Harnessing diversity: addressing racial and religious discrimination in employment

A collaborative project between the Victorian Multicultural Commission and the Victorian Equal Opportunity & Human Rights Commission
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Authorised by the Victorian Equal Opportunity & Human Rights Commission

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June 2008

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Foreword

As one of the fastest growing, most diverse states in Australia, Victoria faces major challenges posed by skills shortages, global competition for labour and an ageing population. Victoria needs to harness the talents and capabilities of all its working age population if it is to keep prospering into the future.

One of the greatest costs arising from racial and religious discrimination in employment is a loss of productivity, skills and innovation due to the underutilisation of the talents and skills that culturally and linguistically diverse communities bring to Victoria.

The Victorian Government has a clear commitment to a fairer society that embraces diversity and supports growth and productivity, with a strong focus on securing and ensuring human rights for all Victorians. Racial and religious discrimination in employment runs contrary to these values.

The research and consultations conducted for this report indicate that discrimination is a significant issue for many community members from culturally and linguistically diverse backgrounds and impacts on their full participation and contribution to the Victorian community. It also has a significant personal impact. The research importantly highlights the systemic nature of employment discrimination resulting in entrenched disadvantage and exclusion. Avoiding the risks and costs identified with ongoing racial and religious discrimination in employment is critical for the Victorian economy and community cohesion.

The research has been collaborative project drawing on the strengths of the Victorian Multicultural Commission and the Victorian Equal Opportunity and Human Rights Commission. Many community members, based on their trust of the Victorian Multicultural Commission, spent considerable time providing input into the research both in Melbourne and in regional Victoria.

This research highlights a number of short-term and long-term interventions to ensure Victoria continues be a welcoming and inclusive state for culturally and linguistically diverse communities. The two Commissions look forward to working together to progress and develop the recommendations in the report.

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Executive summary

The Victorian Government is committed to a society that embraces diversity, supports growth and productivity and secures and ensures human rights for all Victorians. Living in a society that includes people from a wide range of culturally and linguistically diverse (CALD) backgrounds brings individual, social and economic benefits. Conversely, discrimination against people from CALD communities has the potential to cost the community and the economy greatly, as well as having a significant negative impact on the individuals concerned.

Both the Commonwealth and State Governments have put in place a range of legislative and policy approaches to ensure Australians and Victorians maximise the opportunities to reap the benefits of a diverse society. Key among these is legislation to eliminate, as far as possible, discrimination against people from CALD communities in a range of areas, including in the area of employment.

In 1975, Australia ratified the International Convention on the Elimination of all Forms of Racial Discrimination. In the same year, the Commonwealth passed the Racial Discrimination Act 1975, which makes it unlawful for a person to be directly or indirectly discriminated against in employment on racial grounds. The two main pieces of Victorian legislation that address racial and religious discrimination are the Equal Opportunity Act 1995 and the Racial and Religious Tolerance Act 2001. As well, in 2004 the Multicultural Victoria Act established a number of important principles of multiculturalism. This Act did not establish new rights, but further strengthened the message that Victoria is committed to supporting a multicultural society. The recently enacted Charter of Human Rights and Responsibilities Act 2006 (Vic) recognises that human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom; that human rights belong to all people without discrimination; and that the diversity of the people of Victoria enhances our community.

The messages this legislation sends about Victoria benefiting from being an inclusive and diverse society are further reinforced by a number of Government policy statements and strategies, including Growing Victoria Together: The Victorian Government’s Vision for 2010 and Beyond, the A Fairer Victoria social policy action plans, the Attorney-General’s Justice Statement, New Directions for the Victorian Justice System 2004–2014, and the Global Skills for Victoria strategy.
The Victorian Equal Opportunity and Human Rights Commission (the Commission) is an independent statutory body that has responsibilities in relation to equal opportunity and human rights for all Victorians through the administration of the Equal Opportunity Act, the Victorian Racial and Religious Tolerance Act and the Charter of Human Rights and Responsibilities Act. The Commission helps people resolve complaints of discrimination, sexual harassment and racial or religious vilification by offering a confidential, free and impartial complaint resolution service with the aim of achieving a mutual agreement. The Commission also provides education about equality of opportunity, racial and religious tolerance and human rights; undertakes projects and activities aimed at eliminating discrimination and racial and religious intolerance; conducts research into these areas; and provides legal and policy advice.

