

Not **just** work.

Ending the exploitation of refugee
and migrant workers



WEstjustice Employment Law Project Final Report
Catherine Hemingway

WEstjustice

"Because of you, I will be powerful to help other people."

WEstjustice



© WEstjustice Western Community Legal Centre 2016
westjustice.org.au

Photo credit (Cover): Jessica Hogg

I was born in war, I was raised in war, and I have fled war. But I was not born a refugee and I was not born an asylum seeker. *“NO ONE WANTS TO BE A REFUGEE!”* My personal story is not only mine but represents most refugees and asylum seekers who have similar stories as mine. This is what we have in common to share with all.

I left my country, Afghanistan, on my own when I was only 13 years old. I fled to Pakistan without family or friends with me. I settled in Pakistan and finished Year 12 in a high school specifically for refugees. But my personal circumstances in Pakistan forced me to leave for another country—Iran. However, having neither travel documents nor rights to stay, work or study in Iran I again was forced to go back to Afghanistan. Upon my return, I began to study at Kabul University where I was admitted to study Medicine, but it was during the Taliban regime, one of the darkest periods in our history. Because of that, I have never been able to complete my undergraduate degree. That very day—the day the Taliban stopped me and threatened me to death in front of Kabul University was the last day I saw my class fellows and friends.

My right to education was completely denied. My dream to complete higher education in my country still remains unfulfilled. I gave up on the option of education and began to work with humanitarian organisations in my country to give hope for people like myself.

It was the end of 2010, when I was once again forced to leave Afghanistan—this time, for good. I was working for an International Non-Government Organisation and later for the United Nations Development Program (UNDP) as Head of Policy Monitoring and Evaluation in Kabul. I had no other option but to leave because I was not only the victim of ethnic discrimination against Hazara, but also the unwanted ‘villain’ in the established cycle of corrupt governance. I was advocating for human rights, women’s rights and further transparent governance in the national government. I was on TV in Kabul where I advocated for accountable governance in Afghanistan, raising an example of warlords’ involvement in corruption. Yet, this turned out to be my last chance to publicly fight against them. Following that particular TV interview, I was constantly threatened to death, and had no other way but to leave my country, the only country in which I learned to walk, read, write, and speak for others for the better.

I chose a risky path because I chose to live. I left my dear country because I rejected the force of injustice. I travelled to Indonesia and then took the risk of my life by boat to Australia full of hope for the future in my eyes, but I arrived on the coast of Australia—only to discover another institutional incarceration.

It was not easy to be in an Australian detention centre for so many months, but it made me stronger as a person—to understand what it means to be an asylum seeker, what it means to be called by a boat number, and what it means to have no sense of hope for the future.

Yet, it was the 3rd November 2010, when a window of hope had opened to me. The moment I’ll never forget—I was granted an Australian permanent protection visa. Entering a new country, completely new culture and lifestyle made me ponder where to start and how to shape my life. Completing higher education and promoting human rights for all has always been my first goal. As I made my way to Melbourne, I decided to study further. I believe setting goals in a new country and in a new environment is the key to success. I’ll never forget the day I received an offer letter to study a Master’s degree in International Development at RMIT University. It reminded me of the day I was stopped to enter the gate of Kabul University, by Taliban when my right to education was denied by Taliban. I re-gained my confidence and liberty to enjoy my basic human rights, and told myself *“YES I CAN”*.

Afterwards, 2011 and 2012 in Melbourne were a very busy time for me, studying and working for AMES on a casual basis. Upon obtaining PR, I was an AMES client and a service receiver, but soon I became a staff member and a service provider. The first significant milestone I achieved in Melbourne was graduation from my Master’s degree at RMIT University. The second milestone was achieved shortly after I graduated, when I applied for the fulltime position of Settlement Orientation Coordinator at AMES, which I continue to enjoy performing to this day.

Working in Australia, especially for a newly arrived person, is a critical challenge. In my country, securing employment was always difficult due to the lack of established employment regulations and other circumstances. In Australia, the newly arrived face employment challenges due primarily to language barriers, lack of required skills, lack of local experience and un-familiarity with new environment and laws. I believe, in order to overcome such challenges, it is vital to access the right services, to learn about employment regulations, to learn how to secure employment, how to protect your rights to employment and where to get assistance as required.

Even once the newly arrived have secured a job in a new environment, exploitation and access to legal assistance are another challenge. I believe such problems can be solved if new arrivals such as refugees and asylum seeker groups are referred to the right channels such as Community Legal Centres. For example, my friend from Afghanistan of asylum seeker refugee background here in Melbourne was significantly underpaid by his employer. But he approached Footscray Community Legal Centre (CLC) (now WEstjustice) to seek assistance and legal advice. He received appropriate legal assistance and consequently, he received his salary of around A\$ 2000. He was very happy with the outcome and cordially thanked the CLC for its great service. Now he always advises his friends going through similar situations to approach the CLC.

Currently I am working with refugees and asylum seekers, who are unfamiliar with their new rights to work in Australia, employment regulations, and accessing legal assistance. I have found that referring them to the right sources of services such as CLCs have always been a suitable, cost-effective approach that solves the very issue they’re faced with.

What I share with you is my personal journey all the way from Kabul to Melbourne. As I shared all these in person, each time it made me stronger to challenge, to achieve, and to help others to identify their potential, to take advantage of their existing skills and knowledge and finally to achieve their personal and professional goals. My personal advice to my friends would be: believe in your capability, build your confidence and if you need assistance, try to knock on the right door. *NOTHING IS IMPOSSIBLE!*

Hameed Nida



Westjustice volunteer solicitor.
Photo credit: Jessica Hogg

Executive Summary

"Not being paid is a common problem."

THE PROBLEM OF EXPLOITATION

"Living in that hostel made me see a very different side of Australia, the dark and uncivilised side."

Employment is widely recognised as the most vital step for successful settlement in a new country. However, recently arrived migrant and refugee workers face many barriers. Finding employment is difficult. For those who do find work, exploitation is widespread. Exploited workers are not aware of their rights, and rarely access help to enforce the law. Temporary migrant workers, women and young people face additional barriers. Exploitation continues unabated and employers gain a competitive advantage by breaking the law, while companies that do the right thing are disadvantaged. Exploitation not only damages individual workers, it also undermines the Australian workplace relations framework.

The problem of exploitation of migrant workers is well known. In the lead up to the 2016 Federal election, following the 7-Eleven wage scandal, both the Coalition and ALP made significant policy promises aimed at better protecting vulnerable workers. The Victorian Government recently held an Inquiry into the Labour Hire Industry and Insecure Work, the Senate Education and Employment References Committee has reported on temporary migrant worker exploitation, and in its recent report on workplace relations, the Productivity Commission acknowledged that migrant workers 'are more susceptible to substandard working conditions (such as being underpaid) than Australian citizens'. It is now time to act on these commitments and findings.

This report documents the working experiences of newly arrived and refugee workers in Melbourne's Western suburbs. It draws on surveys and extensive consultation with newly arrived and refugee workers, community leaders and staff at community organisations and agencies; as well as data and stories gathered through our pilot Employment Law Service and community education program. The report provides evidence-based recommendations for legal and policy reform. Recommendations are grouped into ten steps that stakeholders can take to eliminate exploitation. Many of our recommendations align with Federal Government policy and the recommendations of the Productivity Commission, Senate Education and Employment References Committee and Ethnic Communities Council of Victoria. The report is targeted at State and Federal governments, policy makers, regulators, commissions, courts, agencies and community organisations. We have strived to ensure that migrant voices are heard in this report and hope that they are now heard by others and acted upon to stop exploitation and benefit all Australians.



Community leaders, WEstjustice Train the Trainer Program.

1

Migrant voices must be heard

2

Diversity measures

3

Targeted education

4

Active and accessible agencies

5

Community-based employment law services

TEN STEPS TO STOP EXPLOITATION

The reasons for exploitation are multi-faceted and include: marginalisation of the voices of 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 the problem of ineffective laws and processes. The 10 steps address each of these problems in turn.

"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 work experience."

—Community leader

The exploitation of newly arrived and refugee workers in Victoria is widespread and current systems are failing to stop the problem. Targeted responses are urgently needed and should be designed and delivered with the involvement of target communities (page 49).

Over the past three years, WEstjustice has witnessed extensive abuse across numerous industries including food processing, hospitality, cleaning, construction, distribution, security and care work. We have seen disturbing cases of underpayment and non-payment of wages, including two workers paid one salary between them. Migrant workers also experience discrimination, frequently lose their jobs, and are routinely denied basic entitlements including superannuation. They experience bullying, are forced into sham contracts and work in unsafe jobs with high injury rates.

"Community members cannot get secure jobs. They accept any jobs they are offered."

—Community leader

It is more difficult for refugees and newly arrived migrants to find work. Reasons include discrimination, lack of Australian experience and failure to recognise qualifications. Once employment is secured, many workers are too afraid to challenge exploitative practices. To reduce exploitation, it must be easier to find and retain decent employment. State and Federal Governments should investigate and implement incentives to employ newly arrived and refugee workers, including tax concessions, affirmative action, an employer education campaign and employment and procurement policies (page 93).

"Because of not understanding employment law or their rights at work, they don't get paid properly... To look on a website or fill out a complaint form is very complicated. My community doesn't have capacity to do this alone. They need help. Here the service is face to face, and one on one. This is important because this Centre has been working with the community, now they have confidence to come here."

—Community leader

Newly arrived and refugee workers generally understand little or nothing about Australian employment laws and services. Targeted, face-to-face education programs enable workers to understand and enforce their rights by raising awareness and building connections between communities and services. Programs must be provided for community members, community leaders (Train the Trainer) and agency staff working with newly arrived communities. State and Federal Governments should establish a fund to provide these targeted education programs (page 101).

"Many in my community do not contact agencies. They are afraid, because many have had bad experiences with people in authority back home."

—Community leader

As a result of low rights awareness, language, literacy, cultural and practical barriers, newly arrived workers rarely contact mainstream agencies for help. When they do make contact, meaningful assistance is needed. Agencies and commissions must take further steps to ensure that they are more accessible and responsive. This includes dedicated staff, intake checklists, providing support to complete forms, outreach, education, and proactive compliance. Regulators must have sufficient funding and powers to address non-compliance and promote systemic reform (page 125).

"I knew I was right and should bring my case. People told me not to. My boss is very powerful. At times I was scared, I was not sure. But you stood beside me and so I kept going."

—WEstjustice client

There is significant unmet need for legal assistance, and often workers cannot enforce their rights alone. With face-to-face support from a trusted community organisation, wages can be recovered, jobs saved and employers held to account. A community-based 'one-stop-shop' hub can assist vulnerable workers to navigate the system and enforce their rights by: delivering targeted education; providing legal assistance; and liaising with government agencies, regulators and policy makers to tackle systemic problems. State and Federal Governments should establish a dedicated fund for community-based employment law hubs for migrant workers (page 135).

6

Improved laws and processes to stop wage theft

"Because of you, I will be powerful to help other people."

—WEstjustice client

Underpayment of wages and/or entitlements is the single-most common problem that our clients present with. However, unnecessary barriers are preventing workers from enforcing meritorious wage claims. If employers fail to keep employee records as required by law, they should have to disprove an employee's wage claim. Otherwise, employers are rewarded for breaking the law. To resolve claims quickly and avoid court, the Fair Work Ombudsman should have increased powers, including the power to determine claims. The Fair Entitlements Guarantee should be expanded or a wages insurance scheme introduced, along with measures to limit phoenix activity and unscrupulous jobactive provider behaviour (**page 149**).

7

Increased accountability in labour hire, supply chains and franchises

"The farm bus picked up the Cherry Tomato picking backpackers on the way back. The poor girls worked all day non-stop but they were only told that they earn 25~40 bucks for 9.5 hours work. Sounds terrible but the worse thing happened after that was we never got paid at all."

—WEstjustice client

Newly arrived and refugee workers are frequently exploited in labour hire arrangements, by franchises and at the bottom of complex supply chains. Ways of working have changed, and our law has not kept up. Currently, big businesses benefit from the labour of newly arrived and refugee workers, but cannot be held accountable for unlawful conduct. The accessorial liability provisions of the Fair Work Act are not sufficient. To promote systemic compliance, laws must be amended to attribute greater vertical responsibility. This includes a labour hire licensing scheme and legislating for greater lead firm and franchisor accountability (**page 165**).

8

Laws and processes to eradicate sham contracting

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

—Community worker

Migrants and refugees are often engaged as contractors with ABNs when they should actually be employees. This means that they are denied the right to minimum pay and other entitlements. WEstjustice has seen sham contracting in numerous industries including construction, cleaning and administration work.

To stop sham contracting, a statutory definition should be introduced that presumes workers are employees. The incentive to engage in sham contracting can be removed by amending the Fair Work Act's 'recklessness/lack of knowledge defence' and placing an obligation on employers to ensure they classify workers appropriately. In addition, more rigorous tests should be applied before an ABN is given to an individual. On the spot ABN inspection and assessment should also be increased (**page 187**).

9

Reforms to stop discrimination, unfair and unsafe work

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

—Community member

Refugee and migrant workers often suffer significant physical, financial and emotional harm from discrimination, unsafe work and unfair dismissals. Law and policy reform is required, including:

- increasing VEOHRC/AHRC powers and resources to investigate and enforce breaches of anti-discrimination and unfair dismissal law;
- broader remedies; and
- fairer time limits (**page 197**).

10

Strategic measures to protect vulnerable sub-groups

"It means a world to know even though I cannot be there, I feel supported, and I am grateful for your help and continuous following up with my case."

—WEstjustice client*

Temporary migrant workers, women, young people and students face additional challenges that must be addressed to eliminate exploitation. Reforms include: amending the Fair Work Act to state that it applies to all workers; creating a clear path to permanent residency; ensuring workers are not sent home before valid legal proceedings are concluded; and limiting visa cancellation to serious breaches of visa conditions to remove workers' fear of being forced to leave Australia if they report exploitation (**page 224**). Measures for women (**page 218**) and young people (**page 234**) include outreach programs and targeted international student services at universities. Private Registered Training Organisations (**page 230**) must be more accountable. A Training Ombudsman is needed. Finally, further research is required—particularly for high risk industries, rural Victoria, the gig economy and young people (**page 240**).

* WEstjustice client who worked on a 457 visa and was unfairly dismissed. Because client was dismissed his visa was cancelled and he was sent home before legal proceedings finished.

THE EVIDENCE

WEstjustice 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, Wyndham or Hobsons Bay, in Melbourne's Western Suburbs. We provide a range of legal services including legal information, advice and casework, duty lawyer services, community legal education, law reform, advocacy and community projects. The WEstjustice Employment Law Project has explored employment experiences and legal processes by:

Face-to-face consultation: we 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: we received 105 surveys—33 from AMES Community Guides, seven from community workers and 65 from members of newly arrived and refugee communities.

Employment Law Service (ELS): WEstjustice has provided employment law advice and/or representation to over 200 clients from 30 different countries. Clients were mostly of refugee background, but also included international students, asylum seekers and subclass 457/working holiday visa holders. 77% of clients spoke a language other than English at home. 60% of our clients had lived in Australia for less than five years. Qualitative and quantitative data was collected throughout. As at September 2016, the ELS had successfully recovered or obtained orders for over \$120,000 in unpaid entitlements and over \$125,000 in compensation for unlawful termination. The ELS had also helped clients access WorkCover, keep their jobs and/or increase hours of work.

Community Education Program: As at September 2016, WEstjustice has delivered over 60 CLE presentations to over 600 community members. We also delivered a 10-day Train the Trainer program with community leaders and presented sessions for agency staff working with newly arrived communities. Evaluation and findings of each program are detailed in the report.

"ELS has successfully recovered or obtained orders for over \$120,000 in unpaid entitlements and over \$125,000 in compensation for unlawful termination."

**"We thank you
for your help...
Even just knowing
that we have your
support has given
us the courage to
pursue the matter."**

RECOMMENDATIONS	23	DIVERSITY MEASURES	93
		Tax concessions for companies that meet diversity targets	95
GLOSSARY	37	Recognition of qualifications assistance	95
		Quotas or other affirmative action measures	95
INTRODUCTION	39	Employment and procurement policies, diversity reporting	96
110 years on: the Harvester decision and workers’ rights in the west	41	Targeted employment programs	98
About WEstjustice	42	Education campaigns	99
About the Employment Law Project	43		
Stage one: research and consultation	44	TARGETED EDUCATION	101
Stage two: employment law service	44	Face-to-face, targeted education is necessary	102
Stage two: CLE program	45	Timing, location and impact of community education	104
Stage three: advocacy	45	Best practice education approaches	106
Funding	46	WEstjustice Community Education program	107
Methodology	47	Presentations for community members	107
Limitations	47	Presentations for community workers	112
		Train the Trainer Program	115
		Other methods of increasing awareness	122
		Funding	122
MIGRANT VOICES MUST BE HEARD	49		
Settlement experience for new arrivals—importance of finding and keeping work	51	ACTIVE AND ACCESSIBLE AGENCIES	125
Importance of employment	51	What works well	126
Barriers to employment	52	FWO	126
Exploitation is widespread	55	FWC	128
Client profile and nature of legal issues	56	Without help, workers cannot articulate complaints	128
Newly arrived communities in the western suburbs of Melbourne	56	Cultural responsiveness frameworks	131
Client profile–Employment Law Service	60	Intake checklists and support	131
Nature of legal disputes	74	Education programs	131
Outcomes	78	Dedicated staff	132
Service challenges and key observations	86	Better collaboration	133
Impacts of exploitation	87	Proactive compliance and enhanced powers	133
Barriers to rights enforcement	88	More resourcing	133
Limited understanding of employment laws and institutions	88		
Refugee background	89		
Cultural understandings of legal systems	89		
Practical barriers to seeking assistance	90		
A targeted, multi-faceted response	91		

COMMUNITY-BASED EMPLOYMENT LAW SERVICES	137
Unmet need for employment law help	139
Employment Law Hubs for migrant workers	139
Multi-jurisdictional landscape makes enforcement difficult	140
Community-based employment advice services can meet this need	141
Employment law hubs: a one stop shop	145
Collaboration with other community based organisations	145
Example from another jurisdiction: Consumer Affairs Victoria Specialist Services Program	146

IMPROVED LAWS AND PROCESSES TO STOP WAGE THEFT	149
Types of exploitation	150
Enforcement challenges	154
Remove employer incentive to neglect record-keeping: reverse onus of proof for wages disputes	155
FWO must have greater powers to resolve claims	156
FEG must be expanded or alternatively, a wages insurance scheme is required	158
Jobactive providers must play a role in stopping the rip-offs	161
Practical help with calculations	162
Superannuation	162

INCREASED ACCOUNTABILITY IN LABOUR HIRE, SUPPLY CHAINS AND FRANCHISES	165
Labour hire	168
Supply chains	170
Franchises	171
Current legislative framework is inadequate	172
New forms of working arrangements	172
Accessorial liability	173
Reform options	174
Joint employment introduced to Fair Work Act	174
Vicarious liability	176
For labour hire: protection for "contract workers"	178
Labour hire licensing scheme	179
For supply chains: expansion of outworker protections to other industries	182
For franchises: legislative reform and updated code	184

LAWS AND PROCESSES TO ERADICATE SHAM CONTRACTING	187
Sham contracting results in exploitation	190
A definition of employee would assist	192
Employer defence should be limited	193
Onus on employer to demonstrate genuine contracting relationship	193
Preventative measures at time ABN obtained	194
Need for increased regulatory action	194

REFORMS TO STOP DISCRIMINATION, UNFAIR AND UNSAFE WORK PRACTICES	197
Dismissals	198
Dismissals are common and have disastrous impacts	198
Process—advantages and challenges	200
Remedies	206
Workplace injury	208
Bullying and discrimination	210
Sole reliance on individual enforcement is problematic	212
Remedies must promote systemic change	213
Targeted assistance and regulator involvement	213
Sexual harassment	215

STRATEGIC MEASURES TO PROTECT VULNERABLE SUB-GROUPS	217
Women and the law	218
Temporary visa holders	224
Focus on penalties is insufficient	224
More education required	225
All workers should be protected by minimum work standards	226
Removal/fear of being sent home: a barrier to rights enforcement	226
Registered training organisation scams	230
International students, apprentices, young people and work	234
International students	234
Domestic university students	236
Apprenticeships and private registered training organisations	238
School students	239
Student access to education and independent legal advice	239
For further research	240

CONCLUSION	243
Acknowledgements	248
Author biography	250



RUSSELL STREET GATES
THESE GATES
WERE THE ENTRANCE TO THE
SUNSHINE HARVESTER WORKS
THE LARGEST FACTORY IN
AUSTRALIA AT THE TIME.
THEY WERE MADE IN 1922 BY
CHARLIE PIPPETT, A BLACKSMITH
EMPLOYED BY THE FIRM
PLAQUE RE-ERECTED IN 2009 BY S. & D. H. S.

Community leaders, Sunshine Harvester Factory gates, Sunshine.
Photo credit: Jessica Hogg

Recommendations

Recommendation	Federal/State government	Regulators/Agencies/ Commissions/Courts
<p>ONE</p> <p>Migrant voices must be heard:</p> <p>The exploitation of newly arrived and refugee workers in Victoria is widespread. Current systems are failing to stop the abuse. Targeted responses are needed. All programs must be designed and delivered with the involvement of target communities (page 49).</p>	<p>Recognise that the exploitation of newly arrived and refugee workers in Victoria is widespread and that current systems are failing to stop the abuse.</p> <p>Recognising the impact that such exploitation has on all workers, urgently take steps to assist workers who have experienced exploitation and prevent further exploitation occurring in the future.</p> <p>Recognise the need for targeted services for vulnerable communities.</p> <p>All programs must be designed and delivered with the involvement of target communities.</p>	<p>Recognise that the exploitation of newly arrived and refugee workers in Victoria is widespread and that current systems are failing to stop the abuse.</p> <p>Recognising the impact that such exploitation has on all workers, urgently take steps to assist workers who have experienced exploitation and prevent further exploitation occurring in the future.</p> <p>Recognise the need for targeted services for vulnerable communities.</p> <p>All programs must be designed and delivered with the involvement of target communities.</p>
<p>TWO</p> <p>Diversity measures:</p> <p>Diversity must be increased in Australian workplaces. To reduce exploitation, measures must be introduced to ensure that newly arrived and refugee workers can find and retain sustainable employment (page 93).</p>	<p>Investigate and implement incentives to employ newly arrived and refugee workers, including:</p> <ul style="list-style-type: none">• 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 workers with qualifications to have qualifications recognised;• amending Government employment and procurement policies to set minimum standards for diversity;• targeted employment programs to provide training and ongoing support for newly arrived and refugee workers; and• a large-scale education campaign to raise awareness of the business case for diversity and inclusion. <p>Adopt a Secure Jobs Code to ensure that procurement policies encourage secure, just employment. Procurement policies should also set minimum diversity standards.</p>	<p>Amend employment and procurement policies to set minimum standards for diversity.</p>

Recommendation	Federal/State government	Regulators/Agencies/ Commissions/Courts
<p>THREE</p> <p>Targeted education:</p> <p>Newly arrived and refugee workers require targeted, face-to-face education programs to understand and enforce their rights at work. Programs must be provided for community members, community leaders (train the trainer) and staff working with newly arrived communities (page 101).</p>	<p>Should establish a fund to provide targeted education programs for vulnerable workers. Such programs should include:</p> <ol style="list-style-type: none">1. direct education programs for community members;2. train the trainer programs for community leaders;3. education programs for community workers in key organisations working with newly arrived communities; and4. other programs delivered in accordance with best practice education approaches (for example online campaigns and updates to curriculum to include workplace rights training).	<p>Mainstream agencies should develop their own targeted resources and programs, but also administer funding for community organisations to distribute those resources and design and deliver essential face-to-face information sessions that align with local community needs.</p>

Recommendation	Federal/State government	Regulators/Agencies/ Commissions/Courts
<p>FOUR</p> <p>Active and accessible agencies:</p> <p>Migrant workers need better access to agencies and legal processes. Agencies and commissions must take further steps to ensure they are more accessible and responsive to newly arrived and refugee workers. Regulators must have sufficient funding and powers to address non-compliance and promote systemic reform (page 125).</p> <p>SEE ALSO: Wages and entitlements (step 6) and discrimination (step 9) sections.</p>	<p>State and Federal Governments should ensure that Federal and State based agencies take further steps to ensure that they are more accessible and responsive to newly arrived and refugee workers.</p> <p>Recognising that increasing accessibility will require increased time and contact with communities, agencies should be given additional resources to meet unmet need.</p>	<p>Agencies should develop cultural responsiveness frameworks to ensure newly arrived and refugee clients can access services.</p> <p>Such frameworks should:</p> <ul style="list-style-type: none">• develop specific protocols and checklists for Infoline staff to identify newly arrived and refugee clients and assist them to articulate their claims;• provide information in a wider variety of community languages including those spoken by newly arrived and refugee communities, and in a variety of formats;• participate in (and help resource) specifically targeted education and engagement programs run in partnership with community organisations;• employ dedicated staff with expertise in assisting migrant workers (ideally multilingual) to provide practical face-to-face assistance;• ensure effective collaboration between agencies, and between agencies and community organisations; and• undertake proactive compliance initiatives to achieve systemic reform in industries and areas where there is widespread exploitation of migrant workers.

