

WEstjustice

27 September 2018

Gender Equality unit
Office for Women
Department of Health and Human Services
50 Lonsdale Street
MELBOURNE VICTORIA 3000

By email: gender.equality@dhhs.vic.gov.au

Dear Gender Equality unit,

WEstjustice submission to the Gender Equality Legislation Public Consultation

WEstjustice welcomes the opportunity to make this submission to the Department of Health and Human Services' Public Consultation on the Gender Equality Bill 2018.¹ We would also welcome the opportunity to discuss our views and recommendations as part of the ongoing consultation process.

We support the proposed legislation and congratulate the Government on taking this initiative to promote equality at work. Employment is widely recognised as a vital step for successful settlement and social inclusion. Yet as documented in our *Not Just Work* report,² exploitation is widespread in Australian workplaces. Despite some recent reforms, discrimination at work remains pervasive, at significant cost to health,³ productivity and justice.

This submission seeks to address the terms of reference most relevant to the WEstjustice Employment Law Program, specifically:

- Question 1: What do you think are the critical actions necessary for the success of gender equality legislation?
- Question 2: What other activities should the government undertake to support this legislation?
- Question 7: What kind of public sector targets should be included in the regulations of the Gender Equality Bill?
- Question 8: What is needed to ensure representation of women from diverse backgrounds?
- Question 10: How can the Victorian Government leverage procurement and funding practices to promote gender equality in the wider community?

Summary of recommendations

This submission recommends that the Government:

- **Expand VEOHRC powers and resources to investigate and enforce breaches of anti-discrimination laws**

¹ WEstjustice would like to acknowledge volunteers Kaitlin Ferris and Alex Blennerhassett for their generous assistance with researching and drafting this submission.

² Catherine Hemingway, 'Not Just Work: Ending the exploitation of refugee and migrant workers', WEstjustice Employment Law Project Final Report, available at <www.westjustice.org.au/publications/policy-reports-121> (**Not Just Work**).

³ According to VicHealth, '[t]here is a strong relationship between exposure to discrimination and poor mental health': VicHealth, 'More than tolerance: Embracing Diversity for Health', (Summary Report, 2007), 11-12.

- Introduce a Discrimination Ombudsman service and provide vulnerable workers access to free legal assistance
- Enact legislation and policies to assist skilled workers to have qualifications recognised
- Establish a fund to provide targeted educating, training and skills programs for women of migrant and refugee backgrounds
- Investigate and where appropriate implement incentives for employers to hire newly arrived migrant and refugee workers
- Extend quotas for roles in public sector organisations to include targets for representation of women from migrant and refugee backgrounds
- Extend Gender Equality Action Plans to consider the question of inequity amongst women, and in particular, as experienced by migrant and refugee women
- Amend employment and procurement policies to set minimum standards for diversity
- Ensure that procurement policies are effective by ensuring proper monitoring and enforcement including a requirement for independently verified evidence of compliance with workplace laws and commitments to diversity targets
- Implement a form of secure jobs code as a way of enhancing the effectiveness of the contemplated procurement guidelines

About WEstjustice and the Employment Law Program

WEstjustice is a community organisation that provides free legal help to people in the western suburbs of Melbourne. Our offices are located in Footscray, Werribee and Sunshine, with a number of outreach services.

We assist with a range of every day legal problems including consumer disputes, credit and debt, family law and family violence, fines, motor vehicle accidents, tenancy, and employment related matters.

We also provide free community legal education, undertake law reform activities and work in partnership with local communities to deliver innovative projects that build legal capacity and improve access to justice.

With a long history of working with migrant and refugee communities, in 2014 we identified a large unmet need for employment law assistance for these communities, who are particularly vulnerable to exploitation at work. In response, WEstjustice established the Employment Law Project, which provided legal assistance to over 200 migrant workers from 30 different countries, successfully recovering or obtaining orders for over \$120 000 in unpaid entitlements and over \$125 000 in compensation for unlawful termination. We also trained over 600 migrant workers, as well as leaders from migrant communities and professionals supporting these communities. Based on evidence from our work, and extensive research and consultation, WEstjustice released the Not Just Work Report, outlining 10 key steps to stop the exploitation of migrant workers.

Given continuing and unmet need, WEstjustice now operates an ongoing Employment Law Program. The Program seeks to improve employment outcomes for vulnerable workers including migrants, refugees and temporary visa holders. We do this by empowering migrant and refugee communities to understand enforce their workplace rights through the provision of tailored legal services, education, sector capacity building and advocacy for systemic reform. To date our service has recovered almost \$400 000 in unpaid entitlements or compensation, trained over 1000 community members, delivered four roll-outs of our award-winning Train the Trainer program, and participated in numerous law-reform inquiries and campaigns.

WEstjustice Legal Service: Migrant Women

Migrant and refugee women often face a number of barriers which make it difficult to secure paid employment, including discrimination, a lack of experience with the Australian employment market, undeveloped social networks and unrecognized overseas experience or qualifications.