The Victorian Multicultural Commission is an independent statutory authority that provides independent advice to the Victorian Government to inform the development of legislative and policy frameworks as well as the delivery of services to our culturally, linguistically and religiously diverse society. The Victorian Multicultural Commission is the main link between Victoria’s CALD communities and the Government, conducting more than 50 community consultations each year.

Despite this legislative and policy framework, extensive regional and metropolitan consultations with CALD communities conducted by the Commission in 2006 found that discrimination in employment is still a significant issue for these communities. As a consequence of these findings, the Commission, in conjunction with the Victorian Multicultural Commission, initiated research into the issue in 2007. It is this research that is the subject of this report.

As well as reviewing the literature on racial and religious discrimination in the workplace in Australia and internationally, consultations were held with CALD communities in four key sites in Victoria – Shepparton, Dandenong, Footscray and Broadmeadows. Individuals and organisations were also invited to provide written submissions to the consultation. The literature and the community consultations highlighted the systemic nature of discrimination and the high personal impact on CALD community members.

There are clear benefits to reducing discrimination and considerable costs if this is not achieved. Australia, like many developed countries, has an ageing population and is experiencing considerable skills shortages in many areas of the labour market. There is now a unique opportunity to highlight both the impact on individuals and the social and economic costs to Victoria resulting from discrimination in employment.
Eradicating discrimination in employment will reduce unemployment and underemployment of migrants and allow for the greater utilisation of migrants’ skills, leading to increased productivity. A diverse workforce has also been shown to increase innovation. Participation in the workforce also has considerable impact on reducing the social isolation of migrants, which in turn has an impact on their health and wellbeing. There are therefore clear economic and human rights reasons to address this issue.

Although anti-discrimination legislation has an important symbolic and educational role and provides formal mechanisms to address discrimination in employment, the literature shows that there are limitations to its effectiveness. Consultation participants suggested a number of improvements that could occur to the complaints process and several best practice legislative and policy initiatives were identified in the literature.

There is some evidence that employment assistance programs can be helpful, but again there are a number of areas where improvements can be made. There is also a need for strategies to be implemented that will increase diversity in the public sector, which has a critical role to play in implementing the Government’s legislative and policy framework. A number of organisational practices to address discrimination were also reviewed and several best and promising practices the private sector have been identified.

There are a number of key findings and recommendations outlined below that emerged from the community consultations and the literature review.
**Key findings**

- **There are individual, social and economic costs and risks associated with racial and religious discrimination in employment.**
  
  These include:
  
  - unemployment and underemployment of migrants with skills
  - potential productivity losses
  - homogeneity in the workplace, potentially stifling innovation
  - unnecessary skill shortages
  - social isolation and exclusion
  - an increased health burden.

- **There are benefits in preventing and addressing racial and religious discrimination in employment and adopting diversity management approaches**
  
  These include:
  
  - greater utilisation of migrant skills
  - greater employee commitment
  - greater market share
  - increases in innovation
  - greater customer satisfaction
  - retention of skilled migrants in Victoria
  - attraction of skilled migrants to Victoria.

- **There is evidence of racial and religious discrimination in employment**
  
  This includes evidence of:
  
  - discrimination in recruitment
  - underemployment and lack of recognition of qualifications
  - discrimination and disadvantage in accessing and utilising job search agencies
  - over-representation of migrants in low skilled, low paid employment
  - under-representation of migrants in the public sector
  - bias against migrants in promotion
• intimidation in the workplace
• religious discrimination
• additional discrimination related to gender
• discrimination in small and medium enterprises (SMEs)
• racism in the media and stereotyping of communities
• difficulties accessing the complaints process.

Recommendations
The recommendations from this report apply to four main areas for change.

➢ Changes to Commission functions and processes
It is critical that the Commission’s complaints process is accessible, flexible, responsive and just. The Equal Opportunity Act needs to function as a tool that deters and responds to acts of racial and religious discrimination. In order to provide a more direct and effective means of addressing the economic and social exclusion of people from CALD backgrounds from the workforce, the Commission makes the following two recommendations. These recommendations are discussed in more detail on page 63.

