

**ECCV Submission
To
The Victorian Inquiry into the Labour
Hire Industry and Insecure Work
November 2015**

1. The Ethnic Communities' Council of Victoria Inc. (ECCV) has been the voice of multicultural Victoria since 1974. It is the peak policy advocacy body for eight regional ethnic community councils (ECC) and up to 220 members including ethnic and multicultural organisations across Victoria. During this time, we have been the link between multicultural communities, government and the wider community. ECCV is pleased to contribute to the Department of Economic Development, Jobs, Transport and Resources' *Victorian Inquiry into the Labour Hire Industry and Insecure Work*.

Background

2. ECCV recognises that culturally and linguistically diverse communities (CALD) are often adversely affected by exploitative labour hire practices based on our consultations with CALD communities, service providers and regional Victorian ECCs. We gain insight from ethnic communities, multicultural service providers and experts through ECCV's Employment, Education and Training Policy Committee. This committee is also concerned with the need to open up the culture of Victorian workplaces to increase culturally diverse employment and training programs across the public and private sector.
3. In this submission, newly-arrived migrants with Temporary and Permanent visas, workers on Working Holiday Maker (WHM) visas, International Student visa holders and established CALD communities are grouped together in the term 'CALD workers'. This is because ECCV community feedback involves all five groups. A shared fear of deportation and desire for permanence, as well as broader experiences of racism in the community, contribute to a decreased confidence and capacity to negotiate workplace rights amongst people from culturally diverse backgrounds.
4. Regional ECCs recommend that assessing labour hire practices should consider both location and settlement program-specific issues as well as industries currently dependent on flawed labour hiring practices. While labour hire and insecure work affects many communities, the ethno-specific dimension of exploitation and insecure work remains consistent in certain sectors such as retail and agriculture.
5. Exploitation of CALD workers in both metropolitan and regional Victoria is a complex problem which has seen ECCV acknowledge and support other community organisations to address this issue. In particular ECCV has endorsed submissions informed by ethno-specific employment programs and working groups such as Western Community Legal Centre (WCLC)¹, who run a CALD workers' employment law program; and Associate Professor Joo-

¹ *Workplace Relations Framework Inquiry Western Community Legal Centre Third Submission to the Productivity Commission*, WCLC, October, 2015,

Cheong Tham of the School of Law, Melbourne University, who advocates on migration and temporary visa laws.²

6. Previous ECCV community consultation papers have established that while ethno-specific data on complaints for breaches of fair work practices in Victoria is low, significant employment barriers exist to discourage CALD workers from finding work and complaining if workplaces are unfair. For example, overseas qualified migrants are unable to find work because the qualifications process in Victoria is fragmented³ and they find themselves represented in the casual or insecure workforce. Similarly, CALD workers on temporary visas who have a short-term license to work, often only find insecure employment that is open to exploitation. Obvious examples of this include cafes who insist on lengthy periods of 'trial' employment; and the *Four Corners* exposure of 7-Eleven franchises coercing students to work hours beyond their visa permits while threatening them with deportation to continue to underpay them⁴.
7. We understand the limitations of Victoria's legislative powers and in this paper suggest a link between workplace safety and employment law that may encourage inter-agency cooperation to address some of the issues raised by this Inquiry. For instance, ECCV notes that "coercion" in employment law could be seen as a form of workplace bullying. This due to the fact that the *Occupational Health and Safety Act 2004* (Vic)⁵ "health" now also refers to hazards that create a risk to an employee's psychological health.⁶ In some cases in Victoria, coercion may also be an infringement of the Crimes Amendment (Bullying) Act 2011 (Vic) which is referred to as "Brodie's law".⁷

<[http://www.footscrayclc.org.au/images/stories/Western CLC Productivity Commission Third Submission - Final.pdf](http://www.footscrayclc.org.au/images/stories/Western_CLC_Productivity_Commission_Third_Submission_-_Final.pdf)> Accessed 10 November 2015. See also *Western Community Legal Centre Employment Law 'Train the Trainer' Project Draft Evaluation Report*, WCLC, November 2015.