Recently arrived and refugee women are also vulnerable to exploitation in the labour market due to the coalescence and intersection⁵ of multiple forces including gender, race and recently arrived and or refugee status. These forces impact on the ability of women to enforce minimum working conditions. In a recent study by AMES, newly arrived women were found to be 'almost twice as likely as men to be earning less than \$15 per hour despite working permanent and full-time positions as often as men.'⁶

For those who do find work, exploitation is widespread. The reasons for exploitation are vast and multi-faceted, including: marginalisation of the voices in migrant workers; limited access to decent work; low awareness of workplace rights and services; lack of effective access to mainstream services; absence of targeted community services; and ineffective laws and processes. Workers being exploited are often not aware of their rights, and rarely seek help to enforce the law – this is a particularly acute experience for women, who are more likely to face the additional burden of community and family pressure not to pursue viable claims.

Migrant women experience a high degree of gender-based discrimination in the workforce, and our clients have consistently reported being subjected to adverse action upon employers becoming aware of caring responsibilities and pregnancy. Through our casework and face to face education sessions at playgroups, sewing groups and other women's gatherings, we heard similar stories over and over. Migrant women find themselves in an Australian labour market that has entrenched gender inequalities. They experience the existing pay gap between men and women⁷ and discrimination when balancing caring or parental responsibilities, negotiating flexible working arrangements,⁸ and returning to work after pregnancy.⁹ Such exploitation is compounded by the cultural, literacy and practical barriers that prevent many migrant women accessing mainstream services for assistance.¹⁰

Other women who have attended our Employment Law Service have reported not receiving job interviews until they anglicised their names, or who were invited to interviews only to be told the position had already been filled when she arrived wearing a hijab.

Of our clients, the greatest cohort of female clients came to Australia as refugees or humanitarian entrants (44%). 17% came as international students, 11% were temporary migrant workers and 8% were asylum seekers. 80% had a low or no income, 11% had a medium income and there were no high income earners reported. One in five of our female clients required an interpreter.

Female clients were largely concentrated in the services sector and clustered in female-dominated jobs – both skilled and unskilled. We found:

- 39% worked in childcare/aged care/community services/health care/education;
- 22% were cleaners;
- 14% worked in hospitality; and

⁵ For discussion of intersection in relation to female migrant workers see Margaret L. Satterthwaite, 'Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers,' (2005) 8(1) Yale Human Rights and Development Law Journal.

⁶ Monica O'Dwyer and Stella Mulders, AMES Research and Policy Unit, 'Finding satisfying work: The experiences of recent migrants with low level English', 2015, 20.

⁷ See also [Workplace Gender Equality Agency, Australian Government, Gender pay gap statistics \(March 2016\)](#).

⁸ Ibid.

¹⁰ See in particular chapters 3-5 in Not Just Work.

¹⁰ See in particular chapters 3-5 in Not Just Work.

- 8% worked in food processing industries.

The most common problems our clients faced were similar between women and men, although we found that a larger proportion of women had lost their jobs, and men were more likely to seek advice on workplace injury:

- 35% had an issue with wages or entitlements;
- 29% had been dismissed;
- 10% sought advice on bullying;
- 8% were advised on discrimination and/or general protections; and
- 4% of women received advice on workplace injury.

In order to reduce exploitation faced by migrant women in particular, pathways to finding and retaining decent jobs must be improved. As part of a broader reform agenda, we consider that the Gender Equality Bill provides an important vehicle to address some of the challenges experienced by migrant women in the workforce.

Our submission contains three key recommendations for reform within the context of the Gender Equality Bill. Our recommendations are based on the experiences of our female migrant and refugee clients, and our views about the ways in which this legislation is an appropriate vehicle through which equality for migrant women can be fostered within the Victorian community.

The Gender Equality Bill is necessarily principally concerned with the specific question of gender equity within the Victorian public sector – we submit however as a matter of principle that the extension of the contemplated provisions to migrant and refugee women will ensure that the Bill is effective in its pursuit of equality for *all* women in Victoria.

Question 1: What do you think are the critical actions necessary for the success of gender equality legislation?

WEstjustice considers that the success of this legislation depends on three key factors:

- first, the legislation should recognise the unique disadvantage experienced by particular groups of women, and include measures which seek to promote equality in an inclusive way. The legislation provides an opportunity to address inequity *amongst* women, and in particular, as experienced by migrant and refugee women;
- second, the legislative mechanisms to monitor implementation of the various requirements proposed to be introduced must be attended by meaningful and enforceable consequences for non-compliance and/or incentives for those who do comply;
- third, where possible, the legislation (or alternatively, Government policy) should signal and reflect the Victorian Government's commitment to encouraging non-public sector organisations to adopt similar initiatives.

We consider that the success of this legislation depends on its enactment and enforcement. More specifically, we suggest that the Victorian Government consider setting obligations for the relevant Minister to take particular action, rather than only creating a right to do so. For example, the current exposure draft includes a right for the Minister to set procurement policies, but no obligation in respect of same. In our view, this creates a risk that the legislation may not ultimately be adopted and used as intended.