Recommendation 1
Changes be made to the Equal Opportunity Act 1995 (Vic) as detailed in the Commission’s submission to the Review of the Act¹ to allow for:

• imposition of a positive duty on private and public sector organisations
• incorporation into government procurement and granting policies of requirements for contracting and grant receiving entities to have a framework to work towards substantive equality
• own motion inquiries to identify breaches or departures from positive duty
• the Commission to have the ability to issue compliance notices, require action plans and seek orders through the Victorian Civil and Administrative Tribunal (VCAT) for compliance

- simplification of the complaints system with flexibility that allows early access to both alternative dispute resolution and to a hearing on the merits at VCAT.

**Recommendation 2**

The Commission, in conjunction with the Department of Justice, develop strategies to improve access to information about equal opportunity legislation for newly arrived community groups and to further the aims of the Attorney-General’s Justice Statement – *New Directions for the Victorian Justice System 2004–2014* – to ensure individuals have access to justice.

The Justice for Refugees initiative funded in the recent State budget will contribute significantly to providing a responsive justice system and information to new arrivals.

- **Changes to Victorian public service processes and policies**

  The Victorian public service is the key administrative vehicle through which State legislation is expressed and as such has an obligation to makes changes that reduce and eliminate racial and religious discrimination in employment. The Commission makes three recommendations for improvements in this area (discussed in more detail on page 64).

**Recommendation 3**

The Victorian public sector to collect ongoing demographic data on its employees, including country of birth, ancestry, languages spoken at home and religion.

This data be collected and analysed biannually against employment data, including recruitment, retention, promotion and separations data, as part of reporting requirements under the *Multicultural Victoria Act 2004* (Vic).

The information reported be used to identify major improvements and initiatives that promote multiculturalism or that meet the needs of culturally and linguistically diverse communities.

Best practice employment practices by the Victorian public service be included as part of these reporting requirements to identify major improvements and initiatives that promote multiculturalism or that meet the needs of culturally and linguistically diverse communities.
Recommendation 4

The Victorian public sector, in conjunction with the Victorian Multicultural Commission, the Victorian Equal Opportunity and Human Rights Commission and the State Services Authority, develop promotional strategies and equity initiatives for people from culturally and linguistically diverse backgrounds with the purpose of encouraging recruitment and providing exemplars for the private and community sectors.

Recommendation 5

The State Service Authority establish a program similar to the Youth Employment Scheme specifically targeted at relevant disadvantaged members of culturally and linguistically diverse communities, irrespective of age.

Encouragement of business to value and support diversity and equity

Although there has been some good work in this area, there is still considerable potential for business to improve policies and planning to encourage diversity and to ensure equitable practices. This is particularly so in small and medium enterprises. The two recommendations in this area are discussed in more detail on page 66.

Recommendation 6

The Commission, the Department of Innovation, Industry and Regional Development, the Victorian Multicultural Commission, the Victorian Employers Chamber of Commerce and Industry and other employer bodies allocate resources and work together to:

- implement a social marketing campaign to encourage employers to adopt culturally inclusive workplace policies
- promote best practice in the area (potentially building up a library of case studies based on the Victorian Multicultural Commission’s Business Corporate Awards)
- establish a voluntary benchmarking program for organisations to assess their diversity practices.
Recommendation 7

The Commission, with the support of the Department of Innovation, Industry and Regional Development and employer groups, undertake:

- a discrete research project on the nature and prevalence of discrimination in small and medium businesses and on the knowledge among business owners of equal opportunity principles
- a consultation on effective, appropriate and reasonable measures to address any gaps in knowledge and effective implementation of equal opportunity principles within these businesses.

Improved support for migrants seeking employment

Both the literature review and community consultations have highlighted the importance of support for migrants when seeking work. They have also illustrated that many migrants are unaware of services and educational options available, as well as the processes for getting their qualifications and skills recognised. This is a particular issue for migrants holding trade skills, where the significant experience held by the individual is not taken into account because of a lack of formal qualifications. The following four recommendations (discussed in more detail on pages 67–69) address this issue.