Recommendation	Federal/State government	Regulators/Agencies/ Commissions/Courts
<p>FIVE</p> <p>Community-based employment law services:</p> <p>Newly arrived migrant and refugee workers require targeted community-based assistance to enforce their rights. Given the complex, multi-jurisdictional nature of the workplace relations framework, community-based 'one-stop-shop' hubs should be established to assist vulnerable workers to navigate the system and enforce their rights (page 137).</p>	<p>Establish a dedicated fund to establish community-based employment law hubs for migrant workers.</p> <p>The hubs would deliver three components:</p> <ol style="list-style-type: none">1. coordination and delivery of an employment law service to provide legal advice and assistance to newly arrived and refugee workers who have a problem at work, and facilitating referrals to mainstream agencies where appropriate;2. coordination and delivery of Community Legal Education (CLE) programmes; and3. pursuing strategic policy and law reform objectives arising out of casework and CLE programs, including liaising with government agencies, regulators and policy makers to tackle systemic problems of migrant worker exploitation. <p>The fund should provide long-term, recurrent funding to enable hubs to build relationships with communities and agencies over time.</p>	<p>FWO should allocate resources within the Community Engagement Grants Program (or other program) to fund employment law hubs for newly arrived and refugee workers. Such hubs could operate similarly to the Consumer Affairs Victoria (CAV) Specialist Services Program.</p>

Recommendation	Federal/State government	Regulators/Agencies/ Commissions/Courts
<p>SIX</p> <p>Improved laws and processes to stop wage theft (page 149).</p>	<p>The <i>Fair Work Act 2009</i> (Cth) (FW Act) should be amended such that if an employer fails to make or keep employment records, the onus falls upon them to disprove any wages claim brought by an employee. Further, the penalties for failure to keep or provide employee records should be increased.</p> <p>Expand Fair Work Ombudsman (FWO) enforcement powers and capacity, in particular:</p> <ul style="list-style-type: none">to enable the FWO to assist all employees with meritorious claims, regardless of claim size;to enable the FWO to compel parties to attend mediation;to enable the FWO to make binding determinations;to enable the FWO to undertake stricter enforcement of existing statutory requirements to provide Employee Records and issue penalties. <p>A wages insurance scheme should be established (or the Fair Entitlements Guarantee (FEG) scheme expanded) to provide compensation to workers with meritorious claims who are unable to obtain back payment from their employers.</p> <p>Expand FEG to cover employees with a Court order where a company has been deregistered. Also expand FEG to temporary migrant workers.</p> <p>Measures must be taken to limit phoenix activity, including the introduction of director identity numbers and further information being required during the company registration process.</p>	<p>FWO should develop a pay calculations tool that calculates the entire amount owed to a client, rather than just providing the hourly rate.</p> <p>FWO should play a more active role in assisting with the detection and enforcement of unpaid superannuation.</p> <p>Jobactive providers must be required to have all wage subsidy agreements independently reviewed to ensure compliance with minimum entitlements.</p> <p>Jobactive provider contracts must require each provider to have a designated support worker for clients who have not been paid properly. That worker must assist clients to pursue underpayments claims, report unscrupulous behaviour to FWO and ensure that no further job seekers are referred to that employer until the employer can demonstrate they have taken steps to ensure compliance.</p>
RECOMMENDATIONS		

Recommendation	Federal/State government
<p>SEVEN</p> <p>Increased accountability in labour hire, supply chains and franchises (page 165).</p>	<p>Undertake a review of fractured forms of employment (labour hire, supply chain, franchises, sham contracting) with a view to amending the FW Act to incorporate the concept of joint employment and/or vicarious liability. Such amendments should ensure that all who receive the benefits of being an "employer" are also required to comply with FW Act provisions relating to underpayments and termination.</p> <p>Amend the FW Act to introduce a concept of joint employment. Amendments could be achieved by:</p> <ol style="list-style-type: none">adopting a definition of "employer" as posited by Thai or Dowling (preferred option);adopting the notion of vicarious liability as found in subsections 109 and 110 of the Equal Opportunity Act with limited exceptions (preferred option);incorporating an equivalent provision to section 21 of the Equal Opportunity Act; orat a minimum, the general protections provisions should be expanded to cover workers in labour hire relationships. <p>Introduce a licensing scheme for labour hire providers. Such a scheme should contain the following features:</p> <ul style="list-style-type: none">payment of a bond and annual license fee to the Government to operate a labour hire company in Victoria;threshold capital requirement to operate a labour hire company in Victoria;core requirements for license holders and related parties, including a fit and proper person test, ongoing minimum capital requirements, reporting obligations and importantly, compliance with workplace laws;dedicated and well-resourced compliance unit;third parties including unions, individuals and community organisations have standing to bring actions for non-compliance. Such actions should be able to be taken in a low-cost forum such as the Victorian Civil and Administrative Tribunal, or a dedicated specialist tribunal; andmandatory workplace rights and entitlements training. <p>Amend the FW Act such that franchisors can be held accountable for breaches by franchisees in respect of underpayments and unlawful termination of employment.</p> <p>Expand outworker protections under the FW Act (and relevant state laws) to other industries such as horticulture and food, distribution, retail, hospitality, cleaning, security, construction and other industries where workers at the bottom of the supply chain are vulnerable to exploitation.</p>

Recommendation	Federal/State government
<p>EIGHT</p> <p>Laws and processes to eradicate sham contracting (page 187).</p>	<p>A statutory definition of employee should be introduced. It should include a presumption that a worker is an employee.</p> <p>Employers and principals should have a positive obligation to ensure they classify their workers appropriately. The recklessness/lack of knowledge defence should be abolished.</p> <p>Where principals do engage contractors, they should be required to submit a statement explaining the nature of the contracting relationship.</p> <p>More rigorous tests should apply before an ABN is given to an individual. At the time an ABN is requested, applicants should be required to attend a face-to-face educational meeting to understand the differences between employees and contractors, and learn about insurance and taxation obligations.</p>

Recommendation	Federal/State government	Regulators/Agencies/Commissions /Courts
<p>NINE</p> <p>Reforms to stop discrimination, unfair and unsafe work practices:</p> <p>a. Dismissals (page 198)</p>	<p>Vulnerable workers require assistance to access unfair dismissal (UFD) and general protections (GP) processes. Recognising that the FWO does not provide assistance with UFD matters, and only limited assistance with GP applications, increased funding and resources for services which assist newly arrived and refugee communities to access FWC dispute resolution processes are required. Such assistance could be provided by employment law hubs (step 5 above).</p> <p>The limitation period for UFD and GP applications should be increased to 90 days. The exceptional circumstances that may be taken into account per subsections 366(2)(a)–(e) and 394(3)(a)–(f) of the FW Act should be broadened to require consideration of the particular circumstances of vulnerable workers. This should include a consideration of English language abilities, knowledge of legal rights and ability to access legal advice, including recognition of the barriers faced by refugee workers in particular.</p> <p>To encourage compliance with the Rules, late lodgement of an Employer Response should attract some penalty.</p> <p>Compensation for UFD should not be capped or limited to lost wages. Instead, the FW Act should be amended to ensure that remedies achieve the policy objective of preventing unfair dismissals and compensating harm. Remedies should include compensation for financial loss, hurt, humiliation and distress; remedies designed to achieve systemic reform such as training for employers; and penalties for egregious employer behaviour.</p>	
<p>b. Workplace injury (page 208)</p>	<p>Services must be funded to provide targeted education and assist vulnerable workers to complete Work Cover claim forms. Such assistance could be provided by employment law hubs (recommendation 5 above).</p>	<p>Targeted education is urgently required to inform workers about occupational health and safety, and their right to bring a WorkCover claim. See recommendations 3 and 4.</p>

Recommendation	Federal/State government	Regulators/Agencies/Commissions /Courts
c. Discrimination and bullying (page 210)	<p>Take urgent steps to reduce discrimination at work. Such steps should include:</p> <ul style="list-style-type: none"> expanding VEOHRC/AHRC powers and resources to enable the regulator to investigate and enforce breaches of the law; 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 FW Act. 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; 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; and funding specialist legal services to provide free assistance to migrant workers experiencing discrimination at work as discussed in recommendation 5 above. 	See steps 3 and 4.
d. Sexual harassment (page 215)	Further research is required to establish the prevalence of sexual harassment experienced by newly arrived and refugee workers, and how to address this abuse.	Further research is required to establish the prevalence of sexual harassment experienced by newly arrived and refugee workers, and how to address this abuse.

Recommendation	Federal/State government	Regulators/Agencies/Commissions /Courts
TEN Targeted measures to protect vulnerable sub-groups: a. Women and the law (page 218)	In order to make education and legal services accessible to migrant and newly arrived women, agencies should be funded to deliver targeted outreach.	In order to make education and legal services accessible to migrant and newly arrived women, agencies should be funded to deliver targeted outreach.
b. Temporary visa holders (page 224)	<p>The FW Act should be amended to state that it applies to all workers, regardless of immigration status.</p> <p>Migrant workers who have been trafficked or subjected to exploitation, should be permitted to remain in Australia for at least as long as they are pursuing valid legal action.</p> <p>Temporary migrant workers and their families should be given access to settlement services including the AMEP program.</p> <p>Workers should not face removal unless there is a serious breach of their visa conditions. Sections 116(1)(b) and 235 of the <i>Migration Act 1958</i> (Cth) should be amended so as to only apply to serious breaches of visas. A proportionate system of administrative fines and/or civil penalties should apply to other breaches.</p> <p>All temporary migrant workers should gain access to permanent residence after they have spent eight years in Australia. Employers of 457 visa holders should be required to sponsor their employees for permanent residence after two years of employment.</p>	
c. International students, apprentices, young people and work (page 234)	Further research should be undertaken to explore workplace exploitation and how best to target education and assistance for secondary school age students and apprentices.	<p>Universities should fund an independent service to provide employment law advice and education to international students.</p> <p>Further research should be undertaken to explore workplace exploitation and how best to target education and assistance for secondary school age students and apprentices.</p>

Recommendation	Federal/State government	Regulators/Agencies/Commissions /Courts
d. RTO and training scams (page 230)	<p>The State and Federal Governments should continue to investigate and prosecute unscrupulous training organisations. Students affected should be compensated for lost time and money.</p> <p>An industry funded Training Ombudsman should be established to investigate and hear complaints made by students.</p> <p>Brokers, agents and commission-based sales should be banned.</p> <p>State and Federal governments must establish a fund for specialised employment service providers to provide targeted assistance to newly arrived and refugee jobseekers.</p>	
e. Further research (page 240)	<p>Further research into high-risk industries, jobactive provider and apprenticeship frameworks, regional Victoria, young people, the gig economy and strategic litigation opportunities is required. Funding should be provided to undertake this research.</p>	

Glossary

ABN	Australian Business Number
AHRC	Australian Human Rights Commission
ALP	Australian Labor Party
AMEP	Adult Migrant English Program
CALD	Culturally and linguistically diverse
CLC	Community legal centre
CLE	Community legal education
ELS	WEstjustice Employment Law Service
FCC	Federal Circuit Court
FEG	Fair Entitlements Guarantee
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
GP	General protections
HSSP	Humanitarian Settlement Services Program
Jobactive	Provides assistance to job seekers (Federal Government employment program)
LGA	Local Government Area
Project	WEstjustice Employment Law Project
SLPET	Settlement Language Pathways to Employment and Training
SRSS	Status Resolution Support Services
TtT Project	WEstjustice Train the Trainer Project
UFD	Unfair dismissal
VCAT	Victorian Civil and Administrative Tribunal
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VLA	Victoria Legal Aid
WEstjustice	Western Community Legal Centre

Introduction

110 YEARS ON: THE HARVESTER DECISION AND WORKERS' RIGHTS IN THE WEST

The Western suburbs of Melbourne are home to a diverse range of new and emerging migrant communities. Arriving from a foreign country, many things are new—from education and health systems, to public transport, language and culture.

The Western suburbs of Melbourne are also home to the origins of Australia's minimum wage. On 8 November 1907, the Commonwealth Court of Conciliation and Arbitration considered the question of what constitutes a fair and reasonable wage. The case related to workers at the Harvester Factory in Sunshine. For the first time in Australia's history, Justice Higgins ruled that a fair wage should be determined by reference to the needs of workers, not the whim of the employer:

I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community... I cannot think that an employer and a workman contract on an equal footing, or make a "fair" agreement as to wages, when the workman submits to work for a low wage to avoid starvation or pauperism (or something like it) for himself and his family; or that the agreement is "reasonable" if it does not carry a wage sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days, etc., as well as reward for the special skill of an artisan if he is one.

The Sunshine Harvester Factory decision was historic, and marked the beginning of universal minimum employment standards in Australia. Importantly, Justice Higgins' decision is grounded in notions of a 'civilised community' and the needs of workers as human beings, not commodities.

For newly arrived communities in Australia, employment plays a vital role in successful settlement. However, as this Report will demonstrate, employment is hard to find and exploitation is rife. Over the past three years, WEstjustice has witnessed widespread abuse across numerous industries including hospitality, retail, construction, food processing and care work. We have seen disturbing cases of underpayment and non-payment of wages, including two workers paid one salary between them, and others paid as little as \$8 an hour. Many of our clients have been dismissed for asking about unpaid wages, or abused because of their race. Reform is urgently required.

The Harvester Factory gates still stand in Sunshine, and serve as an ongoing reminder to strive for a civilised community free from exploitation. This Report, and the WEstjustice Employment Law Project more broadly, strives for just that: successful employment outcomes for newly arrived and refugee workers, and diverse workplaces free from exploitation.

Sunshine Harvester Factory, 1941.
Image courtesy of Museum Victoria.

ABOUT WESTJUSTICE

Western Community Legal Centre (trading as WEstjustice) is a newly formed entity created from the amalgamation of Footscray Community Legal Centre Inc., Wyndham Legal Service Inc. and Western Suburbs Legal Service Inc.

WEstjustice 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, Wyndham or Hobsons Bay, in Melbourne's Western Suburbs. We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine and outreach across the West. WEstjustice provides a range of legal services including legal information, advice and casework, duty lawyer services, community legal education, law reform, advocacy and community projects.

WEstjustice has a long history of working with newly arrived communities. Over the past five years, more than 50% of our Footscray office 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) and our refugee service in Footscray alone has seen approximately 700 clients in the past five years.

WEstjustice has developed specialty advisory services and education programs that address the particular legal and social problems that newly arrived and refugee communities encounter. For example, we have explored the experiences of newly arrived communities in relation to the courts, housing, energy and telecommunications markets in recent years.¹

¹ See, eg, Footscray Community Legal Centre, *Brochures/Publications* (2011) <<http://www.footscrayclc.org.au/brochures-publications/>>.



Employment Law Project Preliminary Report launch, Feb 2014.

ABOUT THE EMPLOYMENT LAW PROJECT

The WEstjustice Employment Law Project (Project) seeks to improve employment outcomes for newly arrived and refugee communities in Melbourne's West.

The Project was first developed in response to unmet need identified through work with newly arrived and refugee communities in our generalist legal practice. At the time, WEstjustice did not provide employment law assistance.

The Project was designed and implemented in three stages:

Stage One (research and consultation):

A literature review, interviews, consultations and surveys were conducted in order to gain a better understanding of the working experiences of newly arrived and refugee communities in the West, available services, unmet community needs, and how WEstjustice could best address identified needs.

Stage Two (pilot programs):

Informed by Stage One, Stage Two featured the development and delivery of two pilot programs—an employment law service and community legal education (CLE) program.

Stage Three (report and advocacy):

Use of data and stories gathered throughout Stages One and Two to document working experiences, reflect on laws and legal processes, evaluate the pilot programs, prepare law reform submissions, participate in advocacy campaigns and produce this evidence-based Report.

STAGE ONE: RESEARCH AND CONSULTATION

Unmet need for targeted employment law assistance was explored and documented in our preliminary report, *Employment is the heart of successful settlement: overview of preliminary findings* released in February 2014 (Preliminary Report). Based on over 100 surveys from community members and community workers, and numerous consultations and forums, the Preliminary Report documents high levels of exploitation and low levels of rights awareness among newly arrived and refugee workers in the West. The Preliminary Report found that face-to-face, targeted employment law services and community legal education programs were urgently required for refugees and recently arrived communities.²

Key findings in the Preliminary Report included that:

- 1. newly arrived and refugee communities have an extremely limited understanding of Australian employment laws and services;
- 2. it was common or somewhat common that newly arrived or refugee communities did not know where to get help if they had a problem —mainstream services are often inaccessible to newly arrived communities;
- 3. the impact of this lack of awareness and accessibility is that workers are exploited and cannot take action to enforce their rights;
- 4. face-to-face service was the preferred mode of education and legal advice; and
- 5. legal services and community legal education should be made accessible through targeted services.

Based on this feedback and information, we established a pilot Employment Law Service and CLE Program.

STAGE TWO: EMPLOYMENT LAW SERVICE

The WEstjustice pilot Employment Law Service (ELS) provides free employment-related legal information, advice, advocacy and referral to clients from refugee or newly arrived communities who live, work or study in the Western suburbs of Melbourne.

Designed in response to feedback gathered in Stage One of the Project, the ELS offers appointments during the day and evening. Appointments are face-to-face, with telephone or in-person interpreters available as required.

The ELS assists with legal issues that arise under employment or anti-discrimination laws including underpayment or non-payment of wages and entitlements, sham contracting, warnings, termination of employment, discrimination, bullying, sexual harassment, victimisation and workplace injury.

To date, the ELS has seen over 200 clients from 30 different countries. Clients were mostly of refugee background, but also included international students, asylum seekers, 457/working holiday visa holders and other migrant workers. The clients have come from a wide range of countries including Iran, Ethiopia, Sudan, South Sudan, Burma, Afghanistan, Eritrea, India, Pakistan, Sri Lanka, Vietnam and East Timor.

As at September 2016, the ELS had successfully recovered or obtained orders for over \$120,000 in unpaid wages and superannuation for clients. There are more cases underway. The ELS had also assisted numerous clients with claims regarding unfair termination, with over \$125,000 in compensation being recovered or ordered, as well as other outcomes that focus on assisting clients to find new work. The Centre has also helped clients keep their jobs and/or increase hours of work, by drafting letters and negotiating with employers. Many of our clients do not speak English, and would not have enforced their rights without our help.

STAGE TWO: CLE PROGRAM

To raise awareness of laws and services, and build trust with target communities, WEstjustice developed an employment law CLE program.

The program consisted of:

Information sessions for community members: these sessions were provided upon request. We delivered sessions to a variety of formal and informal groups, including community organisations (for example at church group meetings or community meetings); English as Additional Language classes (in particular, employment-oriented programs including AMEP SLPET classes); and information sessions run by settlement agencies (for example, Rights and Responsibilities seminars or other organised programs). We have now delivered face-to-face community education to over 600 newly arrived and refugee community members.

Information sessions for community workers: these sessions were targeted at agency staff who frequently assist newly arrived and refugee clients. The sessions sought to raise awareness of employment laws and services to enable workers to identify when their clients were experiencing an employment law issue and make appropriate referrals.

Train the trainer program: the WEstjustice Train the Trainer Program delivered a nine day training program in employment laws and services to six community leaders from newly arrived and refugee communities in Melbourne’s Western Suburbs. The community leaders visited a number of key employment and anti-discrimination law agencies, including the Fair Work Ombudsman, the Fair Work Commission, the Victorian Equal Opportunity and Human Rights Commission and Victoria Legal Aid. Participants were supported to develop a community education presentation, which they delivered to their communities in a culturally appropriate and targeted way.

STAGE THREE: ADVOCACY

WEstjustice has used data, case-studies, observations and experiences gained through the pilot ELS and CLE program to produce a number of evidence-based submissions to law reform and other inquiries, including:

- 1. Victorian Government Inquiry into the Labour Hire Industry and Insecure Work (written submission and appearance at a hearing);
- 2. Productivity Commission Inquiry into the Workplace Relations Framework (three written submissions and appearance at a hearing);
- 3. Victorian Government Employment Programs Review (written submission);
- 4. Australian Human Rights Commission Supporting Working Parents: Pregnancy and Return to Work National Review (written submission and appearance at a consultation); and
- 5. Fair Work Commission Draft Practice Note—Fair Hearings (written comments).

We have also met with a number of stakeholders and politicians to discuss our findings. We plan to continue to expand upon our advocacy efforts with this Report, and hope that other organisations can also use our materials to affect positive change.

² 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>.

FUNDING

Very few generalist community legal centres provide employment law assistance. This is not due to a lack of need. In fact, employment assistance has been frequently recognised as a significant area of unmet legal need.³ However, employment law is a highly specialised area of law with short limitation periods, so generalist centres are not often able to provide assistance. Unfortunately, there is very little funding available for employment law services and existing services are struggling to meet demand with limited resources. In Victoria, Victoria Legal Aid (VLA) does not provide assistance for employment matters.⁴ Apart from the ELS, there are no other targeted employment law services for newly arrived communities in Victoria.

The Project has been managed by Catherine Hemingway, who worked 0.9 EFT for the majority of the Project. Catherine’s position was funded internally by WEstjustice generalist funds. Funding from the Helen Macpherson Smith Trust and Victorian Women’s Trust enabled WEstjustice to engage a Women’s Outreach and Training Solicitor, Genevieve Auld, for six months. This funding also enabled us to engage six community leaders for the Train the Trainer Program. Recently, small grants from the National Union of Workers and AMES, along with a one-off Victorian Government grant and funding from the Melbourne Social Equity Institute, enabled WEstjustice to employ a full time Employment Project Solicitor for 12 months, Gabrielle Watson-Munro. WEstjustice gratefully acknowledges our funders, without whom the Project could not have functioned as it has. The Project currently has no ongoing funding. Without further funding, the pilot services will not continue.

3 Federation of Community Legal Centres, 'Putting the Law to Work: Meeting the Demand for Employment Law Assistance in Victoria' (Report, August 2014) <http://www.communitylaw.org.au/cb_pages/federation_reports.php>.

4 Apart from those involving discrimination that are eligible for assistance from the Equality Law Program.

METHODOLOGY

In Stage One of the Project, we sought to learn about:

1. key problems at work for newly arrived and refugee communities in the West;
2. what services are currently available; and
3. how WEstjustice (at the time Footscray Community Legal Centre) 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. Project coordinator Catherine Hemingway met with 39 individuals or groups from settlement agencies, community legal centres, VLA, law firms, unions, universities, government agencies and other community organisations, as well as attending numerous network meetings. 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 help 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.

Although findings from Stage One were reported in detail in our Preliminary Report, we also refer to key findings in this Report. As will be shown, Stage One findings are largely consistent with our findings from Stage Two.

In Stage Two of the Project, we implemented two pilot programs: the ELS and CLE program. For each client of the ELS, we recorded key statistical information on our intake form, including country of birth, year of arrival in Australia, visa status, employment problem(s) type(s) and employment industry. This data was entered into our client database (CLSIS). We draw on this de-identified quantitative statistical information throughout this Report. Further data, including a more detailed overview of problem type, outcomes and client feedback, was also collected in a “case summary” document throughout the Project. Where clients have signed a consent form, we have used de-identified qualitative data from the “case summary” document to prepare case-studies, client reflections and more in-depth analysis of common themes. Names and other key identifying information have been changed or removed to protect our clients.

Except where otherwise stated, statistical data about our casework service is based on information gathered in intake appointments for new clients between May 2013 and October 2015 (an 18 month period). We note that this period coincides with the opening of our service—therefore, there will be fewer appointments and outcomes recorded for this period than later periods. This is because it takes time for a service to become known in the community, and it takes time for matters to be dealt with in Court.

LIMITATIONS

This report is based on a literature review, stakeholder consultation, surveys and client data.

The findings are not drawn from a large sample size, particularly when considering particular visa types or industries. Our findings do not represent all issues or all newly arrived and refugee workers. We have attempted to be as rigorous as our resources allow, and our research is comprehensive, based locally on our observations and those of our colleagues in the community. This community partnership and relationship is the strength of the Report, as it enables us to share stories that may not otherwise be told.

Migrant voices must be heard



Community leader.

SETTLEMENT EXPERIENCE FOR NEW ARRIVALS —IMPORTANCE OF FINDING AND KEEPING WORK

IMPORTANCE OF EMPLOYMENT

WEstjustice has observed widespread exploitation of newly arrived and refugee workers in the West. In this section, we consider the context and contributing factors that lead to exploitation and provide an introduction to the types of legal matters and clients that ELS has seen. This section also provides an overview of ELS outcomes, feedback and challenges.

Establishing life in a foreign country presents many challenges including new languages, new community connections and new cultural, financial, health and education systems. Many migrants have experienced violence, torture or trauma and are now separated from family members and social connections. Showing resilience and determination, community members seek to create a new life, and employment is consistently recognised as a vital step for successful settlement.⁵

When settling in a new country, sustainable employment provides financial stability⁶ 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'.⁷ As noted by the Refugee Council of Australia and many of our clients, humanitarian entrants are often 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.

Successful labour market integration of culturally and linguistically diverse (CALD) workers benefits not only migrants and refugees, but the broader community as a whole. High levels of unemployment,⁸ exploitation of newly arrived workers and an inability to enforce workplace rights means that Australia is not only missing out on required skills and human capital benefits,⁹ but also on the numerous social and economic benefits an equitable, cohesive, vibrant and multicultural workplace can bring for all workers. By ensuring all workers' rights are protected, we also eliminate exploitation as a means of obtaining competitive advantage. Companies doing the right thing will no longer suffer a competitive disadvantage because unscrupulous others are willing to take advantage of those most vulnerable.

CALD communities face significant barriers to entering the labour market and maintaining sustainable employment, for reasons set out below. However, with targeted support, many of these barriers can be overcome.

⁵ 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.

⁶ Nic Price, 'Employment a path out of poverty for a Fitzroy refugee', *Melbourne Leader* (Melbourne), 11 October 2013.

⁷ Federation of Ethnic Communities' Councils of Australia, '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.

⁸ 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.

⁹ 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/economic-social-civic-contributions-about-the-research2011.pdf>>.

BARRIERS TO EMPLOYMENT

Australians of refugee background are more likely to experience difficulties obtaining employment. Once employed, they are more likely to be engaged in low income, precarious forms of work, and are particularly vulnerable to experiencing discrimination.¹⁰ The high levels of unemployment and underemployment amongst migrants has been recognised in academic research¹¹ as well as by organisations working with migrant communities.¹²

Our clients report that finding a job is extremely challenging. 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.¹³

This is significantly higher than the general unemployment rate of 4.9% for the same period.¹⁴

In our Preliminary Report, we examined the factors contributing to high levels of exploitation experienced by newly arrived and refugee workers.¹⁵ Many of these factors also represent barriers to gaining access to sustainable employment.

These findings are mirrored in our client data, discussed in further detail below.

Factors include:¹⁶

Communication and language barriers: in our community survey, language/communication difficulties were identified as the most common workplace problem 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. We have seen many clients whose employment has been terminated or threatened as a result of a misunderstanding. For example, one client was dismissed because he failed to provide the correct medical certificate after an extended period of unpaid leave—his employer had requested further information about his medical condition, but he did not understand the request and failed to provide the requisite information (which he had in his possession and would have willingly shared had he understood the request).

Low understanding of rights and services: both the literature 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, leading to unsustainable employment outcomes. 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:

*"Many have no idea of what rights and responsibilities they have—but would come and ask us for help—some continue to do so years later."*¹⁷

Discrimination in recruitment: discrimination in recruitment has been recognised as a major barrier preventing migrants and refugees from finding work. Many participants in our preliminary research reported discrimination during recruitment. 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 was 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:¹⁸

*"I was a painter in Somalia, but have no Australian qualification and cannot find work."*¹⁹

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:

*"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."*²⁰

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'.²¹ In 2011, 72% of Humanitarian stream migrants aged 15 and over had weekly incomes of less than \$600.²² Survey respondents and interviewees for the Preliminary Report reported that newly arrived and refugee 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.

*"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."*²³

10 Ibid, xxiv, 102–103, 138; Colic-Peisker, above n 8, 14; Brigid Trenerry, Hayley Franklin and Yin Paradies, 'Preventing Race-Based Discrimination and Supporting Cultural Diversity in the Workplace—An evidence review (Full Report, VicHealth, March 2012); Farida Fozdar and Silvia Torezani, 'Discrimination and Well-being: Perceptions of Refugees in Western Australia' (2008) 42 *International Migration Review* 30, 40; 'Lives on Hold: Unlocking the Potential of Australia's Workforce' (Report, ACTU Independent Inquiry into Insecure Work, 2012) 23.

11 See, eg, Colic-Peisker, above n 8, 1.

12 Dow, above n 2.

13 Australian Bureau of Statistics, *Understanding Migrant Outcomes —Enhancing Value of Census Data, Australia*, 2011 (5 November 2013) <[http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3417.0Main%20Features22011?opendocument&tabname=Summary&prodno=3417.0&issue=2011&num=&view=>](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/3417.0>Main%20Features22011?opendocument&tabname=Summary&prodno=3417.0&issue=2011&num=&view=>)>.

14 Australian Bureau of Statistics, *Australia's unemployment rate steady at 4.9 per cent in June 2011* (7 July 2011) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6202.0Media%20Release!Jun%202011?opendocument&tabname=Summary&prodno=6202.0&issue=Jun%202011&num=&view=>>>.

15 See also, Settlement Council of Australia, 'Addressing Barriers to Employment' (Discussion Paper, July 2012).

16 Dow, above n 2, 13-18.

17 Survey, community worker, Dow, above n 2.

18 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>.

19 Survey, community member, Dow, above n 2.

20 Survey, AMES Community Guide, Dow, above n 2.

21 Leah Vosko, *Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment* (Oxford University Press, 2010) 3.

22 Australian Bureau of Statistics, above n 13.

23 Survey, Dow, above n 2.

Temporary migrant worker status: several reports indicate that temporary migrant workers (including 457 visa holders,²⁴ international students²⁵ and working holiday visa holders) are particularly vulnerable to exploitation due to the nature of their visa, dependence on employers and lack of knowledge of rights and responsibilities.²⁶ This was also raised in some face-to-face consultations. We have certainly witnessed significant exploitation of temporary migrant workers through our casework, with many clients enduring horrific exploitation due to fear of being forced to leave Australia, desperation to keep employment and family responsibilities. A number of case studies below provide powerful examples of what we have observed.

WEstjustice has observed that our clients recognise the value of work in integrating and contributing to Australian society. Our clients want to work, but often find themselves employed in situations that are below minimum legal working conditions.

Given that it is so difficult to find a job, once work is secured, many workers are too afraid or simply unable to challenge exploitative practices. Many workers provide financial support for their extended families, who may be living in poverty back home, or stranded in refugee camps. We frequently observed clients who felt immense responsibility for their families. The impact of job loss for newly arrived community members is extreme—with limited support networks and low prospects of re-employment, many clients have experienced significant health and wellbeing costs as a result of unemployment, including psychological issues and homelessness.

As a result, employers wield immense power and control over their workers, many of whom are desperate to retain employment of any kind, at any cost.

