

ECCV Submission to the Productivity Commission's Workplace Relations Framework Inquiry

March 2015

The Ethnic Communities' Council of Victoria (ECCV) appreciates the opportunity to submit comments to the Productivity Commission's Workplace Relations Framework Inquiry.

ECCV is the voice of multicultural Victoria, its peak advocacy body and has a membership of over 220 ethnic and multicultural community organisations. It maintains an active sub-committee looking into employment, education and training issues in a multicultural context in Victoria.

ECCV support the recommendations made by the Federation of Ethnic Communities of Australia (FECCA) to the Productivity Commission's Workplace Relations Framework Inquiry (The Inquiry) based on direct community consultations with multicultural communities in Australia. Significant barriers to employment for migrants, refugees and new and emerging communities are clearly identified by FECCA. Of prominence in their recommendations are risks to disadvantaged CALD workers earning at, or below, the minimum wage for any changes to the minimum wage or unfair dismissal laws. ECCV's community consultations affirm these barriers exist in Victoria and have produced the discussion papers: *Work Solutions: Improving Cultural Diversity and Inclusion in the Workplace* (ECCV, 2014) and *Qualified but not recognized* (ECCV, 2014, Unpublished Document).

ECCV further contributes to The Inquiry by focusing its comments on *Issues Paper 4 - Employee Protections & 5 - Other Issues* (Australian Government, *Workplace Relations Framework: Employee Protections, Issues Papers 1-5*, 2015).

ECCV's Comments on the Productivity Commission's Workplace Relations Framework Inquiry

ECCV is aware that a large number of small and medium sized businesses in Australia are run by people from culturally and linguistically diverse backgrounds. Larger employers also benefit from cultural diversity which encourages diverse thinking, creativity and innovation. ECCV would like to focus on the way that the 'compliance burden for employers' is discussed in this Inquiry in relation to maintaining fair and equitable pay and conditions for employees, including maintaining relevant safety nets, and complying with equal opportunity legislation.

Cultural Diversity and Innovation

ECCV regrets that The Commission's 5 part issues paper does not mention 'diversity' in its terms of reference while acknowledging its goal to be open to new ideas and approaches that serve the country's long term needs. Yet it recognizes that responding appropriately to changing economic and legislative conditions requires agility and innovation. Diversity provides the Workplace Relations Framework with a tool to respond to changing economic and social conditions. ECCV agrees with Deloitte's report *Global Human Capital Trends 2014: Engaging the 21st-century workforce* (Deloitte Consulting and Bersin, Deloitte, 2014) that if diversity is seen in Australia as less of a human resource program and more as a business imperative, then it would appear more often in reference to workplace relations. The argument for the 'burden of compliance' needs to be balanced by an appreciation of the benefits of current regulatory practice addressing employee protections that encourage cultural diversity and inclusion.

In their report *Diversity Matters* (Hunt V, Layton D & S Prince, McKinsey & Company, 2014) McKinsey & Company offer Australia international examples where diversity is seen as a business imperative to profitability. Hunt, Layton & Prince (2014, p.5) examine the relationship between "...the level of diversity (defined as a greater share of women and a more mixed ethnic/racial composition in the leadership of large companies) and company financial performance...". Although showing correlation and not causality, it supports a clear link between diversity, innovation and market growth in a global and interconnected world. The report promotes diversity as an investment to raise performance levels of companies in a range of measureable areas worthy of consideration.

ECCV's following comments on aspects of 'diversity as cost' versus 'diversity as opportunity' address gaps in The Inquiry's discussion papers 4 and 5.

Diversity as Cost Versus Diversity as Opportunity

Recent research into the cost of Australian dismissal laws by Benoit Freyens and Paul Oslington (2013) does not support the burden of compliance argument inferred by Discussion Paper 4, (Australian Government, 2015, p.1) that "...unfair dismissal provisions have imposed modest, but not trivial, costs on employment and businesses...". The researchers ask instead, "If the expected costs to employers of unfair dismissal actions are indeed small, then why is there so much agitation about unfair dismissal regulation?" (Freyens & Oslington P, 2013, p.303). The researchers also note that Australia's three regime changes in workplace relations have not maintained identical datasets, making accurate costings of compliance systems very difficult.