Recommendation 8

The Victorian Government’s Skills Stores further promote and provide personalised support for people from culturally and linguistically diverse backgrounds to upgrade their skills and to gain formal recognition of their skills.

This support to include specialist job search assistance about qualification recognition processes, education (including English as a Second Language classes), training opportunities, and scholarships and higher education loan programs (such as FEE-HELP) for bridging courses.

Recommendation 9

Scholarships for bridging courses be made available by relevant government departments in areas of skill shortages based on the Victorian nursing model.
Recommendation 10

The Victorian Government contribute to the Commonwealth review of the Adult Migrant English Program pointing out the broad range of barriers and costs associated with searching for employment and undertaking English as a Second Language classes and bridging courses and the benefits of the Program being accessible and flexible.

Further work also be undertaken by the Department of Industry, Innovation and Regional Development to actively engage with the Department of Education Employment and Workplace Relations on professional bridging programs and qualification tests, their economic and financial costs, success rates and migrant experiences to examine the financial viability of these programs for various migrants groups and to explore, where relevant, means to ensure equity in access to various programs.

Recommendation 11

The Commission:

- provide regular equal opportunity and human rights training for service providers in strategically located Job Network members
- promote its Recruitment Industry Best Practice Guidelines to Job Network members and the recruitment sector.
## Acronyms and abbreviations

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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BSL</td>
<td>Brotherhood of St Laurence</td>
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<tr>
<td>CALD</td>
<td>Culturally and Linguistically Diverse</td>
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<tr>
<td>CBA</td>
<td>Canadian Bar Association</td>
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<tr>
<td>CEDI</td>
<td>Community Enterprise Development Initiative</td>
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<tr>
<td>CRE</td>
<td>Commission for Racial Equality (United Kingdom)</td>
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<tr>
<td>DEWR</td>
<td>Department of Employment and Workplace Relations</td>
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<tr>
<td>DEEWR</td>
<td>Department of Education, Employment and Workplace Relations</td>
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<tr>
<td>DIIRD</td>
<td>Department of Industry, Innovation and Regional Development</td>
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<tr>
<td>DOJ</td>
<td>Department of Justice</td>
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<tr>
<td>DPCD</td>
<td>Department of Planning and Community Development</td>
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<td>EOCNI</td>
<td>Equal Opportunity Commission of Northern Ireland</td>
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<tr>
<td>ESB</td>
<td>English Speaking Backgrounds</td>
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<tr>
<td>ESL</td>
<td>English as a Second Language</td>
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<td>GSPV</td>
<td>Global Skills for Provincial Victoria</td>
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<tr>
<td>GTS</td>
<td>Global Tele Sales</td>
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<tr>
<td>HKHRC</td>
<td>Hong Kong Human Rights Commission</td>
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<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunity Commission (Federal)</td>
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<tr>
<td>NESB</td>
<td>Non-English Speaking Background</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>RfO</td>
<td>Race for Opportunity</td>
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<tr>
<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<td>The Commission</td>
<td>Victorian Equal Opportunity and Human Rights Commission</td>
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<td>VCAT</td>
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<td>WPP</td>
<td>Workforce Participation Partnerships</td>
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<td>YES</td>
<td>Youth Employment Scheme</td>
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1 Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) undertook extensive consultations in regional and metropolitan Victoria in 2006. It was clear through these consultations that discrimination in employment is a key issue for culturally and linguistically diverse (CALD) communities in Victoria. As a consequence, in 2007 the Commission initiated a project in conjunction with the Victorian Multicultural Commission to explore the extent of this discrimination and to make recommendations for proactive measures to support positive employment outcomes for people of CALD backgrounds. The findings and recommendations of that project are outlined in this report.

After reviewing the current legislative and policy approaches to anti-discrimination in Victoria, the report examines the costs of not addressing discrimination and the benefits of tackling this issue. Evidence is provided on the nature and breadth of the issue in Australia and promising approaches adopted here and overseas to reduce discrimination in employment are discussed. Finally, recommendations are made on ways to strengthen the legislation and other anti-discrimination work in the State and to better address and engage with this key social issue in Victoria.