Further, the legislation could create a better framework for monitoring and compliance. For example, we support the idea of a Ministerial Council – but suggest that collaboration with an Equality or Discrimination Ombudsman's office, or other independent advocate or commissioner would enhance the level of independent scrutiny and action.

Question 2: What other activities should the government undertake to support this legislation?

Expanding VEOHRC powers

Refugee and migrant women often experience significant physical, financial and emotional harm from discrimination, unsafe work and unfair dismissals. Based on the experience of WEstjustice, women are more likely to be exploited by employers and experience discrimination at work, but are less likely to pursue discrimination claims.

Although discrimination was commonly reported in consultations for our *Preliminary Report*²⁰ and women's outreach project,²¹ this was not observed in our casework service. Less than one in ten employment law service clients received advice on discrimination.

²⁰ 47% of survey respondents reported that discrimination at work was common, somewhat common, or that they or someone they knew had experienced it: Catherine (Dow) Hemingway, 'Employment is the Heart of Successful Settlement: Overview of Preliminary Findings' (Preliminary Report, Footscray Community Legal Centre, February 2014) <http://www.footscrayclc.org.au/images/stories/Footscray_CLC_Employment_Law_Project_-_Preliminary_Report.pdf>, 8 (Preliminary Report).

²¹ With financial support from the Victorian Women's Trust, WEstjustice explored the working experiences of women from newly arrived and refugee communities. In addition to analysing client data from our legal service, we engaged with various women's groups, including sewing groups, financial literacy classes and playgroups. At these meetings we shared information about workplace rights and responsibilities, and heard from women about their experiences at work. We heard similar stories over and over – a lady who had found work at a laundry, and told she did a great job and asked to come back early the next day. After telling her boss she could only come after dropping her child at school, she was told not to come back. Another lady, employed as a casual, promised her job back after taking time off to have her second child, and refused a job upon return. Women who never received a job interview until they anglicised their names, or who were warmly invited to an interview only to be told the position was taken when they saw her hijab.

The discrepancy between high occurrences and low enforcement rates of discrimination may be understood in reference to Sanda's story:

Earlier this year, our legal service met Sanda.²² Sanda was 20 weeks pregnant and a newly arrived refugee. She worked hard in a manufacturing job, always receiving positive feedback. The day Sanda's boss discovered she was pregnant, she was sacked. When we met her, Sanda was struggling to pay rent and buy food. She was owed thousands of dollars in unpaid overtime and below-award wages. Despite having a strong claim, Sanda felt afraid – she had experienced trauma in her home country, had little faith in legal systems, was afraid of her boss, focused on her pregnancy and providing for her family, and was experiencing community and family pressure to just let it go. Sanda decided not to pursue a claim.

Clients may believe they cannot “prove” their case, or experience low awareness of Australian laws, fear of legal processes and authority, and/or the deep pain that reliving traumatic events can evoke. Many clients suffered significant psychological injuries as a result of discriminatory behaviour at work—and such injuries may have prevented others from seeking legal assistance.²³

There are practical considerations to low enforcement – many of the women we encountered had recently given birth or were pregnant. One of our clients with a newborn cancelled her appointment – it was simply too difficult. We were in and out of Court at the time another client's baby was due – the strength and courage that it takes to pursue a case in such circumstances is incredible. Clients also faced family and community pressure to discontinue claims.

Workers who experience discrimination have a range of legal options including making a complaint to the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**).²⁴ Each approach requires the complainant to make a written application and follow their case through. There is no proactive regulator who can run a case on behalf of a client,²⁵ or gather intelligence and prosecute an employer. Given the power imbalances and lack of enforcement, there are few incentives for employers to take positive steps to reduce discrimination.

WEstjustice submits that the power and resources of the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) (and the Australian Human Rights Commission (**AHRC**)) should be enhanced, to allow for the investigation and enforcement of breaches of anti-discrimination laws.

In the UK, US and some Canadian jurisdictions, the regulator can provide advice and direct support to complainants. We consider that the VEOHRC (and AHRC) should have the power to assist clients with meritorious claims and run strategic litigation to promote compliance, just as the Fair Work Ombudsman (**FWO**) can stand in the shoes of an applicant and prosecute a company directly. Like the FWO, mediation and enforcement could be delivered by separate teams within the VEOHRC and AHRC, which we consider appropriate, given their specific expertise in anti-discrimination conciliation.

²² Names changed.

²³ According to VicHealth, '[t]here is a strong relationship between exposure to discrimination and poor mental health': VicHealth, 'More than tolerance: Embracing Diversity for Health', (Summary Report, 2007), 11-12.

²⁴ Other options include , the Australian Human Rights Commission (AHRC), Victorian Civil and Administrative Tribunal or the Fair Work Commission.