EXPLOITATION IS WIDESPREAD

Newly arrived communities experience high levels of exploitation in the workplace. Such exploitation is documented in our Preliminary Report,²⁷ demonstrated by research²⁸, and has been observed in our legal service. As the Productivity Commission recognised in its recent review of the workplace relations system, migrant workers 'are more susceptible to substandard working conditions (such as being underpaid) than Australian citizens', including 'lower wages, reduced entitlements and fewer protections than required by the Fair Work Act 2009 (Cth)'.²⁹ As our preliminary and casework findings show, workers experience significant discrimination, frequently lose their jobs, and are routinely underpaid and denied basic entitlements. They also experience bullying, are forced into sham contracts and work in unsafe jobs with high injury rates. In this section, we provide an overview of the client profile and legal issues seen in the ELS. Further details about specific legal issues and measures for reform are provided later in the report.

In a recent consultation with six community leaders from different new and emerging communities in Melbourne's West, participants were asked about employment problems that members of their community have experienced in Australia, and whether members of their community would find it easy to seek assistance with employment problems. Responses included the following:³⁰

"Not being paid is a common problem. People are scared of losing their jobs so they don't complain."

"Underpayment is a problem. There is often an English language barrier so people look for bosses who speak their language but they are often ripped off by their own community."

"Bullying and harassment—men don't want to admit they are being bullied, don't know who to turn to, if they say anything they will lose their job."

"Factory work is the common type of job, and workplace injuries are common so often they can't keep their job long term."

"Even if they were a professional worker in their own country they are working in menial jobs in Australia, and they don't understand what they are meant to be doing or their rights so this compromises their safety."

"Unfair dismissal—a community member told me his story. In a food processing factory the night shift have to clean the machines. If they clean it within 5 hours they can have rest time. However, the boss asks them to do other jobs at the same time which means they don't have time to clean the machine properly, and they are then sacked when it is found to be not cleaned properly."

"Refugees have the language barrier that leads to misunderstanding, and if they don't have family they are isolated. They don't know about the assistance that is available so they continue to be isolated."

"They cannot look at websites as they don't speak English, and cannot write or read in their own language."

"Many in my community do not contact agencies. They are afraid, because many have had bad experiences with people in authority back home."

Several themes emerged from the consultation, including:

- 1. **lack of rights awareness;**
- 2. **barriers to connecting with information and services,** including fear (of authority and job loss) and limited language/literacy skills; and
- 3. **high levels of exploitation** in a number of legal areas and across a number of industries.

These themes mirror those contained in the Preliminary Report, and once again emerge as key findings from our analysis of client data, as discussed below.

24 According to the Australian Manufacturing Workers Union, hundreds of foreign workers have been exploited under the 457 visa system —see 'Union says hundreds of workers have been taken advantage of by 457 visa rorts', *ABC News* (online), 6 June 2013 <<http://www.abc.net.au/news/2013-06-06/hundreds-of-workers-taken-advantage-of-by-457-visa-rorts/4736740>>. 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—see 'CFMEU says Hungarian workers on 457 visas told to go home after complaining about pay rates', *ABC News* (online) 10 November 2013 < <http://www.abc.net.au/news/2013-11-10/457-workers-sent-home-after-pay-complaint-says-cfmeu/5081410>>. See also Selvaraj Velayutham, 'Precarious Experiences of Indians in Australia on 457 Temporary Visas', (2013) 24 *Economic and Labour Relations Review* 340, cited in Michael Janda, 'Australia's 457 'King of Visas' is a Road to Serfdom for Many Migrants', *ABC News* (online), 6 Sep 2013 <<http://www.abc.net.au/news/2013-09-06/27king-of-visas27-a-road-to-serfdom-for-many/4941980>>; Joo-Cheong Tham and Iain Campbell, 'Temporary Migrant Labour in Australia: the 457 Visa Scheme and Challenges for Labour Regulation' (Working Paper No 50, Centre for Employment and Labour Relations Law, University of Melbourne, 2011).

25 Shanthi 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'—see Shanti Robertson, 'Cash cows, backdoor migrants, or activist citizens? International students, citizenship and rights in Australia' (2011) 34 *Ethnic and Racial Studies* 2192. United Voice has undertaken research in relation to the exploitation of international students in the office cleaning industry, reporting that there is a practice of exploiting international students, including underpayments and failure to pay entitlements: 'A Dirty Business: The Exploitation of International Students in Melbourne's Office Cleaning Industry' (Report, United Voice, 2013) 3. See also 'Better Jobs 4 Better Chicken: Poultry Industry' (Discussion Paper, National Union of Workers, 2011) 2.

26 Velayutham, above n 24.

27 For an in-depth analysis and comments from community members and agency staff about types and frequency, see Dow, above n 2.

28 See, eg, Michael Janda, 'Australia's 457 'King of Visas' is a Road to Serfdom for Many Migrants', *ABC News* (online), 6 Sep 2013 <<http://www.abc.net.au/news/2013-09-06/27king-of-visas27-a-road-to-serfdom-for-many/4941980>>.

29 Productivity Commission, *Workplace Relations Framework*, Inquiry Report No 76 Volume 2 (30 November 2015), 915-916 <<http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume2.pdf>>.

30 WEstjustice focus group with community leaders from Burma (Myanmar), Sudan, DRC Congo, India and Iran, February 2015.

CLIENT PROFILE AND NATURE OF LEGAL ISSUES

NEWLY ARRIVED COMMUNITIES IN THE WESTERN SUBURBS OF MELBOURNE

Maribyrnong, Wyndham and Brimbank Councils have a high proportion of recently arrived³¹ and refugee communities living in their areas with 28.6%,³² 31%³³ and 19.6%³⁴ of their populations migrating to Australia between 2006 and 2011.³⁵ Recently arrived and/or refugee communities are highly concentrated in the suburbs of Footscray,³⁶ River Ward,³⁷ West Footscray,³⁸ Albion,³⁹ Sunshine,⁴⁰ Sydenham,⁴¹ Point Cook,⁴² Tarneit⁴³ and Truganina.⁴⁴

Demographic information on offshore humanitarian resettlement⁴⁵ in Australia from 2012–13⁴⁶ indicates a focus on resettlement of refugees born in Iraq, Afghanistan, Burma (Myanmar), Bhutan, the Democratic Republic of Congo, Iran, Somalia, Eritrea and Ethiopia.⁴⁷

In the Maribyrnong, Wyndham and Brimbank Council areas, census data⁴⁸ indicates there are communities originating from Sudan,⁴⁹ Burma (Myanmar),⁵⁰ Ethiopia,⁵¹ Somalia,⁵² Iraq,⁵³ Iran,⁵⁴ Eritrea,⁵⁵ and Afghanistan.⁵⁶

31 Recently arrived is defined here as arrival within the last 5 years, however see discussion below.

32 Australian Bureau of Statistics, Census of Population and Housing 2011, *Maribyrnong City—Overseas Arrivals* <<http://profile.id.com.au/maribyrnong/overseas-arrivals>>.

33 Australian Bureau of Statistics, Census of Population and Housing 2011, *City of Wyndham —Overseas Arrivals* <<http://profile.id.com.au/wyndham/overseas-arrivals>>.

34 Australian Bureau of Statistics, Census of Population and Housing 2011, *City of Brimbank—Overseas Arrivals* <<http://profile.id.com.au/brimbank/overseas-arrivals>>.

35 The average migration rate for recent arrivals between 2006 and 2011 in greater Melbourne is 23.2%, Australian Bureau of Statistics, *Maribyrnong City—Overseas Arrivals*, above n 32.

36 39.6% of Footscray residents arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Footscray—Overseas Arrivals* <<http://profile.id.com.au/maribyrnong/overseas-arrivals?WebID=110>>.

37 31.5% of the River Ward population arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *River Ward—Overseas Arrivals* <<http://profile.id.com.au/maribyrnong/overseas-arrivals?WebID=180>>.

38 30% of the West Footscray population arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *West Footscray—Overseas Arrivals* <<http://profile.id.com.au/maribyrnong/overseas-arrivals?WebID=160>>.

39 47.5% of Albion residents arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Albion—Overseas Arrivals* <<http://profile.id.com.au/brimbank/overseas-arrivals?WebID=110>>.

40 37.5% of Sunshine residents arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Sunshine—Overseas Arrivals* <<http://profile.id.com.au/brimbank/overseas-arrivals?WebID=260>>.

41 27.2% of Sydenham population arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Sydenham—Overseas Arrivals* <<http://profile.id.com.au/brimbank/overseas-arrivals?WebID=290>>.

42 35.3% of the population of Point Cook arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Point Cook—Overseas Arrivals* <<http://profile.id.com.au/wyndham/overseas-arrivals?WebID=120>>.

43 36.4% of the population of Tarneit arrived in Australia between 2006–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Tarneit—Overseas Arrivals* <<http://profile.id.com.au/wyndham/overseas-arrivals?WebID=130>>.

44 37.1% of the population of Truganina arrived in Australia between 2005–2011, Australian Bureau of Statistics, Census of Population and Housing 2011, *Truganina—Overseas Arrivals* <<http://profile.id.com.au/wyndham/overseas-arrivals?WebID=320>>.

45 Note that there is a different demographic profile for onshore refugee applicants. For more information on this cohort in 2013–14 see Department of Immigration and Border Protection, *Australia's Humanitarian Program 2013–14*, <<http://www.border.gov.au/ReportsandPublications/Documents/statistics/humanitarian-statistics-2013-14.pdf#search=humanitarian%2Dstatistics%2D2013%2D14>>.

46 Note that that there has been a similar humanitarian entrance resettlement profile since 2010. For more information about refugee settlement profiles for specific years see Department of Immigration and Border Protection Statistical Publications <<http://www.border.gov.au/about/reports-publications/research-statistics/statistics>>.

47 Department of Immigration and Border Protection, *Australia's Humanitarian Program 2013–14*, above n 45.

48 Data from 2011 Australian Census and does not reflect settlement between 2011 and 2015. However, Department of Immigration and Border Protection information on humanitarian resettlement in Victoria in 2012–13 indicates that the majority of groups being resettled originated from Afghanistan, Myanmar and Iraq. <<http://www.border.gov.au/ReportsandPublications/Documents/statistics/migration-australia-state-territories-2012-13.pdf#search=migration%2Daustralia%2Dstate%2Dterritories%2D2012%2D13>>.

49 0.8% (1,390) of Brimbank City Council born in Sudan <<http://profile.id.com.au/brimbank/birthplace>>; 0.3% (453) of Wyndham Council population born in Sudan <<http://profile.id.com.au/wyndham/birthplace>>; 0.3% (212) of Maribyrnong City Council born in Sudan <<http://profile.id.com.au/maribyrnong/birthplace>>, Australian Bureau of Statistics, Census of Population and Housing 2011.

50 0.4% (259) of Maribyrnong City Council population born in Burma; 0.3% (518) of Brimbank born in Burma and 0.6% (1,017) of Wyndham City born in Burma. See webpages above n 49.

51 0.6% (432) of Maribyrnong City Council population born in Ethiopia, 0.6% (625) of Brimbank City Council born in Ethiopia and 0.4% (689) of City of Wyndham population born in Ethiopia. See webpages above n 49.

52 0.3% (212) of Maribyrnong City population born in Somalia and 0.1% (174) of City of Wyndham population born in Somalia. See webpages above n 49.

53 0.3% (242) of Brimbank City Council population born in Iraq. See webpages above n 49.

54 0.2% (146) of Maribyrnong City Council population born in Iran. See webpages at above n 49.

55 0.2% (116) of Maribyrnong City Council population born in Eritrea. See webpages at above n 49.

56 0.1% (76) of Maribyrnong City Council population born in Afghanistan. See webpages at above n 49.



WEstjustice community development workers.

HOW THE EMPLOYMENT
LAW SERVICE WORKS

The ELS provides free employment-related legal information, advice, advocacy and referral to refugees, asylum seekers, international students, temporary visa holders and other newly arrived migrants (who are from a non-English speaking background and have lived in Australia for less than 10 years). Clients must live, work or study in the Western suburbs of Melbourne.

The ELS runs by appointment on Monday and Wednesday afternoons and Wednesday evenings. Our Wednesday evening service is staffed by volunteer lawyers and paralegals. All lawyers have experience practising in employment law and are well equipped to provide specialist advice in this area. All volunteers are required to complete four induction sessions, which cover various aspects of how the service operates, as well as substantive legal topics (e.g. choice of jurisdiction) and training in other important areas including self-care and best practice approaches to working with newly arrived and refugee clients. The volunteers are rostered for one evening per month and are supervised by an Employment Project Solicitor from WEstjustice. Monday afternoon appointments are staffed by secondee lawyers from the Corrs Chambers Westgarth Workplace Relations team. Each of the pro bono lawyers has substantial experience practising in employment law, and not only offer excellent service to our clients, but provide WEstjustice staff with excellent mentoring and support. K&L Gates also provides the ELS with significant pro bono assistance, offering a 'phone a friend' service whereby WEstjustice staff can speak with a senior lawyer from the Labour, Employment and Workplace Safety team and obtain strategic guidance and advice about particular matters.

Recognising that the process of making an appointment can be daunting, clients are also able to drop-in on a Wednesday afternoon, where staff will try to assist them, or if there isn't capacity at the time, we will help the client to book a second appointment.

LEVEL OF ASSISTANCE PROVIDED

We seek to provide meaningful assistance to each client, and tailor our level of assistance depending on the client's needs and ability to self-advocate, the merit of the case and our resources. When working with clients who have limited or no literacy in their own language or English, simply advising someone of their right to lodge a claim will be of limited utility. If you cannot write in English, you cannot fill out a claim form without assistance. For this reason, our intake and follow up appointments are longer—usually one to three hours in length, per client. At these appointments, where a client lacks capacity to self-advocate, our volunteer lawyers attempt to assist clients to prepare an application or other correspondence as appropriate. WEstjustice staff then provide follow-up support and assistance as needed, although this is necessarily dependent on our capacity.

For the vast majority of our clients, additional assistance beyond one appointment is necessary. Between May 2013 and October 2015, the ELS provided 162 advices and opened 45 cases for 130 clients. 52 clients received a one-off advice only appointment, while 78 clients received further appointments and/or ongoing assistance. For many clients who received one-off advice, further assistance was needed, but there were no available resources. Sadly, we learned of poor outcomes for some meritorious cases, in part due to lack of ongoing legal assistance.

Of the 30 files that were opened and closed between May 2013 and October 2015, half of all cases required more than 20 hours work. One third of cases required 6–20 hours work, and around 15% of cases involved less than six hours work. Several advice-only files also required more than 20 hours work. Even our clients who received a one-off advice only appointment still received an average of approximately three hours face-to-face assistance from a lawyer.

SAIFUL

Saiful worked as a cleaner. His boss was always late paying his wages. Saiful was called “a dirty Indian” and directed to clean in unsafe places. Whenever Saiful asked about his unpaid wages, his boss always promised he would be paid “soon”. When Saiful sent a text message saying he was going to a lawyer to get advice about his unpaid wages, he was fired.

Saiful spoke quite good English. At a WEstjustice night service appointment, he received assistance to draft a general protections application. Saiful was informed of the process, and encouraged to contact WEstjustice once a conciliation was scheduled so that we could assist him to prepare. At the time, WEstjustice did not have capacity to represent Saiful.

Saiful attended the conciliation unrepresented and received a paltry settlement offer. Without advice, Saiful did not know what to do. He refused the offer, and despite WEstjustice offering to assist with next steps, took no further steps to pursue his claim. Saiful was ultimately unable to pursue his matter, despite having a very strong general protections claim.



Community leaders visit Victoria Legal Aid.

CLIENT PROFILE
-EMPLOYMENT LAW SERVICE

GENDER AND COUNTRY OF BIRTH

Between May 2013 and October 2015, the ELS saw 130 clients from 30 different countries. 72% of our clients were male, and 28% were female. Consistent with information about the country of origin of humanitarian entrants granted refugee status in 2013–14, a significant proportion of clients came from Iran, Burma, Afghanistan, Ethiopia, Sudan and Eritrea. Over 80% of clients came from the following ten countries: Iran, Burma (Myanmar), India, Afghanistan, Pakistan, Ethiopia, Sudan, Eritrea, Vietnam and Sri Lanka.¹

The breadth of communities accessing the ELS is pleasing and, moreover, demonstrates widespread need for employment law assistance across all communities. While the result reflects recent settlement patterns more broadly in the West, it also supports our observation that engagement with agency workers, community leaders and bilingual community workers enables communities to access services. Throughout the Project we have consulted agency workers who have subsequently made referrals to the ELS. We have also built relationships with community members from numerous different communities through the engagement of community leaders. For example, our Centre has engaged community workers from Burma and Iran for a number of years. These workers play a vital role in connecting their communities to our service, as is reflected in the finding that clients from Iran and Burma accessed our service most frequently. Further, five out of six of the community leaders from our Train the Trainer program (see below) came from countries represented in the top ten countries of birth for clients.

Client country of origin may also have been influenced by the relationships WEstjustice has worked hard to develop with refugee and recently arrived communities. WEstjustice has relationships established through current and previous projects including the African Legal Service,² Burmese Legal Service,³ Burmese financial counselling service, the Vietnamese Legal Service⁴ and our ongoing refugee generalist clinics.

1 For two clients, country of origin was not recorded. These results have been excluded from our calculations.
2 Katie Fraser, 'Out of Africa and Into Court: The Legal Problems of African Refugees' (Report, Footscray Community Legal Centre 2009) <http://www.footscrayclc.org.au/images/stories/docs/Out_of_Africa_and_Into_Court.pdf>.
3 Anita Smith and Neng Boi, 'The Burmese Community And the Legal System—A Study in Confusion' (Report, Footscray Community Legal Centre August 2010) <http://footscrayclc.org.au/images/stories/docs/Burmese_Community_and_the_Legal_System.pdf>.
4 Ha Le, 'The Vietnamese Legal Service: An Analysis of the Needs of the Victorian-Vietnamese Community', (Report, Footscray Community Legal Centre, 2012) <http://www.footscrayclc.org.au/images/stories/Report_VLS4.pdf>.



MODE OF ENTRY TO AUSTRALIA

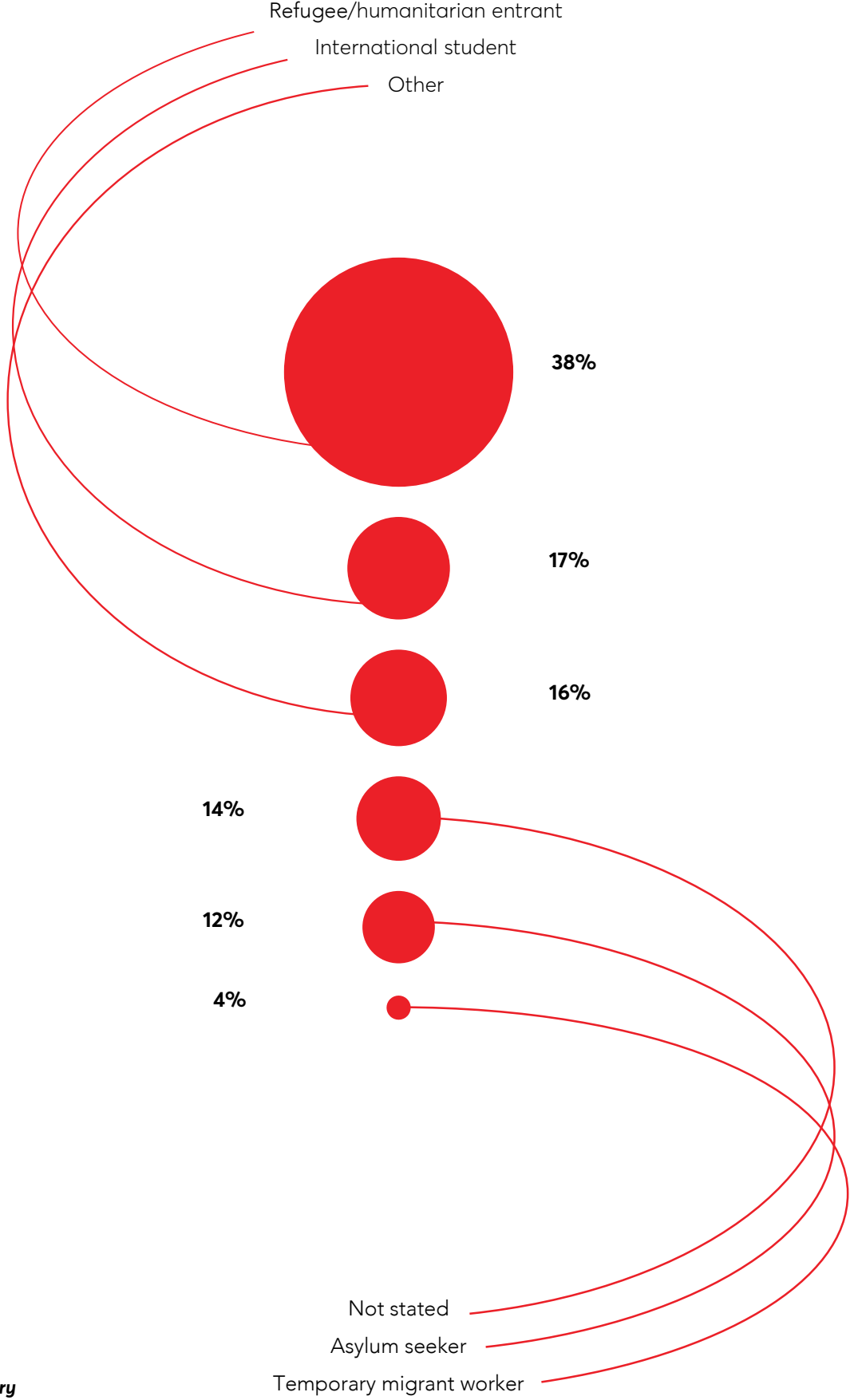
The ELS is available for all newly arrived migrants and refugees who live, work or study in the Western suburbs of Melbourne.

We have seen a number of different types of visa holders, including:

- refugees: a person who has made a claim for asylum and the claim has been accepted;
- asylum seekers: a person who has applied for a refugee protection visa and is still waiting for a decision—there are different visas that an asylum seeker may hold;
- international students: a person who has a visa that allows them to study in Australia and work for up to 40 hours per fortnight during semester;
- subclass 417 working holiday visa holders: a young person (18–30 years old) who is able to stay in Australia for up to one year to work and holiday. A further stay of up to one year may be available if the person completes 88 days of specified work in a regional Australian area;⁶¹
- subclass 457 temporary work (skilled) visa holders: a person who has been sponsored by their employer to work for up to four years. Only workers with skills listed on the Skills Occupation List are able to access this visa; and
- family members: who have arrived via family reunification or other streams;
- Nearly 40% of clients seen by the ELS were refugees who had arrived on humanitarian visas. The second largest group of clients had arrived in Australia as international students (17%). The Centre also advised a number of asylum seekers and people on temporary work visas (including working holiday and subclass 457 visas). Unfortunately, 30% of clients were described as “other” or “not stated” for this question, which makes it difficult to conclusively determine the precise numbers. Also, a number of clients had changed visa status during their time in Australia. For example, while only 4% of clients were identified as arriving in Australia as temporary migrant workers, in a second intake question, 8% of workers were identified as currently holding a 457 or other temporary work visa.

⁶¹ Department of Immigration and Border Protection, Australian Government, Fact sheet—Working Holiday visa programme <<https://www.border.gov.au/about/corporate/information/fact-sheets/49whm>>.

Visa Category



"I didn't think my time in Australia would be like this."

YEAR OF ARRIVAL IN AUSTRALIA AND ENGLISH LANGUAGE SKILLS

Between May 2014 and October 2015, 60% of our clients had lived in Australia for less than five years. 22% of clients had lived in Australia for the past 6–10 years, and 18% had been in Australia for longer than 10 years.⁶²



⁶² These figures exclude the 6% of clients where year of arrival was not recorded.

**23% spoke
English at home
77% spoke
other languages**

**at least 29 different
languages were
spoken**

The ELS is targeted at newly arrived and refugee communities. In a settlement context, newly arrived is often defined as up to five years living in Australia. However, community workers have often expressed to us that five years is simply not enough time for community members to adjust to a new society and access mainstream services without assistance. WEstjustice recognises that many long-term migrants have similar experiences and characteristics to those of newly arrived community members. This is due to various factors including language skills, trauma, health considerations, isolation, ability to access support services and integration into wider society. Further, some migrants may take more than five years to find employment. For this reason, the ELS is available to all migrant workers who have arrived in Australia within the last ten years, or longer in some situations.

77% of clients spoke a language other than English at home. Of these clients, at least 29 different languages were spoken. The frequency at which different languages were spoken broadly reflects country of origin data, with the highest number of clients reporting that they spoke Persian /Farsi, Burmese or a Burmese ethnic group language, or one of several African languages including Tigrinya, Dinka, Amharic or Somali.

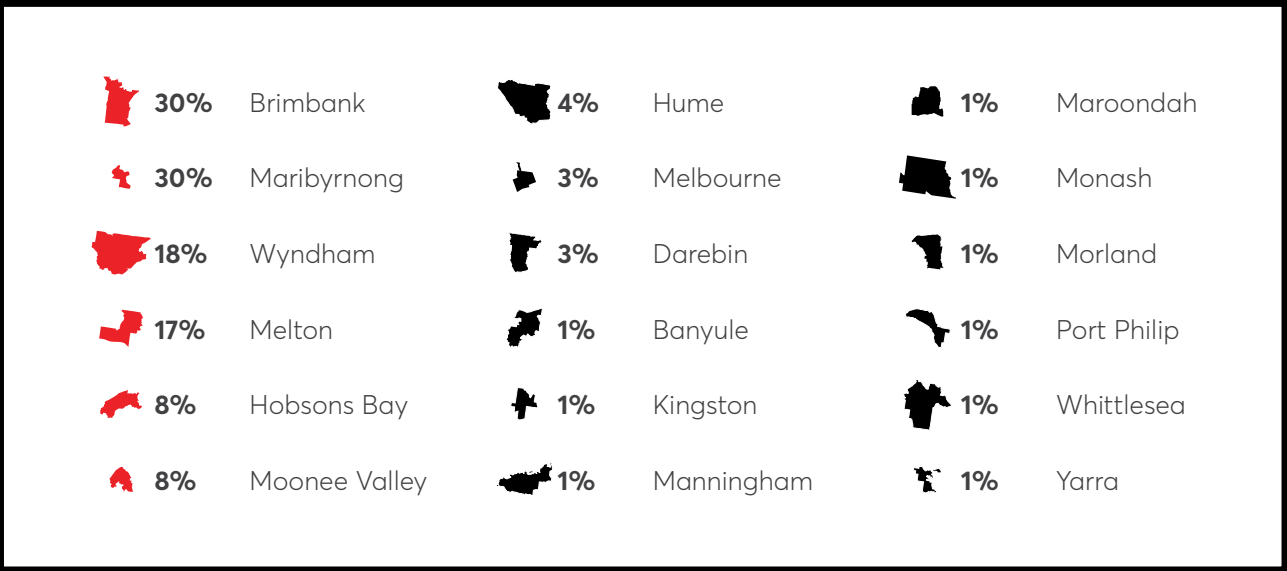
44% of clients were recorded as not speaking English well, or not speaking English at all. Interpreters were provided whenever a client requested assistance (interpreters are offered at intake), or whenever a lawyer required assistance to understand the client or ensure that advice was being understood. Around one third of clients required interpreters during intake, however an interpreter was often required for a larger number of clients after intake to provide legal advice or take further instructions. This is due to the fact that while some community members speak good conversational English, language assistance may be necessary where technical legal terms are used, or a client is under emotional stress.⁶³ This is particularly important during legal proceedings, where particular vocabulary and terminology may be used in a hearing that a party may not understand (even if their English language skills are good) or the anxiety associated with a mediation or hearing may affect an individual's command of their second (or third or other) language. For example, many clients reported how grateful they were to have interpreters present during Fair Work Commission or Federal Circuit Court proceedings, where, due to nerves and formal legal processes, language assistance is even more important. One client recounted how his mind went blank in mediation, and he could not understand any of the English being spoken. WEstjustice estimates that around half of our clients required interpreters at some stage of their matters.