1.1 Methodology

In February 2007 consultations with CALD communities were undertaken in four key sites in Victoria – Shepparton, Dandenong, Footscray and Broadmeadows. The discussions focused on the experiences of discrimination in employment of CALD community members. Over 200 people attended these sessions, including many refugees and migrants from new and emerging communities, women and young people. Each consultation began with an information session about anti-discrimination legislation in Victoria. Individuals and organisations were also invited to contribute written submissions to the consultation process.

Following the community consultations, further research was undertaken to examine the nature and prevalence of discrimination in employment in Victoria and Australia and to present policy options to tackle this critical issue.

A review of relevant legislation and responses to employment in Australia, the United Kingdom and Canada was undertaken. A range of evidence was gathered and sifted in light of the prevailing legislative framework in those countries, resulting in the policy options proposed in this report.
1.2 Definitions

Racism can be broadly defined as the unequal distribution of power based on race, religion, colour, descent, national or ethnic origin resulting from attitudes, beliefs, behaviours, norms and practices within societies (Paradies 2006).

Racism can occur at three conceptual levels (which overlap in practice):

- internalised racism: the incorporation of ideologies within an individual’s world view which results in the unequal distribution of power across ethnoraces
- interpersonal racism: where racist interactions occur between individuals that serve to increase the power differentials between ethnoraces
- systemic/institutional racism: when the production, control and access to material, informational and symbolic resources within society serve to increase power differentials between ethnoraces (Paradies 2006; Paradies & Williams in press).

Racism can be expressed through stereotypes (racist beliefs), prejudice (racist emotions/affect) or discrimination (racist behaviours and practices). Internalised racism can involve any of these three expressions. However, while interpersonal and systemic racism are (in some cases) based on stereotypes and prejudice, their expression is only obvious through discrimination. As such, this report focuses primarily on racial discrimination and the experience of racism in employment rather than racial stereotypes and prejudices.

There are a number of definitions of discrimination. One of the most succinct discussions of the nature of discrimination is in a 2007 report from the Victorian Health Promotion Foundation (VicHealth) entitled More than Tolerance: Addressing Discrimination Affecting Migrant and Refugee Communities. That report provides the following definition:

Discrimination is the process by which a member, or members, of a socially defined group is, or are, treated differently (especially unfairly) because of his/her/their membership of that group (Collins Dictionary of Sociology in Krieger 1999). Discrimination is generally understood not as random acts of unfair treatment but rather a broader pattern, which is justified by beliefs and expressed in interactions among and between individuals and institutions intended to maintain privileges for members of dominant groups at the cost of deprivation for others (Krieger 1999) (cited in VicHealth 2007).
This definition of discrimination is broad, and is distinguished from a legal definition which includes only those discriminatory acts that are against the law. Discrimination can occur on the basis of a range of characteristics, including sexual preference, ethnicity, culture, gender, religion, disability, age, relationship status, social class and religion as well as on the basis of perceived racial distinctions.

Discrimination can be direct (overt) or indirect (covert) in nature. Direct discrimination is the unfair or unequal treatment of a person or a group (e.g. someone not being hired because of their cultural background). This type of discrimination is typically deliberate. Indirect discrimination appears to be equitable on the surface but in practice disadvantages people from particular groups. For example, a rule that says all students must not wear anything on their heads could result in discrimination against students whose religion requires the wearing of headwear. Indirect racial discrimination can occur even when there is no intention to discriminate (Department of Education and Training 2007).

Institutional discrimination, sometimes called organisational or systemic discrimination, refers to discriminatory practices carried out by state and non-state institutions (Krieger 1999, cited in VicHealth 2007). It occurs when policies, procedures or laws disadvantage a specific group. Institutional discrimination involves the application of beliefs, values, presumptions, structures and processes by the institutions of society (be they economic, political, social or cultural) in ways that result in differential and unfair outcomes for one or more social groups. It can also involve a failure to acknowledge historical discrimination against a particular group that has resulted in that group today occupying an inferior or unequal position in society (UNISA 2004). Institutions validate these rules and understandings that are often seen as being universal but which actually reflect and protect dominant social interests (Gopalkrishnan 2004). In the past, institutional discrimination has been quite overt, as in the case of Apartheid in South Africa or the White Australia Policy, but today it is more likely to be a product (whether deliberate or unintentional) of the ethnocentric viewpoints of policy and decision makers (VicHealth 2007, pp. 6-7).