² Submission to the inquiry of the Senate Education and Employment References Committee into 'The impact of Australia's temporary work visa programs on the Australian labour market and on temporary visa holders', Associate Professor Joo-Cheong Tham, 29 April 2015, Senate Education and Employment References Committee, <<http://www.aph.gov.au/DocumentStore.ashx?id=2d0df9c4-08a2-4a1e-bb67-753a791842df&subId=350900>> accessed on 25 November 2015.

³ *Qualified but not recognised – A Discussion Paper*, ECCV, 2015

⁴ *7-Eleven staff work twice as long at half pay rate, investigation reveals*, Alison Branley, ABC Four Corners News, <<http://www.abc.net.au/news/2015-08-29/7-eleven-half-pay-scam-exposed/6734174>. ECCV has also commented on the issue of 'sham contracting' arrangements with international student cleaners in its *ECCV Submission to the Productivity Commission's Workplace Relations Framework Inquiry March 2015* (ECCV, 2015) p. 4. and in the hospitality sectors with CALD workers on travel visas.

⁵ *Occupational Health and Safety Act 2004* (VIC),

<[http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e9200e23be/750e0d9e0b2b387fca256f71001fa7be/\\$file/04-107a.pdf](http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e9200e23be/750e0d9e0b2b387fca256f71001fa7be/$file/04-107a.pdf)>, accessed 01 December 2015.

⁶ *Your guide to Workplace bullying – prevention and response*, WorkSafe Victoria, 2012, P2.

[https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0008/42893/WS Bullying Guide Web2.pdf](https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0008/42893/WS_Bullying_Guide_Web2.pdf) accessed 01 December 2015.

⁷ See the *Crimes Amendment (Bullying) Act 2011*,

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/719E13F9E844BC34CA2578A800151C07/\\$FILE/11-020abookmarked.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/719E13F9E844BC34CA2578A800151C07/$FILE/11-020abookmarked.pdf), accessed 03 December 2015.

8. As input to this submission, ECCV draws on the following:
- a. Previous and current ECCV community consultation papers and media releases;
 - b. Consultations with government, community legal, ethnic and local government organisations through ECCV's Employment, Education and Training Policy Committee;
 - c. Consultations with ECCs in regional Victoria;
 - d. Evaluations of WCLC's ethno-specific employment law education project;
 - e. Findings from the Federation of Ethnic Communities Councils (FECCA) on settlement and migration issues applicable to Victoria;
 - f. Selected research on racial and ethnic discrimination; and
 - g. Selected reports from government departments.

Relevant ECCV Employment Policy and Advocacy

9. For its policy and advocacy on behalf of culturally diverse communities in Victoria, ECCV has produced several submissions and discussion papers addressing the issue of employment and training for CALD workers including separate forums on unemployed migrant women and youth. We sit on the Migrant Workers Campaign Steering Group founded in 2014 to systematically collect data on breaches of workplace rights of migrant workers in Australia. ECCV policy officers sit on various culturally diverse community working groups and attend forums where employment barriers are regularly raised as a key issue with CALD communities.
10. ECCV's 2008 discussion paper *Real Jobs: Employment for Migrants and Refugees in Australia*,⁸ has identified English language skills and employment discrimination as core barrier facing CALD workers when seeking employment. In 2013 ECCV held a community forum which led to a 2014 discussion paper *Summary Report: Work Solutions: Improving Cultural Diversity and Inclusion in the Workplace*⁹ Both these papers revealed that employment barriers are critical in the casualization of a CALD work force with CALD women forming high numbers of casual workers in certain sectors. Despite a decade which has seen a range of positive employment policies and programs to assist migrant and refugee job seekers, in 2014 over 35 per cent of recent migrants still experienced some form of difficulty with finding their first job in Australia.¹⁰

The *Real Jobs* report found the following:

"On arriving in Australia many migrant and refugee communities are unaware of their employment rights in relation to a safe, fair and discrimination free workplace. Instances of employers deliberately targeting migrant workers who are unaware of their rights to work in dangerous jobs with inappropriate safety standards have been raised by ECCV member organisations. Acceptable employment conditions and norms overseas can vary markedly from Australian

⁸ *Real Jobs: Employment for Migrants and Refugees in Australia*, Policy Discussion Paper No. 3. ECCV, 2008.

