

‘Employment is the heart of successful settlement.’

Footscray Community Legal Centre Employment Law Project:
Overview of Preliminary Findings
February 2014

'I hope this service should be open and help us soon.'¹

The Employment Law Project (**Project**) seeks to improve employment outcomes for newly arrived and refugee communities in Melbourne's Western suburbs. Informed by a period of consultation and research (**Stage One**), the Project will deliver two linked programs: a pilot legal advice and referral service; and a community education program (**Stage Two**). One of the outcomes of the Project will be a Report that sets out key employment issues and recommendations, supported by evidence gathered in Stages One and Two (**Stage Three**).

This document sets out our key findings from Stage One. In summary, newly arrived communities report high levels of exploitation in the workplace. In particular, they experience

discrimination, frequently lose their jobs, are underpaid and denied basic entitlements. They also experience bullying, are forced into 'sham contracts' and work in unsafe jobs with high injury rates. Communities report a very low level of understanding of Australian employment laws and services, and a keen desire to learn more. Face-to-face, targeted employment law services and community education programs in Footscray and other outreach locations are urgently required. These services are best delivered in consultation and collaboration with local communities and agencies. Our proposal for Stage Two is attached.



Catherine Dow (Footscray Community Legal Centre), Simone King (Wyndham Legal Service) and participants in an employment law information session at New Hope Foundation, Werribee.

Overview of Stage One Findings

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Stage Two Proposal (attached)

Employment Law Service and Community Legal Education Program

- 1. Pilot Employment Law Service (commencing May 2014)**
 - What is the Employment Law Service, and who can it assist?
 - How will the service operate and when does it open?
 - What can the Service assist with?
 - How to refer to the Service: important considerations
- 2. Community Legal Education Program (underway)**
- 3. Further identified needs**

'Employment is the heart of successful settlement'²

1. Settlement experiences and the value of work

The Western suburbs of Melbourne are home to a diverse range of refugee and newly arrived communities. Arriving from a foreign country, many have experienced violence, torture or trauma and are now separated from family members and social connections. Many things are new - including language, public transport systems, schools and laws. Showing resilience and determination, community members seek to create a new life, and employment is consistently recognised as a vital step for successful settlement.³

When settling in a new country, sustainable employment provides financial stability⁴ as well as 'social cohesion, self-esteem, independence, the ability to gain stable housing and more broadly, a greater sense of community belonging and well-being'.⁵ This benefits not only migrants and refugees, but the broader community as a whole. High levels of unemployment amongst skilled refugees⁶ and the denial of work rights for some asylum seekers⁷ means that Australia is missing out on needed skills and human capital benefits, not to mention the numerous social and economic benefits a cohesive, vibrant and multicultural workplace can bring for all workers.

Although this report exposes high levels of exploitation and unmet need, it is important to recognise that many 'humanitarian settlers have also made important contributions to Australia's economic and social development'.⁸ We have heard of many successful employment outcomes arising from community-based programs that feature partnerships between employers, unions, education providers and settlement agencies.

One community worker described the satisfaction he felt when clients approached him three or four years after participating in an employment program to let him know that they were still working, had bought a house and had reunited with family members. As he said, 'employment is the heart of successful settlement'.

2. Methodology

In Stage One of the Employment Law Project (**Project**), we sought to learn about key problems at work for newly arrived and refugee communities in the West, what services are currently available, and how Footscray Community Legal Centre (**Footscray CLC**) could best meet identified community needs for community education and an employment legal service. We did this by undertaking a literature review, conducting semi-structured interviews with key stakeholders, and circulating surveys for community workers and community members.

I met with 39 individuals or groups from settlement agencies, community legal centres, Victoria Legal Aid, law firms, unions, universities, government agencies and other community organisations, as well as attending numerous network meetings.

Surveys were drafted for community members, community workers and AMES Community Guides.⁹ These surveys addressed similar themes although questions varied in some detail and were refined in response to feedback from academics, bilingual assistants, and preliminary survey respondents. Our initial consultations indicated that community members understood little of employment laws and concepts, making it difficult for them

to identify 'common legal problems'.

To assist, we sought to describe workplace problems in plain English and use examples in the surveys so that respondents could successfully identify whether or not particular problems were common. However, we suspect that even still, significant under-reporting of problems will be a feature of our results.

We received 105 surveys – 33 from AMES Community Guides, seven from community workers and 65 from members of newly arrived and refugee communities. Many community member surveys were completed with the assistance of a bilingual assistant or case worker. Many newly arrived and refugee communities were represented, including participants from Afghanistan, Burma (including Burmese, Chin, Karen and Karenni communities), China, Ethiopia, India, Somalia, Sri Lanka, Sudan, Iran and Iraq.

3. Acknowledgements

I would like to sincerely thank everyone who has given their time to be involved in the Project to date. In particular, I would like to acknowledge community members and workers who met with me, reviewed surveys, completed surveys and/or facilitated further opportunities for learning and consultation – especially to staff at AMES, New Hope Foundation, Spectrum Migrant Resource Centre and Wyndham Community and Education Centre, thank you for taking time out of your busy days to share your experiences, insights and ideas – they have greatly shaped the Project already, and will continue to do so.

To the four bilingual assistants who reviewed draft surveys and conducted surveys with members of their communities – Banafsheh Abedali, Pa Hmun, Atem Biar and Zolfeqar

Ahmadi – thank you for your feedback and assistance. Thank you also for your work in collecting case studies for the Project, Banafsheh. Thank you to the lawyers at other community legal centres for sharing your experiences and resources – the community legal sector provides access to justice to the most disadvantaged in our society using strategic, considered models of service delivery, and it is exciting to work together.

Thank you also to the dedicated and talented volunteers who completed the literature review that informs this Report and the Project more generally: Phoebe Churches, Rachel Hui, Rachel Liebhaber and Grace Park; graduate lawyer, Beth King; and to Jessica Dolan and Don McKenzie for their feedback and assistance with preparing for Stage Two. Thanks to Anjali Suriyakumaran for her considered and thorough assistance analysing the survey results. Thank you to Martin Hemingway for his excellent feedback and support; and to Jessica Grace Hogg for volunteering her outstanding graphic design skills to format this Report. And of course, thank you to my colleagues and friends at Footscray CLC for their inspiration, patience and support. I look forward to working with each of you as we move into Stage Two.

4. Strengths and Limitations of this Report

This report is an overview of our preliminary findings from Stage One of the Project. The findings were largely sought to inform Stage Two, and are not drawn from a large sample size. Although we have attempted to be as rigorous as resources allow, our research is not comprehensive, and is based locally on our observations and those of our colleagues in the community. This community partnership and relationship is also the strength of the Report, as it enables us to share stories that may not otherwise be told.

Common working experiences: exploitation without awareness of rights and services

*'People from refugee backgrounds face discrimination at work, bullying, don't know their rights and often lose their jobs without being aware. No secure job.'*¹⁰

*'I was a painter in Somalia, but have no Australian qualification and cannot find work'*¹¹

Australians of refugee background are more likely to be engaged in low income, precarious forms of employment, and are more likely to experience discrimination.¹² Seventy one survey respondents were asked to identify whether particular experiences were 'common', 'somewhat common', or 'uncommon' for newly arrived and refugee communities at work, or (for community members) whether they or someone they knew had experienced particular issues.¹³ As shown in the graphs below, the most commonly-reported experiences were language/communication difficulties, low understanding of Australian employment laws and services, loss of employment, underpayments and discrimination. The reported rate of workplace exploitation is alarmingly high, and the key issues identified by this survey question are largely mirrored in responses to other, more open survey questions,¹⁴ as well as the face-to-face consultations. Key issues are explored further below.

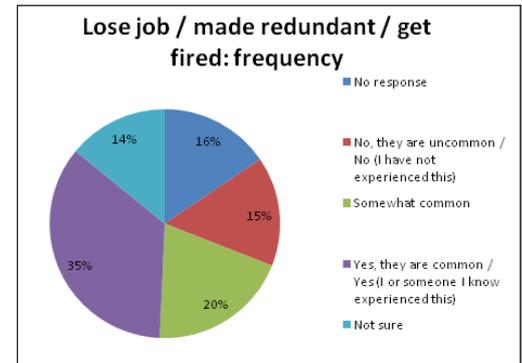
5. Common working experiences

a. Lose job / made redundant / get fired

*'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.'*¹⁵

*'Someone worked on casual basis due to a small language barrier got fired from job. As he was casual no supports were available for him.'*¹⁶

*'We hear often about jobs at meat works factories that have very poor working conditions; low pay, long hours, and are often terminated without much notice or reason given; particularly 866 visas or refugees.'*¹⁷



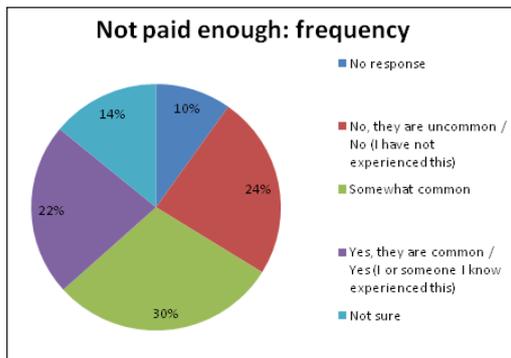
55% of survey respondents identified that termination of employment was common, somewhat common or that they or someone they knew had experienced losing their job. The causes for such high rates of job loss were not captured by this survey question, however interviews and other survey responses suggest it to be a combination of various factors including the nature of the work many newly arrived communities undertake (insecure, highly casualised employment in low-paid industries), as well as other potentially preventable problems including dismissal relating to small communication breakdowns/misunderstandings, unfair dismissals and discrimination. Many survey responses and interviewees noted the difficulties associated with insecure, casual employment. For example, one worker reported that many workers lose their jobs shortly before the Christmas break. Of 11 community members asked to rate the importance of understanding laws about termination of employment on a scale of one to four, the average rating was 3.5, showing that newly arrived and refugee communities attribute high importance to understanding these laws.

b. Underpayments & denial of entitlements

One community worker told us about a newly arrived client who worked in a restaurant. She started work at 10am each day, and worked until close (10-11pm). Before she got the job, she was promised \$7 per hour, but in reality she only receives \$40 per day.