⁶³ See, eg, Foundation House—The Victorian Foundation for Survivors of Torture, 'Promoting Refugee Health: A guide for doctors, nurses and other health care providers caring for people from refugee backgrounds', and 'Promoting the engagement of interpreters in Victorian health services', which provide further information regarding the importance of professional interpreters for refugee communities: <<http://refugeehealthnetwork.org.au/promoting-refugee-health-a-guide-for-doctors-nurses-and-other-health-care-providers-caring-for-people-from-refugee-backgrounds-3rd-ed/>> and <[http://www.mhima.org.au/pdfs/FHinterp_June2013_for_web\[1\].pdf](http://www.mhima.org.au/pdfs/FHinterp_June2013_for_web[1].pdf)>.

PLACE OF RESIDENCE

The ELS is available to clients who work, live or study in the Western Suburbs of Melbourne. 60% of clients came from the cities of Maribyrnong, Brimbank and Wyndham. This reflects the local government areas (LGAs) in which we conducted the most outreach, including attending network meetings and community education sessions. They are also the three LGAs where WEstjustice has offices and established networks. Melton, Moonee Valley and Hobsons Bay LGAs accounted for the place of residence for a further 25% of clients, with the remainder coming from other parts of Victoria.

Although we conducted outreach appointments in Wyndham and Brimbank whenever resources allowed, a number of clients travelled significant distances to attend appointments at the ELS, which is based in Footscray.



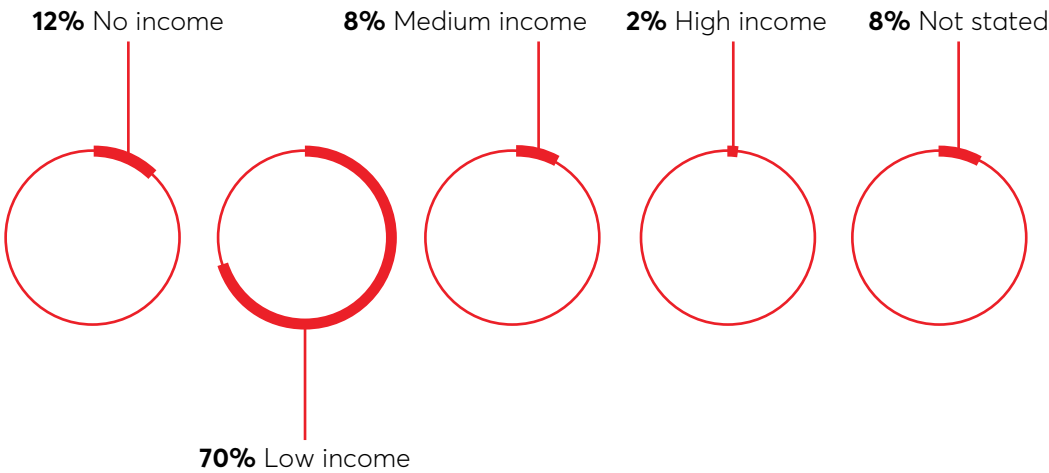
INCOME

WEstjustice services are targeted at those most in need. In particular, we focus on vulnerable clients who would not be able to represent themselves, afford a private lawyer, or find assistance elsewhere. The ELS is no exception. 89% of clients were on a low income or no income at all when they came to the ELS for assistance.⁶⁴

Over half of our clients earned an income at the time they came to see us for advice. 23% of clients were receiving Centrelink payments and 14% reported they had no income at all, often as a result of recent job losses.

Of clients who were earning wages or receiving Centrelink, 87.5% earned a low income (less than \$600 per week), 10% earned a medium income (between \$600 and \$1000 per week) and only 2.5% were high income earners. High income earners (defined as earning above \$1000 per week) received minimal assistance from the ELS, and were referred to private law firms for assistance.

Current Income



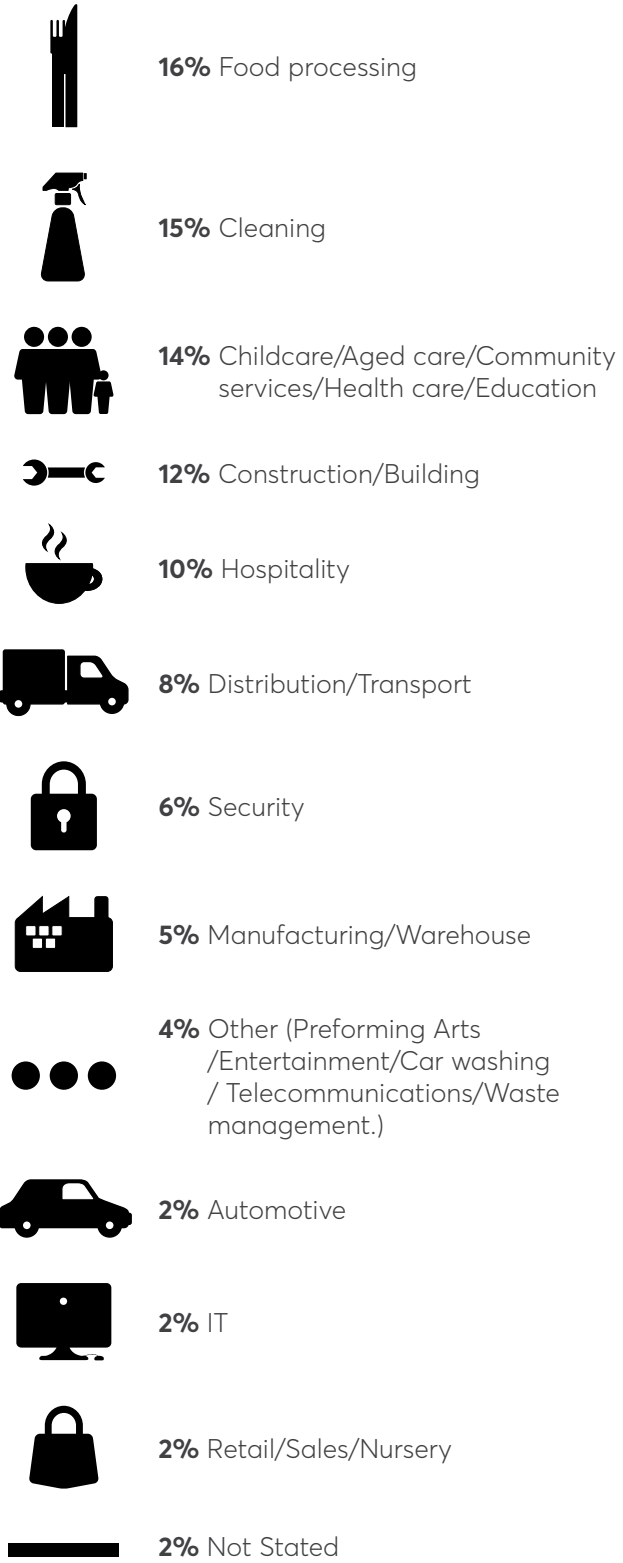
64 This statistic excludes 8% of clients, where income was not recorded.

INDUSTRY

Research shows that newly arrived migrants and refugee communities in Australia are segmented in low skilled and casualised industries.⁶⁵ WEstjustice client data reflects this finding with clients working predominantly in food processing, cleaning, construction, hospitality, distribution, security, manufacturing/warehousing and the community services/child and aged care industries.

A significant proportion of clients were engaged as contractors, casual staff, in part time positions or through labour hire arrangements. At their first appointment, 35% of clients reported that they were permanent employees, while 25% said they were casual and 16% independent contractors.

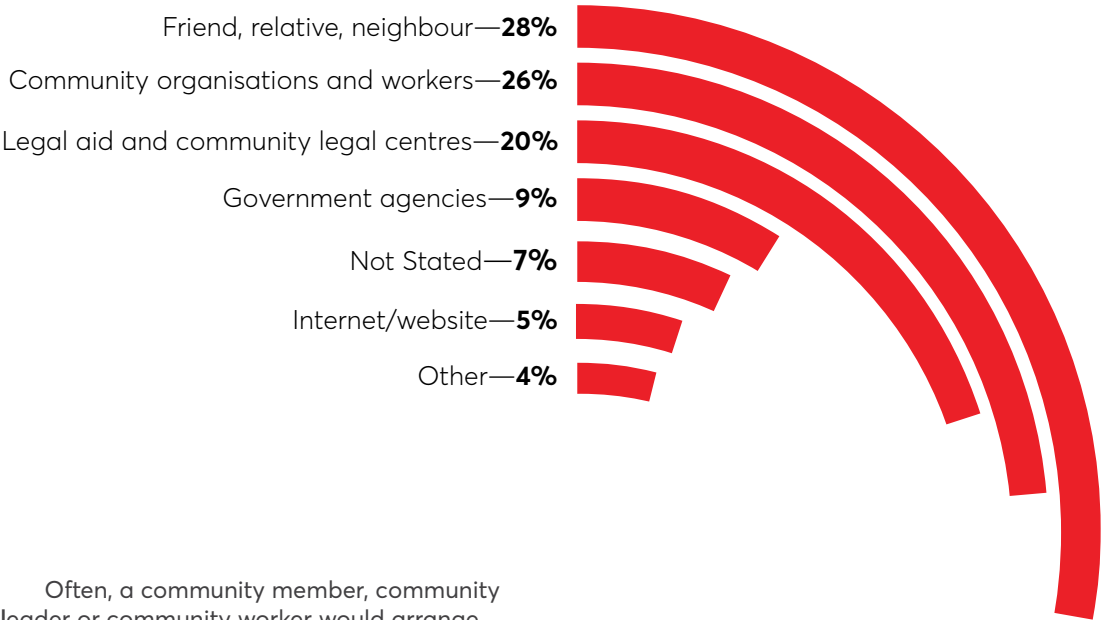
However, some clients were unsure and for others, the type of employment was wrongly identified (for example, they thought they were contractors but were really employees at law; or they considered themselves permanent, when they were engaged under a daily hire arrangement).⁶⁶



65 Val Colic-Peisker and Farida Tilbury, 'Employment Niches for Recent Refugees: Segmented Labour Market in Twenty-first Century Australia' (2006) 19 *Journal of Refugee Studies* 203.
66 Data was also difficult to interpret as one question with tick boxes was used to collect this information—for some clients, our intake worker had only ticked "part time" or "full time", without also selecting whether the client was a permanent employee, casual employee or contractor.

HOW DID CLIENTS FIND OUT ABOUT OUR SERVICE

Over half of our clients were referred to the ELS by a trusted community worker or by word of mouth, including referrals from friends, relatives, community leaders or neighbours. One in five clients found our service with assistance from another community legal centre or VLA. Around 9% of clients were referred to us by government agencies such as the FWO. Only 5% of clients found us using an internet search, or from our website.



Often, a community member, community leader or community worker would arrange an appointment and/or attend a client's first appointment with them. Often, our service would continue to involve a trusted case worker or support person throughout our engagement with a client. Many clients reported to us afterwards that they had never seen a lawyer before, and were extremely nervous about "complaining" about their working conditions.

As discussed below, newly arrived and refugee clients often face numerous barriers to accessing services. Consistent with the data, building relationships with trusted community members and organisations is an essential mechanism to ensure service accessibility.

"Over half of our clients were referred to the ELS by a trusted community worker or word of mouth."

NATURE OF LEGAL DISPUTES

TYPES OF LEGAL PROBLEM AND NUMBER OF PROBLEMS PER CLIENT

Underpayment of wages or entitlements is the most common problem that clients present with at our service. In the relevant period, nearly half of our clients received advice about sham contracting, underpayment or non-payment of their legal wage or other entitlements.

The second most common problem was termination of employment. Around one in five clients attended the service because they had lost their job.

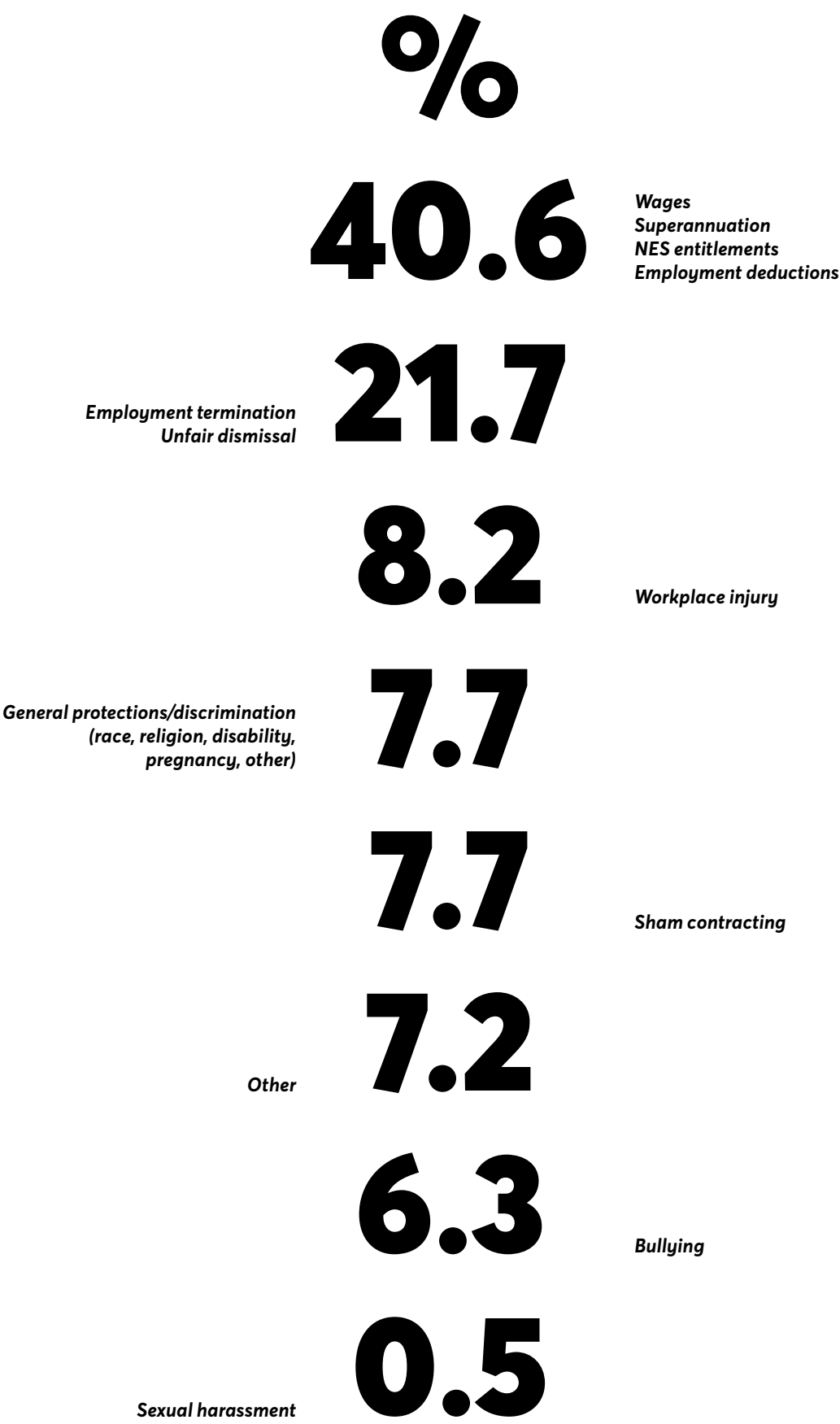
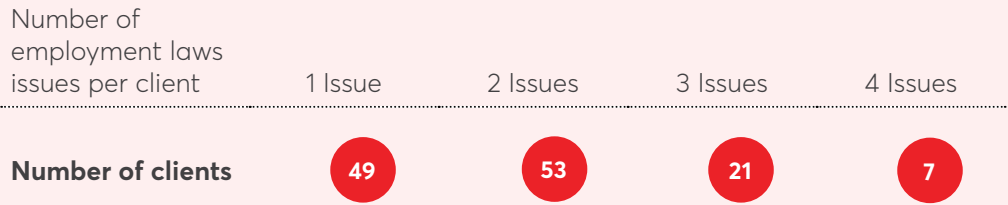
Workplace injury, discrimination and bullying were also relatively common problems, with around 7–8% of clients seeking advice on these issues. Sexual harassment was less commonly reported.

These findings broadly reflect the observations in our Preliminary Report, where:

- 52% of survey respondents said that underpayments were common, somewhat common or that they or someone they knew was not paid enough;
- 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, and one third reported it was common or somewhat common to miss out on superannuation entitlements; and
- 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.

Interestingly, 47% of survey respondents reported that discrimination at work was common, somewhat common, or that they or someone they knew had experienced it. However, clients at the ELS did not seek advice on this issue as frequently as other legal problems. Possible reasons are discussed below.

The majority of clients presented with more than one legal problem relating to their employment. 62% of clients had two or more employment-law related issues, 23% had three or more issues, and 5% had four or more issues. Only one third of clients presented with one employment-related legal issue only. Many of our clients also presented with other associated legal and non-legal issues, including eviction and homelessness (due to loss of employment meaning that clients could no longer pay rent), problems paying bills and the need for material aid, criminal matters (for example, assault or sexual harassment in the workplace) and significant health problems, often arising in connection with employment (both psychological and physical). Whenever possible, we provided a warm referral to another lawyer at WEstjustice, or an external agency as appropriate. Over 120 referrals were made to community services or government agencies in the relevant period.



RECURRENT PROBLEMS IN PARTICULAR INDUSTRIES OR FOR PARTICULAR VISA HOLDERS

As noted above, the majority of our clients work in food processing, cleaning, construction, hospitality, distribution, security, manufacturing /warehousing and the community services/child and aged care industries. Although the sample sizes for each industry are small, the data reveals some trends.

For example, for clients in the cleaning industry, wages and entitlements issues were by far the most significant legal problem. In fact, 70% of clients presented at the ELS with underpayments or non-payment of wages or entitlements issues. 20% had experienced a workplace injury, 15% sought advice on bullying or discrimination, and only 5% contacted the service for issues relating to termination of employment.

Similarly, in the construction industry, wages and entitlements issues were overwhelmingly the biggest issue. 80% of clients from this industry received advice about underpayment of wages or entitlements, with at least half of our clients receiving advice about sham contracting. Unfortunately, clients often lacked sufficient information about their employers, making enforcement action impossible. Clients often presented at the ELS with only the first name of their employer and a mobile telephone number. Although we tried to assist clients to gather further information about the employer, without a company name or details, it was often impossible. One quarter of clients received advice for termination of employment, while only 7% of clients were advised on discrimination, bullying or workplace injury.

Wages and entitlements were also the most significant problem in the distribution/transport industry with 82% of clients seeking help in relation to these issues. In the hospitality industry, the most common problems were wages and entitlements (62% of clients were advised on this) and termination of employment (69% of clients). Only one client who worked in this industry received advice on discrimination or bullying.

In the food processing industry, there existed more variation in the prevalence of different legal issues—only one third of clients working in this industry received advice on wages and entitlements. 43% received advice on termination of employment, nearly one third of clients sought advice on workplace injury and around one quarter received advice on discrimination or bullying related issues. Most clients from the food processing industry worked in high-risk, repetitive cutting and packing jobs at meat factories, which accounts for the significantly high proportion of workplace injury inquiries.

Although this data suggests that wages and entitlements issues are not as widespread in the food processing industry, we note that the majority of our clients were engaged by large meat processing or labour hire companies with a stronger union presence, rather than workers engaged by smaller operators or employees working in other positions and locations, for example on farms picking fruit or vegetables. Anecdotally, we were informed by several community leaders and community workers that underpayment and non-payment of wages in these less-regulated areas is a significant issue. For example, one leader told us about community members picking mushrooms for as little as \$7 per hour, and another about market garden workers being paid \$10 an hour, or \$11 an hour if they were fast workers, or owned a car to pick up/drop off other workers. These stories are supported by numerous in-depth reports,⁶⁷ which expose widespread exploitation of workers in farms and in various labour hire arrangements in the food processing industry. When speaking with community leaders about the workers in this industry, we were told that many workers are extremely vulnerable and unlikely to approach our Centre for assistance without further outreach work. As noted in the conclusion of this report, this is an area for further investigation/work.

Similarly, there was a greater variety in the prevalence of different issues reported in the warehousing/manufacturing industry, with 62% of clients seeking advice on wages or entitlements, 75% seeking advice on termination of employment, one quarter of clients seeking help with workplace injury and one quarter receiving advice on discrimination or bullying. There was also a variety of issues reported in the security industry.

In the community services and care industries, wages and entitlements issues were also less commonly reported, with 28% of clients being advised on this issue. No clients sought advice on workplace injury in this industry. Instead, termination of employment (44% of clients) and discrimination /bullying (39% of clients) were significant issues.

Interestingly, asylum seekers and refugees encountered a broader variety of employment-related problems at work, while temporary migrant workers including international students received advice almost exclusively about wages and entitlements, and/or termination of employment.

⁶⁷ ABC, '7-11: The Price of Convenience', *Four Corners*, 30 August 2015; ABC, 'Slaving Away' *Four Corners*, 4 May 2015 <http://www.abc.net.au/4corners/archive_2015.htm>.

OUTCOMES

SERVICE ACHIEVEMENTS

The ELS opened in May 2013. As at September 2016 the ELS had seen over 200 clients and successfully recovered or obtained orders for over \$120,000 in unpaid entitlements and over \$125,000 in compensation for unlawful termination.

Between May 2013 and October 2015, we assisted 130 clients from 30 different countries, providing 162 advices and opening 45 cases. 52 clients received a one-off advice only appointment, while 78 clients received further appointments and/or ongoing assistance. Given that the ELS only opened at the start of the reporting period, we note that these outcomes are more limited than subsequent periods. This is because matters take time to progress/come before the Court/Commission, and there were no matters on foot at the beginning of the reporting period.

Key service achievements (May 2013–October 2015):

1. Recovery of wages and entitlements: over \$62,000

- WEstjustice helped 13 different clients to recover or obtain orders for payment of over \$62,000 in unpaid wages or entitlements;
- WEstjustice drafted letters of demand for 37 different clients. These letters include details of the client's employment, their minimum pay entitlements (e.g. details of the relevant Award or enterprise agreement and classification), calculations showing wages owed, and a demand for payment. For many clients, more than one letter of demand was written. For example, we often try to help clients negotiate directly with their employers as a first step. Commonly this would involve assisting a client to prepare speaking notes or a letter in their own name. If this fails, and the matter has sufficient merit, we would usually draft a letter on WEstjustice letterhead;
- WEstjustice drafted 11 complaints to FWO, six applications to the FCC (five of which were in the Small Claims division) and three applications to VCAT. We also assisted with one Work Cover claim;
- WEstjustice represented three clients at FWO mediations, and one client at an FCC mediation;
- WEstjustice assisted two clients to represent themselves at VCAT hearings, and two clients to represent themselves at the FCC. This was done by preparing extensive speaking notes and supporting documentation. All four claims were successful although unfortunately three employers have not complied with the orders (discussed below);
- WEstjustice assisted one client to make a Fair Entitlements Guarantee claim, which was also successful.

2. Compensation for unfair treatment: over \$107,000

- WEstjustice helped eight different clients to recover or obtain orders for payment of over \$86,000 in compensation for unfair dismissal matters. Three clients were represented by WEstjustice, one client was helped to self-represent, and others were ultimately assisted by a union, Job Watch or a on a pro bono basis by a law firm;
- WEstjustice helped four different clients to recover payment of over \$21,000 in compensation for general protections or discrimination-related matters. Three clients were represented by WEstjustice while one was able to self-advocate with our assistance;
- WEstjustice represented clients at four UFD conciliations and three general protections conciliations.

3. Helping clients find new work:

- in addition to financial compensation, if clients had lost their job WEstjustice also focused on outcomes to assist with finding new work;
- WEstjustice helped nine clients to obtain a statement of service or reference letter to use when applying for new work;
- WEstjustice assisted five clients to reach agreement with their employer that they had resigned from employment, rather than being dismissed. This is an important distinction for clients seeking new work. Often there would be an agreement reached with the employer around what would be said if a new potential employer called for a reference check;

4. Helping clients keep their jobs:

- WEstjustice advised a number of clients who were facing investigations or allegations of misconduct. WEstjustice helped at least two clients to keep their jobs, for example by facilitating a face-to-face meeting for the client to explain the situation with assistance from an interpreter;
- WEstjustice also assisted a number of clients with concerns around rostering and hours of work. WEstjustice helped at least one client to regain lost hours of employment. After working for over ten years and receiving certificates of excellence for her performance, the client suddenly had her shifts cut. Because the client was illiterate, WEstjustice helped to write two letters to the employer to request that the employee's usual hours be restored. The roster was promptly changed.

5. Referrals to other services:

- WEstjustice made over 120 referrals to government agencies and community services so that clients could receive further assistance from the appropriate agency. Many referrals were "warm" or "active", meaning that with the client's permission, we would call or draft a memorandum to the agency setting out key facts, assistance provided to date, and what further help was required.
- For some referrals, including many to the FWO, WEstjustice stayed actively involved in the client's matter. Referrals included:
 - 32 referrals to FWO, including complaints and general reports to the intelligence team for systemic issues;
 - 18 referrals to relevant unions, including warm referrals for union members and the provision of information about systemic issues;
 - eight referrals to the Law Institute of Victoria Referral Service;
 - six referrals to WorkSafe, three referrals to WorkCover Assist and nine referrals to private practitioners for workplace injury matters;
 - six referrals to housing services;
 - five internal referrals to financial counselling or other WEstjustice services;
 - five referrals to the Independent Contractors Hotline;
 - four referrals to JobWatch and six to other community legal centres;
 - four referrals to Victoria Legal Aid Equality Law team;
 - two referrals to the ATO; and
 - a number of referrals to community organisations including settlement agencies, the Asylum Seeker Resource Centre and health centres.

6. Helping clients resolve their legal issues:

- WEstjustice drafted correspondence for 51 different clients. This included correspondence with employers; warm referrals (to FWO, unions, VLA and other agencies); briefs to Counsel or Justice Connect seeking pro bono assistance; and correspondence with medical professionals and other support staff including caseworkers.

7. Working for systemic reform:

- WEstjustice made seven evidence-based written submissions to law reform and other inquiries, and appeared at two formal hearings and numerous consultations;
- WEstjustice regularly provided information and intelligence to regulators and unions to enable organisations to address broader issues of widespread employer non-compliance and systemic issues, including:
 - 32 referrals to FWO, including complaints and general reports to the intelligence team for systemic issues;
 - 18 referrals to relevant unions, including warm referrals for union members and the provision of information about systemic issues;
- WEstjustice encouraged clients to refer other employees with similar problems to the ELS. For three matters, WEstjustice provided assistance to numerous employees in one workplace with a view to changing employer behaviour and preventing further abuse.

Key outcomes from the complementary education program are discussed from [page 107](#).



WEstjustice staff present at the Productivity Commission Inquiry into the Workplace Relations Framework.

"Many in my community do not contact agencies. They are afraid, because many have had bad experiences with people in authority back home."

FEEDBACK ON THE SERVICE

Clients

Feedback was not sought systematically from clients. However, when clients or others provided feedback, it was noted in the case summary document. Many clients expressed sincere thanks for WEstjustice assistance, and many noted that they would not have been able to enforce their rights without our assistance.