⁹ *Summary Report: Work Solutions: Improving Cultural Diversity and Inclusion in the Workplace*, ECCV, 2014.

¹⁰ *Characteristics of Recent Migrants, Australia, Nov 2010*, Australian Bureau of Statistics, Cat.no. 6250.0, Canberra, 2011,

<<http://www.abs.gov.au/ausstats/abs@.nsf/Products/6250.0~Nov+2010~Main+Features~Employment?OpenDocument>>, accessed 03 December 2015.

standards and in particular, minimum wages, hours and occupational health and safety standards in developing countries are generally less stringent than that of Australia. As a result, many new arrivals are not fully aware of their rights in the workplace and therefore unable to exercise these fundamental rights. For those working in the informal sector, speaking up about poor or exploitative employment conditions may be perceived as jeopardising one's visa and subsequent opportunity to obtain permanent residency in Australia. Limited English language skills can also inhibit ability and confidence to voice concern over employment conditions.”¹¹

Retail Labour Hire

11. The Victorian Government has addressed insecure work in one sector through a \$2 million investment in Ethical Clothing to support Victoria's textile, clothing and footwear businesses to comply with the *Homeworkers Code of Practice*. ECCV commended this initiative in our May 2015 Budget Response. As a 'hidden' sector, homeworkers (also known as outworkers) are acknowledged to be made up of mostly migrant women from diverse communities often with little formal education, and limited English language skills who often do not understand their rights. They experience poor working conditions and underpayment and, according to Ethical Clothing, very rarely receive industrial entitlements such as paid annual leave, superannuation, or sick leave which is part of broader systemic barriers faced by workers from culturally diverse communities in Victoria.
12. ECCV's further commended the work of the FWO in protecting CALD workers in its 2015 submission to the Productivity Commission's Workplace Relations Inquiry¹² in which we called for a heavier investment to assist FWO to address the exploitation of CALD workers. Since 2013, however, the FWO has become responsible for policing 457 visas and the Department of Immigration and Border Protection (DIBP) has also been established. Some confusion now exists in the relationship between the FWO and the DIBP since automatically reporting complaints to the DIBP will likely deter temporary visa holders from reporting their employer for unlawful conduct. As ECCV is concerned that this applies equally to the issue of 'payment for visas' this again puts a temporary visa holder, and CALD worker, in a weaker position.
13. ECCV supports the FECCA *Submission to Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Migration Amendment (Charging for a Migration Outcome) Bill 2015* that explains:

“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

¹¹ *Real Jobs*, ECCV 2008. P7.

¹² *Submission to the Productivity Commission's Workplace Relations Inquiry 2015*, ECCV 2015, <http://eccv.org.au/library/file/document/Final_ECCV_Submission_Prod_Commission_Workplace_Relations_2_015b.pdf> accessed on 25 November 2015.

give employers leverage over their employees; if temporary visa holders report their employer for unlawful conduct, it may result in their own visa cancellation.”¹³

14. ECCV is pleased, however, to see FWO targeting employers at the top of the labour hire supply chain. We support their 2014 legal action targeting Coles supermarkets for not helping to end the exploitation of vulnerable trolley collectors as part of a strategy to change the culture of worker exploitation. The FWO have “... alleged that Coles knew that trolley collection employees at its sites were not being paid the correct minimum wages and conditions and that the company failed to take effective action to require its trolley service providers to comply with workplace laws.”¹⁴ The FWO dropped their legal proceeding after Coles signed an ‘Enforceable Undertaking’ in accordance with Section 715 of the *Fair Work Act, 2009* (Cth).¹⁵

