

Supporting Working Parents: Pregnancy and Return to Work National Review

Footscray Community Legal Centre

Submission to the Australian Human Rights Commission



January 2014

1 Introduction

Thank you for the opportunity to make a submission to the National Review on pregnancy and return to work. Footscray Community Legal Centre Inc (**FCLC**) has recently commenced an Employment Law Project (**Project**), which seeks to explore and document the working experiences of newly arrived and refugee communities in the Western suburbs of Melbourne.

Although we are not yet in a position to comment on the prevalence, nature and consequences of discrimination in respect of pregnancy and return to work, we would like to make some recommendations for future actions to address the forms of discrimination identified through the Project; specifically with respect to rights awareness, community education and best practice approaches to engage refugee and recently arrived communities.¹

We would welcome the opportunity to provide further comments once the Project is more established.

1.1 About FCLC

FCLC 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.

The Western suburbs of Melbourne are home to a diverse range of new and emerging communities. FCLC has a long history of working with these communities. Over the past five years, more than 45% of our clients spoke a language other than English as their first language. Approximately one quarter of our clients are newly arrived (having arrived in Australia in the last five years) and our refugee service alone has seen over 750 clients in the past five years.

We have developed specialty advisory services and education programs that address the particular legal and social problems newly arrived communities encounter. We have explored the experiences of newly arrived communities in relation to the courts, housing, energy and telecommunications markets in recent years. Reports are available on our website (<http://www.footscrayclc.org.au/brochures-publications/>).

FCLC has a long standing history of collaboration and co-location of services with numerous settlement agencies and community organisations in the Western suburbs of Melbourne. FCLC currently operates outreach services at Spectrum Migrant Resource Centre in Sunshine and the Wyndham Community and Education Centre in Werribee, as well as operating duty lawyer services at Sunshine Magistrates' Courts and VCAT in Werribee. FCLC has worked collaboratively with various organisations (including AMES, New Hope Foundation and Spectrum Migrant Resource Centre) to deliver community education programs.

¹ FCLC would like to thank Phoebe Churches for her outstanding assistance in preparing this submission, and Anjali Suriyakumaran and Rachel Hui for their excellent work entering and analysing our survey results.

1.2 The Employment Law Project and the workplace rights of pregnant women

In a refugee settlement context, employment has been recognised as one of four vital components necessary for successful settlement, along with housing, education and health.² However, newly arrived and refugee communities face significant barriers and disadvantage in the labour market.

Through a strategic mix of research, consultation, collaboration, advocacy and community education, the Project aims to explore and document the working experiences of newly arrived and refugee communities in Melbourne's Western suburbs. After a period of consultation and research, the Project will include two linked programs: a pilot legal advice and referral service and a targeted community education program (for communities and community workers). The Project will collect information and stories to document systemic employment law issues in refugee and newly arrived communities, which will be presented in a report (**Report**).

The recommendations in this submission are based on our preliminary observations during the Project, as well as our experiences working with newly arrived and refugee communities more generally.

1.3 Awareness of rights, barriers, and the importance of targeted services

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.³ When these factors combine with other vulnerabilities faced by newly arrived communities, the need for targeted legal services and the promotion of awareness of rights in newly arrived communities is paramount.

Newly arrived communities often have a limited understanding of their rights under Australian laws and do not know where they can obtain legal assistance. As set out in **section 1.4**, our preliminary findings indicate that newly arrived communities understand very little about employment laws, and many would like to learn more. Someone who has spent many years in a refugee camp may not have any familiarity with the concept of anti-discrimination laws or even the rule of law at large.

Even once people become aware of their rights, they may face a multitude of barriers to accessing existing services. For instance the simple act of making a telephone call to an enquiry line may be arduous due to language and cultural barriers. Many of FLC's refugee clients access services via caseworkers or friends. Cultural barriers might include a deep distrust and/or fear of people in positions of authority – such as government bodies or judicial officers. As the Refugee Council of Australia notes:

² Alistair Ager and Alison Strang, 'Understanding Integration: A Conceptual Framework', *Journal of Refugee Studies* 2008 21(2), 170.