We heard lots of shocking stories about underpayments and denial of entitlements. Participants reported that it is common for an employer to agree to pay a certain amount to a worker (for example, \$300 per week), but then say that because the business had a bad week (or some other excuse) the employee will only receive \$100. Some employees work many more hours than they are paid for. 52% of survey respondents said that underpayments were common, somewhat common or that they or someone they knew was not paid enough. We heard stories about some professionals who had worked for many months, without any pay at all.

survey respondents said being paid in cash was common or somewhat common, and many linked cash in hand payments to other forms of exploitation, such as unsafe work and underpayments. It was often noted that because it is so difficult to find work, and there seem to be no other options, people feel forced to take **cash in hand jobs**. Another common issue was **no superannuation or not enough superannuation** with 33% of respondents identifying this to be common or somewhat common. 45% of respondents reported that it was common or somewhat common to **not be paid for holidays or when sick**, however it is not possible to determine whether this high reporting rate is because workers are casual (and not entitled to such payments), or being denied their entitlements. One survey response suggested that they were denied rights to paid leave: ‘They didn’t mention about it and we didn’t have paid holiday although we worked like permanent job (long hours)’.¹⁸ These figures are remarkably high and indicate a widespread denial of basic rights to a living wage. Such underpayments have significant flow-on consequences in respect of workers’ housing, lifestyle and other social and health impacts.

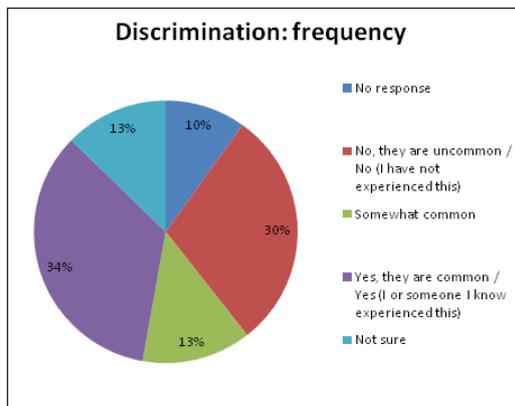


38% of respondents indicated that **not being paid regularly** was common or somewhat common for newly arrived or refugee communities, or that they or someone they knew experienced this. 36% reported it was common or somewhat common to **come in early or stay late at work without getting paid**. Another important underpayment issue identified in the survey and consultations was cash in hand payments. Around one third of

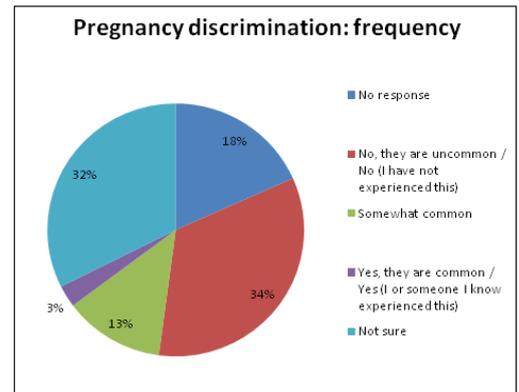
c. Discrimination

'Work discrimination should stop, education has to be spread to eliminate ignorance.'¹⁹

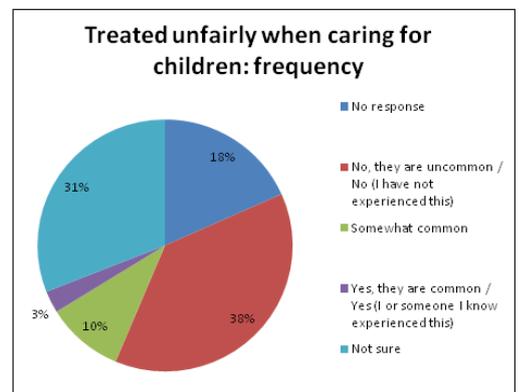
As is reflected in the literature,²⁰ discrimination was commonly identified in interviews and surveys as a serious issue - both when trying to obtain work, and once people found a job. 47% of survey respondents reported that discrimination at work was common, somewhat common, or that they or someone they knew had experienced it.

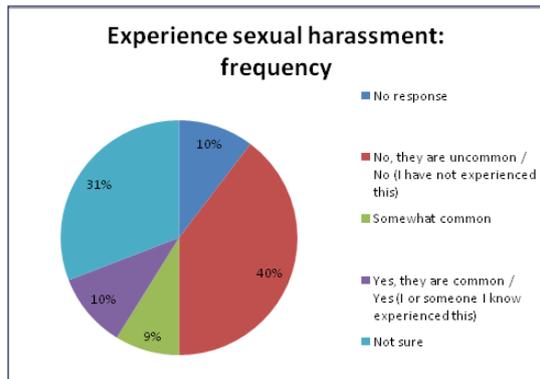


According to VicHealth, '[t]here is a strong relationship between exposure to discrimination and poor mental health'.²¹ The stories that we heard confirmed the devastating impacts of discrimination, and the significant health impacts that problems at work can cause. Community workers told stories about clients being deeply affected by discriminatory behaviour (for example derogatory comments about family or religion), and some clients being so offended that they felt they simply could not return to work. Community members reported being blamed for mistakes at work because of their accent/ language, or being refused work based on their foreign-sounding name, or country of origin. One community worker spoke about how discrimination is 'bigger than a word' for many refugees, feeding into a whole history of denial of rights and having to flee one's country to save their life.²²



When asked how important it was to understand anti-discrimination laws on a scale of one to four, community members who were asked ranked it an average of 3.6. Embodied in the comment above that 'education has to be spread to eliminate ignorance', and evidenced by an information session held for community workers in 2013, both community members and community workers consider this to be an extremely important issue to learn about. In October 2013, Footscray CLC hosted an information session with Victoria Legal Aid about anti-discrimination laws and how to refer clients for assistance. Targeted at community workers, this information session was attended by nearly 50 participants, and overall feedback from the event was overwhelmingly positive.





Although it is not possible to determine what type of 'discrimination' is reported so highly in the survey (except that it occurred 'at work'), or whether it was unlawful, specific questions relating to discrimination on the grounds of pregnancy or carer status revealed a much lower level of frequency, as did sexual harassment. Only 16% of respondents reported that **being treated differently because of pregnancy** was common or somewhat common or they or someone they knew had experienced it. However, 32% of respondents said that they were 'not sure'. Similarly, 13% reported that **'unfair treatment because you have children'** was common or somewhat common. 31% said that they were 'not sure'. 19% said that **sexual harassment** was common or somewhat common, or that they or someone they knew had experienced it at work. 31% were unsure. The number of respondents who were 'unsure' is significant for each of these responses, and demonstrates a high level of uncertainty about sexual harassment, pregnancy and carer based discrimination among survey respondents. This low level of rights awareness was reflected in consultations and observed in community legal education sessions that we have run.

Given the limits of the survey, it was not possible to evaluate whether or not the different/unfair treatment constituted unlawful discrimination. We will be able to comment more conclusively in our Final Report. The story of Zara,²³ reflects one experience:

I am 26 years old and I came to Australia as a refugee.

I have been working for two restaurants and I was really upset about all of working. The biggest problem for me was that they were all thinking to take advantage of me.

The first restaurant that I started to work with was for a man (who has a wife already) who suggested that we have a relationship. There were two men there working with each other and both of them suggested this. Then after that I did not feel safe in that place and preferred to stop working there.

I am living alone and I have nobody who I can trust.

The second restaurant that I found a job also was for a man who suggested me to have a relationship with him. His wife was working in that restaurant and she was just yelling at me during my two days work for them. After those two difficult days I decided not to go there anymore and he did not pay me any money.

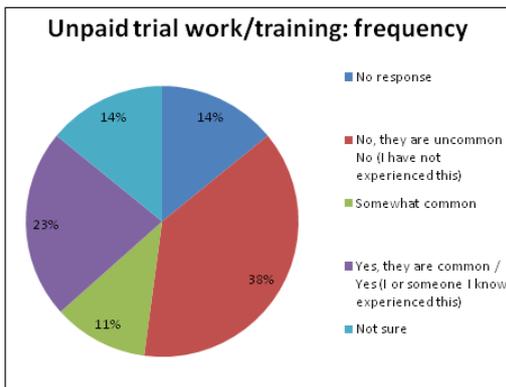
Actually there is another problem with these jobs. They tell you that you have to work two or three days as a trainee and then they usually keep one week wages for themselves.

Now I am not working and I decided to study English.

We all have these kinds of problems [in my community] and we don't know where we can go and make a complaint about them.

d. Unpaid trial work

Zara’s story highlights another common problem – unpaid trial work and unpaid training. 34% of survey respondents reported that unpaid trial work or unpaid training was common, somewhat common, or that they or someone they knew had experienced this.



