECCV also welcome the shifting of the burden of proof (once a prime facie case is established by the applicant) to the respondent, as this is likely to result in increased willingness to report discrimination.

With regard to mediation and conciliation, the ECCV submit that the Federal Government should resource a training and recruitment strategy, aimed at enhancing the availability of bilingual, culturally competent, accredited mediators. This would serve to make the complaints system more accessible and more supportive of those from CALD backgrounds, particularly those from more recently arrived cohorts (who are also quite likely to experience discrimination and racism).

Feedback provided to the ECCV indicates that people from non-English speaking backgrounds are not always well informed about where and how to make a complaint when they are discriminated against, nor are they aware that a complaint can be made in any language. In light of this, the ECCV submit that the new legislation should be accompanied by a public education campaign. All Australians need to be made well aware of their rights and their responsibilities under the new laws. General and site-specific campaigns are needed to weed out and eliminate racism and discrimination, wherever it occurs, in order to protect the rights of all Australians.

Stakeholders have informed the ECCV that CALD community members experience discrimination and racism in a number of sites and circumstances, these include

- In public places
- In workplaces
- In schools and educational institutions

- When seeking housing
- When seeking employment (as discussed)
- When engaging with government services and supports
- When seeking health care and information
- During interactions with Victoria Police.

The ECCV submit that anti-discrimination and human rights education campaigns are required in order to alert Australians to their rights and responsibilities in each of above contexts.

The ECCV Recommend:

6. That the Federal Government resource a training and recruitment strategy, aimed at enhancing the availability of bilingual, culturally competent, accredited mediators.
7. That in order to encourage Australians to take up their rights and responsibilities under the new legislation, the Commonwealth Government should resource site specific education campaigns, with a view to identifying and eliminating discrimination, racism and access barriers in a number of sites and contexts, including:
 - workplaces
 - educational institutions
 - health related services
 - the labour market,
 - the housing market
 - Government supports and services
 - during interactions with the police

Other pertinent issues:

The ECCV recommend that, in order to demonstrate a commitment to equality, Human Rights and anti-discrimination, the Commonwealth Government of Australia should take the vital step of ratifying the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families.

The ECCV Recommend:

8. That the Australian government ratify the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, in order to demonstrate the State's commitment to protecting and respecting CALD workers.