³ Graeme Hugo, *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants: Final Report to Department of Immigration and Citizenship* (Department of Immigration and Citizenship, May 2011), 252; Val Colic-Peisker and Farida Tilbury, *Refugees and Employment: The Effect of Visible Difference on Discrimination* (Murdoch University, 2007), 14; VicHealth, *Preventing Race-Based Discrimination and Supporting Cultural Diversity in the Workplace* (2012), 13; Farida Fozdar and Silvia Torezani, 'Discrimination and Well-being: Perceptions of Refugees in Western Australia', *International Migration Review* (2008) 42 (1) 30, 40; Independent Inquiry into Insecure Work, *Lives on Hold: Unlocking the Potential of Australia's Workforce* (ACTU, 2012), 23.

*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.*⁴

The process of booking an appointment or requesting an interpreter over the telephone may be equally daunting. The Women's Legal Services NSW report *A Long Way to Equal* found that

*members of smaller and emerging migrant communities ... either cannot access an appropriate language interpreter at all, or the small population of a particular migrant/refugee community means that the interpreter is likely to be known to the client, sparking fears about the maintenance of client confidentiality.*⁵

Some of our clients from emerging communities have experienced similar difficulties.

In our experience, and as confirmed by literature, the mode of service delivery is also an important factor. For example, telephone advice services are not always accessible for culturally and linguistically diverse 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...*⁶

Accordingly there is strong evidence to suggest that face-to-face assistance and advocacy is essential to provide a service to refugee clients and that without targeted assistance focused on relationships, collaboration and trust, legal services and judicial bodies are often inaccessible to refugee and newly arrived communities:

*Cultural conceptions of government, authority and the legal system can be strong deterrents to seeking legal assistance. Strong relationships with settlement services and other support agencies have been valuable in building relationships between FCLC's clinic and refugee communities, as has been the employment of workers from within refugee communities.*⁷

Services may also be geographically inaccessible – many of our clients face significant mobility factors which make travel into the CBD or the wider metropolitan region challenging. Clients may not have cultural resources required to apply complex information that is relayed verbally or in

⁴ Refugee Council of Australia, Legal and Financial Issues Fact Sheet, <http://www.refugeecouncil.org.au/f/smt-l&f.php>

⁵ 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, Women's Legal Services NSW, July 2007), 32.

⁶ Christine Coumarelos, Deborah Macout, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsie, *Legal Needs Report*, (Law and Justice Foundation Report, August 2012), 209-210.

⁷ Footscray Community Legal Service, *Making it Home: Refugee Housing in Melbourne's West*, (Tenancy report, 2012), 31.

writing to them by generalist services, even if an interpreter is used. For these reasons, targeted legal services are essential.

Further, 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:

*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.*⁸

In order to reach these communities; explore the systemic issues, and ensure pregnant women are properly informed of their substantive rights under the legislative and policy framework, education and assistance must be delivered via culturally sensitive services and through appropriate language translation services or services in relevant languages. Community Legal Education also needs to be ‘maintained in a sustained rather than ad hoc way’.⁹

Moreover, many migrant and refugee women have low levels of literacy in their own first language and this forms yet another

*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.*¹⁰

Ultimately, only when these barriers are overcome will pregnant women in refugee and newly arrived communities begin to access advice and assistance with discrimination.¹¹

1.4 Survey Data

The first stage of the Project has focused on consultation and research to learn about:

- working experiences and common problems at work for newly arrived and refugee communities;
- awareness of Australian employment laws and services to assist with employment issues;
- current services and referral pathways;
- the most appropriate ways to address any unmet legal needs; and
- the operation of relevant laws and legal processes.

This has included a literature review, consultation meetings with various stakeholders, and the distribution of surveys to community workers and members of newly arrived and refugee communities. We are very thankful to community members and the staff at community agencies

⁸ Coumarelos et al, above n 5, 208.

⁹ Women’s Legal Services NSW, above n 5, 32.