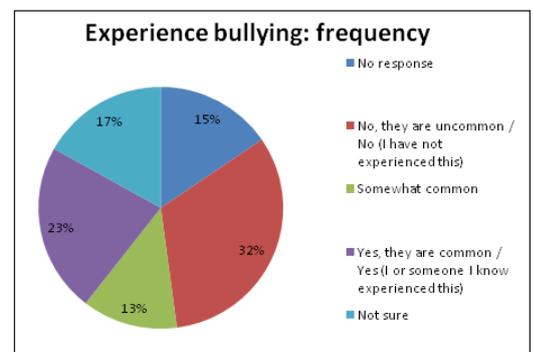
A 2013 report commissioned by the Fair Work Ombudsman (FWO) draws attention to international students and young migrant workers on student or temporary visas as a vulnerable group of workers more likely than others in Australia to be exposed to types of unpaid work.²⁴ This was reflected in our consultations, with community workers reporting unpaid trial work to be a common issue, and one survey respondent noting: ‘there was a series of clients coming in regards to meat works trials.’²⁵ When presenting community legal education about employment rights and responsibilities to newly arrived communities, I have talked about different types of employment (for example, ‘casual’, ‘apprentice’, ‘employee on probation’ and ‘trial work’), and then asked participants to guess whether or not the different types of employment are paid or unpaid. Participants often think that trial work falls into the unpaid category, when in many circumstances, the worker should in fact be paid.

e. Bullying

‘[Bullying] was common for the first wave of Sudanese going into the predominantly white meat works.’²⁶

36% of survey respondents said that bullying at work was common, somewhat common, or that they or someone they knew had experienced it. The importance of understanding bullying laws was ranked an average of 3.7 (very important) on a scale of one to four. Bullying is clearly identified as an important area to learn about, and the figures suggest that **over one third of respondents reported that bullying is common or somewhat common, or that they or someone they knew had experienced bullying at work.**

In numerous consultations, bullying was described as a serious and common workplace problem. Community workers explained how many employees experienced bullying, but few would challenge the perpetrators. Due to this reluctance to report, the bullying continued and workers often felt forced to leave their jobs. Bullying was reported as particularly common in meat processing factories. Our findings are reflected in the National Union of Workers safety audit survey (NUW Audit) which found that of the 1000 people surveyed, 20% ‘reported that they had suffered bullying while working in the poultry industry’.²⁷

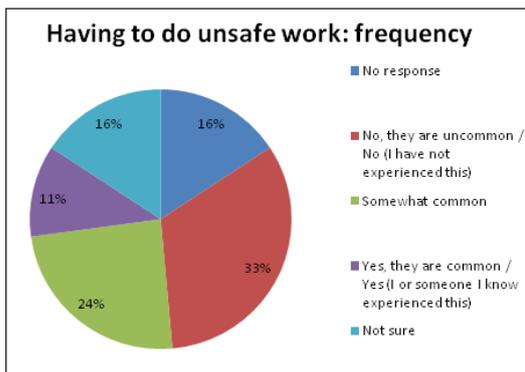


f. Workplace injury and unsafe work

*'One of my friend lost his fingers in meat factory few years ago. The incident happen due to poor workplace safety, and no proper induction/training at workplace.'*²⁸

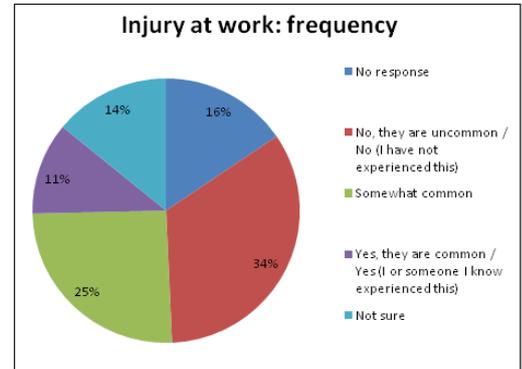
*'Some clients have awful work like cleaning out bins/tanks, dealing with skins being tanned - they probably don't have thorough chemical training or safety things...'*²⁹

Workplace injury and unsafe work is reported at alarming rates by many newly arrived and refugee communities, and their case workers. This issue was raised in a number of face-to-face consultations, and also mentioned in a high number of survey responses. 35% of survey respondents reported that it was common or somewhat common to have to do unsafe work, or that they or someone they knew had to do unsafe work. Very similar rates were reported for injury at work, with **over a third of respondents reporting that injury at work was common/somewhat common, or that they or someone they knew had a workplace injury.**



In the poultry industry, where many newly arrived community members work, the NUW Audit found that 37% of those surveyed said they had suffered an injury at work, although only half of these workers filed compensation claims. This rate of injury is significantly higher

than the national average.³⁰ The Audit found that 37% of workers had received no manual handling training, along with other serious safety concerns.³¹



Communities clearly identified a need to learn more about workplace injury and safety laws.

We heard stories about employers taking advantage of their employees' lack of knowledge about workplace safety laws, for example by getting them to sign 'settlement' agreements for unsatisfactory amounts that deny the worker fair compensation and return to work entitlements:

One case worker told us about a client who was told to clean a machine while it was still running. The machine was designed to peel and cut vegetables. As a result of following the instruction, he lost his thumb. The company said they were sorry about the loss and offered the client an amount of compensation to "settle" the matter. The company told the worker to go home, saying that they were quiet at the moment and they would call when busy again. Many workers were called back once it was busy again, but not this worker. Ultimately, with the help of the case worker and union, the worker was able to obtain the compensation they were entitled to.

g. Sham contracting, other contracting issues

*'Client was told they would only hire him if he had an ABN.'*³²

*'Clients don't know their rights and what they should be paid. They are taking jobs and using ABNs without knowing what that means.'*³³

'A lot of clients are told by employers they have to obtain ABNs even though it's not appropriate for the work they are doing.'³⁴

Australian employment laws make it illegal to hire a worker as an independent contractor when they should be an employee (known as 'sham contracting'). However, many survey respondents and interviewees reported that working as an independent contractor was very common, even for work that should be performed by employees. This means that workers miss out on various entitlements including superannuation, minimum wage, holiday pay and WorkCover benefits.

The NUW has identified this as a key problem in the poultry industry, highlighting related problems in terms of workplace safety (contractors rarely receive adequate training) and security of employment.³⁵

Another related problem was described to us as the use of 'middle men'. Some community members find work with the assistance of a 'middle man', who then takes an amount out of the worker's wages each week. We heard of one client working as an independent

contractor in a warehouse. Instead of receiving \$15 per hour, he receives \$8 per hour, and the 'middle man' takes \$7. The client was too afraid to take action in case he lost his job. It is possible to challenge sham contracting, as shown by recent case of *Jooine*:

A recent case brought by the FWO³⁶ concerned a part-time night cleaner from South Korea. The cleaner did not speak much English and was on a working holiday visa. The Court found that the worker was deliberately engaged in a sham contract and underpaid by almost \$2,000.³⁷ The judge noted that the boss had taken advantage of the worker's vulnerability:

*'I now turn to Mr Park who was a vulnerable employee, due to his limited English and the fact that he was on a working holiday visa in Australia... Mr Park had a very limited understanding of what his workplace rights were and... Mr Lee took advantage of this limited understanding... Not only was Mr Park deprived of income due to Mr Lee's contraventions of the FW Act, the sham contracting arrangements deprived Mr Park of other benefits such as workers' compensation protection, the right to receive superannuation and leave provisions. In effect, there is more than just wages which Mr Park did not receive.'*³⁸

Mr Park was awarded \$1858.53 (the amount he was underpaid by), plus interest. The company also had to pay nearly \$50,000 in penalties with the company director also required to pay penalties of \$9,504.

The breach was identified as part of a FWO audit of the cleaning, call-centre and hair and beauty industries. We look forward to collaborating with the FWO if any of our clients seek to pursue similar cases.

6. Contributing factors

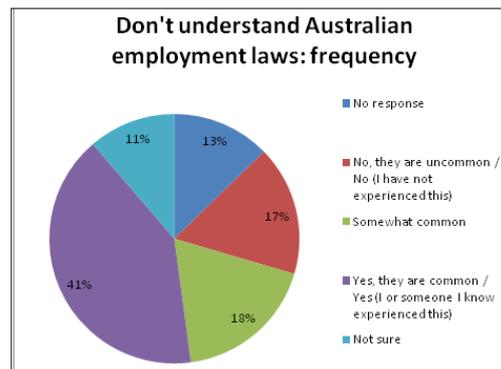
There are a number of factors that contribute to the high level of exploitation experienced by newly arrived and refugee workers. We will explore these issues further during Stage Two, however so far participants have reported the following:

a. Low understanding of rights and services

*'Many have no idea of what rights & responsibilities they have - but would come & ask us for help - some continue to do so years later.'*³⁹

'Many have no idea of what rights & responsibilities they have.'⁴⁰

Both the literature⁴¹ and our findings strongly indicate that newly arrived and refugee communities have an extremely limited understanding of Australian employment laws and services. The impact of this lack of awareness is that workers are exploited and cannot take action to have their rights enforced.