Our key recommendations are:

Recommendation 1: ECCV recommends that The Commission expand its terms of reference for The Inquiry by including ‘cultural diversity’ as an influential element in Australia’s workplace relations framework and to note the following:

- a) Present clearer key data to assist multicultural communities, employers and employees to be included in the discussion;
- b) Recognize that assumed data and costs of unfair dismissal for employers remain imprecise;
- c) Recognize the role of cultural diversity as a business strategy to encourage innovation, productivity; and
- d) Recognize that a culturally diverse workforce will help industry connect with a more interdependent, global economy.

Cultural Diversity as Opportunity

ECCV believes Australia is leading globally in reflecting cultural diversity in the workplace. Furthermore, ECCV highlights that diversity in business drives creativity and innovation. To answer the Commission’s question: “*Do Australia’s unfair dismissal processes achieve their purpose?*” ECCV believes that they do. Deloitte (2014, p.88) reports that preparedness for integrating diversity and inclusion as a business imperative is illustrated using its Human Capital Capability Gap Index, a research-based index that shows Human Resource’s (HR) relative capability gap in addressing a given talent or HR-related problem.

The report explains that, “[*The Index*] is computed by taking an organization’s self-rated “readiness” and subtracting its “urgency,” normalized to a 0–100 scale. For example, if an organization feels that an issue is 100 percent urgent and it also rates itself 100 percent capable and ready to address the issue, the capability gap would be zero. These gaps, which are almost always negative, can be compared against each other.” (Deloitte, 2014, P88). Australia is one of 4 countries performing above the half-way point on this Index, where the challenge of diversity is urgent but companies feel confident in meeting it.

It can be suggested that Australia’s unfair dismissal processes contribute to this confidence. For instance, according to Freyens and Oslington, the work of the Fair Work Commission (FWC) and EEO legislation is having the desired effect without placing undue financial pressure on business. Deloitte’s research appreciates the risks associated with homogeneity in a competitive global marketplace, suggesting that diversity is less of a “program” and more of a business strategy with

measurable returns on investment. ECCV suggests that compliance costs are also investments that bring returns to employees, multicultural communities, and the broader economy.

Beyond Unfair Dismissal

ECCV has gathered community feedback about complaints of unfair dismissal from Victorians from culturally diverse backgrounds. They indicate unsatisfactory outcomes through workplace and human rights complaints. The terms of reference of The Inquiry's discussion paper is focused on elusively calculating unfair dismissal costs to employers in terms of salaries and legal disputes when some of the costs might in fact be incurred under common law claims for wrongful dismissal. Freyens and Oslington attribute a lack of distinction between these costs to proponents of the 'burden of compliance' argument. The inclusion of cultural diversity as a productivity driver opens the discussion on workplace relations to research into productivity drivers currently not included in the current Inquiry. ECCV sees a diverse workforce as enabling business to better relate to the broader multicultural population.

Benefits of Multiculturalism

In the absence of data, ECCV refers to industry reports by Deloitte (2014) and Hunt et al (2014) to indicate the productivity effects of dismissal regulation. These identify unique correlations between cultural diversity (and diverse thinking) and financial success measured outside of the 'burden of compliance' mindset. Both reports also focus on outcomes relevant to productive workplace relations including: a) accessing top talent; b) driving performance and innovation; c) retaining key employees and d) understanding customers. The international business community recognizes that thinking of cultural diversity as just a program misses an opportunity to frame it within the productivity debate.

"A diverse workforce is a company's lifeblood, and diverse perspectives and approaches are the only means of solving complex and challenging business issues. Deriving the value of diversity means uncovering all talent, and that means creating a workplace characterized by inclusion. Our research shows that most organizations are not there yet, ...and market leaders are starting to move from compliance to inclusion as a business strategy." (Hunt, et al (2014), p.P92).

The Rights of Migrant Workers

ECCV highlights the disadvantages experienced by vulnerable workers from culturally diverse backgrounds, such as recent migrants, refugees and international students. It believes that the Fair Work Ombudsman (FWO) is performing strongly in monitoring employers that contravene employees' rights. Its role in highlighting 'sham contracting' arrangements with international student cleaners, including their underpayment and unsafe work conditions, contributes to an improvement of Australia's international reputation.