International Students

15. In a November 2015 media release ECCV focused attention on vulnerable international students and newly arrived migrants involved in the 7-Eleven worker exploitation case. In the release ECCV explains that, “...it [is] critical to ensure that temporary migrant workers are protected, particularly given the widespread reports of significant exploitation of international students in 7-Eleven franchises across Australia, which is something ECCV fully supports.”¹⁶ ECCV also called for a written guarantee from DIBP that overseas students working for 7-Eleven and other organisations who underpay their staff will not be deported if coming forward to complain about being “coerced” to work outside visa-permitted hours¹⁷. ECCV is concerned that CALD workers’ fears of deportation and experiences of employment discrimination and racism play a dual role in their exploitation and concentration in insecure work with poor working conditions in Victoria.

Recommendation 1

ECCV recommends that DIBP consider an amnesty for exploited workers who are in breach of their visa unwillingly or unknowingly, with a view to developing a longer-term policy solution regarding this issue with FWO.

¹³ Submission to Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Migration Amendment (Charging for a Migration Outcome) Bill 2015*, 8 October 2015, p. 2, accessed 21 October 2015. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Visa_f_or_payments_Bill/Submissions accessed 01 December 2015.

¹⁴ *Coles accepts “ethical and moral responsibility” to help end exploitation of vulnerable trolley collectors 7 October 2014*, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser> , Accessed 01 December 2015.

¹⁵ Two FWO senior education staff were guest speakers at ECCV’s Employment, Education and Training Policy Committee at its Carlton, Victoria offices on 30 November 2015 and confirmed that litigation at the source of labour hire chain was a strategy being adopted to work more effectively within the regulator’s resources.

¹⁶ ECCV media Release, “ECCV calls for written clarification on visa amnesty for 7-Eleven worker” (November, 2015), <<http://eccv.org.au/community/media-releases/eccv-calls-for-written-clarification-on-visa-amnesty-for-7-eleven-worker/>> accessed on 25 November 2015.

¹⁷ Ibid.

Recommendation 2

ECCV recommends for resources to be allocated to address data gaps in research on the representation of CALD workers in insecure work and those working through labour hire companies.

Migration, Labour Hire and Insecure Work

16. 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. Their submission for the *Migration Amendment (Charging for a Migration Outcome) Bill 2015*¹⁸ reinforces anecdotal evidence to ECCV that temporary protection visa (TPV) holders are highly vulnerable to exploitation. ECCV supports FECCA's key recommendations that these vulnerable temporary visa holders are recognised and that the penalty and conviction framework is focused primarily on sponsors. This would support ECCV's **Recommendation 1** for clearer boundaries between the FWO and the DIBP to encourage exploited CALD workers to seek information from the FWO.
17. FECCA reported at the end of June 2015 that there were 1,008,930 temporary visa holders in Australia (including 374,570 student visa holders, 143,920 working holiday makers and 188,000 temporary skilled (subclass 457) visa holders).¹⁹ Further to our **Recommendation 1**, FECCA makes the case that the desire for permanent residence makes them more susceptible to "exploitation and reluctant to make any complaint that may put their employment at risk."²⁰

FECCA reports,

*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 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.*²¹

Recommendation 3

ECCV recommends that resources be focused on educating CALD workers who are temporary visa holders about workplace rights and responsibilities earlier in their visa application in culturally appropriate languages and media.

¹⁸ A letter of submission on the Migration Amendment (Charging for a Migration Outcome) Bill 2015 (Cth), by FECCA 8 October 2015).

¹⁹ Ibid. FECCA's letter references figures from the Department of Immigration and Border Protection,

'Temporary entrants and New Zealand citizens in Australia as at 30 June 2015', 1-2.

²⁰ Ibid.

²¹ Ibid.