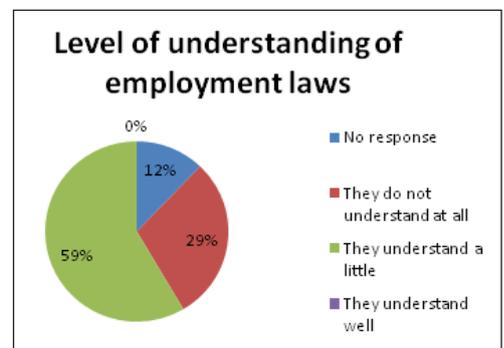
i. Don't understand laws

'Access to services begins with knowledge of the law' - without an understanding of your rights and responsibilities at work, you are less likely to perceive that you are being exploited, and are much less likely to seek help to enforce your rights.⁴²

Nearly two thirds of survey respondents reported that it was common or somewhat common that newly arrived or refugee communities do not understand Australian employment Laws. Similarly, when community workers and AMES Community Guides were asked how well newly arrived and refugee communities understood Australian employment laws, 88% said they do not understand at all or understand a little.

No respondents said that communities understood employment laws well.

36% of survey respondents said that it was common or somewhat common that **workers do not know whether they are part time, full time, casual, independent contractor or other employment type**. 43% said that it was common or somewhat common that **workers do not know the name of the award or agreement covering their employment**. Low rights awareness was frequently identified in interviews and survey responses as a serious problem for newly arrived and refugee communities at work.



There are a number of vocationally-oriented education programs for newly arrived communities (for example, the Settlement Language Pathways to Employment and Training Program (SLPET) and the Skills for Education and Employment program (SEE), as well as employment-related information sessions and programs organised as part of the Humanitarian Settlement Scheme and Settlement Grants Program. Many of these programs have facilitated successful employment outcomes for clients and feature

workplace placement components to empower workers by facilitating references and Australian experience. However, while these programs may cover some information about workplace rights and responsibilities, they are not delivered by educators with legal expertise, and there are few targeted teaching resources to assist. We have already commenced presenting information sessions to classes on employment law rights and responsibilities in an attempt to address this clearly unmet need.

We look forward to collaborating further with educators and others to develop and deliver effective community legal education seminars and resources. For the many individuals who enter the workforce prior to commencing the Adult Migrant English Program (AMEP), or leave the AMEP program early, we will need to conduct alternative community education opportunities.

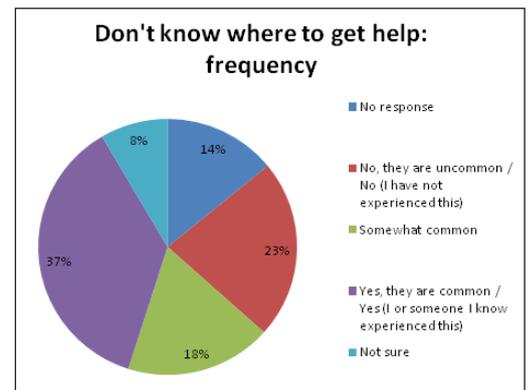
ii. Don't know where to get help

'Language barriers and cultural differences affects all newly arrived refugees to access either legal information or health services provider.'⁴³

*'Most newly arrived people will not know the services available for them.'*⁴⁴

55% of survey respondents reported that it was common or somewhat common for newly arrived or refugee communities to not know where to get help if they had a problem at work, or that they or someone they knew did not know where to get help when they had a problem at work. These extremely low

levels of service awareness were reflected in more detailed survey questions. 40 survey respondents (community workers and AMES Community Guides) were asked whether they (or the community they worked with) were aware of any organisations that could assist if they had an employment related query/problem. Seven responses identified the Fair Work Commission. Within these seven responses, two also identified the FWO, and one identified WorkSafe.⁴⁵



For community members who were asked a similar question, most respondents said that they were not sure who they would ask for help, or that they would speak to their supervisor or colleague. The only community member participants who successfully identified employment-related services (e.g. Job Watch) were those who completed the survey AFTER attending a community legal education seminar where we explained what services were available to assist. When asked whether they knew various services, over half of the community members asked had never heard of many key agencies.⁴⁶

Workers often seek advice and information from those in their communities because they are unsure where else to turn. This information is often incorrect or incomplete. As one community worker reports, 'most agencies helping them will endeavour to provide [relevant] information, however the demographics who rely on their community for information may get misinformed'.⁴⁷

Some community members were asked whether they, or anyone they knew, had a problem at work, and what they did. The responses reflect a common pattern – community members lacking awareness of laws, experiencing exploitation, but not enforcing their rights: ‘yes, discrimination, nothing’; **‘yes, myself I injury at work but I not receive any payment to recovery’**. Zac’s Case⁴⁸ tells a similar story of exploitation and not knowing where to find help:

I am 26 years old and I came to Australia as a refugee. I started work as a mechanic. I had an International Driving License and I started to drive my own car. I had a very friendly relationship with my boss.

I was just a new arrival at that time and I was not familiar with lots of things, including driving rules in Australia. After a while, my boss asked me to transfer my driving licence details to his fines. He told me ‘I have some fines and I want to pay for them but I don’t want to lose my points’. He also added ‘you don’t need to worry about anything because you have an international license and you don’t have any points to worry about.’ He said, ‘you just give me your details and then our fines will come to you and we will pay for all of the fines.’ Actually, he needed a person to transfer his fines because he would miss all of his points or maybe his license.

I accepted it because I did not want to lose my job at that point and I could not say no to him because I thought if I didn’t agree he would fire me.

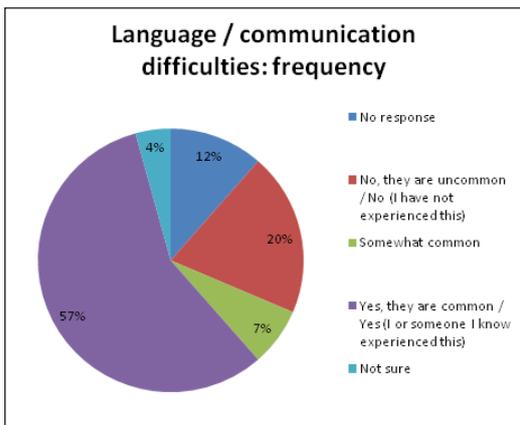
He also did not pay me on time or enough. I was paid \$50 per day.

After that I received more fines with the recent date which shows that he did not care about anything. Now, I owe \$2000 dollars in fines, I have lost my licence and the police have taken my car.

I am really upset about this matter, especially when I am still forced to work for him. I really need somebody to help me solve this problem. I don’t know if anyone can help me.

b. Communication and language barriers

‘Language or communication difficulties’ was identified as **the most common workplace experience** from the list provided. 64% of survey respondents said that language/communication difficulties were common or somewhat common, or that they or someone they knew had experienced this.



Not only do language and communication difficulties **cause** problems at work (for example, we heard about one employee who did not understand a colloquial request for assistance ('give us a hand'), and was then perceived as unhelpful because she did not respond), but they also **prolong** exploitation by stopping workers from understanding their rights, accessing services, or negotiating with their employer to resolve a problem.

One example of this is Yasmin’s story,⁴⁹ a young refugee worker who reports struggling with part time work and a young family, unsure of her rights, all of which is compounded by language barriers:

I came to Australia with my husband and five year old son. Now I am a part time employee but I have so many issues in my work place. Because I am a part-time employee, I am not able to have some hours off to pick up my son from school.

My husband is studying and is not able to leave class early. Now I am very nervous because of my son, I really don't know what to do. If I want to arrange childcare I have to pay a lot of money which is not possible for me. These days I am thinking that I am working but I don't have any more money than if I stayed at home. The other problem that is really nerve-racking for me and maybe for other new arrivals is language.

It is really difficult for a person who comes from another country with different language and life style, to learn new language and cultural diversity. It takes a lot of time for us to use that, and when you have a lot of stress at work that maybe the other people laugh at you or you may lose your job.

Sometimes lack of sufficient English stops me from expressing myself and affects the whole result at the end. And it also affects the picture that I have of myself as a powerful and independent person in my life and breaking self confidence.

All the refugees have problems in this area, especially when they work they face so many difficulties. If there is a place we can go to tell them our problem that may affect future refugees that would be great.

c. Other contributing factors

Difficulty obtaining employment and related fear of losing job:

The high levels of unemployment and underemployment amongst migrants has been recognised in academic research⁵⁰ as well as by organisations working with migrant communities.

As noted above, survey respondents and interviewees indicated that finding a job is extremely challenging for many newly arrived communities. In 2011, the Australian Bureau of Statistics found that 9.1% of Humanitarian migrants in the labour force (actively looking and immediately available for work) were unemployed.⁵¹ The 9.1% unemployment rate of Humanitarian migrants is glaringly high when compared to the general unemployment rate (rated in 2011 at 5.3%)⁵² and rate of unemployment for skilled migrants (3.5% of main applicants and 6.7% of secondary applicants).⁵³ 'Being employed' has been defined as working an hour a week, which means that the many underemployed workers are obscured. As the CEO of AMES, Cath Scarth, explains, '[o]fficial employment figures do not reflect the true extent of joblessness among emerging communities' – the actual figure might be as high as 20 per cent.⁵⁴

In order to find work, emerging communities must overcome numerous barriers, some outlined **below**. Because it is so difficult to find work, many community members do not challenge exploitative practices for fear of losing their jobs. This issue was frequently raised in interviews, and also mentioned by many participants in community legal education presentations.

- **Discrimination in recruitment:**

Discrimination in recruitment has been recognised as a major barrier preventing migrants and refugees from finding work.⁵⁵

As mentioned above, many participants reported discrimination in the recruitment stage. One community worker explained that for many young people from emerging communities it is difficult to get over the first hurdle of an online application, which often requires detailed written responses to questions such as 'your dream for the future', even if the job is for low-skilled industries. Another community worker told us about a young African man studying at university and looking for part time work. Although he was happy to do any sort of hospitality job, he was repeatedly told that his application was unsuccessful prior to the interview stage. When he did get an interview, he would get there and be told there is no job for him (after they saw him).