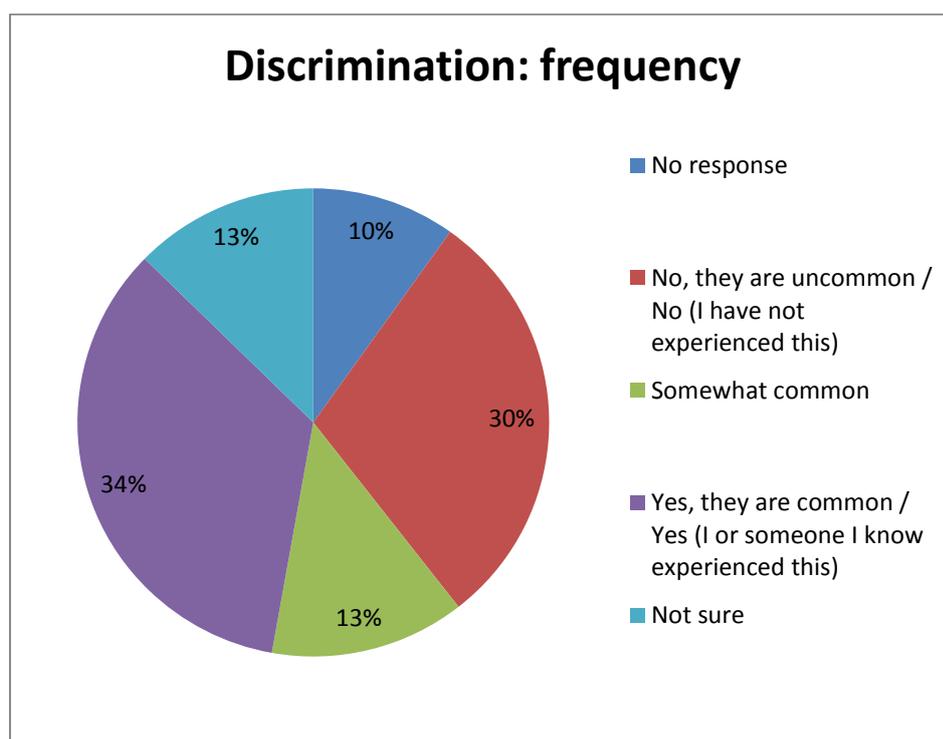
¹⁰ Ibid.

¹¹ See also Lisa Cavallaro, “I lived in fear because I knew nothing” *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (Report, InTouch Inc. Multicultural Centre Against Family Violence, 2010); Maryann Athaide, *A case for justice: Immigrant women’s experience with Australian migration law* (Report, Toora Women Inc, 2010) and Victoria Legal Aid, *Cultural diversity action plan 2011-2012* (Report, Victoria Legal Aid, 2012).

who assisted us to complete these surveys and met with us to discuss the Project. The findings from this first stage, coupled with our longstanding experience working with newly arrived and refugee communities, will inform the design and implementation of Stage Two of the Project (the pilot legal advice and referral clinic and targeted community education program).

Although the number and detail of surveys is not sufficient to draw widespread conclusions (we received a total of 105 surveys), and were largely sought to inform Stage Two of the Project, we have observed some trends worth noting in this submission.

In short, our preliminary findings indicate that discrimination at work is a common experience for many newly arrived communities. 71 participants were asked about the frequency of discrimination at work for newly arrived and refugee communities. 34% of respondents indicated that discrimination at work was common, or that the survey respondent, or someone they knew had experienced discrimination at work. 13% said that discrimination at work was somewhat common. 30% reported that discrimination was not common, or that the survey respondent had not experienced discrimination, and neither had anyone they knew. These results are set out in the table below:



15% of respondents reported that it was common or somewhat common to be treated differently because of pregnancy, or that they or someone they knew had experienced different treatment because of pregnancy. However, given the breadth and brevity of the survey, it was not possible to evaluate whether or not this different treatment constituted unlawful discrimination. 33% of respondents said that they were “not sure” about whether it was common or not.

Importantly, our broader preliminary findings indicate that newly arrived communities understand very little about employment laws, and many would like to learn more. The

following comments from survey participants capture the importance of education about discrimination in particular.

These comments were offered in response to the question "Any other comments / information or knowledge that would assist with this Project?":

"work discrimination should stop, education has to be spread to eliminate ignorance"

"to help teach refugee background how to increase their chance to get a job and resist discrimination "

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

2 Recommendations

FCLC recommends the following approaches to maximise engagement with people from refugee communities who are affected by discrimination around pregnancy and returning to work.

2.1 Community Education

Pregnant women from refugee communities may be especially vulnerable in their employment and seeking to return to work. In order to overcome the barriers discussed in the introduction, a range of community legal education approaches are necessary.