²⁵ The Fair Work Ombudsman does have a general protections team however it has only brought a small number of prosecutions. Victoria Legal Aid has an equality law program that provides invaluable assistance to vulnerable clients with discrimination claims – but still this places responsibility on an individual to bring a claim. The Victorian Equal Opportunity and Human Rights Commission has limited powers to investigate matters that are serious in nature, relating to a group of persons and cannot reasonably be expected to be resolved by dispute resolution (section 127, Equal Opportunity Act 2010 (Vic). However, the powers of VEOHRC are significantly less than those of FWO, which include promoting compliance with the FW Act 'including by providing education, assistance and advice to employees, employers...', monitoring compliance, inquiring into and investigating 'any act or practice that may be contrary' to the FW Act, and commencing proceedings in Court to enforce the FW Act (section 682, FW Act).

To complement this work, vulnerable workers require access to free legal assistance, as represented clients have better outcomes.²⁶ Due to the lower rates in women pursuing discrimination claims, we consider it essential that such assistance be made easily accessible for women.

Discrimination Ombudsman

WEstjustice has also previously advocated for the introduction of a Discrimination Ombudsman. We submit that the Gender Equality Legislation may provide an appropriate avenue for the Victorian Government to consider the merits of a separate entity to advocate on behalf of Victorian women who face gender-based discrimination in their workplaces.

In addition to the problem of the complaints-based model, current remedies in anti-discrimination law often do not address the problem of discrimination. Most claims settle for financial compensation, without addressing the problem of discrimination itself – meaning businesses do not make any meaningful change.

The introduction of a discrimination ombudsman (operating as part of a strengthened VEOHRC) would assist in addressing the fundamental causes of discrimination as experienced by women in the workforce. Expanding the powers and resources of the VEOHRC and the AHRC would also assist in addressing the discrimination faced by migrant and refugee women in the course of their employment, or their exposure to the Australian labor market more broadly.

WEstjustice consider the implementation of a well-resourced regulator with widespread enforcement powers would ‘counter the deep pocket/repeat player advantage enjoyed by some respondents’.²⁷ It could promote systemic change within problem workplaces, by:

- undertaking own-motion investigations and prosecutions;
- promoting and seeking systemic remedies (including workplace training and compliance audits);
- running powerful education campaigns; and
- championing the benefits of diverse workplaces free from exploitation.

A discrimination ombudsman could also support sexual harassment workplace claims; in light of the AHRC’s recently released report on the extremely low levels of reporting sexual harassment incidents.²⁸

In addition to the introduction of a new regulator, WEstjustice submits that the government can play a further role in reducing discrimination at work. Such steps should include:

- expanding the limited positive duties in anti-discrimination laws that require employers to take certain steps to prevent discrimination occurring;
- addressing the challenge of ‘proving’ discrimination by amending the law to introduce a reverse onus of proof, similar to the general protections provisions of the *Fair Work Act 2009* (Cth) (complainants should be required to establish that they have a particular protected attribute and suffered unfavourable treatment. The employer should then be required to show that the unfavourable treatment was not because of the complainant’s attribute. This is fairer as the employer has access to its own internal records and evidence about decision making, while the employee does not);

²⁶ Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces, Sydney: AHRC.

²⁷ Beth Gaze and Rosemary Hunter: Access to justice for discrimination complainants: courts and legal representation (2009) 32 UNSW Law Journal 699, 699.

²⁸ 47% of survey respondents reported that discrimination at work was common, somewhat common, or that they or someone they knew had experienced it: Preliminary Report, 8.

- amending existing laws to require courts and tribunals to award remedies that promote systemic change;
- expanding existing reporting obligations to require companies to report publicly on diversity and anti-discrimination measures (as proposed);
- funding targeted education campaigns for newly arrived and refugee workers;
- funding specialist legal services to provide free assistance to migrant workers experiencing discrimination at work.

Training and recognition of qualifications

Question 8 asks what is needed to ensure representation of women from diverse backgrounds. Our response to that question within the context of the gender equality legislation is set out in a later section of this document, however we make the following related point in addressing what other activities the government can undertake to support this legislation.

The recognition of qualifications obtained overseas is essential to ensuring that women from diverse backgrounds are represented. Based on our experience, it is often difficult for migrant and refugee women to have their qualifications and experience recognised in Australia. Studies have shown that despite professional qualifications, many migrant and refugee women are employed below their level of expertise.²⁹

In 2015, the Ethnic Communities' Council of Victoria released a Discussion Paper which squarely addressed the barriers encountered by newly arrived migrants and refugees in this regard. WEstjustice agrees with the position expressed by the ECCV, that while there are an increasing range of bridging courses in Victoria, there is a lack of coordination which has created a fragmented accreditation system.

The prospects for migrant and refugee women seeking employment in public sector organisations, and in the private and not-for-profit sector more broadly are severely diminished by an accreditation system which is complex, difficult to navigate, and in many instances, simply does not provide an avenue for their particular qualification to be recognised in Australia.

As part of ensuring that women from diverse backgrounds are represented, within the context of the aims of this legislation and otherwise, we submit that the Victorian Government should enact legislation and policies where appropriate to assist skilled workers to have qualifications recognised.

In addition to the recognition of existing qualifications, WEstjustice believes that women of migrant and refugee backgrounds require greater access to training and education programs, to build the skills necessary to engage in the paid workforce in Victoria.