- **Lack of recognition of qualifications:**

Many participants said it was difficult to have qualifications and experience recognised in Australia. Studies have shown that despite professional qualifications, many migrants and refugees are employed below their level of expertise.⁵⁶

Cultural barriers, lack of networks and no Australian experience:

This was reported as a barrier to finding work, but also a contributing factor to exploitation of newly arrived workers. Without local experience or a reference, many workers find it immensely challenging to find work. As discussed below, cultural barriers also prevent some workers from accessing mainstream services.

Low income, precarious work:

Many newly arrived and refugee workers are engaged in precarious work, defined as 'work for remuneration characterised by uncertainty, low income, and limited social benefits and statutory entitlements'.⁵⁷ In 2011, 72% of Humanitarian stream migrants aged 15

and over had weekly incomes of less than \$600. Survey respondents and interviewees reported that communities worked in a variety of low-paid, low-skilled or dangerous jobs including warehousing, factories, hospitality, meat processing, family day care, painting/tiling, taxi driving and cleaning. The work was characterised by casualisation and insecurity. There were also some professional and managerial positions, although these workers were in the minority.

Power imbalances for temporary migrant workers: Because our community member surveys were largely completed with the assistance of community workers from settlement agencies (who work with refugees and other permanent migrants), we have not yet explored the experience of temporary migrant workers in detail. However, several reports indicate that temporary migrant workers (including 457 visa holders,⁵⁸ international students⁵⁹ and working holiday visa holders⁶⁰) are particularly vulnerable to exploitation due to the nature of their visa, dependence on employers and lack of knowledge of rights and responsibilities.⁶¹ This was also raised in some face-to-face consultations.

Desperation to work for family: As noted by the Refugee Council of Australia and many interviewees in our research, many humanitarian entrants are extremely driven to find and keep work in order to sponsor family reunion and/or provide financial support to family members waiting in refugee camps or other locations. Family reunion is an integral

aspect of successful settlement for many refugees, and the costs associated with family reunion can be immense: 'The drive to reunite with family and friends who have been left behind in often precarious situations in refugee camps and other places of exile is so strong that people will go to great lengths to raise the money to bring them to Australia.' For many, reuniting with family is a s critical part of the settlement process.⁶²

Employers lack awareness: Many community members find employment with friends or family members from their own communities. Therefore, interviewees reported that sometimes, employers are not aware of the laws.

Current services, resources & referral pathways

7. Unmet legal need in employment law

In order to obtain and retain employment that is sustainable, it is essential that workers are aware of their legal rights and responsibilities, and able to access employment law advice and information. However, there are no targeted employment law services for newly arrived communities, and limited mainstream services available to vulnerable workers with a legal problem.

In 2009, the Minister for Employment and Workplace Relations requested a review of the need for Community-based Employment Advice Services (**CBEAS**). This review, conducted by Anna Booth, considered various government services, agencies, tribunals and others including the FWO and Fair Work Commission. Indeed, there are a number of mainstream services able to provide free legal information, advice and in limited situations, representation, to individuals with a problem at work. For example, FWO both investigates and prosecutes alleged breaches of laws including minimum pay or award conditions. The FWO also operates an Infoline (although their website reports that on average there is a 30 minute wait to get through) and has a range of fact sheets, tips and videos on their web site - with some targeted videos and information published in 27 languages.⁶³ Other relevant bodies include the **Victorian Equal Opportunity and Human Rights Commission**, **the Australian Human Rights Commission**, **WorkSafe and Victoria Legal Aid** (who have an Equality Law Team to assist with matters that involve discrimination). There is also **Australian Council of Trade Unions**. Some private firms are able to assist for a fee, however this cost is prohibitive for most newly arrived and refugee workers.

The review concluded that while there are a number of services that can provide general information and sometimes legal advice and representation, without CBEAS, there are few options for vulnerable community members who require more targeted assistance:⁶⁴

'As valuable as all of these services are, when an individual worker has a problem at work they may be unaware of their rights and perhaps also reluctant to approach a government body. Very often they will be looking not only for an information-provider but also an advisor and even advocate. A worker may need advice tailored to their particular circumstance. They may need personal support in preparing documentation. They may need representation in discussions with their employer to try to resolve the problem and restore the relationship. They may need representation and advocacy in the conduct of a proceeding before a tribunal or court to obtain redress.'

In these circumstances workers who are trade union members can go to their union, workers who can afford to do so can go to a lawyer and workers who are confident and capable can use the information provided by the government body to look after themselves.

However this leaves a significant group of workers with nowhere to go in the absence of community-based services. These are the workers who because of their industry or occupation, employment status or personal characteristics are also more likely to be vulnerable to exploitation at work. They experience a 'double whammy' of vulnerability at work and an inability to assert their rights.'

Yet many community legal centres (**CLCs**) are not able to meet demand for their services, despite doing an immense amount of valuable work with very limited resources. For example, Job Watch (an employment rights community legal centre that operates a free telephone information and referral service and provides some casework) has reported that it is unable to provide assistance in up to 67% of cases due to lack of resources.⁶⁵

Our observations at Footscray CLC, as well as responses gathered in Project interviews and surveys also demonstrate a significant unmet legal need for employment law matters, particularly for vulnerable workers. This unmet need is even greater among newly arrived and refugee communities, who face several barriers to accessing available mainstream services.

8. Barriers to accessing current services

Even once newly arrived and refugee workers become aware of their workplace rights and available services, they still may face a multitude of barriers to accessing those services. For example, the simple act of making a telephone call to an enquiry line may be arduous due to language and cultural barriers. Our survey asked whether newly arrived migrants and refugees face barriers to accessing legal information. Many community members identified language and cultural barriers, and interviewees explained that these cultural barriers often include a deep distrust and/or fear of people in positions of authority – such as government bodies or judicial officers. As the Refugee Council of Australia notes:⁶⁶

Prior to arriving in Australia, refugees have often experienced years of persecution and injustices at the hands of corrupt government officials, police and bureaucracies. It is understandable,

then, that many refugees arrive with a wariness of police and government bureaucracies and it takes time to rebuild trust and understanding.

The process of booking an appointment, requesting an interpreter, or receiving telephone advice over the telephone may be equally daunting. As confirmed by our survey results below, face-to-face services are much preferred by newly arrived and refugee communities. Telephone services are not always accessible:

Sole reliance on internet and telephone legal information and advice services may fall short of providing justice for all people... internet and telephone services can be ineffective modes of delivering legal assistance for people with low levels of legal capability. For example, as already noted, people with poor literacy or communication skills can have difficulty using legal information resources and websites, and other self help strategies... In addition, several authors have noted that disadvantaged people in particular often fall into the category of those who may require high quality face-to-face advice in order to achieve beneficial legal resolution... Thus, legal hotline services should not be regarded as a stand-alone panacea...⁶⁷

Similarly, mainstream education programs often fail to reach newly arrived and refugee communities.⁶⁸

There is strong evidence to suggest that face-to-face assistance and advocacy is essential to provide a service to refugee clients and that without targeted assistance focused on relationships, collaboration and trust, legal services, legal information and judicial bodies are often inaccessible.

What will meet our clients' legal needs?

9. Need for targeted services

A large body of research has established that specialist services targeting refugee and humanitarian entrants are the most effective form of service delivery.⁶⁹ This is also reflected in the survey and interview results.

Some general features of targeted services are set out here, with specific comments regarding Stage Two of the Project further **below**:

Relationships and trust: To be accessible, it is essential that community members feel safe and trust the service. This trust will build through nurturing relationships between the service and target communities, for example, by providing face-to-face community education, and attending local meetings and events. As one survey respondent notes, a key element of the relationship is its long-term, ongoing nature: 'Engage new arrival communities to integrate in the Australia system, especially to understand Australian laws; keep support and provide information/services to refugee backgrounds for long term in order to collaborate with the Australian-first settlers as a community.'⁷⁰

Collaboration: Closely linked with the above point is the importance of collaborating with other services that assist target communities, and other mainstream employment-related services. Fortunately, there are a number of networks (including the Wyndham Humanitarian Network, Inner West Settlement Advisory Committee, Bridging Visa E Innovative Interagency Responses Network and Maribyrnong Workers With Young People Network) that promote collaboration between service-providers in the West.

Consultation with relevant communities and agencies: Involvement of the target group in planning and decision making is crucial.⁷¹

Importance of community workers: Community workers from target communities provide an essential link between services and community members.

10. Employment Law Service

Participants were consulted about the need for an Employment Law Service and also best-practice models of service delivery.

As stated above, our research clearly demonstrates an unmet need for a targeted legal advice, advocacy and referral service for newly arrived and refugee clients in the West, who have a problem at work. This need was identified in both interviews and surveys. When asked what difference an employment law clinic might make, responses included:

*'It can prevent from so many problems that happening to newly arrived people because of lack of information.'*⁷²

*'Awareness/educating the communities about Australian laws.'*⁷³

As noted above, on a feedback form for an employment law information session that I delivered in early 2014, one participant had commented:

*'I hope this service should be open and help us soon'*⁷⁴

When asked about what would make an employment law legal service **'helpful and easily accessible'** for newly arrived and refugee communities,⁷⁵ the following preferred features were identified:

a. Face-to-face service

Of 36 respondents who commented on whether face-to-face or telephone services were more helpful and accessible, 20 respondents said face-to-face, while 16 said both. No respondents said that a telephone service alone would be more helpful and accessible.

b. Day and night options

There was a mixed response to whether the legal service should operate during the day or the night: of 26 respondents who commented on this, four said night would be more helpful and accessible, 11 said day, and 11 said both.

c. Located in Footscray and with outreach

In both interviews and surveys, a significant number of participants requested outreach services in addition to Footscray, particularly in Werribee and Sunshine. Laverton, Maidstone and Point Cook were also suggested.

d. Drop-in and appointment options

Again, there was a mixed response between whether drop-in or appointment-based service would be best, with seven preferring appointments, five preferring drop-in, and 15 preferring both.