Audits by the FWO (FWO, Media Release, 12 March 2015) found that some subcontracting companies recruit international student cleaners and register them using an Australian Business

Number (ABN) instead of an employee's Tax File Number (TFN). This makes them appear as 'independent contractors' not directly employed by the cleaning companies. It is of concern to ECCV that in the 5th discussion paper – *Other Issues* – the Commission blames most sham contracting incidents on overly technical compliance burdens.

The Commission's discussion paper explains,

"The very complexity of a system that leads to high compliance costs may also lead to non-compliance. People make mistakes in complex systems. It is notable that most instances of sham contracting are not deliberate, a symptom of the complexity of this single issue alone." (Australian Government, *Discussion Paper 5*, p.4).

A sham contracting arrangement occurs where an employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done for the purposes of avoiding responsibility for employee entitlements. The FWO's rulings are based on the *Fair Work Act 2009* and not random assessment, and therefore should be supported instead of undermined. ECCV acknowledges that compliance is the start and not the only tool. However, more recognition is needed that investing in workplace protections, including unfair dismissal and discrimination, is a necessary and strategic cost – and not just a 'burden' on business.

Under-Representation of Diversity

Despite a new survey finding more than 90 per cent of Australian employers believe that racist attitudes still exist in the workplace, a recent survey conducted by Diversity Council Australia (DCA) and the Scanlon Foundation found that cultural diversity is considered a lower priority issue among Australian businesses. Former DCA Cultural Diversity Director Katriina Tahka acknowledged that, *"It's also good to see there is strong recognition that racist attitudes are a problem in Australia – because acknowledging a problem is the first step to effectively addressing it."* (Scanlon Foundation Media Release, June, 2014).

Limited Opportunities

ECCV highlights the limited opportunities for people from culturally diverse backgrounds in the workplace and the importance of industry leadership at the top. While Hunt et al (2014) do not prove causal relationships of diversity to profit, they do show that, *"...companies that commit to diverse leadership are more successful."* (Ibid p.3)" Another DCA research project *Cracking the Cultural Ceiling: Future Proofing Your Business in the Asian Century (DCA 2014)* uncovered valuable information about 'the bamboo ceiling' and why so few Asian leaders are reaching the top.

DCA reported that,

"People from Asian backgrounds are well represented in entry level and mid-level jobs in Australian business, yet they are significantly under-represented in leadership roles, representing an enormous waste of talent. While 9.3% of the Australian labour force is Asian born, only 4.9% make it to senior executive level. In ASX 200 companies, only 1.9%

of executives have Asian cultural origins, compared to 9.6% of the Australian community.”.

Previous ECCV Recommendations Relevant to Issues Paper 4 - Workplace Protections

In a previous submission to The Department of Industry (*ECCV Submission to the VET Reform Taskforce on Review of Training Packages and Accredited Courses – Discussion Paper*, 18 February, 2015), ECCV made three key recommendations to highlight barriers faced by migrants, refugees and those with overseas qualifications in Victoria accessing Vocational Education and Training (VET) to recognize their skills, qualifications and experience to Australian employers.

Outside of the scope of the present inquiry, those recommendations are summarised below for their impact on workplace protections. They draw attention to systemic barriers in VET, industry input into training packages, recognition of prior learning (RPL) and marginalised communities’ capacity to meet National Employment Standards. These barriers are inconsistent with wider economic and social needs such as meeting changing labour demands in globalised labour market.

ECCV made the following recommendations in its VET submission.

Our supplementary recommendations are:

Recommendation 1 ECCV recommends that the Government allocate resources to research and review the current state of the recognition of overseas skills and qualifications and to map the relevant organisations, pathways and courses across jurisdictions to ensure they remain compliant with relevant national and state equal employment opportunity (EEO) legislation.

Recommendation 2 ECCV recommends that overseas qualifications units in each jurisdiction are resourced (or established) to provide better face-to-face community level advice, assistance and networking opportunities in line with relevant national and state equal employment opportunity (EEO) legislation.

Recommendation 3 ECCV recommends that adequate resources be provided, in the form of seeding funds or grants, for professional associations to conduct reviews of their accreditation processes in consultation with multicultural communities to support students and job seekers with overseas qualifications.

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