Settlement Programs and Women

18. ECCV supports FECCA's submission to the Productivity Commission Workplace Relations Inquiry that states:

*"People from CALD backgrounds 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. Factors which contribute to this vulnerability and lack of bargaining power include lack of familiarity with a new culture and customs and lack of English language proficiency. CALD workers also find themselves being the target of negative stereotypes and racist behaviour in hiring practices and at work."*²²

19. FECCA also notes that:

*"Many people from CALD backgrounds are employed in insecure work which is often low paid, unsustainable, dangerous and isolating. The negative impacts of Australia's insecure employment on CALD employees not only affects individuals and their workplaces but, on a much larger scale, impacts Australia's productivity, welfare systems and social cohesion. More research into the experiences of CALD insecure workers is needed to determine the extent of engagement in insecure work and the effects of this work."*²³

20. Their submission also recognises that *"...for women from CALD backgrounds, this disadvantage is compounded"*²⁴ ECCV also supported FECCA consultations in regional Victoria in March 2015 which led to their paper *Community Perspectives on Settlement Issue Affecting New and Emerging Communities in Rural and Regional Australia: A case study of the Iraqi, Afghan, Congolese and Sudanese communities in Shepparton, Victoria*²⁵. This paper reinforces the importance of the economic and social value of settlement. Specifically they make the point that, *"Employment remains the biggest settlement issue"* and *"[c]ommunity engagement and targeted information provision are a prerequisite for ensuring that new and emerging communities are safe,...and have a clear understanding of their rights, entitlements and responsibilities."*²⁶

Recommendation 4

ECCV recommends that both State and Federal government agencies responsible for successful settlement of newly arrived migrants and refugees agree to allocate resources in two areas:

²² *Productivity Commission Workplace Relations Inquiry*, a submission paper, FECCA, March 2015. P1. This information is taken from *Bridging our growing divide: Inequality in Australia*, Senate Community Affairs References Committee, (December 2014), PP124 – 125.

²³ *Ibid.* P2.

²⁴ *Ibid.* P3. FECCA notes FWO data from 2007 which found that 51 per cent of low paid employees were women compared with 47 per cent of the total workforce [and that] *"Women from CALD backgrounds are overrepresented in insecure employment fields which include industries such as manufacturing, accommodation, food services, cleaning and labouring. They are more likely to be employed on a casual basis and to be at a disadvantage negotiating terms of employment."*

²⁵ *Community Perspectives on Settlement Issue Affecting New and Emerging Communities in Rural and Regional Australia: A case study of the Iraqi, Afghan, Congolese and Sudanese communities in Shepparton, Victoria*, FECCA, FECCA, June 2015.

²⁶ *Ibid.* P19.

- a) To educate settlement community members about their employment rights and responsibilities and:
- b) To educate the agricultural sector and labour hire companies in regional Victoria to increase their cultural competency.

Agricultural Labour Hire

ECCV received feedback from ECCs in regional Victoria as follows:

21. The issue of labour hire and insecure work is characterised by employment sector and location. It is a complex economic and social ecosystem which intersects with state and federal legislation. Both retail and agricultural sectors appear regularly in reports and community consultations as vulnerable to fair work breaches for CALD workers. At the same time, the characteristics of the problem varies from metropolitan to regional Victoria. ECCV represents eight regional ECCs and consulted with them for this Inquiry.
22. Levels of access to knowledge of exploitation among ECCs in Regional Victoria varied, but all relied on anecdotal evidence. Although ECCs in regional Victoria report partnering with State government departments to consult in their region, a shortage of systematic investigation into labour hire in their region still exists.
23. Cases discussed ranged from high levels of awareness of exploitation of CALD workers by labour hire companies and employers dependent on unlawful practices to meet commercial deadlines; to closed communities with extremely high numbers of CALD workers where labour hire company owners come from the same ethnic groups. International students were mentioned as was the issue of “busing in workers” at short notice on request from employers.
24. With ethno-specific labour hire companies, specific agriculture sectors may hire CALD workers exclusively from one ethnic community. For example, the Afghan community has links with the horticulture market in one regional area that may not be the case in another. Iraqis are also involved with pruning fruit trees almost 12 months of the year providing continual work on region that is not reported in other regional areas.
25. Occasionally there are issues of scams being anecdotally reported such as a CALD worker being promised that [vegetable] picking will lead to owning a patch as a small business; or promising people entitlements and higher rates but then putting them on junior training rates. Provisional visas are seen to make workers more vulnerable.
26. Sending money overseas to family (remittance) was raised consistently as an incentive and motivation for CALD workers to accept lower wages or agreeing to lower working conditions since small amounts of money in Australia equate to higher rates in other currencies.
27. ECCV consultations with regional Victoria indicate a consistent theme of exploitation of CALD workers.
 - a. Sometimes orchardists prefer to engage labour hire contractors for a speedy response. One person said: *“If an orchard needs 20 pickers, they have to go through*