As set out in our **attached** Proposal, the pilot Employment Law Service will operate in a manner informed by these consultations: the service will be face-to-face; offer day and night options; commence in Footscray with a view to opening outreach services in the near future; and offer an initial drop-in service, with appointments booked for eligible clients after this.

11. Community legal education

a. Importance of education / rights awareness

As noted above, awareness of rights and responsibilities plays a central role in access to services, the enforcement of rights, and sustainable employment outcomes. Community members and community workers have frequently acknowledged the importance of community legal education (CLE).

Some community members were asked 'How important is it to understand Australian employment laws?' - all responded that it was very important or important. When asked 'Why?', responses included:

'Because assist a person to stand up for his/her rights' / 'To give you rights' / 'Good to know my rights'

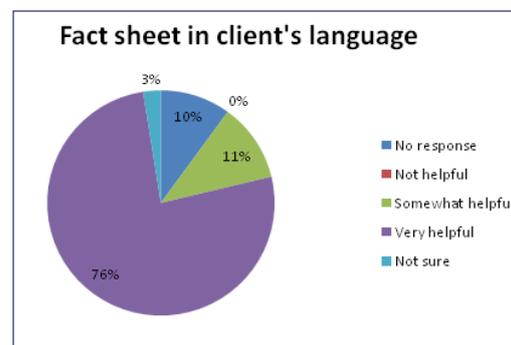


Banafsheh Abedali (Footscray CLC), Feridun Urak (ATO) and participants in a CLE event held at Footscray CLC.

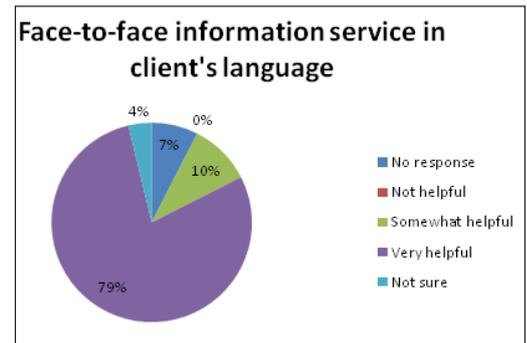
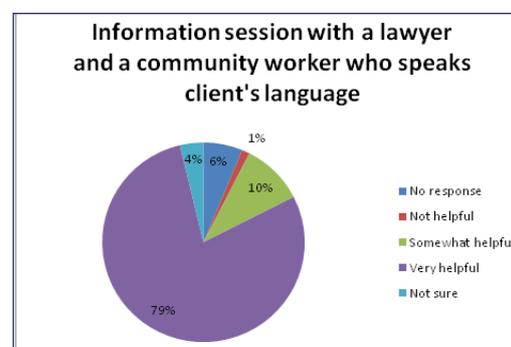
b. CLE for community members

i. Format

80 survey respondents (including community workers, AMES Community Guides and community members) were asked to comment on a variety of different CLE options. Respondents were asked to say whether particular options would be 'very helpful', 'somewhat helpful', 'not helpful' or 'not sure'.



The results clearly favoured materials in the client's language, provided face-to-face. For example, while 32% of respondents thought a fact sheet in English would be very helpful, 76% thought a fact sheet in the client's language would be very helpful. While 50% of respondents thought that an information session with a lawyer would be very helpful, 78% thought that an information session with a community worker who spoke the client's language would be very helpful.



46% of respondents thought that a telephone information service in the client's language would be very helpful - 79% thought a face-to-face information service in the client's language would be very helpful. For each of these results, in-language or face-to-face services are around twice as likely to be recognised as very helpful.



The four most popular formats of community education based on these survey responses are: fact sheet in client's language, information session with a community worker who speaks client's language (and also with a lawyer), and face-to-face information service in client's language. Interestingly, printed materials in English, websites in English and social media were reported as among the least helpful education formats.

Survey participants were also asked open questions about CLE. Community workers and AMES Community Guides were asked what makes community education effective, and what had worked well in previous CLE projects.

There were a wide variety of responses, but some recommendations include:

Visual materials and multimedia: Use of pictures, visual aids (such as DVDs) or other multimedia (including community radio).

Information sessions, English classes and pre-arranged community meetings: Delivering CLE via information sessions or as part of English classes is effective, as is visiting existing community groups.

Client's language and community workers: Using interpreters, community guides and community workers from relevant communities.

Clear language: Using clear and simple language.

Key information only: Outlining key concepts and where to go for further information/ assistance.

Cultural awareness: Ensuring presenter understands the community culture.

Convenient location: Considering location of CLE and contacting existing organisations: 'I think taking time to identify a number of community groups and associations that are already established and are meeting for a purpose on a regular basis. Request to be invited to talk about this issue which I think would be very popular within these communities.'⁷⁶

Practical and timely: Providing information 'that is linked to outcomes', for example by facilitating employment in industries and workplaces where rights can be realised. Ensuring that workers receive the right amount of information at the right time so it is not abstract.

Developed in consultation with communities: Ensuring that CLE is developed in consultation with community members and community workers, and responds to identified needs.

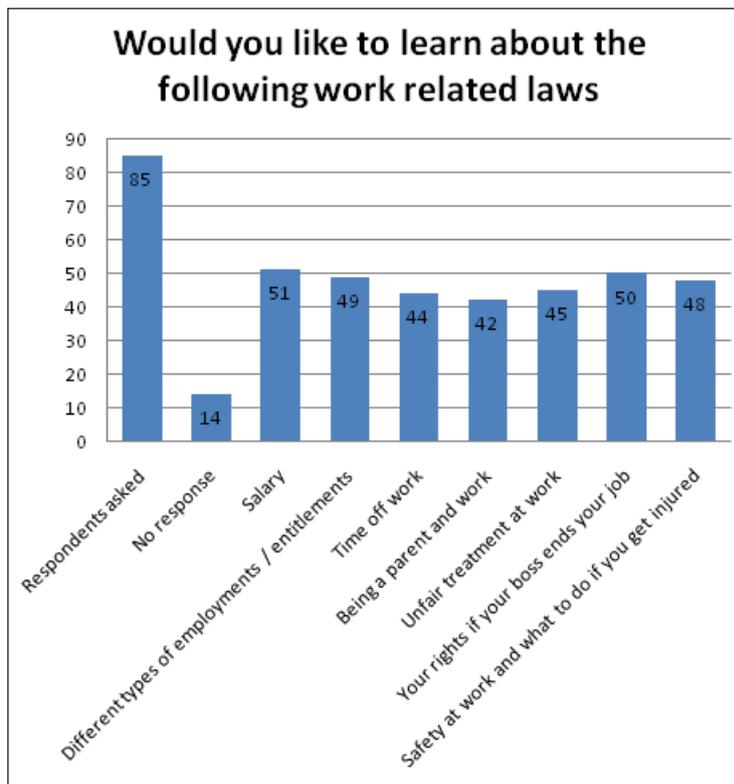
Similarly, when community members were asked what would make them interested to attend an information session, they indicated that sessions should be provided **in their language**, with **verbal as well as written materials**, with the involvement of **bilingual community workers**. Again, English language classes were suggested, as well as the importance of **community participation and consultation**.

Footscray CLC has been involved in designing a number of community education tools targeted towards newly arrived and refugee communities. Past successful training tools have included the development of digital stories and other training resources, which can be used by community workers, teachers, CLC staff and others to conduct CLE activities. Research has established that best practice in CLE requires materials in a variety of languages and not just in written format. Consequently education materials should be delivered in a range of media, including digital stories, DVDs and infographics. These materials should be developed in consultation with community workers and community leaders, to ensure the resources are appropriately targeted.

Additionally CLE about workplace rights, responsibilities and services should be delivered face-to-face to ensure accessibility and build relationships. Such presentations will also foster referrals to key services. One point of delivery for CLE is via a range of education programs for newly arrived and refugee communities. These include the AMEP, SEE, Victorian Government Rights and Responsibilities Seminars, and other vocational training programs.⁷⁷ There is a real need to integrate further training in employment law rights and responsibilities at various stages of these programs.

ii. Content

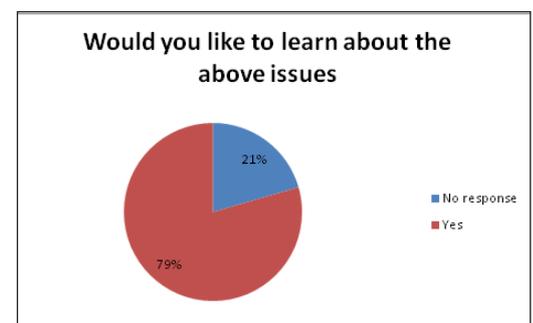
85 survey participants were asked to indicate whether they would like to learn about any of a number of work-related laws. This question sought to identify whether there were any CLE topics that were particularly popular. Interestingly, there was significant interest in all topics, with over half of those who responded wanting to learn more about each topic:



c. CLE for community workers

*'Timely referral by non-legal professionals has the potential to substantially enhance early legal intervention and resolution. Early intervention can be critical in maximising outcomes and avoiding more complex problems.'*⁷⁸

*'Should organise some training in support with the organisation dealing with refugee so that they can provide info to their clients'*⁷⁹



Close to 80% of community workers reported that they would like to learn about employment laws to enable them to identify legal problems for their clients and make appropriate referrals. When asked about how they would like to learn, the overwhelming majority indicated that they would like to learn by attending information sessions.

d. Train-the-trainer / engaging workers from target communities

*'Have staff member speak native language not an interpreter if possible.'*⁸⁰

'Having bilingual workers from the clients' communities working and imparting knowledge to their own communities has been effective.'⁸¹

Hiring community workers has been an integral aspect of all previous projects at Footscray CLC and we have gathered anecdotal and statistical evidence to support the importance of community workers. The importance of these workers was also reflected in surveys and interviews.