We therefore submit that the Victorian Government should establish a fund to provide targeted education programs for women of migrant and refugee backgrounds, which should include:

- direct education programs for community members;
- train the trainer programs for community leaders;
- education programs for community workers in key organisations working with newly arrived communities; and
- other programs delivered in accordance with best practice education approaches.

In response to community feedback regarding the importance of face-to-face, targeted employment law services and information, WEstjustice developed and implemented a Community Legal Education Program (**CLE Program**), commencing May 2014.

²⁹ See, eg, Ethnic Communities Council of Victoria, 'Qualified but not recognised' (Discussion Paper, 2014) <http://www.eccv.org.au/library/ECCV_Discussion_Paper_-_Qualified_but_not_Recognised_2015_Final.pdf>.

The CLE Program has consisted of:

- information sessions for community members (delivered at a variety of locations including English as Additional Language classes, community meetings, settlement agencies and schools);
- information sessions for community workers (to enable staff to identify when their clients have an employment law issue and make appropriate referrals); and
- the Train the Trainer Project, working with community leaders.

We have developed numerous resources including template PowerPoint presentations, activity sheets and educational videos especially tailored for English as Additional Language students. Please visit our website for access to these resources.³⁰ Some example images and scripts from one video are below:

ANDREA

Jill!

JILL

Andrea! Hey! How are you?

ANDREA

Good. How's the new job?

JILL

Loving it. Six months, and they just gave me a promotion!

ANDREA

That's so exciting!

JILL

I know - what about you?

ANDREA

Still working in the kitchen at the pub.

30 See: <<http://www.westjustice.org.au/community-development-and-law-reform/community-legal-education/newly-arrived-and-refugee-employment-law-140>> last accessed 26 July 2018.

JILL
Is it good pay?

ANDREA
Depends on whether it's a busy
night.

JILL
(concerned)
Really?

ANDREA
If they can't pay me much they give
me a meal, so...

JILL
(concerned)
But a meal is *not* pay! Don't you
have an hourly rate?

ANDREA
If nobody comes in, how can they
pay me?

JILL
But they *have* to pay you the Award
rate.

ANDREA
Jill!

JILL
Andrea! Hey! How are you?

ANDREA
Good. How's the new job?

JILL
Loving it. Six months, and they
just gave me a promotion!

ANDREA
That's so exciting!

JILL
I know - what about you?

ANDREA
Still working in the kitchen at the
pub

ANDREA
They said they opted out of the
Award...

JILL
They can't do that. What about
overtime?

ANDREA
No.

JILL
Penalty rates, for weekends?
Holidays? Superannuation?

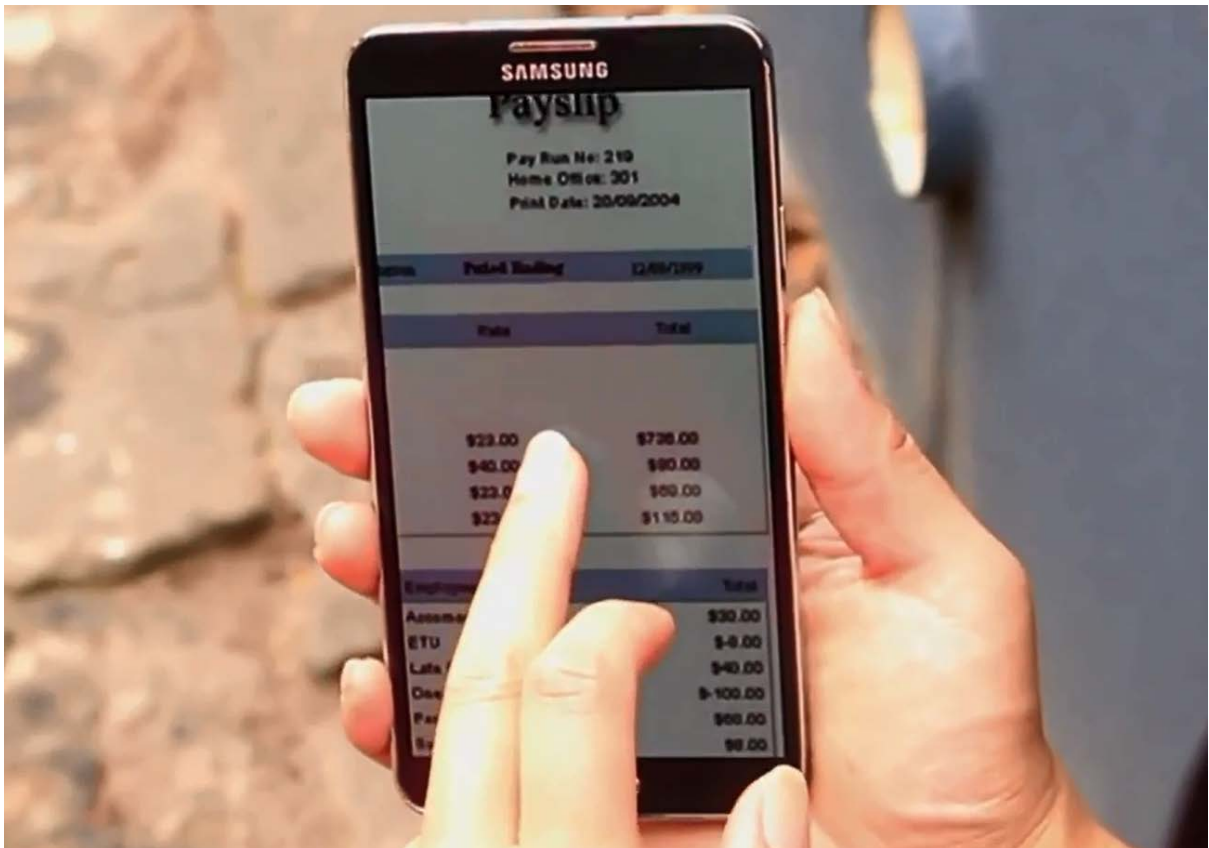
ANDREA
I know it sounds bad... but they're
really nice people.