1.3 The legislative and policy context

1.3.1 International obligations

In 1975 Australia ratified the International Convention on the Elimination of all Forms of Racial Discrimination and in doing so agreed to a number of standards to address racial discrimination.
1.3.2 Commonwealth legislation
Australia recognises, legislates and attempts to mitigate both direct and indirect discrimination.

Under the *Racial Discrimination Act 1975* (Cwlth), racial discrimination is defined as:

any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

1.3.3 Victorian legislation
In Victoria there are two key pieces of legislation that address racial and religious discrimination. The primary piece of legislation is the *Equal Opportunity Act 1995* (Vic), which specifically notes that:

An employer must not discriminate against a person—
(a) in determining who should be offered employment;
(b) in the terms on which employment is offered to the person;
(c) by refusing or deliberately omitting to offer employment to the person;
(d) by denying the person access to a guidance program, an apprenticeship training program or other occupational training or retraining program (s.13).

Section 15 of the Equal Opportunity Act also prohibits discrimination against contract workers. Further, section 14 notes:

An employer must not discriminate against an employee—
(a) by denying or limiting access by the employee to opportunities for promotion, transfer or training or to any other benefits connected with the employment;
(b) by dismissing the employee or otherwise terminating his or her employment;
(c) by denying the employee access to a guidance program, an apprenticeship training program or other occupational training or retraining program;
(d) by subjecting the employee to any other detriment.
The Racial and Religious Tolerance Act 2001 (Vic) was enacted:

(a) to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons on the ground of race or religious belief or activity; and

(b) to provide a means of redress for the victims of racial or religious vilification (s.4).

The Racial and Religious Tolerance Act, like the Equal Opportunity Act, notes that there is a vicarious liability of employers and principals. If:

a person in the course of employment or while acting as an agent contravenes a provision of this Part, both the person and the employer or principal must be taken to have contravened the provision, and a complaint about the contravention may be lodged against either or both of them (s.17).

Both the Equal Opportunity Act and Racial and Religious Tolerance Act prohibit authorising, assisting and undertaking racial and religious vilification.

On 1 January 2008 the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) came into effect in Victoria. The Charter is an agreed set of human rights, freedoms and responsibilities protected by law. Government departments and public bodies must observe these rights when they create laws, set policies and provide services. This means that Government, public servants, local councils, Victoria Police and others are required to act in a way that is consistent with the human rights protected under the Charter.

All new laws in Victoria must be checked against the Charter. A Statement of Compatibility has to be developed to tell Parliament whether the law meets the human rights standards set out in the Charter. If a law does not meet these standards the Government is expected to explain how and why this is the case. In exceptional circumstances, Parliament may strike down a law that does not uphold human rights.

The rights protected by the Charter include:

- recognition and equality before the law
- protection from torture and cruel, inhuman or degrading treatment
- freedom from forced work
- protection of privacy and reputation
- freedom of thought, conscience, religion and belief
- taking part in public life
- cultural rights
- liberty and security.

A fourth Act that reinforces the Victorian Government’s commitment to supporting a diverse community is the *Multicultural Victoria Act 2004* (Vic). This Act came into operation on 1 January 2005 and:

- establishes a number of important principles of multiculturalism
- strengthens the Victorian Multicultural Commission
- establishes reporting requirements for government departments in relation to multicultural affairs.

Importantly, the Multicultural Victoria Act:

- does not create new rights
- does not impose obligations on any Victorians to comply with other cultural norms or modify their own beliefs and customs
- does not create new offences.

The Multicultural Victoria Act requires Government departments to report annually to Parliament and the Minister for Multicultural Affairs (currently the Premier) on their achievements in multicultural affairs. In particular, information needs to be provided on:

- the use of language services by departments during the financial year
- communications in languages other than English made by departments during the financial year
- any major improvements made or initiatives developed by a department during the financial year that promote multiculturalism and meet the identified needs of Victoria’s CALD communities
- the extent to which people from different CALD backgrounds were represented during the financial year on boards and committees established by departments or for which departments are administratively responsible.
While the ratification of international conventions and the subsequent creation of legislation has been critical in adopting an anti-discrimination stance in the State and nationally, there are a number of well-documented limitations to dependency on legislation as the primary tool for addressing discrimination. These are discussed further in section 5.1.1.