As a result of engaging community workers in the past, refugee communities have become aware that they can come to the Footscray CLC with their legal problems, and have felt comfortable to do so. For example, after hiring a community worker from Iran, the number of Persian speaking clients jumped from 18 over an 18 month period to 110 over the following 18 months. Research also indicates that the use of appropriately trained bilingual workers

to conduct CLE with their communities can be extremely successful.⁸² As well as building trust between services and communities, community workers can promote culturally targeted and appropriate service delivery.

For this Project, the train-the-trainer model will be especially important because many individuals from newly arrived and refugee communities do not attend AMEP classes or settlement agencies. For these workers, community members may be the main source of information. By training key community workers from emerging communities, these ambassadors will seek to provide accurate information and referrals to vulnerable workers in their communities.

Need for an holistic approach

At the end of our survey we asked participants if they had any further comments, information or knowledge that would assist the Project. One Community Guide responded:

'Help teach refugee background how to increase their chance to get a job and resist discrimination'⁸³

This comment represents one of the broader aims of the Project: improve employment outcomes for target communities. By improving access to justice and working to address community-identified unmet legal needs for a targeted legal service and CLE, the Project seeks to promote long term sustainable employment outcomes for newly arrived and refugee communities in Melbourne's West. In Stage Two of the Project, we will explore the impact of legal services and community education; develop our understanding of common working experiences; and consider the operation of laws and legal processes.

However, the Employment Law Project forms only one part the process to empower workers to obtain successful employment outcomes. Other forms of training and support are also necessary, including targeted and practical job seeking assistance programs, vocational training programs and casework support both before, and during, employment. Work also needs to be done with employers, to reduce discrimination and increase compliance with relevant laws.

This Project has been greatly enhanced already by consultation and feedback from agencies delivering these services (and indeed all participants in the Project to date), and will continue to benefit from working collaboratively with each of our Project partners as we move into the implementation stage. We look forward to working with you in Stage Two of the Project.

About Footscray CLC

Footscray CLC is a community organisation that provides free legal assistance and financial counselling for the benefit of people who live, work or study in the City of Maribyrnong. Some of our services are available for people who live outside the City of Maribyrnong.

Over the past five years, more than 45% of our clients spoke a language other than English as their first language. Approximately one quarter of our clients are newly arrived (having arrived in Australia in the last five years). We have a longstanding history of collaboration and co-location of services with numerous settlement agencies and community organisations. Further information and reports are available on our website: www.footscrayclc.org.au

Report written by Catherine Dow, Employment Project Solicitor, Footscray CLC. Comments and enquiries about the Project are very welcome - please email catherine@footscrayclc.org.au or call (03) 9689 8444.

¹ Community member, Employment Law Project community legal education feedback form.

² Interview, community worker.

³ For example, 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: Natasha Wilton, Djerriwarrh Health Services, 'Investigating resettlement barriers with the Burmese Community in Melton: A Needs Assessment'; see also Alistair Ager and Alison Strang, *Understanding Integration: A Conceptual Framework*, *Journal of Refugee Studies* (2008) 21(2) 170.

⁴ Australian Bureau of Statistics, 'Labour Force Participation of Migrants', *Australian Social Trends*, 2006; Nic Price, 'Employment a path out of poverty for a Fitzroy refugee', *Melbourne Leader*, 11 October 2013

⁵ FECCA, 'Latest unemployment figures hide harsh realities for CALD workers' (Media Release, 16 August 2013); see also Deng Tor Deng and Fodia Andreou, "Settlement Needs of Newly Arrived Migrant and Refugee Men: Brimbank & Maribyrnong", *Migrant Resource Centre North West Region*, March 2006.

⁶ Val Colic-Peisker and Farida Tilbury, 'Refugees and Employment: The effect of visible difference on discrimination', *Final Report*, Centre for Social and Community Research, Murdoch University, January 2007, 1.

⁷ Gwilym Croucher and Sophie Dutertre, *The Right to Work for All Asylum-Seekers: Why Depriving Asylum-Seekers of Work Rights in Australia's Loss*, *The International Journal of Diversity in Organisations, Communities and Nations* (2007) 7(4) 241, 242. Not all asylum seekers have the right to work. Recently the non-renewal of asylum seeker visas has meant that people who have work, are losing their jobs: Melissa Townsend, 'No bridging visa, no job: Life's tough for Greater Dandenong asylum seekers and the welfare groups that support them', *Dandenong Leader*, 28 January 2014. The Red Cross recommends that work rights be granted to asylum seekers living in community: Australian Red Cross, *Inaugural Vulnerability Report: Inside the Process of Seeking Asylum in Australia*.

⁸ Graeme Hugo, 'Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants', *Final Report to Department of Immigration and Citizenship* (May 2011) xxi.

⁹ AMES Community Guides provide settlement support in clients' own language during the first six months of resettlement in Victoria. Community Guides are refugees who have settled in Australia for some time, and so are able to help new arrivals from their home country to settle more effectively in their new environment. AMES introduced the Community Guides (CG) initiative in 2005. The tailored Community Guides program has been formally recognised by the United Nations and is a model increasingly used by similar organisations in other countries (see <http://www.ames.net.au/settling-in-australia/community-guides-program.html>).

¹⁰ Survey, AMES Community Guide.

¹¹ Survey, community member.

¹² Hugo, above n 8, 252; Colic-Peisker and Tilbury, above n 6, 14; VicHealth, *Preventing Race-Based Discrimination and Supporting Cultural Diversity in the Workplace* (2012) 13; Farida Fozdar and Silvia Torezani, *Discrimination and Well-being: Perceptions of Refugees in Western Australia*, *International Migration Review* (2008) 42(1) 30, 40; ACTU *Independent Inquiry into Insecure Work, Lives on Hold: Unlocking the Potential of Australia's Workforce* (2012) 23.

¹³ Community workers and AMES Community Guides were asked whether particular experiences were 'common', 'somewhat common' or 'uncommon'. Community members were asked: 'Have you or anyone you know experienced these things at work?' Each of the references to 'survey respondents' in this section refers to the 71 participants who were asked these questions.

¹⁴ 40 survey respondents (AMES Community Guides and community workers) were asked an open question about the main problems that newly arrived or refugee communities face at work. Issues relating to language, culture and communication mentioned 29 times, lack of knowledge of employment laws/services mentioned 15 times (including particular mention of workplace health and safety laws for three responses) and discrimination mentioned 10 times. Other responses included difficulty obtaining employment (10 mentions), lack of education or Australian experience (five mentions), cash in hand payments (three mentions), underpayment (three mentions), failure to recognise qualifications (two mentions), needing to get an ABN/sham contracting (two mentions), bullying (two mentions), insecurity of employment (two mentions) and unfair dismissal (one mention). 34 community members were also asked an open question about the main problems at work for newly arrived and refugee communities. Once again, language barriers (19 mentions), difficulty finding work (10 mentions), discrimination (six mentions), lack of rights awareness (four mentions), lack of Australian experience (four mentions) and failure to recognise qualifications (one mention) were identified

¹⁵ Survey, AMES Community Guide.

¹⁶ Survey, AMES Community Guide.

¹⁷ Survey, community worker.

¹⁸ Survey, community member.

¹⁹ Survey, AMES Community Guide.

²⁰ Colic-Peisker and Tilbury, above n 6, 18-21; VicHealth, 'More than tolerance: Embracing Diversity for Health', (Summary Report, 2007), 32.

²¹ VicHealth, above n 20, 11-12.

²² AMES Community Guide, AMES Community Guide Professional Development day, 21 November 2013.

²³ Name and some details have been changed. This case study was compiled by a Footscray CLC community worker.