red tape, so a contractor is much easier. It becomes a closed system. Orchardists don't know where to hire, so there is not so much transparency."

- b. In one Victorian region labour hire companies are ethnic-based. One comment was: *"Orchardists know the system. Ethnic-based labour hire companies are strong. This could be a good thing, with communities working together. It is beneficial all round but because it's happening in the communities we were never going to really know what the real story is. They are quite closed communities and therefore it is hard to know if this silence means the system is working or not."*
- c. Working conditions were assessed in one region. One person said: *"Fair Work Ombudsman has been here before asking mainly about general working conditions. ECC doesn't really know more. It seemed more of a general roadshow than seeking information. FWO probably knew it was closed but there is such a broad industry with horticulture. There are so many different nationalities. Resources are needed to try and understand the real story, like conditions. Appropriate wages would be good, that promotes better awareness"*
- d. Farmers save money by engaging labour hire contractors. One mentioned: *"[It's] very informal hiring practices, word of mouth, so it's hard to report. Farmers will pay whatever they like because of the amount they save on labour, most salad and vegetables sold through big supermarkets."*
- e. A change in the diversification of crops is resulting in continuous work and higher demand for labour by farmers and orchardists. A typical comment was, *"... with early harvesting beginning in October with cherries, then late apples til June, the pruning will begin and then the cycle starts all over again."*
- f. CALD women on spouse visas are particularly vulnerable. Another person said: *"Some of the people are bused into the area. Some stay for a while. Also, there's an issue with spouses. Thai women, Chinese women on provisional spouse visas are involved, some married to an Australian. With 1st stage 2 year provisional partner visas you can work but are not permanent. You must live with your sponsor. There is pressure on these women to support family at home. The Aussie guy only tells them about the farm work when they get here, though, so there is no room to move."*
- g. Bilingual workers are needed for workplace education. One said: *"Ideally you need bilingual workers. When you have a lot of new arrivals who may not have strong English language skills there is anecdotal evidence that they do not all understand about fair work practices or employment rights. There are opportunities to create relevant work for hard to reach communities here."*

Recommendation 5

ECCV recommends to:

- a) Explore opportunities to use bilingual workers in regional Victoria to educate CALD workers and settlement communities about fair work practices.

Recommendation 6

ECCV recommends that:

Due to the rising demand for labour by farmers, agricultural regulators should be consulted to discuss the link between labour hire and insecure work in regional Victoria with a rising demand for labour by farmers and orchardists as a result of changes in the diversification of crops.

Recommendation 7

ECCV recommends that:

Unions, employers, and labour hire companies should work closely together to eliminate the potential for exploitation of CALD workers in regional Victoria.

Recommendation 8

ECCV recommends that:

Both FWO and DIBP increase resources to protect women on provisional spouse visas who find themselves involved in inappropriate labour hire or insecure work in regional Victoria.

Bullying, unfair dismissal and low wages

23. Western Community Legal Centre (WCLC) is a newly formed entity created from the amalgamation of Footscray Community Legal Centre Inc. and provides free legal and associated services to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's Western suburbs. In November ECCV endorsed WCLC's submission to the draft report of the *Productivity Commission's Inquiry into Workplace Relations Framework* in which it raised issues of procedural fairness that are absent when dealing with vulnerable CALD workers in Victoria facing bullying, unfair dismissal, low or unpaid wages or loss of entitlements.