Broadly we recommend that materials in relation to employees' rights with regard to pregnancy and return to work are widely distributed in a range of relevant community languages. Such materials should come in a variety of formats to accommodate clients of varied literacy levels. Optimal points of distribution include General Practitioners and other community health clinics, Centrelink Offices, and neighbourhood houses or other centres where local communities gather. To ensure that materials are effective and utilised, they should be developed in close consultation with community workers and community leaders. Once developed, distribution should be accompanied by a training package for community workers and community leaders.

Additionally information about rights and the ways those rights may be exercised or protected should be delivered through Community Legal Education (**CLE**). FCLC has successfully conducted CLE with newly arrived communities in conjunction with settlement agencies. Fundamental to this approach is the acknowledgement that these programs are delivered face to face to ensure accessibility and build relationships.

2.1.1 Train the trainer

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.¹²

¹² Coumarelos et al, above n 5, 213.

Community workers have played an integral role in projects at the FCLC. Their efficacy is undeniable. For example, after hiring a community worker from Iran, the number of Persian speaking clients at the FCLC jumped from 18 over an 18 month period to 110 over the following 18 months. Similarly research indicates that the use of appropriately trained bilingual workers to conduct the CLE with their communities can be extremely successful.¹³ Community workers are particularly valuable for building trust between services and communities, for example by promoting culturally targeted and appropriate service delivery.

It is also important that workers at agencies working with newly arrived communities are provided with adequate information and training to identify legal issues and facilitate effective referrals for their clients.

2.1.2 Targeted materials

In *Pregnant and Productive - Report of the National Pregnancy and Work Inquiry*, the AHRC noted

*It is important, therefore, for employers to take all appropriate steps to ensure that the information provided to employees is accurate and tailored to the needs and demographics of the particular workforce. For example, workplaces with employees from linguistically and culturally diverse backgrounds or with a disability need to take particular care to ensure all employees are aware of their rights and responsibilities in relation to pregnancy at work.*¹⁴

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

2.1.3 Established education programs

Another point of delivery for CLE on pregnancy and return to work is via a range of education programs for newly arrived and refugee communities. These include the Adult Migrant English Program (AMEP); the Skills for Education and Employment (SEE) and other vocational training programs.¹⁵ There is a real need to integrate further training in employment law rights and responsibilities at various stages of these programs. We emphasise the need to target information to communities, and also to match education and materials to the relevant stage in the resettlement process.

¹³ Katie Fraser, *Prevention is better than cure: Can education prevent refugees' legal problems?* (Footscray Community Legal Centre, 2011), 19.

¹⁴ Australian Human Rights Commission, *Pregnant and Productive: It's a right not a privilege to work while pregnant* (Report, 1999), 148.

¹⁵ See e.g. *Fact Sheet 94 – English Courses for Eligible Migrants and Humanitarian Entrants in Australia*, at <<http://www.immi.gov.au/media/fact-sheets/94amep.htm>>.

2.1.4 Advice and referral service

Ultimately the central plank to effective engagement with newly arrived and refugee communities on this important area of workplace rights is relationship-building. For services to be accessible to these vulnerable communities delivery points for legal services should ideally be co-located with, or delivered in collaboration with, other services targeting the specific communities. Community workers must be engaged to build relationships, promoting the services and facilitating access to them.

FCLC's proposed Employment Law service will provide employment law advice, referral, casework and advocacy to clients from refugee or newly arrived communities who reside in the western suburbs of Melbourne. At this stage, we anticipate that the service will be based at FCLC in Footscray but will include outreach services in other localities determined to be most in need of the service. These services would complement existing FCLC outreach services in those areas. We are currently using this service delivery model to provide legal advice to newly arrived and refugee communities in other areas of law. The service will assist newly arrived clients with work related legal issues – including pregnant women facing workplace discrimination and will fill a critical gap in employment law assistance in Melbourne's western suburbs. Given the prevalence of workplace discrimination against pregnant women, we anticipate that this issue will be represented in our clients' matters.¹⁶

Thank you for considering our comments. Please contact Catherine Dow, Employment Project Solicitor at Footscray CLC, if you would like to discuss further.

¹⁶ See e.g. Australian Human Rights Commission, above n 14, 27.