Some examples are as follows:

- "I couldn't do anything without you. Thank you so much".*
- "Words cannot say it. Thank you so much. I knew I was right and should bring my case. People told me not to. My boss is very powerful. At times I was scared, I was not sure. But you stood beside me and so I kept going. Even when I wasn't going to, I continued, because of you."*
- "I am very happy with the service", "The lawyers provide good advice", "I want to say thank you to Catherin. She did good job"*
- "I appreciate so much. Thank you. I appreciate. I cannot say how much. I wish you all the best and your family. You are good humans. I appreciate."*
- "Thank you for all people there at Footscray helping me. I'm happy. I didn't expect. Really I didn't. I am happy. The second language is too difficult. Thank you so much."*
- "We almost use 4 months to deal with the case, and communicate seven letters (i know you write letters... more than seven.) ... I am very grateful to you waste so much time for my case, especially "Letter Of Demand" (It is perfect letter between me). This case let me know their methods. I'm glad I did not choice to go to court. Anyways i just want to say Thank you so much... Because of you I will be powerful to help other people"*

- "We thank you for your help and support... Your advice and information you provided the team e.g. how to prepare the documentation, what to and what not to include in submission, the legality of the issues, the scope of the Fair Work Commission and Ombudsman's work are very valuable. Even just knowing that we have your support has given us the courage to pursue the matter."*
- "Let me thank you very much for your help in relation to resolving the recent matter about my employment wages... I am very glad to let you know that the matter has resolved successfully and he has paid the amount that I was supposed to get paid. ... It was a great help that I have received from CLC and I'm sure such types of help will certainly benefit your clients such as myself and those who have similar situation."*

- "It was a very exciting moment—over two thousand Australian Dollars just transferred into my bank account. "Salary plus Leave" was shown as transfer details. Finally, my former employer paid me fairly and legitimately. Thanks to Western Community Legal Centre for their support and professional help, without them it wouldn't be that easy."*
- I have worked for my former employer, which was a franchisee of a big retail brand (over 200 stores over Australia), for 11 weeks. Before I went for an interview, I assumed that they would understand the importance of following the Australian Employment Law. But things are not always easy. They told me that I was hired, but I need to go through the probation, which means no contract, no super, no leave and cash-in-hand for the first three months. They told me that's how it works here."*
- I was really appreciative to have professional volunteering help... I remembered I was a bit nervous when I first arrived, but everyone who works there was so friendly, positive, and loved what they do, hence I felt more relax. Catherine greeted me with her genuine and warm smile, and led me to a private room. She asked for all the possible details about the period of time I worked for my former employer. By discussing how many hours I worked a day, if my former employer expected me to work for him in a long term, Catherine helped me to sort out how much money he owed me. It was definitely a great idea to have WEstjustice's help instead of going straight to Fair Work Ombudsman, as I finally learnt how to calculate my minimum wage, my leave and got to know my rights."*
- Catherine helped me sending emails and registered letters to make my former employer understood that even he did something wrong, he can make it right. He firstly denied what he has done but in the end he finally realised that we had all the evidence to prove him wrong. The whole interactions were peaceful and polite, but also coherent and powerful."*
- I hope people who are still working off the books to know that they are not alone. There are so many ways to get help, all they need to do is to raise their hands. If you are the one I am talking about, pick up your phone and call your legal centre in your community now!"*

- Another community lawyer who accepted a warm referral noted how legal assistance at conciliation helped a client to find new work after being unfairly dismissed. He said the client was:*
 - "happy with the outcome... his main concern was that he is getting interviews but not job offers because of his termination for serious misconduct so we have now hopefully cleaned up his resume so he should get a new job pretty soon."*
- Similarly, another client who WEstjustice assisted with an unfair dismissal matter was very happy with the outcome of a conciliation, which involved the employer providing a statement of service and retrospective resignation. She explained that this meant she could now apply for jobs with a clear conscience as she didn't want to lie.*
- Several clients thanked WEstjustice for trying to assist, even when no favourable outcome was achieved.*
- However, a number of clients noted their frustration with the legal system, and perceived it as failing to provide justice. This was particularly true in cases where discrimination was alleged, but no apology was forthcoming, and also in underpayment matters where an employer refused to pay or acknowledge a debt was owed, even when a court found in the client's favour.*
- Others discussed their hurt and surprise that employers would treat them in this way. One client stated: "I didn't think my time in Australia would be like this". Some clients wanted more help from WEstjustice, for example representation at hearings, which we were not always able to provide.*



Card from WEstjustice client.

Volunteers

Feedback was also sought from volunteer lawyers and paralegals. When asked what the ELS does well, some responses included:

"So many underpayments. These people would probably never see their money but for the ELS. Some issues seem bigger or more 'sexy' but I think simply helping people get their entitlements and exercise their rights in this regard is the best thing the service does."

"The employment law service is really good at providing vulnerable immigrants with fast and reliable advice. For example, helping them meet the dates for lodging a unfair dismissal claim, or underpayments claim. It has also been useful for providing referrals, which newly arrived immigrants may not have known how to discover. After every client meeting I feel as if the clients are providing positive feedback, as they are so grateful and appreciate the assistance."

"I think the service ought to be expanded to reach other CLC's. The popularity of the service vindicates the experiment, and thus should be grown to meet the evident need in the community."

"The night service does a lot of things well. I think the quality of the permanent staff is amazing and clients are lucky to have such experienced lawyers assist them. I think more clients should be taken on by the service rather than being given self help advice. This is because there is a difference between being told how to do something and actually being able to do it. I realise there are practical limitations on how many people the service can take on as ongoing clients."

"I think the night service is doing a great job documenting the cases and their outcomes, which is really useful for future law reform work."

When asked for anonymous feedback on the volunteer night service lawyers, paralegals provided the following comments:

"I think the lawyers provide an excellent service. The way in which lawyers engage with clients, and advice given to volunteers is very good."

"I think the lawyers give good advice. However, I sometimes think they use "legal jargon" that the clients do not or may not understand. I think the lawyers could improve my explaining these more simply to clients and using basic terms and language rather than complicated legal terms."

"I have only volunteered for the day service, so interaction with the lawyers at night has not occurred however from gathering information and listening to the outcomes of some of the cases and their successes, I feel like the lawyers are achieving the goals set out by the service. Whether it is by giving brief advice at the induction which sometimes occurs, or take the matter to court, the benefits can be seen."

"From the perspective of a paralegal, the lawyers are always helpful, supportive, and accommodating with regards to work performed by myself. They are always a pleasure to work with. I feel the work they do for clients is excellent. The way they present themselves to clients is always appropriate."

"Every lawyer I have worked with has been thorough and professional, and approached their work with patience, empathy and good humour."

"I assume this question refers to the volunteer lawyers? I think they do a great job and it has been a privilege to work with some very skilled practitioners."

Feedback gathered from volunteers via a formal survey, and informally gathered throughout ELS operation has been invaluable in refining and improving ELS procedures, as well as informing training for future induction sessions.

SERVICE CHALLENGES AND KEY OBSERVATIONS

Reflecting on the case summaries, a number of key themes emerge. These themes are discussed throughout the Report, and we address concerns regarding particular laws and processes below. However, in short, some of the high level challenges /observations include:

Client fear: Clients frequently expressed a fear of contacting government agencies or institutions without WEstjustice support and assistance. Clients also expressed a fear of complaining to their employers, in case they lose their jobs or it affects their immigration status. Many clients chose not to take any action in their cases, despite WEstjustice advice that they had a good claim and we could represent them in pursuing it.

Client literacy and language barriers: Many clients were unable to act on our advice without significant support due to literacy and language barriers. For many clients, tasks such as filling out forms, drafting letters, calling employers, requesting medical certificates or calculating underpayments were simply impossible.

Lack of rights awareness: Many clients commented to us that they did not understand Australian employment law. Many clients came to our service for help with one issue (e.g. termination of employment), only to discover they had been significantly underpaid throughout their employment.

Lack of resources and available assistance: WEstjustice is one of the only face-to-face free employment law services in Victoria, and the only one targeted at newly arrived and refugee communities. We were acutely aware that if we were not able to assist, there was no-one else. For many clients, this meant that there was no way for them to enforce their rights if we did not help. However, our resources are extremely limited and we were often forced to turn away people who had meritorious claims.

Strict time frames: Some claims have a 21 day time limit. This placed extreme pressure on our service. The ELS often had a six week wait time for an appointment. Although we tried to prioritise dismissal-related matters, and always referred clients to Job Watch for interim assistance, some clients were not able to receive legal advice before their limitation period expired.

Serious and compounding issues: As noted above, many clients presented at the ELS with more than one legal issue. In fact, it was very common for clients to be experiencing numerous employment-law related issues, and also a number of related or unrelated legal and non-legal issues. Sometimes, for example, clients experienced homelessness or significant mental health issues as a consequence of their mistreatment at work. This is discussed further below.

Collaboration: Relationship-building and collaboration with community services and community leaders were key influencing factors in achieving positive service outcomes. Many clients were accompanied to their first appointment by a trusted caseworker or community leader, and over 70% of clients found our service as a result of word of mouth or referral from another community agency.

Racism: Clients often felt that racism and discrimination were the underlying reasons their mistreatment.

"Many clients felt that they were singled out for exploitation because they did not understand the law, could not speak English well or were not born in Australia."

IMPACTS OF EXPLOITATION

The impact of insecure work and exploitation on our clients is immense. Without financial security, isolated community members struggle to pay bills and buy food. Clients feel immense pressure to support families living in poverty and at refugee camps abroad. A number of our clients have experienced homelessness as a result of losing their job as they were no longer able to pay rent. As discussed below, in some cases, exploitative and discriminatory behaviour has caused significant psychological injuries.

The impact of employment law problems has been well documented. Discrimination at work causes significant financial, physical and emotional impacts. It also limits social cohesion, participation in society and successful settlement.⁶⁸ Frequently, employment law problems create further problems for workers. For example, research indicates that two thirds of Victorians with an employment problem will face adverse consequences as a result of their initial employment problem.⁶⁹ A recent Law and Justice Foundation survey found that ‘not only did 5.9 per cent of Victorians have an employment law problem, but that the problem was not just contained to the employment relationship alone—it also had a negative impact across other areas of their lives. In this sense, employment problems tend to function as ‘trigger’ problems which cause other legal and non-legal problems to emerge.’⁷⁰

The negative flow-on effects of employment law problems makes it even more important to prevent exploitation and ensure workers have access to timely help. Many of our clients have experienced torture and trauma in their home country, or on their journey to Australia. It is simply unacceptable that abuse continues at work in Australia. One client described the experience of being bullied at work in Australia as worse than any other experience he had, including surviving a civil war in his country of origin.

Further, employment law problems such as discrimination at work have an adverse impact on the economy. As noted by the Victorian Equal Opportunity and Human Rights Commission, discrimination at work costs businesses in terms of high staff turnover, labour shortages and homogenous thinking which limits innovation. Indeed:⁷¹

One of the greatest costs arising from racial and religious discrimination in employment relates to loss of productivity, skills and innovation due to the underutilisation of talents and skills that migrants bring to the country.

Unfortunately, as discussed in the following section, many newly arrived and refugee clients are not able to enforce their rights for a number of reasons, and so the exploitation continues.

68 Victorian Equal Opportunity and Human Rights Commission, 'Harnessing Diversity: Addressing racial and religious discrimination in employment', June 2008, 13, <<http://www.humanrightsccommission.vic.gov.au/our-resources-and-publications/reports/item/174-harnessing-diversity-addressing-racial-and-religious-discrimination-in-employment-jun-2008>>.

69 Richard Denniss, Josh Fear and Emily Millane, 'Justice for All: Giving Australians Greater Access to the Legal System' (Institute Paper No 8, Australia Institute, March 2012) 1 ('Australia Institute Survey') cited in Federation of Community Legal Centres, above n 3, 4.

70 Federation of Community Legal Centres, above n 3, 4.

71 Victorian Equal Opportunity and Human Rights Commission, above n 68, 11.

BARRIERS TO RIGHTS ENFORCEMENT

Coupled with high levels of exploitation, recently arrived and refugee communities face multiple barriers that prevent them from accessing mainstream legal services and thus, enforcing their rights at work. Low levels of rights awareness, language, literacy, cultural understandings and practical considerations all form critical barriers to accessing mainstream employment services.

The complex, multi-jurisdictional nature of laws governing work also contributes to the problem—for a non-English speaking worker with multiple employment issues, there are a myriad of agencies that may assist with part of the problem, but no ‘one-stop shop’ to provide a culturally appropriate and accessible service, and guide vulnerable workers through the quagmire of legal and non-legal options available to them. For many of the most vulnerable workers, there will be no assistance at all.

This section considers why current responses are failing migrant and refugee communities, and the following sections suggest key steps to improve rights enforcement including targeted education; an active and accessible regulator; the establishment of community-based employment law services; and reform to laws and legal processes.

LIMITED UNDERSTANDING OF EMPLOYMENT LAWS AND INSTITUTIONS

*"Most newly arrived people will not know the services available for them."*⁷²

Newly arrived migrants and refugee communities have an extremely limited understanding of Australian employment laws and services. This means that many members of refugee or recently arrived communities are unable to identify that they have employment law related issues, do not know where to go for assistance and rely on identification and referral of these issues from community workers or friends and family.

Even when clients have arrived via skilled migration schemes (for example the temporary work (skilled) subclass 457 visa), we have found that workers possess a very low understanding of employment laws and services. For example, in Martin and Wendy's case study below, two clients were paid one salary between them for over 12 months. The clients explained that they had no idea their salary was unlawfully low—they did not know there was a minimum wage in Australia.

Often, communities have come from countries where there are many employment problems, few or no worker rights, and no agencies where aggrieved workers can seek help. In a consultation with community leaders, we heard about the legal systems they had experienced before coming to Australia:⁷³

"No union or organization exists to protect you."

"Agricultural workers have no rights, no wages, no safe living conditions, and are typically mistreated."

"Corruption, you get a job through your connections or a relative. There are no rights. No minimum wage."

"The job might be good but the working conditions are appalling, for example 1 toilet per 1000 workers."

"Must have 'connections' to be protected, there are laws but they are not worth the paper they are written on. Very lengthy legal processes."

Many newly arrived and refugee clients at our service present with little or no understanding of minimum laws and entitlements. At our community education presentations there is genuine surprise when we discuss the existence of the minimum wage.

REFUGEE BACKGROUND

In situations where community members are able to identify employment problems, there are further barriers that limit their ability to enforce their rights.

People of refugee background may have past experiences and cultural understandings of legal systems and authority figures⁷⁴ which deter them from seeking advice or enforcing their rights. As the Refugee Council of Australia notes:

*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."*⁷⁵

As one community leader commented:

"Many in my community do not contact agencies. They are afraid, because many have had bad experiences with people in authority back home."

WEstjustice has observed that clients commonly misunderstand the confidential nature of legal advice, and that some clients express fear of retribution for both seeking legal assistance and in enforcing their rights. Client fear extended not only to engaging with an employer but to engaging with government agencies including the Fair Work Ombudsman. Many of the ELS's refugee clients accessed our service via trusted caseworkers or friends. Without the friend or caseworker arranging the appointment and attending the service with our client, it is unlikely that the appointment would have occurred.

CULTURAL UNDERSTANDINGS OF LEGAL SYSTEMS

Our consultations with community leaders have highlighted that many recently arrived migrant and refugee communities have had adverse experiences with legal systems in their home countries.⁷⁶ In particular, community leaders mentioned that in their home countries, there was a distinction between laws on paper and laws that are enforced.

This concept of ‘paper laws’ means that community members may be less likely to pursue legal claims if they do not have past experience of laws being enforced. One community leader described that members of their community viewed legal problems as their ‘fate,’ illustrating the extent to which members felt unable to enforce their rights.

Participants discussed that, in the event laws were enforced, access to the justice system in their experience was limited to the rich and powerful.

72 Survey, community member, Dow, above n 2.

73 WEstjustice focus group, above n 30.

74 Refugee Council of Australia, *Legal Issues* (1 April 2011) <<https://www.refugeecouncil.org.au/getfacts/settlement/livinghere/legal-issues/>>.

75 Ibid.

76 WEstjustice focus group, above n 30.

PRACTICAL BARRIERS
TO SEEKING ASSISTANCE

Language and literacy problems are barriers to accessing justice. Many of our clients cannot read or write English and many are illiterate in their own languages. Given that many mainstream agencies focus on websites and factsheets to raise awareness, with their presumption of basic literacy, such resources are largely ineffective.

Further, the language and concepts in employment law are often complex and arcane for native English speakers. This is amplified significantly for people with low English language skills. Accordingly, practices and processes which place heavy reliance on written communication can be particularly daunting—this includes filling out a Fair Work Ombudsman complaint form, drafting a letter of demand, preparing and lodging an unfair dismissal form or bringing a small claim to the Federal Circuit Court.

Practical issues including difficulties in using a telephone advice line (including an inability to wait on hold for significant periods of time, or a lack of trust), accessing internet resources, finding appropriate interpreters⁷⁷ and travelling to appointments⁷⁸ also prevent individuals from enforcing their rights.

In our experience, and as confirmed by the literature, the mode of service delivery is an important factor. For example, telephone advice services are not always accessible for CALD communities:

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...⁷⁹

Even if a newly arrived or refugee community member manages to contact a mainstream service for help, in the absence of further and ongoing targeted assistance, the initial contact is unlikely to elicit any meaningful outcomes. As noted above, receiving information from an Infoline about your correct rate of pay is meaningless if you cannot write a letter of demand or fill out a claim form to seek recompense for underpayments.

A TARGETED,
MULTI-FACETED RESPONSE

In its recent report on the Workplace Relations Framework, the Productivity Commission acknowledged the importance of a targeted and multi-faceted response to address migrant worker exploitation:⁸⁰

Targeted, proportional and effective policies are required to reduce the exploitation of migrant workers. Employers’ incentives to exploit migrants workers will be reduced by policies that make exploitative practices more detectable, less easy to initiate and more costly when discovered.

Because of the various factors contributing to migrants’ vulnerabilities, no single policy will be able to effectively reduce exploitation. Rather, a suite of policies that target different aspects of migrant exploitation and are implemented in concert are likely to be more effective, particularly given that the policies may complement each other.

Indeed, there are a variety of targeted responses that need to be delivered to ensure migrant workers are able to understand and enforce their workplace rights. For the remainder of this report we focus on practical steps to improve employment outcomes for newly arrived and refugee communities in Victoria.

RECOMMENDATION

State and Federal Governments should recognise that the exploitation of newly arrived and refugee workers in Victoria is widespread and that current systems are failing to stop the abuse.

Recognising the impact that such exploitation has on all workers, governments should urgently take steps to assist workers who have experienced exploitation and prevent further exploitation occurring in the future. Targeted responses are needed.

77 Women’s Legal Services NSW, ‘A Long Way to Equal—An update of “Quarter Way to Equal: A report on barriers to access to legal services for migrant women”’ (Report, July 2007) 31-32.

78 Inability to travel can be due to geographic isolation, lack of public transport options and childcare responsibilities.

79 Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Report, Law and Justice Foundation Report, August 2012) 215.

80 Productivity Commission, above n 29.

Diversity Measures

"A diverse workforce is a company's lifeblood, and diverse perspectives and approaches are the only means of solving complex and challenging business issues."⁸¹

Many of the issues identified above are attributable to the scarcity of alternative employment opportunities for newly arrived and refugee workers. This creates a power dynamic between the parties which renders employees particularly vulnerable to exploitation and abuse.

In order to reduce dependence on employers and increase employee agency, it is essential that measures to improve job opportunities for CALD workers are explored and taken. There is significant evidence to show that with appropriate programs, legislation and policy responses, diversity can be encouraged and sustainable employment can be achieved for newly arrived and refugee communities.

Importantly, diverse workplaces provide benefits to more than individual workers. There is significant evidence from Deloitte and others to show that diverse and inclusive workforces are more successful, and therefore better for all Australians.⁸²

Such diversity measures may include the following:



WEstjustice community education session.

TAX CONCESSIONS FOR COMPANIES THAT MEET DIVERSITY TARGETS

This approach has previously been proposed by the Australian Greens Party.⁸³

RECOGNITION OF QUALIFICATIONS ASSISTANCE

This would involve assisting workers with qualifications to have their skills recognised, as recommended by the Ethnic Communities Council of Victoria.⁸⁴

QUOTAS OR OTHER AFFIRMATIVE ACTION MEASURES

Measures could include a positive duty to recruit a diverse workforce. This approach has been extremely successful in Northern Ireland, where historically there was significant division between the employment opportunities of Catholics and Protestants. Northern Ireland implemented legislation in 1989 which 'requires employers to carry out regular reviews of their workforce composition to determine whether there is fair employment, and to undertake remedial action where required'.⁸⁵ The Equality Commission is empowered to identify companies that do not have sufficient diversity and work with them to develop agreements for improvement. The agreements may be voluntary or compulsory, and include 'process requirements and substantive requirements', including 'advertising, hiring, promotion, dismissal, and equal opportunities training', for example an agreement to use targeted advertising that welcomes applications from particular under-represented groups.⁸⁶ Although no quotas are permitted, a 2009 study found that:⁸⁷

Agreements were positively associated with improvements in fair employment, both those designed to improve Catholic representation and those designed to improve Protestant representation. Voluntary agreements proved to be more effective than the legally-enforceable Article 13 agreements...

Agreements were effective both in boosting employment and increasing shares in managerial /professional occupations—i.e. the gains were not restricted to workers in low skill occupations.

⁸¹ Juliet Bourke, Nicky Wakefield, Christie Smith, Heather Stockton, 'From diversity to inclusion: Move from compliance to diversity as a business strategy', 7 March 2014, <<http://dupress.deloitte.com/dup-us-en/focus/human-capital-trends/2014/hc-trends-2014-diversity-to-inclusion.html>>.

⁸² Deloitte Australia and Victorian Equal Opportunity and Human Rights Commission, 'Waiter, is that inclusion in my soup? A new recipe to improve business performance', November 2012, <<http://www.humanrightscouncil.vic.gov.au/index.php/our-resources-and-publications/reports/item/529-waiter-is-that-inclusion-in-my-soup-a-new-recipe-to-improve-business-performance-nov-2012>>.

⁸³ Such an approach has previously been proposed by the Australian Greens Party – see Henrietta Cook, 'Greens to Demand Tax Credits for Victorian Businesses that Employ Migrants and Refugees', The Age (online), 4 December 2014 <<http://www.theage.com.au/victoria/victoria-state-election-2014/greens-to-demand-tax-credits-for-victorian-businesses-that-employ-migrants-and-refugees-20141203-11zjk4.html>>.

⁸⁴ Ethnic Communities Council of Victoria, above n 18.

⁸⁵ Christopher McCrudden et al, 'Affirmative Action without Quotas in Northern Ireland' (2009) 4 *The Equal Rights Review* 7, 7.

⁸⁶ Ibid, 9.

⁸⁷ Ibid, 11.

EMPLOYMENT AND PROCUREMENT POLICIES, DIVERSITY REPORTING

This approach could include amending government employment and procurement policies to set minimum standards for diversity, and requiring companies to collect data and report against diversity standards so as to create meaningful targets for employment of CALD workers. Importantly, any procurement policies must be properly monitored and enforced.⁸⁸

For example, in America, 'employers with federal contracts are required to file reports indicating "underutilization" of women or minorities 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.'⁸⁹ 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.'⁹⁰

In Australia, the Administrative Appeals Tribunal 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%'.⁹¹ Similarly, the Fair Work Commission Workplace Diversity Strategy seeks to increase recruitment and retention of CALD employees.⁹² Such practices, including minimum standards, could be mandated for all businesses, or at the very least, those with Government contracts.

Similarly, the DHS Gippsland Region Home and Community Care Culturally and Linguistically Diverse Plan⁹³ seeks to increase numbers of CALD staff and volunteers by:

supporting and mentoring new CALD staff/volunteers through training, group meetings, a buddy system, telephone contact and recognition awards; and

monitoring and reporting on the impact of the strategies deployed to increase CALD representation in the workforce.

To tackle unconscious bias, the Victorian Government has recently initiated an 18 month trial of blind recruiting, whereby personal details including name, age, gender and location are removed during the job application process.⁹⁴

We support each of these measures, as well as the National Union of Workers' recommendation that the Victorian Government should, through the Victorian Government Purchasing Board, adopt a Secure Jobs Code to ensure that the State's procurement policies work to encourage secure employment.⁹⁵ Such code should also set minimum diversity standards (as discussed above) and be adopted by the Federal Government and other states too.

88 John Howe, Andrew Newman, Tess Hardy, 'Submission to Independent Inquiry Into Insecure Work In Australia' (Centre for Employment and Labour Relations Law), 22-23.
89 McCrudden et al, above n 84, 8.
90 McCrudden et al, above n 84, 8.
91 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>>.
92 Fair Work Commission, *Workplace Diversity Strategy* (11 February 2016) <<https://www.fwc.gov.au/about-us/careers/workplace-diversity-strategy-2013-15>>.

93 Department of Human Services Gippsland Region, 'Home and Community Care Culturally and Linguistically Diverse Plan' (Report, March 2009) <<http://www.health.vic.gov.au/regions/gippsland/resources/Gippsland-HACC-CALD-Plan.pdf>>.
94 Miki Perkins, *Victorian government trials blind job applications to overcome hiring bias*, The Age, 20 May 2016, <<http://www.theage.com.au/victoria/victorian-government-trials-blind-job-applications-to-overcome-hiring-bias-20160519-goz8pf.html>>.
95 National Union of Workers, Submission No 91 to Economic, Development, Jobs, Transport and Resources, *Inquiry into Labour Hire and Insecure Work*, 2 February 2016, 21 <http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0005/1314635/Submission-NUW.pdf>.



Lunch.

TARGETED EMPLOYMENT PROGRAMS

There are ‘a number of specifically targeted approaches and programs which can be effective’ in assisting newly arrived and refugee workers to find and retain employment. Such approaches include specialised training, one-on-one mentoring, ongoing support after employment has commenced, case management and job search assistance.⁹⁶

For example, the Brotherhood of St Laurence (BSL) runs a number of targeted programs to assist asylum seekers and refugees to find and keep work. The BSL *Given the Chance for Asylum Seekers* program works with employers and jobseekers to assist clients to access the employment market. Importantly, the program is tailored to each individual jobseeker.⁹⁷

Jobseekers receive one-to-one assistance to create an employment pathway with a focus on developing new skills and renewing confidence. It is an early intervention, intensive support model that offers learning for other employment programs working with culturally and linguistically diverse people, and those at risk of disengaging.

The average cost of the Given the Chance program per participant is significantly less than other jobactive providers have to spend, however its outcomes are better—evaluation shows ‘higher participation in education, training and employment’.⁹⁸

The BSL *Employment Pathways for Young Asylum Seekers* program helps young job seekers plan and achieve an employment pathway. Workshops cover various topics necessary to equip jobseekers with the skills to find work, including:⁹⁹

- understanding how to find work in Australia, and Australian workplace culture;
- how to plan a pathway through training and work experience;
- how to prepare and update a CV;
- where to look for work opportunities; and
- how to apply for training, work experience or jobs.

The BSL *Stepping Stones to Small Business* ‘aims to educate migrant and refugee woman about money, and build an understanding of how to start a small business in Australia’.¹⁰⁰

Similarly, the *Youth Internships Initiative* run by the Maribyrnong and Moonee Valley Local Learning and Employment Network has delivered significant outcomes for marginalised young people in the West. Through the provision of a short management course, mentoring, internships and ongoing support, 77% of participants transitioned successfully into training or employment.¹⁰¹

The *Ucan2* program is run by Foundation House, Centre for Multicultural Youth and AMES. It ‘supports the social inclusion of recently arrived young people of refugee background, aged 16–25 as they rebuild their lives which have often been disrupted by war and the refugee experience.’¹⁰² The program is delivered one day per week over 16 weeks and includes English language and work experience components. The program has delivered numerous successful outcomes including ongoing employment, improved emotional well-being and increased English capacity.¹⁰³

By increasing opportunities for sustainable employment for CALD communities, 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 diverse workplaces.

EDUCATION CAMPAIGNS

It is important to ensure that businesses understand the business case for diversity and inclusion. Unfortunately, discrimination in recruitment is rife, and businesses need to understand the risks and opportunities. Often, managers and decision-makers are not aware of their unconscious bias in recruitment, or may not understand how to promote diversity and inclusion in their workplace. A large-scale education campaign to raise awareness of the benefits of diversity is needed, along with accessible and practical guidance on how to achieve it.

RECOMMENDATION

State and Federal Governments should investigate and implement incentives for employers to hire newly arrived 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;
- amending government employment and procurement policies to set minimum standards for diversity;
- targeted employment programs to provide training and ongoing support for newly arrived and refugee workers;
- a large-scale education campaign to raise awareness of the business case for diversity and inclusion.

Federal and State governments should adopt a Secure Jobs Code to ensure that procurement policies encourage secure, just employment. Procurement policies should also set minimum diversity standards.

96 Settlement Council of Australia, above n 15.

97 Brotherhood of St Laurence, *Given the Chance for Asylum Seekers* (19 July 2016) <<https://www.bsl.org.au/services/work-and-learning/given-the-chance/given-the-chance-for-asylum-seekers/>>.

98 Refugee Council of Australia, ‘Economic, Civic and social Contributions of Refugees and Humanitarian Entrants: A Literature Review’ (February 2010), 37.

99 Brotherhood of St Laurence, *Employment Pathways for Young Asylum Seekers* (3 August 2016) <<https://www.bsl.org.au/services/refugees-immigration-multiculturalism/employment-pathways-young-asylum-seekers/>>.