24. The WCLC's 2015 Preliminary Report on its programs indicates that 55% of survey respondents, "*identified that termination of employment was common, somewhat common or that they or someone they knew had experienced losing their job.*"²⁷ Although the reasons for job loss was not listed in their survey their substantial casework has yielded information to support ECCV's anecdotal community concerns in its 2014 employment forums that CALD workers are concentrated in "...insecure, highly casualised employment in low-paid industries."²⁸

²⁷ WCLC p 8 2015

²⁸ Ibid.

25. In their submission WCLC quote one community worker who explained, ‘Most people who I know they lose their jobs just because they’re a refugee background or they don’t speak English fluent and be underestimated for their experience work.’²⁹

Employment Discrimination and Racism

23. Discrimination may appear as unconscious bias or more overt discrimination and these two aspects of racism are often acknowledged as a difficult area to quantify. According to a 2013 survey of 75 Australian businesses by the Diversity Council Australia in conjunction with the Scanlon Foundation, nine out of 10 employers believe that racist attitudes persist in the workplace.³⁰
24. A 2012 Australian National University case study research on labour market discrimination in job advertisements and selection processes in Australia³¹ support consistent feedback to ECCV that surnames and ethnic-identification in CVs play a role in not being called back for a job interview. In this context, and bearing in mind that the interview participants in the *Four Corner’s* program on 7-Eleven were within the CALD worker category, we note also the Australian Institute of Criminology’s *Crimes against international students in Australia: 2005–09 – A Report*.
30. In 2011 the Australian Institute of Criminology (AIC) released a 172 page report into the incidence of assault and robbery crimes against overseas students in Australia titled *Crimes against international students in Australia: 2005–09 - A Report*. This report had a specific focus on Indian male students. It found that “[t]he proportion of robberies against Indian students occurring at commercial locations was approximately double that recorded for students from other countries.”³² It also found that “[o]ver half of robberies against Indian students [occurred] on commercial premises...” and that 28% of assaults (nearly one third) on Indian male students’ in Victoria “[occurred within] commercial locations (including retail, hospitality and financial services).”³³
31. ECCV argues that CALD workers who have experienced overt racism are highly vulnerable to exploitation in both the labour hire supply chain, in the trafficking of workers, and in understanding Australian workplace practices. This is partially due to their lower rates in the reportage for both employment discrimination and racism. At the same time, ECCV acknowledges its community consultations have raised the issue of intra-group bias.

²⁹ Ibid.

³⁰ Businesses neglecting cultural diversity in race to achieve gender balance, 19 February 2014, http://www.brw.com.au/p/leadership/businesses_neglecting_cultural_diversity_3oCfvfB6D3dkyJm3RDIC1K accessed 01 March, 2015, accessed 28 November 2015.

³¹ *Does Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment*, Alison L. Booth, Andrew Leigh and Elena Varganova in *Oxford Bulletin of Economics and Statistics*, 74, 4 (2012), <<http://andrewleigh.org/pdf/auditdiscrimination.pdf> > accessed 30 November 2015.

³² *Crimes against international students in Australia: 2005–09*, a report by the Australian Institute of Criminology, URL<<http://www.aic.gov.au/publications/current%20series/special/1-20/001.html>>, accessed 30 November 2015. See also the AIC’s media release *Crimes against international students in Australia: 2005–09*, < <http://www.aic.gov.au/media/2011/august/20110811.html>>, accessed 30 November 2015.

³³ Ibid. P.78, URL<http://www.aic.gov.au/publications/current%20series/special/1-20/001/10_vic.html>, accessed 01 December 2015.