### 1.3.4 Victorian Government policy

At the 2006 Census Victoria had the second largest proportion of migrants coming from a non-English speaking background (NESB). These migrants to Victoria have come from over 200 countries, speak over 180 languages and dialects and follow over 110 religious faiths.

There are a number of strategies, policies and approaches undertaken by the Victorian Government to support a socially inclusive, productive and just multicultural society.

*Growing Victoria Together: The Victorian Government’s Vision for 2010 and Beyond* outlines the Government’s broad vision for Victoria for the next 10 years. This policy framework is supported by other whole-of-government strategies, such as *A Fairer Victoria*, and key justice policy statements such as the Attorney-General’s Justice Statement, *New Directions for the Victorian Justice System 2004–2014*.

The Government's vision outlined in *Growing Victoria Together* is that by 2010 Victoria will be a state with:

- a thriving economy
- quality health and education
- a healthy environment
- caring communities
- a vibrant democracy.

Included in the goals articulated in *Growing Victoria Together* is a fairer society that reduces disadvantage and respects diversity, recognising that ‘there are still significant barriers to opportunity and a need to strengthen the opportunities and expectations of all Victorians for an equal chance’ (p. 2).

*A Fairer Victoria*, the Victorian Government’s social policy action plan introduced in 2005, was specifically aimed at reducing disadvantage and creating opportunities. In
2007 the Government released *A Fairer Victoria 2007 – Building on our Commitment*. Central to the Fairer Victoria framework is the focus on targeting support for those in greatest need. *A Fairer Victoria 2007* contains a number of strategies that directly relate to disadvantaged communities from CALD backgrounds, including:

- reducing barriers to opportunities
- strengthening assistance to disadvantaged groups
- ensuring that universal services provide equal opportunities for all
- involving communities in decision-making that affects their lives and making it easier to work with government.

Most recently, in 2008 the Victorian Government released *A Fairer Victoria: Strong People, Strong Communities*. One of the four priority areas for action outlined in that report is ‘improving education and helping people into work’, particularly by removing barriers to workforce participation.

The Victorian Government’s intention for a just, multicultural society is highlighted in *New Directions for the Victorian Justice System 2004–2014*. This statement highlights the Government’s commitment to the maintenance of human rights and to addressing disadvantage, including modernising anti-discrimination law, reducing systemic discrimination and determining strategies to promote attitudinal change. As part of this commitment, the Victorian Government is currently undertaking a review of the Equal Opportunity Act.

Finally, in the area of skilled and business migration, the Government is delivering *Global Skills for Victoria*, Victoria’s 2007 skilled migration strategy. This strategy aims to contribute to:

- developing a highly skilled Victorian workforce and human capital base
- promoting State economic and social development
- developing the State’s international linkages and connections.
In order to achieve these aims, *Global Skills for Victoria* delivers a range of initiatives under the four broad objectives of:

- expanding and enhancing Victoria’s skills base
- marketing Victoria as the destination of choice for skilled and business migrants
- assisting skilled and business migrants to make the most of their skills
- attracting and retaining skilled and business migrants to provincial Victoria.

As stated earlier, the Victorian Government has a clear commitment to a society that embraces diversity, supports growth and productivity, and that ensures human rights for all Victorians. Racial and religious discrimination is contrary to the values and goals embedded in these strategies and programs. Despite this commitment, as this report shows, there is evidence that racial and religious discrimination in employment still exists in Victoria. There are costs to individuals and the community from this discrimination, both in terms of the economy and its social impacts. There are therefore considerable benefits to be gained from addressing racial and religious discrimination in employment. This report investigates the effectiveness of a number of current strategies and emerging best practices to achieve this, and makes recommendations based on the evidence that will contribute to making Victoria a truly inclusive multicultural society.
The Victorian Equal Opportunity and Human Rights Commission

Making a complaint – Steps for handling discrimination

1. **Try to resolve the matter informally**

   Ask the individual involved to stop or talk to your manager or human resources manager if you are not comfortable speaking to the person involved.