100 Brotherhood of St Laurence, *Stepping Stones to Small Business* (15 August 2016) <<https://www.bsl.org.au/services/refugees-immigration-multiculturalism/stepping-stones/>>.

101 Maribyrnong and Moonee Valley Local Learning and Employment Network, ‘Youth Internships Initiative—an overview’, 2016.

102 See also Settlement Council of Australia, ‘Employment solutions: Case studies of good settlement in practice’ (Discussion Paper), 5.

103 Ibid.

Targeted education

3

Without targeted legal education for newly arrived and refugee workers, the workplace relations system will remain largely inaccessible. The importance of community education has been acknowledged by the Productivity Commission:¹⁰⁴

Increasing the amount and quality of information available to migrant workers on their workplace rights and entitlements should be part of a broader strategy to reduce the prevalence of exploitation. Not only are informed migrant workers less likely to accept substandard working conditions when these are offered, but they are also more likely to alert regulators once an employer begins to act exploitatively. Since the FWO mainly discovers instances of exploitation through complaints from workers, informing migrants can also increase the effectiveness of the regulator.

Education not only informs people about their rights at work and where they can access assistance with their employment issues, but empowers communities to enforce their rights by building relationships and trust between vulnerable workers and services that can assist. In this section, we discuss best practice approaches to education for migrant and refugee communities, and demonstrate the value of targeted programs delivered by WEstjustice over the past three years.

FACE-TO-FACE, TARGETED EDUCATION IS NECESSARY

*"Access to services begins with knowledge of the law"*¹⁰⁵

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.

Newly arrived migrant and refugee communities have a very limited understanding of Australian employment laws. To date, mainstream approaches have been largely unsuccessful in informing workers about their rights, and where they can find assistance with employment problems.

The FWO's education and advisory service is primarily delivered via its Infoline and web-based resources including its online learning portal.¹⁰⁶ Whilst these services are critical and increased online information is welcome, evidence suggests that telephone and internet services will not always reach migrant workers. The Productivity Commission has acknowledged that the information currently provided by FWO 'could be improved'.¹⁰⁷ Many of our clients are not able to use a computer, read a fact sheet or "google" search information that they require in order to self-advocate. As one community leader explains:¹⁰⁸

"They cannot look at websites as they don't speak English, and cannot write or read in their own language."

As noted in the Law and Justice Foundation Legal Needs Report, it is extremely important that legal information and education be targeted to specific communities:¹⁰⁹

One-size-fits-all education strategies tend to be less effective than strategies tailored to address the specific issues faced by particular people at particular times.

Education and assistance must be delivered via culturally sensitive services and through appropriate language translation services, with English as Additional Language (EAL) resources or services in relevant languages. While social media and internet advertising may work for some communities (for example, Iranian community leaders have suggested that in addition to meetings, online strategies in-language using social media may be effective for some community members),¹¹⁰ for other communities, only face-to-face education will be effective. To build a meaningful relationship, community education also needs to be 'maintained in a sustained rather than ad hoc way'.¹¹¹ The best way to ensure information is appropriately targeted is to consult with relevant communities, community workers, and EAL education professionals.

Importantly, education should be provided through the use of images, videos or new multimedia platforms. As the Women's Legal Service NSW has recognised, many migrant and refugee workers have low levels of literacy in their own first language and this forms yet another:¹¹²

barrier to accessing information about the Australian legal system and where to gain legal assistance. The focus of many services on translating relevant written legal information fails to adequately address the need for non-written information to be made available among migrant populations with low levels of literacy. A significant number of women in the [research] reported that translated information was not extremely helpful to them, especially where translations contain difficult or unfamiliar legal concepts.

Data collected for our Preliminary Report and throughout the pilot education program demonstrates the utility of face-to-face information sessions. When asked about the helpfulness of a face-to-face information service in clients' first language, 89% of survey respondents thought this would be very helpful or somewhat helpful. As set out below, feedback from our information sessions has been overwhelmingly positive, and demonstrates increased understanding of employment laws and services.

104 Productivity Commission, above n 29.

105 Chris Arup and Carolyn Sutherland, 'The Recovery of Wages: Legal Services and Access to Justice', (2009) 35 *Monash University Law Review* 96, 101.

106 Fair Work Ombudsman, Submission No 228 to Productivity Commission, *Inquiry into Australia's workplace relations framework*, 16 February 2015, 3 <http://www.pc.gov.au/__data/assets/pdf_file/0007/189439/sub0228-workplace-relations.pdf>.

107 Productivity Commission, above n 29.

108 WEstjustice focus group, above n 30.

109 Coumarelos et al, above n 79, 213.

110 Similarly, the Fair Work Ombudsman has directed a targeted social media campaign at international students—see Productivity Commission, above n 29, 924.

111 Women's Legal Services NSW, above n 77, 32.

112 Ibid.

TIMING, LOCATION AND IMPACT OF COMMUNITY EDUCATION

As well as ensuring that materials are appropriately targeted to the relevant community, it is essential to consider timing and method of distribution of resources. By addressing these issues, community education has been proven to have a significant impact in migrant communities.

Katie Fraser’s 2011 report, ‘Prevention is better than cure: Can education prevent refugees’ legal problems?’ (Fraser Report) examines the role of community legal education in preventing legal problems for newly arrived and refugee clients. The report found:¹¹³

- refugees could be assisted with legal problems if they are empowered to recognise a problem as a legal problem and then access legal services;
- it is fitting to provide newly-arrived refugees with legal information in the first few months after arrival in Australia; and
- greater involvement of community legal centres in the settlement sector has several potential benefits including the use of education and early intervention to prevent legal problems.

The timing of educational intervention is of utmost importance. In-language, basic information on employment rights and services should be provided when all migrants first arrive to cater for those who commence work promptly. This initial information should include free access to a work diary and/or phone app to enable workers to record key employment information, including hours of work.¹¹⁴ The diary and app should also include contact details of key services. More detailed information should be provided at later stages of the settlement process.

Different intervention points will also be necessary for different visa holders.

For example, under the Humanitarian Settlement Services Programme (HSSP), refugees receive casework assistance and support to set up their lives in a new country. Caseworkers ‘familiarise and connect new arrivals to essential services including on arrival support; accommodation assistance; property induction; a start-up food and household goods package; assistance to register with Centrelink, Medicare, health services, banks, schools and English language classes; orientation to health, education, employment, laws and culture; and links into community and recreational programmes.’¹¹⁵ Refugees are also entitled to assistance with finding employment from jobactive providers, and 510 hours of English lessons through the Adult Migrant English Program (AMEP).¹¹⁶ Therefore, there are numerous opportunities to provide community education to refugees in a structured, familiar environment.

For this reason, we have targeted many of our information sessions at attendees of the AMEP Settlement Language Pathways to Employment and Training (SLPET) classes. This English as Additional Language class is focused on work readiness, and includes a work experience component. Attendees of this class are usually actively looking for work—therefore the information we provide is relevant and timely. We have also presented at information sessions hosted by settlement agencies that work closely with communities and community leaders to identify learning needs and deliver education in a safe and familiar space for communities.

However, temporary visa holders (including international students, asylum seekers and other migrant workers and their families) do not have access to the HSSP or AMEP. Therefore, educational resources must also be appropriately targeted to these communities, including via universities, the Status Resolution Support Services (SRSS) for asylum seekers, immigration processes and community groups and meetings. Such meetings may include church events, interest groups or weekend functions. These interventions provide invaluable opportunities to build trust with communities, and also provide information to vulnerable workers who may not be connected to settlement or other services. As noted in our Preliminary Report, practical and timely information is of critical importance. As one community worker noted, information should be provided ‘that is linked to outcomes’ and which ensures that workers receive the right amount of information at the right time, so it is not abstract.¹¹⁷

When targeted community education is delivered in a timely and relevant manner, the positive impact is evident. One example of a targeted resource that has received excellent feedback is Victoria Legal Aid’s (VLA) education kit: What’s the Law? Australian Law for New Arrivals.¹¹⁸ The VLA website explains that this free information kit provides information about:

common legal problems that people newly arrived to Australia may encounter. The kit can be used by teachers, educators and community workers who work with migrants and refugees. It is designed to be used in English classes, but it can easily be used in other community education settings.

The kit includes 10 simple English stories, based on real life experiences, to engage new arrivals and help them:

- get simple information about common legal issues;
- recognise and avoid legal problems;
- know where to get free legal help if they need it; and
- build their English language skills.

Each topic has:

- a video about common legal problems;
- activity sheets to build students’ comprehension and reinforce key messages; and
- answer sheets, including notes for teachers about how to use the kit.

You can order the kit, which includes a DVD of the videos. The materials can also be downloaded.

The materials are largely used by EAL teachers as part of a structured learning environment. Inspired by WEstjustice’s (then Footscray CLC) ‘Getting to know the law in my new country’, the VLA resource was evaluated in October 2013¹¹⁹ and findings included that of those who used the resource:

97 percent indicated that it was a useful tool to provide information about legal issues... The benefits of using the kit were identified as increasing the users’ legal knowledge and their ‘ability to recognise a legal problem and refer a client’. Once respondents used the kit, they were more likely to identify an ‘increased confidence to teach legal issues’ and the ability to ‘meet requirements to provide legal education’ as benefits, which were primary reasons for creating WTL.

Importantly, a further study has evaluated the effectiveness of a community legal education intervention using What’s the Law materials. The study asked whether there was a measurable difference between students’ understandings of the legal issues associated with buying a car, borrowing money and seeking help, after they participate in a class on this topic.¹²⁰

The utility of the education session was measured using quantitative data drawn from pre and post lesson surveys. Participants’ mean score improved from 9.38 to 11.68.¹²¹ The ANOVA found this to be a significant statistical improvement,¹²² and the results ‘show a measurable difference in participants’ understandings of the legal issues’. Qualitative

results reinforced these findings.

¹¹³ Katie Fraser, ‘Prevention is better than cure: Can education prevent refugees’ legal problems?’ (CLC Fellowship Report, Victoria Law Foundation, March 2011) 6-7.

¹¹⁴ As discussed below, gathering evidence to demonstrate hours of work is a significant barrier to rights enforcement in underpayment matters. For this reason, preventative measures should be taken to assist workers to record their hours of work.

¹¹⁵ Department of Health and Human Services, ‘Refugee and asylum seeker settlement in Victoria: Frequently asked questions for key services and sector partners’ (Fact Sheet, Victorian Government, July 2016) 7.

¹¹⁶ Ibid.

¹¹⁷ Dow, above n 2.

¹¹⁸ Victorian Legal Aid, *What’s the law? Australian Law for New Arrivals* (23 February 2016) <<https://www.legalaid.vic.gov.au/find-legal-answers/free-publications-and-resources/whats-law-australian-law-for-new-arrivals-education-kit>>.

¹¹⁹ Monica Ferrari and Katie Fraser, ‘Evaluation Report: assessing the value of *What’s the Law? Australian law for new arrivals*’ (Report, National Legal Aid, October 2013) 6, 25 <<http://www.nationallegalaid.org/assets/Whats-the-law/Whats-the-law-Evaluation.pdf>>.

¹²⁰ Monica Ferrari, Does Community Legal Education work? *Educating English language students about consumer contracts* (Thesis, RMIT University, February 2015) 9.

¹²¹ Ibid.

¹²² Ibid.

BEST PRACTICE EDUCATION APPROACHES

Any education program should adopt best practice education approaches to ensure that it is accessible and useful for target communities.

Based on feedback from over 50 community presentations, a literature review,¹²³ and over 300 surveys of community members, community workers and community leaders from newly arrived and refugee communities, we found that the following features make targeted education effective:

Face-to-face and verbal: Information provided face-to-face, both verbally as well as in writing.

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

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 community education via information sessions or as part of English classes is effective, as is visiting existing community groups.

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. As one community worker recommended: ‘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.’

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. Understanding audiences’ level of understanding and targeting information at the appropriate level.

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

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, government employment services are often inaccessible to refugee and newly arrived communities.

WESTJUSTICE COMMUNITY EDUCATION PROGRAM

Raising awareness of employment laws and services is a critical step in rights enforcement. 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. 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.

As discussed below, 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. WEstjustice recommends that similar programs be adopted and expanded across Australia.

PRESENTATIONS FOR COMMUNITY MEMBERS

To date, the CLE Program has delivered over 60 CLE presentations about employment laws and services to approximately 600 community members, community workers and community leaders.

Sessions for community members were largely delivered through English as Additional Language (EAL) classes, and at community meetings as requested by community members. Some sessions were delivered as part of settlement agency programs and at schools. Education materials were drafted by WEstjustice lawyers, and reviewed by EAL teachers and a law firm acting on a pro bono basis. Two different presentations were developed to cater for audiences of different English language abilities. For students with lower levels of English, a simpler presentation was prepared using more images and fewer words.

The presentations were designed to be interactive, with case studies where audience members were required to answer questions. Audience members were also given cards and were asked to organize different types of employees into categories depending on whether they would be paid for work done. Case studies and examples were developed and refined based on common issues arising at the casework service.

A vocabulary list of employment law terms and a summary of information was also developed. This information was provided in a short handout to participants, along with contact details for key agencies.

Content in the presentation included:

- an overview of employment law including the National Employment Standards, Awards, Enterprise Agreements and Employment Contracts;
- workplace policies and procedures;
- types of workers including casuals, permanent and independent contractors;
- the right to be paid and your right to a payslip;
- minimum pay rates and allowances, overtime and penalty rates;
- health and safety;
- sham contracting;
- discrimination;
- sexual harassment, bullying and victimization;
- unfair dismissal and general protections; and
- where to go to for help.

123 Dow, above n 2, 23-26.

Materials were reviewed and improved throughout the program, based on feedback from attendees. Part way through the program, videos were made and introduced (discussed in the train the trainer section below). Community presentations were largely delivered in English with the assistance of interpreters for some sessions. Presentations were evaluated through participant surveys. 372 surveys were collected in total.

The majority of participants attending the community sessions were humanitarian entrants, with 47% coming as refugees, and a further 20% through family reunion. 13% had arrived via family migration, while a small number had come on temporary work visas, or other types of visa. WEstjustice needs to consider how to better reach temporary migrant worker communities. Around 30% of attendees had been in Australia for one year or less, with 34% of attendees having been in Australia for 1–3 years. 18% had been in Australia for 3–5 years. Only 18% of attendees had been in Australia for more than five years. Attendees were most commonly from Myanmar, Vietnam, India, China, Thailand, Eritrea, Ethiopia, Iran, Indonesia and Bangladesh.

PARTICIPANT UNDERSTANDING OF EMPLOYMENT LAW IN AUSTRALIA

To ensure the presentations were appropriately tailored, WEstjustice tried to gain an understanding of participants' knowledge of employment laws and services prior to the presentation. Often, materials were sent to EAL teachers in advance, to enable teachers to undertake pre-teaching of key words and concepts.

We consistently found that CLE participants had a limited understanding of employment law in Australia prior to the presentations despite having some experience of working in Australia.

Some participants had some superficial knowledge of specific terms relating to their employment including familiarity with the words employee, independent contractor, permanent or casual employment.

Employees versus Independent contractors

Participant knowledge often extended to having heard of or possessing Australian Business Numbers (ABNs). However, participants were not aware of the meaning of these terms or how the distinctions in employment status impacted on their legal rights.

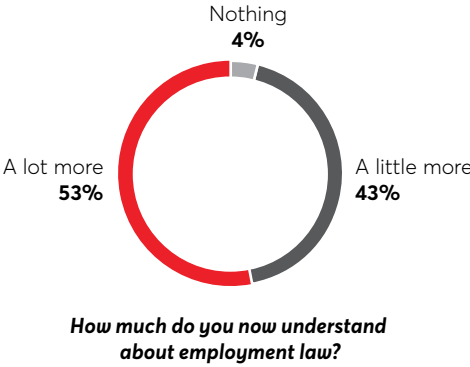
There was confusion about the working rights of independent contractors and a lack of awareness that independent contractors need to pay their own tax, superannuation and insurance.

Minimum Rates of Pay

Participant feedback indicated that prior to the CLE session, there was limited understanding of minimum rates of pay and that the minimum rate of pay was set by the law and not by an employer. Feedback also indicated that prior to the presentation participants did not understand that casual and ongoing employees received different rates of pay and the reasons for this.

Limited awareness of services

WEstjustice observed that CLE participants had usually not heard of relevant government agencies like the Fair Work Commission, the Fair Work Ombudsman, WorkSafe and other relevant institutions including unions. This finding mirrored results from the Preliminary Report, which recorded very low levels of service recognition.¹²⁴

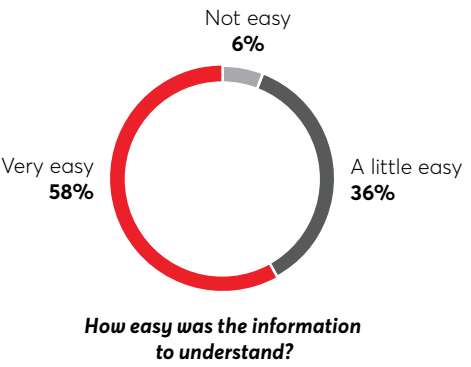


EVALUATION

Feedback from the sessions was overwhelmingly positive. As a result of the CLE presentation about employment law, 96% of participants stated that they knew a little more or a lot more about employment law. 94% of participants found the information 'a little easy' or very easy to understand. As shown in the graph below, the evaluations found that 85% of participants surveyed stated that as a result of the CLE session they now knew where to go for help with an employment problem. Given evidence that many workers previously knew nothing about rights and services, these statistics demonstrate the success of the community sessions.

Feedback was also collected from teachers and/or community leaders who coordinated the session. Teachers/leaders were asked to evaluate how much the audience's understanding of workplace rights and responsibilities increased as a result of the seminar, whether information was presented in an easy to understand way and how confident they were that the audience would know where to go for help.

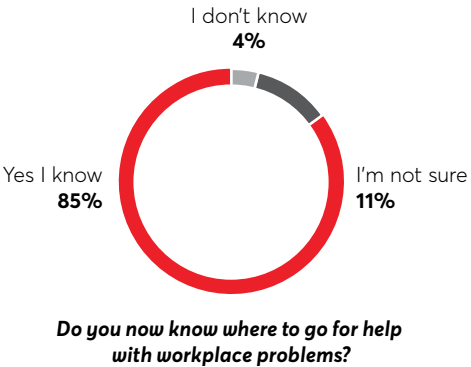
Teachers/leaders graded each of these queries on a scale of one to five, with one being the least effective, and five being the most effective. Teachers/leaders responded that the audience's understanding of workplace rights and responsibilities improved significantly (4 out of 5 average) as a result of the seminar. Correlation with feedback from participants was moderate to high, as students found their understanding improved either 'a little more' or 'a lot more'. Reasons for moderate to high correlation (rather than all high) could be because some students with low literacy did not understand the question.



Teachers/community leaders responded that the information was presented in a way which was easy for the audience to understand. Correlation with students was moderate, as students found information mostly a 'little easy' or 'very easy' to understand. Once again, reasons for moderate correlation could be that some participants with low literacy did not understand the question. There was a strong correlation in rating between the teachers/community leaders (4.5 out of 5) and participants about confidence that people would know where to go for help.

Teacher/community leader comments included:

- "Clients had learned things they were unaware of. They were thankful some suggested if the workshop could be done again."
- "Excellent ESL presentation—simple English and well paced."
- "A very engaging presenter."



When community members were asked about the "best thing about the session", learning about rights at work and where to seek assistance were consistently mentioned.

Feedback on what would make the session better largely focused on longer sessions, more sessions, more examples, speaking slowly, use of multimedia and a request for more information:

The following responses illustrate a cross-section of feedback:

"The best thing about the employment law is get to know everyone have right at work."

"New legal terms like "sham contracting."

"About how much for the permanent and casual payment."

"The wage in different work type."

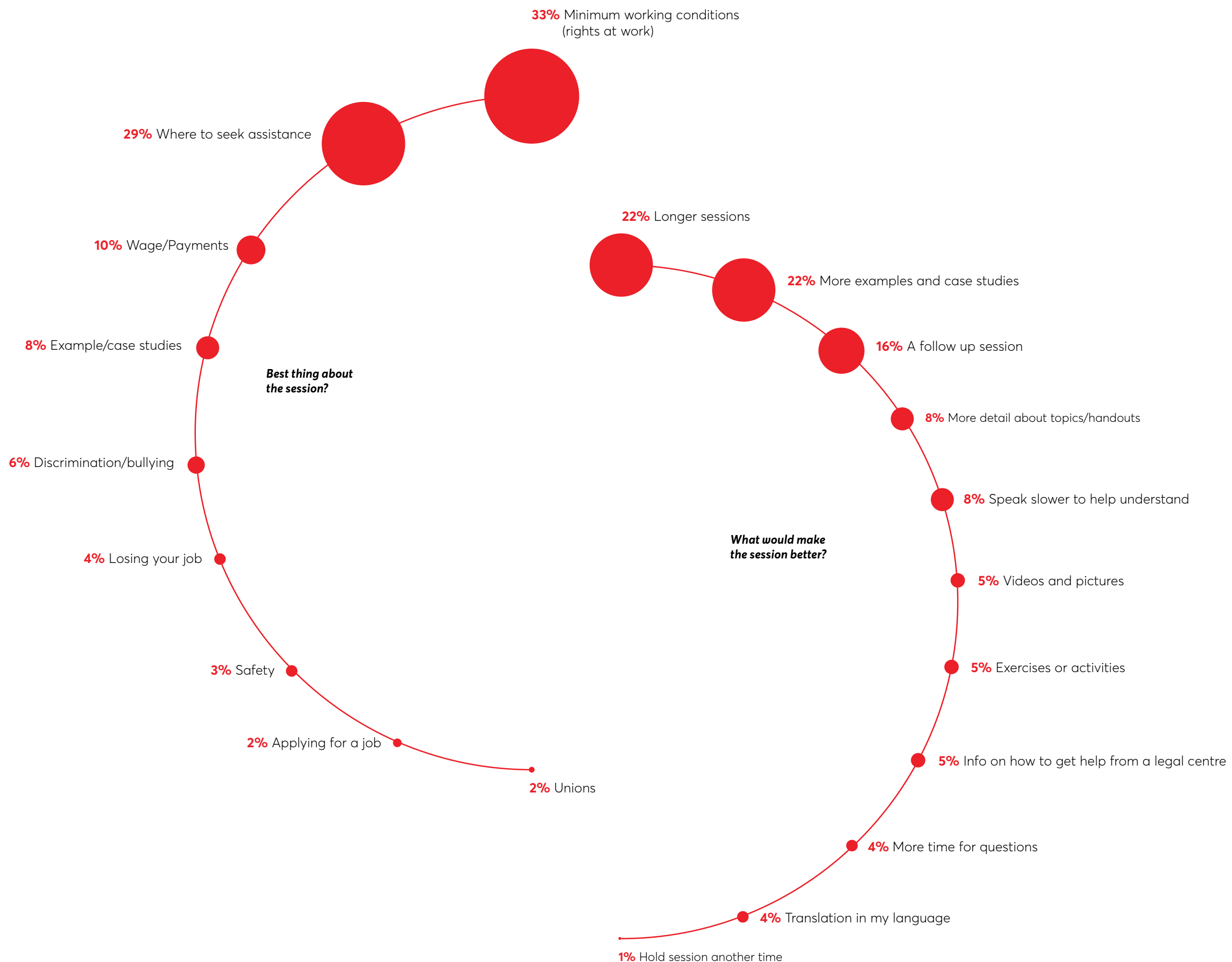
"It provides the legal wage standard and organisations we can ask for information and legal help."

"When you losing our job for wrong matter we can get help many places."

"The best thing I learn is job problem and talk to the community legal centre for help."

"I know about our rights (awards, enterprise agreements and contracts)."

"To make people know the right for both employment and employees."



PRESENTATIONS FOR
COMMUNITY WORKERS

The WEstjustice CLE Program has also delivered information sessions to staff from agencies that work with newly arrived communities. This includes staff from settlement agencies, community health organisations, jobactive providers, EAL schools and other government and community organisations. These individuals have subsequently played a crucial role in helping clients to identify that they have a legal issue and make appropriate referrals to our service.

As noted in the Law and Justice Foundation report, Legal Australia-Wide Survey: Legal Need in Victoria, upskilling community workers can help improve legal outcomes for vulnerable clients:

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.¹²⁵

In this regard, the importance of community workers and an effective referral network are critical to increasing awareness of workers’ rights in Australia. Community workers play a central role in referring clients who may not know where or how to seek legal assistance. Community workers from target communities provide an essential link between services and community members.¹²⁶

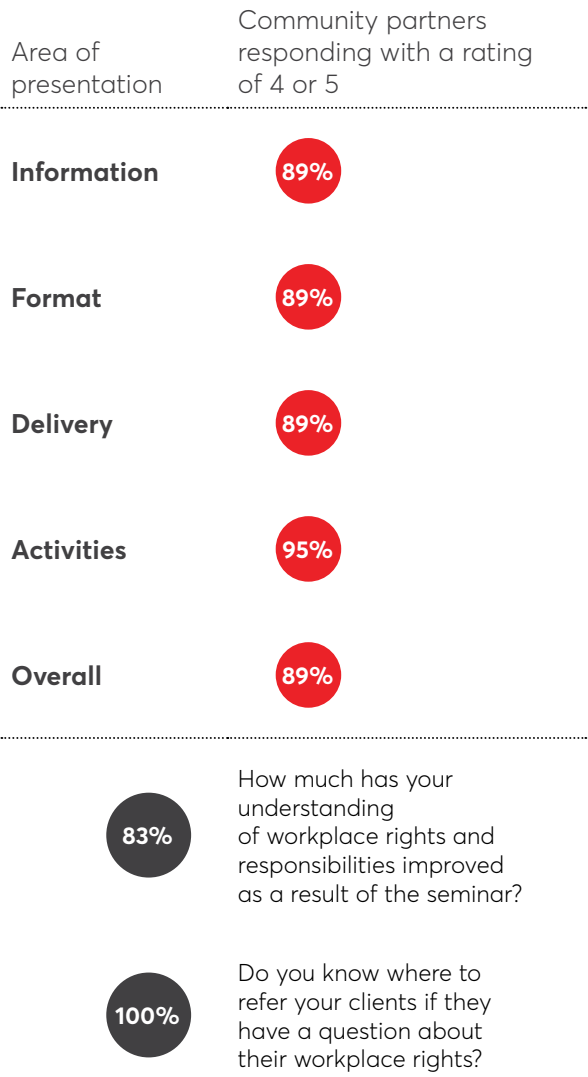
Therefore, WEstjustice delivered a number of training sessions to community workers. These sessions provided:

- a basic overview of employment and discrimination laws; and
- information about government and community organisations that could help workers with a problem.

EVALUATION

Feedback from attendees at one information session for community workers shows that participants were very satisfied with the presentation. Participants were asked to rank their experience on a scale of one to five, with five being the most effective. 83% responded that their understanding of workplace rights and responsibilities had increased either four out of five or five out of five (with five being significantly improved). After attending the session, 100% of attendees knew where to refer clients with a problem at work:

Employment law presentation



When asked to suggest any ways to improve the presentation, 71% requested a longer or less rushed session. 29% requested more real scenarios and case studies.

When asked to comment on why they attended the session and how it may assist vulnerable workers, responses highlighted attendees’ desire to be able to assist and refer clients to appropriate places for assistance:

"I have heard such stories but do not know the right organisation to refer to" City of Maribynong

"To learn more about employment law, to learn where to send people for referral " Coordinator

"Our service is often the first port of call for clients experiencing issues with employment. Its essential for us to be aware of the correct services to refer onto" Settlement support worker

"To learn more about employment law, and how I can get help for my clients about work rights" Project Officer

"Working with newly arrived refugees and asylum seekers who don't know their rights and often get pushed into employment theyre not ready for —great to know where to send them" EAL teacher

"As a job service provider we have a duty of care to look after our job seekers" Business development consultant

"I teach English to refugees and migrants who speak a different language, and they are often vulnerable" EAL teacher

Participants requested more information on sham contracting, discrimination, how to access community legal centres and workplace injury. General comments about the session included:

"Really worthwhile presentation. A list of people's names and where they are from will be helpful"

"Great speakers, well run workshop"

"Really informative session, excellent resources, and enjoyed the case studies"

"Very helpful to our clients"

Partly as a result of the information session, but also due to ongoing relationship building and engagement including attendance at network meetings and other events, WEstjustice has established relationships with community workers in settlement agencies, migrant service providers and NGOs. These relationships promote the Employment Law Service and foster warm referrals between agencies. Since the ELS opened, clients have been referred from a variety of agencies including New Hope Wyndham, Spectrum Migrant Resource Centre, AMES Footscray and AMES Werribee, Asylum Seeker Resource Centre and Foundation House. WEstjustice has also received referrals from the Fair Work Commission, Victorian Legal Aid and the FWO.