- ²⁴ Andrew Stewart and Rosemary Owens, 'The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia: Experience or Exploitation?' (Report, Fair Work Ombudsman, January 2013) 66-67, 163.
- ²⁵ Survey, community worker.
- ²⁶ Survey, community worker.
- ²⁷ Charlie Donnelly, National Secretary of the National Union of Workers, 'Caged Chickens, Caged Workers', Working Life, 26 July 2013, <<http://workinglife.org.au/2013/07/26/caged-chickens-caged-workers/>> (as at 18 February 2014).
- ²⁸ Survey, community member.
- ²⁹ Survey, community worker.
- ³⁰ Of the 12 million people who were employed at some time during the 2009-10 financial year, 5.3% (640,700 people) experienced at least one work-related injury or illness. Although this figure is related to one financial year only, it differs significantly from the reported rate in the poultry industry and our survey results, especially given that many of the workers have only been in Australia for a short time. See Dennis Farrell, 'Work-Related Injuries, Australia', 6324.0, 2009-2010, 4, <[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/027334AFFAAA92AECA25796000D5FE7/\\$File/41020_workandhealth_jun2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/027334AFFAAA92AECA25796000D5FE7/$File/41020_workandhealth_jun2011.pdf)> (as at 18 February 2012).
- ³¹ Donnelly, above n 27. See also National Union of Workers, Better Jobs 4 Better Chicken: Poultry Industry, Discussion Paper (2011) 2.
- ³² Survey, community worker.
- ³³ Survey, community worker.
- ³⁴ Survey, community worker.
- ³⁵ National Union of Workers, above n 31.
- ³⁶ Fair Work Ombudsman v Jooine (Investment) Pty Ltd & Anor [2013] FCCA (20 December 2013).
- ³⁷ See Workplace Express, 'Penalty seeks to deter advisors from orchestrating employment contract "scams"', 24 January 2014.
- ³⁸ Fair Work Ombudsman v Jooine (Investment) Pty Ltd & Anor [2013] FCCA (20 December 2013) [82].
- ³⁹ Survey, community worker.
- ⁴⁰ Survey, community worker.
- ⁴¹ Selvaraj Velayutham, 'Precarious Experiences of Indians in Australia on 457 Temporary Visas', Economic and Labour Relations Review (2013) 24(3) 340, cited in Michael Janda, 'Australia's 457 'King of Visas' is a Road to Serfdom for Many Migrants', ABCNews (online), 6 Sep 2013 <<http://www.abc.net.au/news/2013-09-06/27king-of-visas27-a-road-to-serfdom-for-many/4941980>>.
- ⁴² Chris Arup and Carolyn Sutherland, 'The Recovery of Wages: Legal Services and Access to Justice', Monash University Law Review (2009) 35(1) 96, 101.
- ⁴³ Survey, community member.
- ⁴⁴ Survey, community member.
- ⁴⁵ Nine responses identified settlement services, employment agencies or Centrelink; three said they were not sure; and each of the following were identified in one response: Victoria Legal Aid, 'equal opportunity, refugee council', DEWER, CLC, union. Many respondents did not answer.
- ⁴⁶ 11 community members were asked whether they were aware of a number of key agencies. Participants were asked to choose between 'never heard of it', 'heard the name but don't know what it does', 'know a little bit about it' or 'Yes, I know what it does'. Over half the respondents had never heard of the Fair Work Commission, Fair Work Ombudsman, Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission, Job Watch or Australian Council of Trade Unions. Respondents demonstrated a higher level of awareness of WorkSafe and Victoria Legal Aid. Although this is a small sample size, low awareness of available services was raised as a significant issue in face-to-face consultations, and has been observed in a number of community education sessions.
- ⁴⁷ Survey, community worker.
- ⁴⁸ Name and other details changed. This case study was compiled by a Footscray CLC community worker.
- ⁴⁹ Name and other details changed. This case study was compiled by a Footscray CLC community worker.
- ⁵⁰ See Colic-Peisker and Tilbury, above n 6, 3.
- ⁵¹ Australian Bureau of Statistics, 'Understanding Migrant Outcomes - Enhancing the Value of Census Data, Australia, 2011' released 19 September 2013.
- ⁵² Australian Bureau of Statistics, Labour Force, December 2011 Key Figures, <<http://www.abs.gov.au/AUSSTATS/abs@nfs/allprimarymainfeatures/51C4221B103F5466CA2579A500117492?opendocument>>.
- ⁵³ Australian Bureau of Statistics, 'Understanding Migrant Outcomes - Enhancing the Value of Census Data, Australia, 2011' released 19 September 2013.
- ⁵⁴ Pro Bono Australia News, 'Migrant Unemployment Higher than Reported', 11 November 2013.
- ⁵⁵ Research has reported that jobseekers often failed to gain job interviews when submitting an application with a 'foreign' sounding name; however, interviews would be granted when they disguised their ethnicity in their application, for example by changing 'Mohamed' to 'David'. Refugees also face discrimination based on accent, appearance, or dress and have reported being told the 'position was already filled' after speaking to employers or recruiters, in some cases where they knew Australian friends who had been offered interviews: Colic-Peisker and Tilbury, above n 6, 18, 20; Participants in a recent Victorian Equal Opportunity and Human Rights Commission (VEOHRC) study reported that their skin colour, wearing a hijab, their accents

and other visible differences contributed to the difficulties of finding employment. Individuals reported being told that they would not be a good 'cultural fit': Dr Gabrielle Berman and the VEOHRC, 'Harnessing Diversity: Addressing racial and religious discrimination in employment: A Collaborative project between the Victorian Multicultural Commission and the Victorian Equal Opportunity and Human Rights Commission' (2008), 19.

⁵⁶ Colic-Peisker and Tilbury, above n 6, 13-16.

⁵⁷ Leah Vosko, 'Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment' (2010) 3.

⁵⁸ According to the Australian Manufacturing Workers Union, hundreds of foreign workers have been exploited under the 457 visa system ('Union says hundreds of workers have been taken advantage of by 457 visa holders', ABC, 6 June 2013) and other unions have also reported abuse of 457 visa holders, including a number of workers told to return home after complaining about their rates of pay (ABC News, 'CFMEU says Hungarian workers on 457 visas told to go home after complaining about pay rates'. 10 November 2013). See also Velayutham, above n 41; Joo-Cheong Tham and Iain Campbell, 'Temporary Migrant Labour in Australia: the 457 Visa Scheme and Challenges for Labour Regulation', Centre for Employment and Labour Relations Law, University of Melbourne, Working Paper Number 50 (2011).

⁵⁹ Robertson writes that international students are technically 'legal but temporary, that is, resident aliens'. But due to the nature of their visas 'they often teeter on the edges of legality, with minor breaches in visa conditions, such as non-completion of courses or working over twenty hours a week, able to rapidly render them illegal and open to deportation': Shanthi Robertson, 'Cash cows, backdoor migrants, or activist citizens? International students, citizenship and rights in Australia' Ethnic and Racial Studies (2011). United Voice has written a report on the exploitation of international students in the office cleaning industry, reporting that there is a practice of exploiting international students in the cleaning industry, underpaying international student cleaners by up to \$15,000 a year, including missing entitlements, through subcontracting arrangements: United Voice, 'A Dirty Business: The Exploitation of International Students in Melbourne's Office Cleaning Industry', 3.

⁶⁰ National Union of Workers, above n 31, 2.

⁶¹ Velayutham, above n 41.

⁶² Refugee Council of Australia, 'Who bears the cost of Australia's Special Humanitarian Program?: Research into the impact of travel costs on new Special Humanitarian entrants and their proposers (June 2008) 6. See also Refugee Council of Australia, 'Humanitarian Family Reunion: The Building Block of Good Settlement' (Research Discussion Paper, Refugee Council of Australia, April 2012).

⁶³ Recently, the FWO prosecuted a Perth cleaning company, who were fined \$286,550 for knowingly underpaying foreign workers. See Fair Work Ombudsman v ACN 146 435 118 Pty Ltd & Anor (No. 2) [2013] SCCA 1270 (5 September 2013); Fair Work Commission, Working in Australia Video <<http://www.youtube.com/fairworkgovau>>. We look forward to collaborating with mainstream services such as the FWO wherever possible to deliver meaningful outcomes for our clients.

⁶⁴ Anna Booth, 'Report to the Fair Work Ombudsman: Report of a Review of Community-Based Employment Advice Services', CoSolve, 30 September 2009.

⁶⁵ Booth, above n 64.

⁶⁶ Refugee Council of Australia, Legal and Financial Issues Fact Sheet <<http://www.refugeecouncil.org.au/f/smt-l&f.php>>. See also Australian Human Rights Commission (AHRC), 'Pregnant and Productive: It's a right not a privilege to work while pregnant' (1999), 168-9 [10.90].

⁶⁷ Christine Coumarelos, Deborah Macout, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsie, Legal Needs Report, (Law and Justice Foundation Report, August 2012), 209-210.

⁶⁸ AHRC, above n 66, 169, [10.93].

⁶⁹ Refugee Council of Australia, What Works: Employment strategies for refugee and humanitarian entrants (Report, Refugee Council of Australia, 2010); Coumarelos et al, above n 67, 208; Hugo, above n 8, xxvi; Footscray Community Legal Service, Making it Home: Refugee Housing in Melbourne's West (2012), 31.

⁷⁰ Survey, Community Member.

⁷¹ Department for Victorian Communities, 'The Good Practice Principles Guide for Working with Refugee Young People' (Report, Victorian Settlement Planning Committee, July 2005), 21.

⁷² Survey, community member.

⁷³ Survey, community member.

⁷⁴ Community member, Employment Law Project community legal education feedback form.

⁷⁵ 69 survey participants were asked (including AMES Community Guides, community workers and community members).

⁷⁶ Survey, AMES Community Guide.

⁷⁷ See e.g. Fact Sheet 94 - English Courses for Eligible Migrants and Humanitarian Entrants in Australia, at <<http://www.immi.gov.au/media/fact-sheets/94amep.htm>>.

⁷⁸ Coumarelos et al, above n 67, 213. ⁷⁹ Survey, AMES Community Guide.

⁸⁰ Survey, AMES Community Guide.

⁸¹ Survey, AMES Community Guide.

⁸² Katie Fraser, Prevention is better than cure: Can education prevent refugees' legal problems? (Footscray Community Legal Centre, 2011), 19.

⁸³ Survey, AMES Community Guide.