32. Although difficult to include in employment law at both state and federal levels, the link between employment discrimination and broader patterns of racist attitudes should not be under-valued in this Inquiry. As then Racial Discrimination Commission Mr Tom Calma stated in the AIC report, “[w]e need to recognise that racism does exist in Australia. It doesn’t mean the whole of society is racist but it does exist with individual’s actions and small group actions.”³⁴ The effects of employment discrimination is therefore also a work safety issue.
33. There is a link between CALD worker exploitation through labour hire and insecure work. ECCV’s *Real Jobs* introduced “[m]easures to minimise occupational health and safety risks for workers who are not proficient in English [which] include delivering occupational health and safety material in community languages and translating important notices.”³⁵ For the current inquiry into labour hire and insecure work, inter-agency discussion into links between employment discrimination and occupational safety and health (OSH) has the potential to address the Inquiry’s concern into “...the limitations of Victoria’s legislative powers over industrial relations and related matters and their capacity to regulate these matters.”³⁶
34. Specifically there are links between the employment discrimination issues raised by ECCV and the *Occupational Health and Safety Act 2004* (OHS Act 2004)³⁷ that are relevant to insecure work and labour hire issues that fall under the *Fair Work Act 2009* (Cth). For instance, there are similarities between “coercion” and bullying. While ECCV recognises that bullying is not specifically a part of the OHS Act 2004 (Vic), it does refer to “without risks to health” which now include “psychological health” which ECCV sees as relevant to the 7-Eleven case³⁸.
35. Work Safe guidelines in Victoria exist to prevent bullying in the workplace which can negatively affect psychological health³⁹. In *A guide to Workplace bullying – prevention and response*, *Work Safe* states that,
- “[w]orkplace bullying may amount to a breach of the OHS Act where: it has created a risk to an employee’s (or another person’s) health and safety, and the employer has failed to take all reasonably practicable steps to prevent and address it • an employee has acted in a way that fails to take reasonable care for the health and safety of others at a workplace.*
36. The link between “psychological health” in Victoria is echoed federally in Section 3 of the *Fair Work Act 2009* (Cth) under “‘State subject matters’ means the following subject matters’ – where it includes, “a matter dealt with in the Equal Opportunity Act 2010” and “occupational health and safety”.⁴⁰ ECCV argues that the issues raised by ECCV consultations

³⁴ Ibid. p. 7.

³⁵ *Real Jobs*, ECCV 2008, P7.

³⁶ *Victorian Inquiry into Labour Hire and Insecure Work –October 2015*, p 5.

³⁷ *Occupational Health and Safety Act 2004* (Vic).

³⁸ “Occupational Health and Safety Act 2004” from the Australian Education Union website, http://www.aeuvic.asn.au/OHS_Act_4_70001004.html accessed 01 December 2015.

³⁹ *Your guide to Workplace bullying – prevention and response*, Work Safe Victoria, 2012. http://www.worksafe.vic.gov.au/data/assets/pdf_file/0008/42893/WS_Bullying_Guide_Web2.pdf accessed 10 November 2015.

⁴⁰ *Fair Work (Commonwealth Powers) Act 2009* (Cth)– Sect 3, http://www5.austlii.edu.au/au/legis/vic/consol_act/fwpa2009334/s3.html>, accessed on 02 November 2015.

with culturally diverse communities, its stakeholders, researchers and the 7-Eleven case link directly to matters under Victorian legislative powers.

Recommendation 9

ECCV recommends elevating discussions that link provisions in Victorian OHS legislation regarding hazards to psychological health and other Victorian workplace bullying laws to the concept of “coercion” in Federal employment law at the next Commonwealth of Australian Government (COAG) meetings. These discussions could be informed by research into crimes against international students and recent investigations into the exploitation of 7-Eleven workers on temporary visas.

Recommendation 10

ECCV recommends an across-government approach in Victoria to overcome the limitations of Victoria’s legislative powers over industrial relations through policy research into the effects of employment discrimination on CALD workers as understood by references to “psychological health” relevant to the OHS Act 2004 and, where relevant, “Brodie’s Law”.

Recommendation 11

ECCV recommends introducing a Civil Justice Stay visa to provide a temporary bridging visa to CALD workers who believe that they have been exploited and wish to pursue litigation against their current/former employer.

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