These community-based relationships and networks are critical in order to strengthen support networks and to address migrant workers’ lack of awareness of workplace rights.

125 Coumarelos, above n 79, 218.
126 Dow, above n 2.

"In Burma, people get a job based on monthly wages. No matter how many hours they work, no matter how many days per week they work, they don't get paid extra. Not getting paid for overtime and penalties. There is no compensation if injured. You are fired if you make complain or speak out the truth.

In Australia, most of the people from my community are farmers, not literate or educate. As a result community members cannot get secure jobs. They accept any jobs they are offered. Usually they get a job which doesn't require any qualification; only require hard working, such as meat factory, cleaning. They sign the paper without understanding what are in terms and policy. Because of not understanding employment law or their rights at work, they don't get paid properly. For example, I know many cleaners are working night shift cash in hand for \$14 an hour and they only get paid for four hour even if they work all night. If they are injured at work they don't know they have the right to get compensation or claim.

If they have a problem at work, people go for information to community leaders. They don't contact government agency for help with problems because they are scared, have language barriers and think that they will lose their jobs. They think that they cannot get a job in the future because of making complaint against the boss.

I think the train the trainer program is the best way to help my community understand the law. Because whenever the community members have a problem, they come to leaders. If the community leader has knowledge about the laws and services, they can guide the community member where to get help and advice also, the Western Community Legal Centre. To look on a website or fill out a complaint form is very complicated. My community doesn't have capacity to do this alone. They need help. Here the service is face to face, and one on one. This is important because this Centre has been working with the community, now they have confidence to come here. This is a first step for the community to get help."

—Neng Boi, community leader
and WEstjustice Community Worker

TRAIN THE TRAINER PROGRAM

The WEstjustice Train the Trainer Project (TtT Project) is the third part of the Employment Law Project's CLE program. It featured:

- the development of a suite of education resources for newly arrived communities, including six videos and a PowerPoint presentation;
- a training program for community leaders;
- a launch event for agency staff, where education resources were showcased, and community leaders demonstrated their skills; and
- a series of information sessions, delivered by the community leaders to their communities.

Community leaders are trusted sources of information in newly arrived and refugee communities. Bilingual community workers are an effective means of connecting vulnerable communities with community services. Utilising these principles, the TtT Project delivered a nine day training program in employment laws and services to six community leaders from newly arrived and refugee communities in Melbourne's Western Suburbs.

The community leaders visited a number of key employment and anti-discrimination law agencies, including the Fair Work Ombudsman (FWO), the Fair Work Commission (FWC), the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and Victoria Legal Aid (VLA).

Participants were supported to develop a community education presentation, which they delivered to their communities in a culturally appropriate and targeted way. Participants now act as an important link between their communities and agencies by raising awareness that those affected by employment problems can get advice from agencies including WEstjustice.

The Project developed and utilized a suite of education resources that target newly arrived and refugee communities. The resources aim to provide useful tools for agencies, educators, community leaders and others working with vulnerable communities to explain employment and anti-discrimination laws and services. The materials are designed for high post-beginner to intermediate EAL students. They are freely available on our website.

The resources are divided into six topics which relate to common legal issues that we observe at our legal service:

- Wages and Other Entitlements
- Employees, Contractors and Sham Contracting
- Workplace safety
- Discrimination
- Sexual harassment and Bullying
- Unfair dismissal and Other Protections if your employment ends

The resources are:

- **A template PowerPoint presentation:** providing key information about each of the six topics. The Community Leaders modified the presentation template for their individual information session. They included the employment law topics that would benefit their community. There is a template presentation available on our website for other organisations to use: www.footscrayclc.org.au/train-the-trainer-project
- **Handouts:** A summary of employment law concepts and key employment law terms (also available on our website). Participants also received more in depth materials each week.
- **Six video clips (one relating to each topic):** Produced by Tandem Media, these videos are based on six common legal issues WEstjustice observed at our legal service. The scripts were reviewed at a workshop attended by English as additional language teachers, community education staff from Victoria Legal Aid, community workers from settlement agencies and youth services, and lawyers. View the video clips at www.footscrayclc.org.au/train-the-trainer-project.
- **Activities and question/answer sheets to accompany each video:** If used in a workshop, classroom or other group setting, the activities provide an opportunity for participants to work together and strengthen their understanding of employment and anti-discrimination law in Australia. The materials are designed for high post-beginner to intermediate English as an Additional Language students.

**This is the script and screen shot
from the video on wages and other entitlements:**

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.
Jill	Is it good pay?
Andrea	Depends on whether it's a busy night.
Jill	<i>(Concerned.)</i> Really?
Andrea	If they can't pay me much they give me a meal, so...
Jill	<i>(Concerned.)</i> 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	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 really bad... but they are really nice people.
Jill	<i>(thinking but with caution)</i> 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. <i>(Showing Andrea an example on her phone.)</i> 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.



WEstjustice digital story.
Note: Resources which include handouts, videos and powerpoint presentations are available footscrayclc.org.au/train-the-trainer-project.

EVALUATION

Feedback from the leaders, external agencies who attened the launch event, and community members who attended information sessions has been overwhelmingly positive.

Feedback was gathered via:

- discussions with participants throughout the training course;
- evaluation forms completed by community leaders at the end of each training day and after their presentations;
- evaluation forms completed by attendees of the launch event; and
- evaluation forms completed by community members who attended the community sessions.¹²⁷

A video was also prepared showing detailed interviews with community leaders about their experiences.¹²⁸

Some comments from the leaders included:

"Train the Trainer program has helped me to understand the complexity of employment law issues in Australia. It was particularly relevant for me to understand how different organisations work to provide a comprehensive protections to workers in Australia."

"Prior to the training I had some ideas about employment laws and services but now after the training I know more details and am confident that I can deliver the information sessions by myself and refer clients appropriately."

"I didn't have any knowledge and understanding of employment law before but I now have some knowledge about it and hope I can help the community how and where to get help."

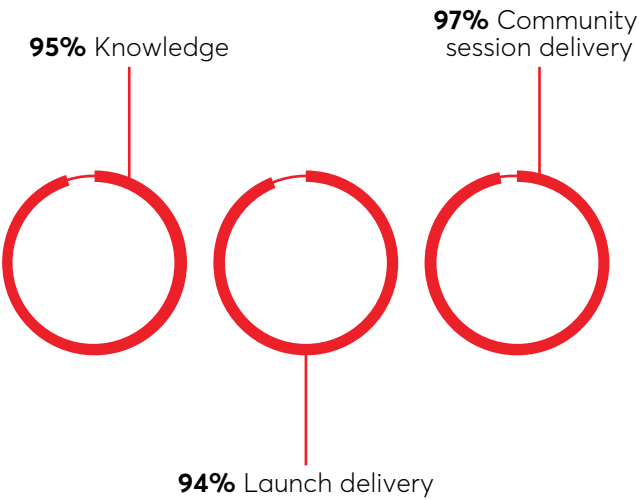
"Train the Trainer program will help my community because they will know now who can help them with employment law issues, in English, and also in the language which they speak. The Community Leaders have the first-hand knowledge of the employment law problems faced by their community and also have the knowledge of the organisations that can help. They can confidently refer their community to those organisations. Having the knowledge of the employment law will empower the community and people will gain confidence in taking action when their employment rights are breached."

127 For further details, please request a copy of the Train the Trainer Evaluation Report from WEstjustice.

128 Footscray Community Legal Centre, Train the Trainer Project <www.footscrayclc.org.au/train-the-trainer-project>.

Launch event feedback:

At the launch event, each of the participants presented in a resources showcase. 95% of attendees thought the leaders' knowledge of employment laws was excellent or very good. 94% found their delivery excellent or very good. Importantly, 97% thought that the leaders would deliver an excellent or very good information session to their communities.



Comments from agency staff who attended the launch were as follows:

"The presentations were fabulous, the program is beneficial because it links services and clients."

"Excellent initiative to have presenters from the community."

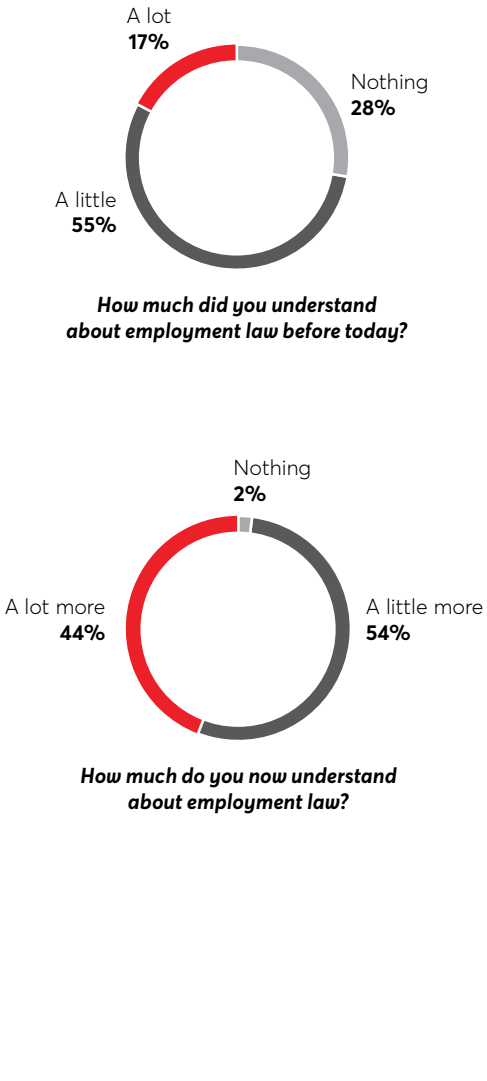
"Great presentation, this has been needed for sometime so its great to see this at grass roots level."

"Presentations were terrific, great to see everyone confidently providing advice."

"The Program is exactly what the community needs. It should be ongoing with additional support provided to the Community Leaders, as well as additional Community Leaders trained."

Community member feedback:

Importantly, feedback from community members who attended community leader presentations shows that their understanding and awareness has increased. Prior to the community information sessions, 83% of community members understood a little or nothing about employment law. After the information sessions, 98% of community members understood a little or a lot more about employment law, and 82% of community members know where to go for help if they have employment problems:



What was the best thing about the employment law session?

- "Knowing that employees have rights and entitlements"
- "Free service, interpreter"
- "If you get bullied you can contact people who can help you"
- "They made it easy for me to understand it better in my language"
- "It has helped me to understand the employment law better than before"
- "The information, phone numbers and pamphlets"

What would make the employment law session better?

- "Conduct information sessions in Karenni language for parents who cannot speak English and Burmese"
- "Explain with the real case study"
- "Asking people about their work conditions, this would have connected the audience more"
- "More training, as well as meeting with different communities of different backgrounds"
- "Informing the community about the best ways to enter into the workplace"

How will the information from today help you?

- "Will help the family"
- "Will guide me to the best legal service centre"
- "I can get help without worry and anxiety"
- "Giving information to friends and colleagues"
- "Will give information to young friends entering employment"
- "I have new awareness of the law and it will stop discrimination and bullying"
- "I know whom to approach now"

The Train the Trainer model has had many positive outcomes not least of which is the increased information sharing (of accurate information) within the community. Community leaders who participated in the Train the Trainer Project have told us that they have shared, and plan to share, employment law information with their community in a number of ways, including:

- community information sessions;
- client appointments in their workplace;
- at their church;
- at community events and functions;
- via telephone conversations;
- face-to-face meetings in their home;
- on community radio;
- social media (such as Facebook);
- local newspapers and community newsletters.

Evidence shows that leaders now act as an important link between their communities and agencies by raising awareness that those affected by employment problems can get advice from agencies including WEstjustice. Evidence also shows an increase in understanding of laws and services among target communities, as well as increased access of services.

The Train the Trainer model is an important mechanism to create strong support networks within migrant communities. By arming community leaders with knowledge of workplace rights in Australia, workplace issues may be resolved early and the levels of exploitation amongst migrant workers may be reduced.

The below case study demonstrates the impact of targeted materials, when used by EAL teachers in the classroom:

IMPACT OF TARGETED MATERIALS AND FACE-TO-FACE SUPPORT

A teacher from an English as Additional Language program provided the following feedback about the impact of the WEstjustice education resources. WEstjustice has also directly assisted clients that this teacher, and others from her community centre, have referred to our employment law service:

I used the material from the Employment Law project—and in 6 weeks, we only got through two of the videos! They were fabulous, and the class did lots of related readings and role plays.

One of the students told me as a result of doing that project, she was able to ask her employer for her payslips. They had not given her any, and now she has all of them.

Another student had a boyfriend who sounded like he was in sham contracting. He had been told to get an ABN, and was working 6 am–9 am on a casual basis and in a supervisory role, for \$15 an hour. She was able to give him the information about contacting the CLC, and that it was all confidential... I'm not sure if he followed up, but at least he has the information.

Another student is a bilingual worker in childcare. Even though we didn't get up to the discrimination videos, after studying the underpayment and sham contracting videos, she thought maybe she should talk to her boss about being treated unfairly at different centres. So she rang her boss and stated what had happened. The lady was most concerned and said she would talk to the workers involved, and then said, 'How long did you say you have been working with us?... ' As a result, the student has been given a \$5 per hour pay rise as her employer realised they had not given her increments for experience. I don't know if they've backpaid her, but it's still a good outcome and she's very happy. She's especially happy that she was brave enough to talk to her boss.

And this same student has a neighbour who was working at a restaurant. The young girl is an international student and has to work to make ends meet. Her agreement had been to work at a casual basis at only \$15 p.h. When our student talked to her, they had told her she must work for \$8 ph. So she was able to pass on information about the CLC and the Fairwork Ombudsman's office. Again, I don't know whether she has done anything about this, but at least she knows what to do.

Some students which have a slightly lower level of English still seem a bit apprehensive to act on what they've been taught because they're still frightened of losing any jobs they do have. One of them has two sons working at factories. Although the work is casual, and he often works long hours, they're only paying him the minimum wage of \$17.29 an hour. It sounds like her other son is on the correct minimum wage for casuals. The workers have been told they're going to be moved to part-time, with no change in pay, so that's good. The son hasn't done anything about going to CLC even though his mother has told him what to do - maybe because he's always exhausted - working 12 hours a day on a lot of days. They also probably find it hard to believe they can get people to pay them more money.

There is a further case study below (page 127) which demonstrates how training community leaders can benefit vulnerable communities. In this case study, a community leader connected a large group of vulnerable workers to WEstjustice and the FWO, resulting in over \$20,000 of wages being recovered.

OTHER METHODS OF
INCREASING AWARENESS

There are many other methods of raising awareness of workers' rights. As stated above, we consider that the more approaches that are adopted, the greater the likelihood that information will reach those who need it most.

Other examples of alternative means
to increase awareness include:

Amendments to curriculum for EAL learners:
One such method is making information about Australian employment laws and services a compulsory component of the curriculum in English as Additional Language (EAL) courses, such as Settlement Language Pathways to Employment and Training and Adult Migrant English Program (AMEP) classes. In fact, one of the observations in the Fraser Report is that settlement agencies and AMEPs are 'well-placed to deliver legal and financial education to a large number of people in a systematic way'.¹²⁹

Phone app: developing a simple phone application that is translatable into languages other than English, containing basic information about key agencies such as the Fair Work Ombudsman, Fair Work Commission, the ATO and other key regulators (such as OHS regulators). Many attendees at our CLE sessions take a photo of the PowerPoint slides showing key service contact details. Therefore, the information could include brief descriptions of what the agency does and include contact details. This information could be written but also spoken/in video form. It could also include a function enabling workers to record their hours of work (we understand that FWO is currently developing an app that provides some of these features).

Public awareness campaigns: public awareness campaigns about systemic issues, delivered in languages other than English. Public awareness campaigns have been used by FWO, and in other countries to combat issues such as human trafficking.¹³⁰ Such campaigns could include social media and face-to-face approaches, depending on community need.

FUNDING

Unfortunately, WEstjustice receives more requests for CLE community presentations than we have capacity to deliver. Similarly, the 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 evidences 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. Such need will only increase over the coming months with communities moving to regions in attempts to find work that qualifies for their Safe Haven Enterprise Visas.

WEstjustice proposes that mainstream agencies develop their own targeted resources, but also provide funding for community organisations to distribute those resources and deliver essential face-to-face information sessions that align with community needs. We support the Productivity Commission's recommendation 29.1 that:¹³¹

The Department of Immigration and Border Protection and the Fair Work Ombudsman should improve the information available on their websites about migrant workers' workplace rights and conditions. They should also explore other ways of providing migrants with this information, ensuring that it is in easily accessible languages and formats.

We also support the Senate Education and Employment References Committee recommendation that:¹³²

the Department of Immigration and Border Protection provide funding on a submission basis for non-governmental organisations, registered employer organisations, trade unions, and advocates to provide information and education aimed specifically at improving the protection of the workplace rights of temporary migrant workers.

It is essential that education resources do not sit unused on a website, but adequate funding is allocated to ensure resources are distributed and available in community sessions, migrant resource centres, medical facilities and other locations visited by migrant workers.¹³³

RECOMMENDATION

Newly arrived and refugee workers require targeted, face-to-face education programs to understand and enforce their rights at work.

Governments should establish a fund to provide targeted education programs for vulnerable workers. Such programs 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.

WEstjustice proposes that mainstream agencies develop their own targeted resources and programs, but also provide funding for community organisations to distribute those resources and design and deliver essential face-to-face information sessions that align with local community needs.

129 Fraser, 'Prevention is better than cure', above n 113, 8.
130 International Labour Organization, 'Protecting the rights of migrant workers: A shared responsibility' (Report, 2009) 8.

131 Productivity Commission, above n 29, 926.

132 Education and Employment References Committee, The Senate, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (March 2016) xiii; 272–276; 318–320.
133 International Labour Organization, above n 130, 8

Active and accessible agencies

4

In addition to improving education around workplace rights and responsibilities, migrant workers urgently need better access to agencies and legal processes. This will increase equity and efficiency. Claims will be better articulated and resolved more quickly.

Currently, there are numerous government agencies that each assist with different employment problems. If you have been injured at work, you may contact WorkSafe. If you have been underpaid you may contact the Fair Work Ombudsman (FWO). If you have lost your job in unfair circumstances, you may contact the Fair Work Commission (FWC). If discrimination is involved, you may contact Victoria Legal Aid (VLA), the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Australian Human Rights Commission. If you have experienced all of these things, you may need to contact all of these agencies. Although interpreters are offered, the level of assistance for vulnerable CALD workers varies between services.

On the whole, agencies are inaccessible to newly arrived and refugee communities. This is for various reasons discussed above including lack of rights awareness and language, literacy, cultural and practical barriers.

WHAT WORKS WELL

WEstjustice has worked closely with the FWC and FWO. This section focuses mostly on these two agencies. Between May 2013 and October 2015, WEstjustice referred 32 matters to FWO, and was involved in at least 15 matters that involved FWC conciliations or hearings. WEstjustice welcomes our collaborative relationship with both the FWC and FWO.

FWO

Our relationship with FWO has strengthened considerably as a result of our connection with the Community Engagement team. We have developed a successful warm referral system, and have also developed connections with members of the Overseas Workers Team, Education and newly formed Migrant Worker Taskforce teams. WEstjustice staff have benefitted from the opportunity to shadow FWO staff at the Federal Circuit Court, and FWO staff have attended and participated in a number of WEstjustice education initiatives.

These collaborations and referral pathways are resulting in impressive outcomes. For example, numerous clients have received assistance via our warm referral process, whereby WEstjustice staff assist vulnerable workers to articulate their claims, then prepare a case summary which is sent directly to a FWO staff member with experience in migrant worker issues. Further, FWO’s recent participation in the WEstjustice Train the Trainer program has provided a number of community leaders with significantly improved awareness of FWO services. Community leaders were able to visit FWO’s Infoline centre and gain first-hand information about how FWO works. Information about FWO has now been shared with several newly arrived communities across the West. This collaboration recently resulted in a group of extremely vulnerable clients receiving assistance they would never have received otherwise.

Of particular benefit to newly arrived and refugee communities are the systemic outcomes flowing from investigations and FWO’s ability to look at industry wide issues. As noted above, our clients mostly work in low-skilled and high-risk industries, including food processing, hospitality, cleaning, warehousing and distribution and the child and aged care industries. Whenever possible and with our clients’ consent we share intelligence with FWO about systemic breaches.

TRAIN THE TRAINER PROGRAM COLLABORATION SUCCESS

WEstjustice received a phone call from a community leader who had recently completed the Train the Trainer Program. The leader had been approached by numerous community members who all worked for one employer. They felt concerned that they had been underpaid. The workers spoke no English and were very afraid about complaining—they did not want to lose their jobs. The trusted community leader arranged a meeting with WEstjustice at a familiar meeting place. WEstjustice lawyers attended, and advised the community members that it appeared there had been an underpayment.

The lawyers gave information and advice about the minimum wage, and also the role of FWO. After building trust with the workers, and explaining the options moving forward, the workers agreed to meet with a FWO inspector and explain their situation. Another meeting was arranged. At this meeting, around 10 workers were assisted by WEstjustice staff and volunteers to complete complaint forms, as the workers did not speak English. FWO then liaised with the relevant employer and ultimately over \$20,000 in unpaid wages was recovered for numerous vulnerable community members.

The workers said they would never have made a complaint without help from their community leader.

In such situations, FWO’s power to audit workplaces in an own motion investigation capacity removes the onus from individual complainants who are vulnerable, and enables systemic change across workplaces. Through the warm referral process, we have been able to bring matters to FWO’s attention and FWO has used the information provided as part of broader investigations. Such actions enable FWO and WEstjustice to assist other vulnerable workers who haven’t been able to complain directly.

Many clients have also benefited directly from FWO’s individual complaint process, where as a result of mediation or other inspector action, with assistance from WEstjustice and FWO, clients have been able to enforce their rights in a supported and cost effective way. We have had a number of cases resolve favourably for our clients at the FWO mediation stage. Unfortunately, before FWO’s involvement, the employers were not willing to respond to our letters of demand.

As noted in the wage theft section below, we submit that with increased powers and capacity, FWO would be better able to resolve complaints at this early stage.

WEstjustice welcomes the Federal Coalition’s commitment to increasing FWO enforcement powers and providing a \$20 million funding increase. In particular, we welcome the commitment to establish a Migrant Worker Taskforce to target employers who exploit migrant workers.¹³⁴ We would welcome the opportunity to work with members of the Taskforce and discuss our findings further.



WEstjustice Train the Trainer program: community leaders visiting the FWO.

134 Liberal Party of Australia, Coalition’s Policy to Protect Migrant Workers (10 August 2016) <<https://www.liberal.org.au/coalitions-policy-protect-vulnerable-workers>>.

FWC

Our collaborations with the FWC Engagement Team have delivered tangible benefits for newly arrived and refugee communities in the West. In particular, the FWC’s involvement in the Train the Trainer program was extremely beneficial. The FWC allowed community leaders to observe an FWC conciliation and liaise with a Commissioner. Feedback from the leaders was that such experiences enabled them to better understand how the FWC operates, and will empower the leaders to assist community members to access FWC processes.

As discussed in the dismissals section below, it is helpful that the FWC provides assistance in the early stages of an application. For example, that the FWC attends to service of the original application is of great importance for our clients, who often find service extremely difficult and in some cases, unaffordable. We have observed a higher attendance rate for employers at FWC conciliations than FWO mediations.

Our staff and volunteers have benefitted from FWC education resources, including mock trials and the Benchbooks. This enables the ELS to provide better advice and resolve complaints more efficiently.

WITHOUT HELP, WORKERS CANNOT ARTICULATE COMPLAINTS

WEstjustice recognises that numerous government agencies including the FWC and FWO have undertaken work to target services at newly arrived communities. For example, FWO has an Overseas Workers team, had engaged Community Engagement Officers, and conducts targeted campaigns. However, as demonstrated by the prevalence and persistence of the employment problems faced by these communities, it is evident that further action is required.

Many clients may intuitively feel that they have been treated unfairly, but due to the barriers outlined above, have no sense of who to contact, or how to frame their complaint. Even once workers are made aware of a service, and are comfortable enough to contact it, resource constraints or communication difficulties mean that they may not receive sufficient assistance to articulate their complaint.

WEstjustice has found that prior to presenting at the ELS, some clients have initiated a complaint with an agency like the FWO but due to ignorance of their rights and the elements required to establish their claim, complaints may be closed due to a lack of sufficient detail.

In other situations clients have presented to our service seeking assistance with one matter (e.g. missing a week of pay), only to discover far more extensive underpayment issues due to an incorrect hourly rate, lack of annual leave entitlements or superannuation issues.

In our experience mainstream agencies like the FWO have not been able to provide the assistance required to explore or assist clients to identify further issues and articulate the full extent of their complaints. Only the issues correctly identified and evidenced by the complainant will be pursued. This means that vulnerable workers often cannot enforce their rights, and some of the worst forms of abuse are allowed to continue undetected.

Our clients generally require active assistance from making a complaint through to mediations, and formally settling their dispute. The imbalance of power inherent in many of these disputes makes independent assistance for vulnerable workers crucial for efficient resolutions.

Without direct assistance many newly arrived and refugee clients who have had their workplace rights breached will not be able to enforce them.¹³⁵ Even if workers learn enough to know that something is wrong, and manage to contact an agency, without ongoing assistance, they are often unable to achieve justice.

These case studies provide examples:

PAVEL

Pavel is a newly arrived refugee. He does not speak much English and cannot write. He got his first job as a cleaner. He often worked 12 or 14 hour shifts but was only paid for five hours’ work each shift. He was also paid below the minimum pay rate. Pavel came to WEstjustice because he had not been paid his last two weeks’ pay. A community worker had tried to assist Pavel to complain to the Fair Work Ombudsman, but because they didn’t know what to complain about, the complaint was closed.

WEstjustice helped Pavel make a new complaint to the Fair Work Ombudsman and negotiated with his employer to receive back payment. WEstjustice later learned that Pavel assisted two of his friends to negotiate back pay and legal pay rates going forward.

JOHN

John worked for a bakery and believed he was underpaid by around \$8000. He had evidence in his phone and diary to show the hours he had worked. He wasn’t paid penalties or overtime, and his hourly rate was below-award. John’s friend helped him lodge a complaint with the FWO. There was a mediation but the employer denied the underpayments. John came to WEstjustice asking for help. He showed us his documentation. A letter from FWO said that a Fair Work Inspector could assist John to pursue his case further and ask for this assistance if he’d like, but John doesn’t speak English and didn’t understand the invitation/offer of assistance. We helped John get back in contact with the FWO.

135 Catherine Hemingway, Footscray Community Legal Centre, Submission No 143 to Productivity Commission, *Inquiry into Australia’s workplace relations framework*, March 2015, 7-9.

CULTURAL RESPONSIVENESS FRAMEWORKS

One option to increase accessibility is for government agencies to undertake a comprehensive review of their cultural response plans, and create better cultural responsiveness frameworks and engagement guidelines.¹³⁶ Based on our experience and relevant research, we suggest that a cultural responsiveness framework should include the following actions:

- develop specific protocols and checklists for Infoline staff to identify newly arrived and refugee clients, and then assist them to articulate their claims (ideally, once identified, vulnerable workers would be referred to a specialist team within FWO who are equipped to work with CALD clients);
- provide information in a wider range of community languages including those spoken by newly arrived and refugee communities,¹³⁷ and in a variety of formats,¹³⁸ and ensure such resources are appropriately distributed to communities;
- participate in (and help resource) specifically targeted education and engagement programs run in partnership with community organisations;¹³⁹ and
- employ dedicated staff with speciality expertise in assisting migrant workers (ideally multilingual) to provide practical face-to-face assistance.