JILL
(thinking, but with
caution)
Listen... do you have a pay slip I
could have a look at?

ANDREA
What's a pay slip?

JILL
It's a document that you get every
time you get paid. It sets out the
hours you worked, your payment and
how much you've been taxed. I get
mine by email.

(showing Andrea an example
on her phone)
Look, I'll show you.



ANDREA

I don't get those.

JILL

You have rights in the workplace, you know! You should get some advice about your pay.

ANDREA

Who can I speak to?

JILL

There are legal services that can help for free - and they're confidential, so they're not going to tell your boss unless you want them to. And then later, if you feel like it, you could talk to your boss or you could get a lawyer to write a letter.

As discussed in detail in the Not Just Work Report (chapter 3), each of these programs has been evaluated, and results indicate that the CLE Program has dramatically increased migrant worker understanding of laws and access to services. For example, after attending a WEstjustice information session, 89% of participants surveyed stated that as a result of the CLE session they now knew where to go for help with an employment problem.

Unfortunately, WEstjustice receives more requests for CLE community presentations than we have capacity to deliver. Similarly, the pilot Train the Trainer program received applications from more than five times the number of community leaders than there were places in the program. The success of the Project's CLE program shows that additional funding and resources ought to be made available for the delivery of regular sessions to community groups who may not otherwise have access to information and other services to raise awareness about employment law issues.

Such education programs are urgently required not only in the Western Suburbs of Melbourne, but elsewhere in metropolitan and regional Victoria. WEstjustice has already received requests to deliver education in Albury and Nhill. Regional programs are especially necessary given the concentration of migrant workers in food processing industries in regional towns. WEstjustice recommends that similar programs be adopted and expanded across Australia.

In addition to building the skills and awareness of those seeking employment in Victoria, it is equally important to ensure that employers understand the business case for diversity and inclusion in employment practices. Women, particularly those of migrant and refugee backgrounds, face widespread discrimination in recruitment. A central cause of this experience is that managers and decision-makers bring unconscious bias to recruitment, and may not otherwise appreciate the importance and necessity of promotion of diversity and inclusion in their workplace.

A large-scale campaign (or indeed, a legislative requirement in respect of public sector organisations to facilitate training programs) to educate leaders in organisations about unconscious bias, along with accessible and practical guidance about promoting diversity and inclusion would assist in alleviating one aspect of the recruitment barrier faced by women in this regard.

Private sector regulation

We note that the legislation will apply directly to 'in-scope' entities, defined as Victorian Government departments, public sector entities with over 11 full time employees, and local government. Not-for-profit and private sector organisations are not within the scope of the legislation, however will be influenced through revised procurement and funding policies – we make some further comments in respect of procurement policies in a later section of this paper.

However, as noted briefly above, we consider that there is an important role for state (and Federal) governments to encourage private and not-for-profit sector organisations to adopt pro-active and meaningful gender equality and diversity practices.

More specifically, we submit that the Victorian Government should investigate and where appropriate implement incentives for employers to hire newly arrived migrant and refugee workers, including:

- tax concessions for companies that meet diversity targets;
- quotas or other affirmative action measures including a positive duty to recruit a diverse workforce;
- requiring businesses to collect data and report on the diversity of their workplace;
- assisting skilled workers to have qualifications recognised;
- training and education programs for staff (and in particular, senior management) in relation to diversity, gender equality and unconscious bias in the workforce.

Recommendation 1: Expand VEOHRC powers and resources to investigate and enforce breaches of anti-discrimination and unfair dismissal laws

Recommendation 2: Introduce a Discrimination Ombudsman service and provide vulnerable workers access to free legal assistance

Recommendation 3: The Victorian Government should enact legislation and policies to assist skilled workers to have qualifications recognised

Recommendation 4: The Victorian Government should establish a fund to provide targeted education, training and skills programs for women of migrant and refugee backgrounds

Recommendation 5: The Victorian Government should investigate and where appropriate implement incentives for employers to hire newly arrived migrant and refugee workers

Question 7: What kind of public sector targets should be included in the regulations of the Gender Equality Bill?

Question 8: What is needed to ensure representation of women from diverse backgrounds?

WEstjustice notes its strong belief that diversity must be increased in Australian workplaces. In order to reduce exploitation, measures must be introduced to ensure that newly arrived and refugee women can find and retain sustainable employment. WEstjustice considers that the Gender Equality Bill should include obligations for public sector organisations to employ newly arrived and refugee women, including:

- quotas or other affirmative action measures including a positive duty to recruit and promote a diverse workforce; and
- Gender Equality Action Plans which collect data in relation to the background (including country of origin) of workforces, and implement strategies to promote workplace gender equality which have regard to the diversity of Victorian women and the need for the workforce to reflect this diversity.

Establishing life in a foreign country presents many challenges including new languages, new community connections and new cultural, financial, health and education systems. Many of our female clients have experienced violence, torture or trauma, and are often separated from family members and social connections.

Employment is widely recognised as being the most vital step for successful settlement in a new country,³⁶ yet recently arrived migrant and refugee women face a number of barriers. Once employed, women of refugee background are more likely to be engaged in low income, precarious forms of work, and are particularly vulnerable to experiencing discrimination.³⁷

An Australian Bureau of Statistics survey conducted over a decade identified that the unemployment rate for recent migrants and temporary residents was 7.4% compared with 5.4% for people born in Australia.³⁸ Overall, men had a higher labour force participation rate than women:

- 90% for male migrants with Australian citizenship compared with 71% for females;
- 86% for males on a permanent visa compared with 58% for females; and
- 74% for males on a temporary visa compared with 54% for females.³⁹

In comparison, for males and females born in Australia, the participation rates were 75% and 66% respectively.⁴⁰

A number of steps can be taken within the contemplated gender equality legislation to improve what is currently a scarcity of employment opportunities for women, all of which fall within the presently contemplated obligations for public sector organisations – including Gender Equality Action Plans, targets for women in leadership and reporting obligations.

³⁶ A recent consultation in Melton with community members from Burma identified employment as the most important theme for successful settlement in Melton. Employment was also ranked as the most difficult goal to achieve. See Djerriwarrh Health Services, Investigating resettlement barriers with the Burmese Community in Melton: A Needs Assessment (2015). See also Alistair Ager and Alison Strang, 'Understanding Integration: A Conceptual Framework' (2008) 21 Journal of Refugee Studies 166, 170.

³⁷ See, eg, Graeme Hugo, 'Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants' (Final Report to Department of Immigration and Citizenship, May 2011) xxiv – xxv <[http://www.border.gov.au/ReportsandPublications/Documents/research/Community leader_economic-social-civic-contributions-about-the-research2011.pdf](http://www.border.gov.au/ReportsandPublications/Documents/research/Community%20leader_economic-social-civic-contributions-about-the-research2011.pdf)>.

³⁸ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>

³⁹ Ibid.

⁴⁰ Ibid.

Quotas and other affirmative action measures

The Gender Equality Bill presently contemplates the introduction of targets for women in leadership in public sector organisations. WEstjustice considers that this approach should be extended to ensure that the public organisations that represent women of migrant and refugee backgrounds reflect their make up as members of the Victorian community.

Positive role-modelling is a critical step in the path towards enhancing migrant and refugee women's participation in the workforce. Adopting targets which ensure diversity amongst the leaders in these roles is needed to ensure representation of women from diverse backgrounds at *all* levels of the public sector.

As to the appropriate targets, WEstjustice supports the proposal for targets prescribed by the regulations to include:

- Victorian Public Service – appoint 50% women executives;
- Paid public boards – 50/50 representation of women in new appointments.

As to targets which aim to achieve diversity amongst the women appointed to those positions, we support the introduction of quotas, but do not consider that we are well placed to make a submission in respect of the quantitative targets to be adopted in this regard. Any targets for specific groups must take account of the diversity in the Victorian community which extends beyond women from migrant and refugee backgrounds, and account for the need for the workforce to be meaningfully diverse.

In our view, specific quotas would mark a step towards achieving equality for all women. Having regard to the diversity of the Victorian community and its workforce, we see great opportunity for the proportion of women from migrant and refugee backgrounds to increase over time, and suggest that short, medium, and long term targets might be best adapted to the increasing incidence of qualifications recognition and training amongst this group.

We note that this position is consistent with stakeholder views in response to the Victorian Gender Equality Strategy Discussion Paper, which spoke to the need to establish quotas for women including specific groups who are even more underrepresented.

Gender Equality Action Plan strategies and reporting

The Gender Equality Bill provides an opportunity for the Victorian Government to target the issue of inequality both between men and women, but also to confront the particular experiences of disadvantaged women within our community.

WEstjustice strongly supports the proposal to introduce Gender Equality Action Plans, but submits that the identification of strategies to promote workplace gender equality and requirement to report annually on the success of gender equality targets ought extend to the question of inequity *amongst* women, and in particular, as experienced by migrant and refugee women.