It is certainly within the mandate of many regulatory bodies and agencies to engage with the community and be accessible.

For example, section 576(2)(b) of the *Fair Work Act 2009* (Cth) (FW Act) provides that one of the FWC’s functions is to provide assistance and advice about its functions and activities. The FWC Engagement Strategy sets out a range of strategies to enhance public engagement.¹⁴⁰

INTAKE CHECKLISTS AND SUPPORT

As the case studies demonstrate, we have witnessed a number of clients try to access help from FWO without support from a community lawyer. Too often, such attempts result in clients with meritorious claims having their cases closed without investigation. Similarly, we have witnessed clients who have been unable to fill out FWC application forms and hence, decided not to lodge a claim. Clients are often unaware of the laws, and do not know what facts or incidents may be relevant to a claim.

We recommend that all agencies introduce checklists and guides to ensure that vulnerable workers are identified and assisted to articulate their claims. For example, our intake form contains a list of practical questions about pay, hours worked, duties, language spoken at home, year of arrival in Australia and language proficiency. These are designed to identify how vulnerable a client is, and ensure that no employment law problems are missed due to the client’s lack of awareness that a legal problem even exists. Where particular issues are raised via initial intake questions, further “Matter Specific Questionnaires” are designed to assist lawyers and paralegals obtain all relevant information and make a thorough assessment of the case.

EDUCATION PROGRAMS

As noted above, there is urgent need for targeted education programs to raise awareness of employment rights and services. Such education could be provided by FWO and FWC, or under the auspices of these bodies, and delivered by community organisations.

In order to ensure any new language resources are effectively utilised, it is essential that staff are engaged to educate communities, agencies and community leaders about the available resources and how to use them.



WEstjustice community information session.

¹³⁶ Other sectors have done work in this area, see, eg, Department of Health & Human Services, ‘Cultural responsiveness framework, Guidelines for Victorian health services’ <www.health.vic.gov.au/diversity/cald.htm>.

¹³⁷ Coumarelos et al, above n 79, 214.

¹³⁸ Women’s Legal Services NSW, above n 77, 7.

¹³⁹ Fraser, ‘Prevention is better than cure’, above n 113, 51.

¹⁴⁰ Fair Work Commission, *Public Engagement* (22 February 2016) <<https://www.fwc.gov.au/creating-fair-workplaces/commission-engagement-strategy/public-engagement>>.

DEDICATED STAFF

To facilitate accessibility for vulnerable workers, greater targeted assistance is required throughout the dispute resolution process. For example, it would be useful for agencies to have dedicated staff who can assist vulnerable workers (including those with English as an additional language) to navigate processes and procedures. WEstjustice has assisted clients who cannot calculate their underpayment, cannot fill out a complaint form, do not know what an outline of submissions or a witness statement is, or who have been very afraid to contact the FWC or FWO for cultural reasons. The ability to make a warm referral to trained staff who can assist clients throughout their claim would increase the accessibility of agency processes. These staff could also work to build trust and relationships with vulnerable communities through community education and other community engagement activities.

As demonstrated in the Train the Trainer section above, engagement of multilingual staff and community leaders would also greatly improve access.

Training for all staff to increase awareness of CALD workers and their needs would also be beneficial. For example in 2004, the Family Court engaged in a program called the ‘Living in Harmony Partnership: Families and the law in Australia’. The program aimed to ‘develop and strengthen relationships between new and emerging communities and the Court’, including by enabling Family Court personnel to gain knowledge about the life experiences of CALD communities; and was also intended to provide educational opportunities for members of CALD communities to learn about Australian family law.¹⁴¹

Diana Bryant, the Chief Justice of the FCA, reflected positively on the experience gained by Court personnel as a result of the partnership:

*From the discussions I have had with Court personnel, I know that judicial officers and staff who have been involved in the Partnership have learnt a great deal. It can be quite humbling to learn of the experiences of some of our newer citizens, as I did at the graduation ceremonies held in Melbourne and Parramatta. Their lives have been extraordinarily different to the experiences of the great majority of Australians. Most have come as refugees and some have held senior positions in their countries of origin. The move to Australia has not been simple and when they arrive in Australia life can be anything but easy. Australian law is one of the factors confronting these communities. We take for granted the complexities of Australian law but for newcomers, it can seem overwhelming. Communities repeatedly spoke about the plethora of laws that apply to every day life and how confusing they found the division of Commonwealth-State jurisdictions. They often talked of feeling confronted or challenged by Australian law on an almost daily basis as they try to make new lives for themselves and their children. Their desire to understand it was strongly expressed.*¹⁴²

The FWO has a dedicated Overseas Workers team, and has recently announced the formation of a new Migrant Worker Strategy and Engagement Branch. WEstjustice welcomes this initiative and the opportunity to work with this new team.

BETTER COLLABORATION

In addition to individual agency plans and processes, there should also be greater collaboration between key agencies. Community organisations, the Fair Work Commission, FWO, AHRC, VEOHRC and WorkSafe should work together to develop a cultural responsiveness plan and improved processes to facilitate warm referrals between services.

The Migrant Workers Campaign Steering Committee, a broad coalition of agencies and community organisations, has prepared a service map with a view to encouraging such processes.

PROACTIVE COMPLIANCE AND ENHANCED POWERS

“While addressing worker complaints is an important function of any labour inspectorate, there is concern that a focus on complaints at the expense of other detection methods fails to ensure that vulnerable workers are effectively protected.”¹⁴³

Unfortunately, not all exploited workers are able or willing to take action against their employers. Even if clients are aware of their rights, many choose not to pursue matters further. Even after receiving advice that they have a strong claim, some WEstjustice clients decide not to pursue their claims, despite our offers of assistance. Often clients are afraid of their employers, afraid of losing their jobs, or afraid of bringing a claim for cultural reasons or community connections. As noted above, it is not appropriate to expect that all enforcement activity be initiated by those who are most vulnerable. Indeed, it is essential that agencies take proactive measures in key industries and locations where there is suspected widespread exploitation. Such measures should include inspection of records and actions to recover any discovered underpayments. FWO has undertaken such initiatives in the past, however¹⁴⁴ more extensive and regular initiatives are required.

Further, as discussed in the wages and entitlements section below, WEstjustice recommends that FWO be granted enhanced powers to compel parties to disclose information, attend mediation, and rectify small underpayment claims.

MORE RESOURCING

WEstjustice appreciates that without increased funding, FWO is not able to implement all of our recommendations. Greater resourcing and coercive powers of the FWO and other agencies would enhance outcomes for the most vulnerable. WEstjustice echoes recommendation 29.2 of the Productivity Commission in its recent report on the Workplace Relations Framework:¹⁴⁵

The Australian Government should give the Fair Work Ombudsman additional resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers.

At the very least, an independent review of the resources and powers of the FWO should be undertaken, as recommended by the Senate Education and Employment References Committee.¹⁴⁶

WEstjustice commends the Coalition’s recent policy announcement to increase FWO resourcing.¹⁴⁷

141 ‘Families and the Law in Australia: The Family Court Working Together with New and Emerging Communities’ (Report, Family Court of Australia and Australian Government Department of Immigration and Citizenship) 4, 7.

142 Ibid, 3.

143 John Howe, Andrew Newman, Tess Hardy, above n 88, 7.

144 See, eg, Fair Work Ombudsman, *Harvest Trail Campaign* <<https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign>>.

145 Productivity Commission, above n 29, 927.

146 Education and Employment References Committee, above n 132, xiv, 278–283; 327–328.

147 Liberal Party of Australia, above n 134.



WEstjustice employment law service.
Photo credit: Jessica Hogg

RECOMMENDATION

Federal and State Governments should ensure that Federal and State based agencies take further steps to ensure they are more accessible and responsive to newly arrived and refugee workers.

State and Federal Governments should require agencies to develop cultural responsiveness frameworks to ensure newly arrived and refugee clients can access services. Such frameworks should:

- develop specific protocols and checklists for inoffice staff to identify newly arrived and refugee clients and assist them to articulate their claims;
- provide information in a wider variety of community languages including those spoken by newly arrived and refugee communities, and in a variety of formats;
- participate in (and help resource) specifically targeted education and engagement programs run in partnership with community organisations;
- employ dedicated staff with speciality expertise in assisting migrant workers (ideally multilingual) to provide practical face-to-face assistance;
- ensure effective collaboration between agencies, and between agencies and community organisations; and
- undertake proactive compliance initiatives to achieve systemic reform in industries and areas where there is widespread exploitation of migrant workers.

Recognising that increasing accessibility will require increased time and contact with communities, agencies should be given additional resources to meet unmet need.

Community-based employment law services



WEstjustice volunteer.
Photo credit: Jessica Hogg

"Community and advocacy groups are often the resource of first resort for immigrants and can connect well-meaning policies, the enforcement agencies that implement them, and the population they seek to protect."¹⁴⁸

UNMET NEED FOR EMPLOYMENT LAW HELP

In 2012, the Law and Justice Foundation undertook a large study of unmet legal need in Australia. Among all Victorian respondents, 5.9 per cent identified that they had experienced an employment law problem in the past year. Similarly, an Australian Institute survey identified that 7 per cent of Australians had an employment law problem.¹⁴⁹ WEstjustice data suggests that this figure would be significantly higher for newly arrived and migrant workers.

Despite significant need for employment law services there are limited avenues for workers to get help with their problems. Few private firms offer employment law advice on a no win no fee basis. Therefore, for low income earners, private legal assistance is not an option. While the Fair Work Ombudsman can offer limited assistance for unpaid wages and entitlements, as noted above, it is largely inaccessible to newly arrived and refugee communities.

Very few generalist community legal centres provide employment law assistance. This is not due to a lack of need. However, employment law is a highly specialised area of law with short limitation periods, so generalist centres are often unable to allocate scarce resources to this area.

Unfortunately, there is very little funding available for employment law services. Existing services are struggling to meet demand with limited resources. JobWatch, a community legal centre specialising in employment matters, is unable to meet 57 per cent of demand for help. Justice Connect, a community organisation that helps facilitate pro bono referrals, reports that employment law is one of the top four problems that people request assistance for, however only around one fifth of matters receive much needed help.¹⁵⁰ In Victoria, Legal Aid does not provide assistance with employment matters (except where discrimination is involved) and frequently refer matters to other services.¹⁵¹ Apart from the ELS, there are no other targeted employment law services for newly arrived communities in Victoria. As observed in a Report by the Federation of Community Legal Centres, 'there is a significant gap between the need and demand for assistance and the services that are currently available'.¹⁵²

EMPLOYMENT LAW HUBS FOR MIGRANT WORKERS

Even if agencies are more active and accessible, newly arrived migrant and refugee workers will still require community-based assistance to enforce their rights. In this section, WEstjustice proposes the establishment of 'one-stop-shop' employment law hubs. These hubs will increase successful labour market integration and reduce disadvantage for migrant workers by providing a safe place to learn about rights and opportunities, and assistance to enforce rights in cases of breach. Hubs will also play a central role in liaising with government agencies and policy makers to tackle systemic problems of migrant worker exploitation.

¹⁴⁸ Shannon Gleeson, 'From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers' (2009) *Law & Society Review* 43(3) 689-690.

¹⁴⁹ Federation of Community Legal Centres, above n 3, 4.

¹⁵⁰ Federation of Community Legal Centres, above n 3, 4.

¹⁵¹ Apart from those involving discrimination that are eligible for assistance from the Equality Law Program.

¹⁵² Federation of Community Legal Centres, above n 3, 4.

MULTI-JURISDICTIONAL LANDSCAPE MAKES ENFORCEMENT DIFFICULT

The piecemeal nature of the workplace relations landscape makes enforcement difficult. There are currently different jurisdictions and agencies for enforcement of workplace safety, wages and entitlements, unfair dismissal, general protections, superannuation and discrimination laws. This makes choice of jurisdiction and case management extremely challenging, particularly for vulnerable clients. This complexity also typically limits the capacity of generalist advice agencies such as generalist community legal centres to provide assistance.

For example, if a client is dismissed for a discriminatory reason (for example, they have been injured at work and complained because they were not paid properly), the client will need to decide whether to bring a general protections claim in the Fair Work Commission, an unfair dismissal claim in the Fair Work Commission, a wages claim in the Federal Circuit Court or Magistrates Court, a discrimination claim to the VEOHRC, AHRC or VCAT, a claim to WorkCover, a complaint to WorkSafe, or a combination of these. Some claims carry a costs risk (meaning if you lose your case, you may be ordered to pay the other side's legal costs), some claims prohibit other claims being made, and each claim has different processes and different limitation periods (for example, only 21 days to bring an unfair dismissal claim, but up to six years for an underpayment of wages claim). Furthermore, the decrease in union membership has significant implications for monitoring and enforcement of workplace rights.¹⁵³

It is critical that targeted services exist to provide initial information and advice on matters such as choice of jurisdiction, as well as subsequent advocacy and support with navigating processes, completing paperwork and resolving disputes. Our clients generally require active assistance from the time of making a complaint through to mediations, and formally settling their dispute. At the initiation of an application, clients require assistance with the completion of the relevant forms—this can involve consideration of complex jurisdictional issues. Many clients faced with the requirement to prepare a letter of demand, application, outline of submissions or witness statement would be locked out of the system without extensive assistance. The imbalance of power inherent in many of these disputes makes independent assistance for vulnerable workers crucial.

As noted above, there is no doubt that many of our clients would be unable access the system to resolve claims without assistance to lodge relevant applications, and advocacy and other support at conferences and hearings.

COMMUNITY-BASED EMPLOYMENT ADVICE SERVICES CAN MEET THIS NEED

Community based employment advice services (in particular, community legal centres) are best placed to meet this need. As demonstrated in the outcomes section above (page 78), in a short time, WEstjustice has provided significant assistance to over 200 vulnerable clients, achieving meaningful results for minimum cost. Results include recovery of wages and compensation, job retention, education for future employment and referrals for further assistance.

For example, given FWO's strict eligibility criteria for ongoing assistance, many workers with unpaid entitlements are left to self-advocate. For newly arrived workers, this is often impossible. WEstjustice has assisted many clients who were turned away from FWO and were unable to enforce their rights without support. Zara's case is one example:

ZARA

Zara worked on a 457 visa in a restaurant. She was directed to work 6–7 days per week, often for more than 12 hours each shift. However, she received no overtime or penalty rates. When Zara asked why her superannuation was not being paid, she was dismissed. Zara had taken photos of the log book where she wrote her hours of work.

Zara contacted the Fair Work Ombudsman for assistance, but FWO could not take Zara's matter further because Zara's boss supplied conflicting evidence.

WEstjustice spoke with other employees at the restaurant and confirmed Zara's story. WEstjustice then helped Zara to bring a claim in the Federal Circuit Court, with help from a Justice Connect pro bono barrister. Zara's boss threatened Zara, saying she was poor and weak and would never be able to do anything about the situation. WEstjustice supported Zara to continue with her claim and she recovered over \$20,000 in unpaid wages.

When more than one jurisdiction is involved, it is particularly important for a community organisation to assist:

AMAD

Amad worked as a labourer at a company that installed building products. He spoke limited English. Amad obtained his employment through a job agency that he had been referred to by Centrelink. Amad worked at the company for about five months but left employment because he had to constantly remind his employer to pay him. Amad was not paid at all for his final week of work. After he left employment, Amad made numerous, unsuccessful attempts to contact his former employer to demand payment. When his former employer was consistently unresponsive, Amad attended WEstjustice. WEstjustice was aware of the employer, who had underpaid other clients of the service.

WEstjustice made a warm referral to the Fair Work Ombudsman, where Amad and WEstjustice attended a mediation with his former employer who agreed to pay him his outstanding wages. However, his employer did not honour the settlement agreement and Amad returned to WEstjustice for help as FWO was not able to assist.

Through consultation with practitioners across different community organisations, WEstjustice advised Amad that the best course of action was to apply at the Magistrates Court for the Terms of Settlement to be enforced and obtained a barrister through Justice Connect to represent the client on a pro bono basis. Amad ultimately received payment.

Amad's case illuminates the importance of ongoing legal assistance from a community agency. It was only through ongoing contact and case management from WEstjustice that Amad was able to attend mediation through the Fair Work Ombudsman and ultimately receive payment.

¹⁵³ Ingrid Landau, Sean Cooney, Tess Hardy and John Howe, 'Trade Unions and the Enforcement of Minimum Employment Standards in Australia (Research Report, January 2014), 8.

WEstjustice is accessible for vulnerable migrant workers for a number of reasons, as identified in our preliminary research:

Relationships and trust: To be accessible, it is essential that community members feel safe and trust the service. Trusting relationships have been built between the service and target communities in a number of ways, including for example, by providing face-to-face community education, and attending local meetings and events. As one survey respondent noted, 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.'

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 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. This was undertaken in the first stage of the Project, and on an ongoing basis through gathering client and community feedback.

Importance of community workers: Community workers from target communities provide an essential link between services and community members. As one survey noted: 'Having bilingual workers from the clients' communities working and imparting knowledge to their own communities has been effective'. Our Centre has used bilingual workers for many years, and found this to be an extremely valuable way of connecting our service with newly arrived communities.

The value of community organisations in assisting vulnerable workers has been widely recognised. In 2009 the FWO conducted a review of the need for and provision of Community-Based Employment Advice Services (CBEAS) in the light of the introduction of the Fair Work regime (Booth Report).¹⁵⁴

The Booth Report describes the current employment advice landscape for vulnerable employees as presenting 'a confusing picture' if they are sent out alone on the 'referral roundabout'.¹⁵⁵ The Report highlights the importance of CBEAS for vulnerable workers:¹⁵⁶

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.

For example, while an FWO mediation may be regarded as a low impact and relatively informal type of alternative dispute resolution, it is extremely confronting for many of our clients. For example, one of our clients was visibly shaking at her mediation. She said she simply couldn't have done it without our assistance. This client made it clear that, had she been required to represent herself, she would have withdrawn the complaint.

The Booth Report also stresses the utility of collaboration between government and CBEAS:¹⁵⁷

CBEAS are not 'underground' organisations that are distinct from the new workplace relations architecture. They are an essential link in the chain of maintaining employment standards. In practice they are treated as such by government bodies that regularly refer workers to them. Their interdependence within the system should be formally recognised and their visibility improved.

Indeed, CBEAS contribute to the effective and efficient functioning of the workplace relations systems by:

- providing critical assistance to a vulnerable group who would otherwise be unable to understand or enforce their workplace rights;
- filtering disputes by advising clients on the legal merits of their claims;
- increasing the focus on early intervention and assisting clients to resolve issues at an early stage;
- promoting the efficient passage of disputes through the workplace relations dispute resolution pathways;
- development of legal precedent through strategic litigation; and
- collecting information about systemic issues for vulnerable groups and providing this information to regulators and others.

The Productivity Commission has also recognised that community organisations have strong potential to provide innovative solutions to social problems.¹⁵⁸ It has also recognised that employment law is a major gap in civil law assistance¹⁵⁹ which can have serious consequences, and that efficient, government funded legal assistance services generate net benefits to the community. The Commission has acknowledged that more resourcing is required.¹⁶⁰

In its recent Report on the Workplace Relations Framework Inquiry, the Productivity Commission specifically acknowledged the vulnerability of migrant workers and the important role that community organisations play in providing information and promoting compliance with employment laws. The Commission recognised the 'credibility these [community] organisations have within the community, their sensitivity to established cultural or community attitudes and their separation from government'.¹⁶¹

Importantly, the Commission discussed the value of WEstjustice (then Western CLC) Employment Law Project in particular, noting that:¹⁶²

Community organisations often have a broader remit than just ensuring compliance with employment law. For instance, apart from providing legal advice, the Western Community Legal Centre also runs a legal education program for vulnerable workers, which includes information sessions to community members about their workplace rights, and training programs to assist people to distribute legal education within their community (sub. DR329). In this way, these organisations also can likely direct migrant workers to alternative employment opportunities or government support programs.

The Productivity Commission recommended that the 'Australian Government should give the Fair Work Ombudsman additional resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers'.¹⁶³

WEstjustice strongly supports this recommendation, and suggests that some of these increased resources should be directed towards successful community programs. Funding services like WEstjustice to provide legal assistance and community education such as the Train the Trainer program would also enable FWO to meet Productivity Commission recommendation 29.1 that FWO and the DIBP 'improve the information available on their websites about migrant workers' workplace rights and conditions' and 'explore other ways of providing migrants with this information, ensuring that it is in easily accessible languages and formats'.¹⁶⁴ It would also enable FWO to gather more effective intelligence on non-compliant employers, as WEstjustice regularly provides such information with the consent of clients who may not otherwise complain.

The work of CBEAS, including WEstjustice, clearly contributes to the efficiency of the workplace relations framework.¹⁶⁵ In addition to providing critical assistance to regulators and vulnerable workers, CBEAS provide a crucial triage or filtering function, advising clients with meritless claims or very poor prospects of success not to proceed.

154 Anna Booth, 'Report to the Fair Work Ombudsman of a Review of Community-Based Employment Advice Services' (Report, Cosolve, 30 September 2009), 26 <<https://www.fairwork.gov.au/ArticleDocuments/716/Report%20of%20a%20Review%20of%20Community%20Bases%20Employment%20Advice%20Services.pdf.aspx?Embed=Y>>.

155 Ibid, 25.

156 Ibid, 2.

157 Ibid, 26.

158 Productivity Commission, *Contribution of the Not-for-Profit Sector*, Research Report (January 2010).

159 Productivity Commission, *Access to Justice Arrangements*, Inquiry Report Overview No 72 (5 September 2014) 30.

160 Ibid, 2.

161 Productivity Commission, above n 29, 925.

162 Ibid.

163 Ibid, 836.

164 Ibid, 926.

165 Productivity Commission, *Access to Justice Arrangements*, above n 159.

Similarly, WEstjustice’s support and advocacy often assists clients to settle their disputes by negotiation, thus increasing efficiency and reducing costs by avoiding unnecessary reliance on proceedings advancing to court. We routinely undertake calculations and assist clients to resolve issues with their employers by way of a letter of demand. We have been successful in assisting many clients during this early stage in the legal process.

CBEAS also promote the efficient passage of disputes through established dispute resolution pathways, and by assisting clients to access mainstream services. For example:

SAM

Sam is from South Sudan. He worked at a factory and was not paid the minimum wage. He is illiterate and does not speak much English. WEstjustice assisted Sam to calculate his underpayment and write a letter of demand. When this was not successful, they helped Sam fill out the FWO complaint form. Inspectors from the Overseas Workers team worked with Sam and WEstjustice, and helped Sam recover his wages.

We believe it is important to highlight the importance of this community-based work, which cannot continue without funding. We note that the CBEAS funding program has recently been replaced by the Fair Work Ombudsman Community Engagement Grants program.¹⁶⁶ We recommend that part of this program include dedicated funding for supporting newly arrived and refugee workers. However, given the significant and particular unmet needs of migrant workers, we further recommend that a separate and dedicated fund be established—similar to the Migrant Communities Employment Fund that was introduced by the Labor Government, and abandoned by the Federal Coalition Government in 2013. Such a fund should include tenders for the provision of targeted legal education and legal services for newly arrived and refugee workers.

EMPLOYMENT LAW HUBS: A ONE STOP SHOP

In particular, we recommend the establishment of community-based employment law hubs for migrant workers.

These hubs would deliver three components:

- coordination and delivery of the Employment Law Service, providing legal advice and assistance to newly arrived and refugee workers who have a problem at work, and facilitating referrals to mainstream agencies where appropriate;
- coordination and delivery of a Community Legal Education program to newly arrived communities, including community leaders and community workers, to raise awareness of laws and services that can assist and prevent exploitation; and
- pursuing strategic policy and law reform objectives arising from casework and education programs, including consultation with key stakeholders to raise awareness of migrant worker experiences and to promote legal and policy change.

The WEstjustice Employment Law Service is a pilot program. Due to resource constraints, future operation of the service is not guaranteed and we are unable to meet current demand. Further, this targeted service is not available to many migrant workers outside our catchment area. We have received contact from workers and organisations around Australia expressing a need for similar services.

It is difficult for generalist community legal centres to provide assistance in all areas of law, particularly in specialist areas like employment law. Indeed, only a small number of CLCs across Australia have the expertise to provide employment law assistance. Funding for specialist areas such as employment is not always available from funds provided by State and Federal Attorneys General. In other specialty areas, funding is provided by other sources. For example, at WEstjustice specialist credit and tenancy services are funded by Consumer Affairs Victoria, and taxi driver legal services are funded by the Taxi Services Commission.

Therefore, the State and Federal Governments should establish a dedicated fund to adequately resource and roll out employment law hubs across Australia. Such hubs could operate as independent centres (similar to migrant worker centres in America)¹⁶⁷, or ideally, form part of (or work closely with) an existing community legal centre, so that clients can receive holistic assistance with other legal issues. We recommend the Consumer Affairs Victoria Specialist Services Program model below.

The recommendation to establish employment law hubs has also been made by the Ethnic Communities Council of Victoria:¹⁶⁸

ECCV consultation finds a need to fund existing and new targeted employment law services for migrant communities... ECCV support further investment in government departments to stop worker exploitation among migrant communities. ECCV also recommend establishing employment law hubs (to provide education, legal assistance and other services)

COLLABORATION WITH OTHER COMMUNITY BASED ORGANISATIONS

Importantly, the Employment Law Hubs would collaborate with other services currently working to assist newly arrived migrants and refugees. As discussed in the targeted education section above (presentations for community workers), staff at settlement agencies, churches and other community organisations play a critical role in the settlement process and are often the first point of contact for recently-arrived migrants. As WEstjustice Employment Law Service has done, it is essential that the Hubs provide education and training to staff in community organisations so that they can identify when their clients have an employment law issue, and make appropriate referrals.

¹⁶⁶ Department of Employment, Australian Government, 2016–17 Budget: Employment Overview (4 May 2016) <<https://www.employment.gov.au/2016-17-budget-employment-overview>>.

¹⁶⁷ For example, the Workers Center New York runs “Know Your Rights” education workshops in both English and Spanish, and run campaigns for policy and law reform: *About* <<https://workerscentercny.org/about-2/>>.

¹⁶⁸ Ethnic Communities Council of Victoria, ‘ECCV Pre-Budget 2016-17 Submission to Victorian Department of Treasury and Finance’, February 2016, 8-9.

EXAMPLE FROM
ANOTHER JURISDICTION:
CONSUMER AFFAIRS
VICTORIA SPECIALIST
SERVICES PROGRAM

Consumer Affairs Victoria's (CAV) Specialist Services Program (SSP) recognises that community organisations play an important role in connecting vulnerable clients to mainstream services. The SSP provides funding to twelve community agencies that deliver the Consumer Advice and Advocacy Program (CAAP) and the Tenancy Advice and Advocacy Program (TAAP). The CAAP and TAAP provide face-to-face advice and assistance with consumer and tenancy matters, including proceedings before the Victorian Civil and Administrative Tribunal.

The programs reflect CAV's understanding that disadvantaged people who experience legal problems require targeted assistance to enforce their rights. While CAV operates as an impartial regulator, the funded community agencies play an active role in supporting clients and advocating on their behalf. The program recognises that vulnerable consumers and tenants require more intensive support than CAV's self-help models, and are more likely to seek help from a community agency.

Importantly, funded community agencies report regularly to CAV and share information about systemic issues and problems in the sector, which CAV can then respond to. Specialist agencies (such as the Consumer Action Law Centre) receive funding to provide training and support to other services delivering the programs Victoria-wide. This ensures consistent and high quality assistance is provided across the State by both specialist and generalist services.

RECOMMENDATION

State and Federal Governments should establish a dedicated fund to establish community-based employment law hubs for migrant workers.

The hubs would deliver three components:

- coordination and delivery of an employment law service to provide legal advice and assistance to newly arrived and refugee workers who have a problem at work, and facilitating referrals to mainstream agencies where appropriate;
- coordination and delivery of a community legal education program; and
- pursuing strategic policy and law reform objectives arising out of casework and CLE programs, including liaising with government agencies, regulators and policy makers to tackle systemic problems of migrant worker exploitation.

The fund should provide long-term, recurrent funding to enable hubs to build relationships with communities and agencies over time.



WEstjustice staff and community leaders.