Recommendation 6: Quotas for roles in public sector organisations should extend to targets for representation of women from migrant and refugee backgrounds

Recommendation 7: Gender Equality Action Plans should extend to the question of inequity amongst women, and in particular, as experienced by migrant and refugee women

Question 10: How can the Victorian Government leverage procurement and funding practices to promote gender equality in the wider community?

In order to meet diversity standards, and ensure women retain sustainable employment, we submit that government employment and procurement policies should be amended to set minimum standards for diversity. WEstjustice believes that by increasing opportunities for sustainable employment for women of migrant and refugee backgrounds, workers will be less likely to tolerate abysmal working conditions out of desperation. Exploitation will be reduced and society as a whole will benefit from more diverse workplaces.

WEstjustice strongly agrees with the position expressed in the Discussion Paper, insofar as the Government has recognised that there is an opportunity to leverage its position as a provider of funding support to the not-for-profit sector, and a purchaser of goods and services from the private sector.

We note that the Victorian Government has adopted the Social Procurement Framework, which includes recommended actions for government buyers to drive supplier behavior that addresses gender inequality and prevents family violence.

The Gender Equality Bill presently contemplates the introduction of purchasing guidelines, including in respect of procurement practices. In WEstjustice's view, any contemplated procurement practices and policies should also set minimum diversity standards, so as to create meaningful targets for employment of women of migrant and refugee backgrounds. This approach could include requiring companies to collect data and report against diversity standards so as to create meaningful targets for employment of culturally and linguistically diverse workers.

The implementation of procurement policies provides an excellent opportunity for the Victorian Government to promote secure work for women generally. However, we consider that procurement policies must also set minimum diversity standards, and reward high-functioning workplaces with a track record of promoting women from migrant and refugee backgrounds.

Importantly, we consider that any procurement policies must be properly monitored and enforced.⁴² Governments must model best practice standards by requiring those who tender for government contracts to provide independently verified evidence of compliance with workplace laws, and a demonstrated commitment to secure work and diversity targets. The absence of independent verification which measures performance against objective standards as part of this process will significantly reduce the effectiveness of the contemplated guidelines.

We commend the consultation draft of the ACT's Secure Local Jobs Code to the Victorian Government in this regard, which requires that contractors undertaking territory funded work obtain Code Certification. The ACT has issued draft legislation which proposes to amend the Code to include an obligation for a tenderer to state in its labour relations, training and workplace equity plan, how the tenderer will promote and support diversity in the tender's workforce.

Examples provided in respect of promoting and supporting diversity include "*policies or strategies to address barriers to employment, or career development, for Aboriginal or Torres Strait Islander people, women, people with disability and people from culturally and linguistically diverse backgrounds*".

The implementation of an equivalent instrument alongside the contemplated guidelines is, in our view, a critical way in which the government can meaningfully leverage its procurement practices. In the absence of an objectively measureable set of standards such as that set out in the ACT's Code, the

⁴² John Howe, Andrew Newman, Tess Hardy, 'Submission to Independent Inquiry Into Insecure Work In Australia' (Centre for Employment and Labour Relations Law), 22-23.

effectiveness of the procurement guidelines is likely to be undermined, or at the very least difficult to assess.

The positive effect of diversity requirements within procurement practices have been repeatedly demonstrated - for example, in America, 'employers with federal contracts are required to file reports indicating "underutilization" of women and are then obliged to address this by making corrective efforts including the use of written goals and timetables. Contractors may be sued and barred from federal contracts if they are judged to be not pursuing affirmative action.'⁴³ It is generally agreed that 'the federal contractor programme as a whole has improved the proportions of African Americans and of women both in employment generally and in managerial posts specifically.'⁴⁴

In Australia, the Administrative Appeals Tribunal (**AAT**) has a Workplace Diversity Plan which 'seeks to drive the principle into action and realisable employment targets'. As of June 2016, the AAT reported that 'of the APS employees in its workforce, at least 21% were born overseas, compared to the APS median of 14.4%'.⁴⁵ Similarly, the Fair Work Commission Workplace Diversity Strategy seeks to increase recruitment and retention of culturally and linguistically diverse workers.

Recommendation 8: Government employment and procurement policies should be amended to set minimum standards for diversity

Recommendation 9: Procurement policies must be properly monitored and enforced including through the provision of independently verified evidence of compliance with workplace laws and commitment to diversity targets

Recommendation 10: The Victorian Government should implement a form of secure jobs code as a way of enhancing the effectiveness of the contemplated procurement guidelines

Thank you for allowing WEstjustice the opportunity to make this submission.

Yours sincerely,



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⁴³ Christopher McCrudden et al, 'Affirmative Action without Quotas in Northern Ireland' (2009) 4 The Equal Rights Review 7, 8.

⁴⁴ Ibid.

⁴⁵ Administrative Appeals Tribunal, *Workplace Diversity Plan 2016-17* (2016) < <http://www.aat.gov.au/about-the-aat/working-at-the-aat/workplace-diversity-plan-2016-17>>.