2. **Get advice**

   If the issue is unresolved, get advice from the Commission in person or from its confidential telephone advice line.

3. **Make a complaint**

   This needs to be in writing. An Education and Complaints Officer at the Commission will help you with this.

4. **Investigation**

   Once your complaint is lodged an impartial investigator will gather relevant information and report to the Commission. The investigator will tell the person who the complaint is about the details of your complaint and discuss the matter with them. Based on this investigation the Commission will either refer the matter for conciliation or decline the complaint.

5. **Resolution**

   The conciliation will be aimed at resolving the complaint.

   Outcomes might include an apology, financial compensation, a job reference or reinstatement, access to previously denied opportunities, an agreement to change or stop behaviours, or an agreement to put equal opportunity policies in place or to undertake equal opportunity training. The Commission does not have the authority to make orders or award compensation.

6. **Take your complaint to the Victorian Civil and Administrative Tribunal anti-discrimination list**

   In the failure of a resolution, or if a complaint is declined by the Commission, you can have the matter referred to the Victorian Civil and Administrative Tribunal (VCAT) for a hearing. The person you complained about can also go to VCAT to have your complaint struck out if they think the complaint is frivolous, vexatious, misconceived or lacking in substance.
2 The costs of discrimination

Saban worked as an apprentice full time, and was in his third year with his employer when he resigned from his job. He reported on many occasions to his employer that he was being severely bullied at work.

Saban says he was urinated on, physically harmed and constantly harassed due to his Muslim background. He said the bullying would escalate whenever there were news reports about terrorist attacks or negative media reporting about Muslims generally.

Saban said he loved his job, but could not go back, as he became depressed and unmotivated due to this relentless treatment. He said every time he tried to bring the issue of discrimination and bullying to the employer’s attention, the employer would ignore his complaints and start raising issues about his performance.

Saban said one person at work was very nice and supportive, and helped him write a complaint about this treatment.

Submission to the Community Consultation (Job Watch 2007)

2.1 Impacts on the economy

One of the greatest costs arising from racial and religious discrimination in employment relates to loss of productivity, skills and innovation due to the under-utilisation of talents and skills that migrants bring to the country (Allbrook 2001; Junankar & Mahuteau 2004; Kler 2006).

In Australia these risks are particularly problematic in light of the ageing of the population (ABS 2006) and serious skill shortages in a wide range of occupations (DVC 2006, cited in Pyke et al. 2007, p. 18). In Victoria shortages are similar to those found nationally. They include shortages of child care workers, civil and electrical engineers, specialist and generalist nurses, occupational therapists, urban and regional planners and workers in most trades (DEWR 2007).

As noted in Growing Victoria Together: The Victorian Government’s Vision for 2010 and Beyond:

Several of the external factors supporting Victoria’s recent strong economic performance could become less favourable. Increasingly, our future living standards will depend on productivity growth and increased workforce participation. We also have the continuing challenge to ensure regional Victoria shares fully in the benefits of a strong economy. Innovation and creativity are essential in a global economy where knowledge is the key to competitiveness. As
our population ages and our workforce grows more slowly, increased participation in the workforce is a key priority … and, while unemployment is low, there is a significant amount of underemployment: people who are employed but would like to work more hours. Meeting these challenges will require, among other things, continuing business investment, improved export competitiveness and an increase in skill levels among both younger and older workers (DPC 2005).

Shortages in the health professions compromise public health, while trades and engineering shortages can limit the country’s capacity to adapt to technological change and respond to major challenges such as climate change. Any systemic discrimination that deprives migrants of the opportunity to utilise their work skills is likely to worsen skill shortages. This could arguably result in a range of economic and employment related difficulties in Victoria (Buttigieg & Gahan 2005). Not only does discrimination have the potential to diminish the labour pool in times of significant shortages, it also has the potential to exacerbate wage inflation as the labour market contracts (Blank 2001).

The costs are also likely to be high for those experiencing discrimination. As far back as 1978, economic analysis in the USA showed that non-white communities lost $37.6 billion due to unemployment and racial disparities in income for similar work. Little data is available on the physical and mental health impacts on those experiencing racial and religious discrimination in the workforce. However, a systematic review of self-reported racism and health found that 54% of health-related outcomes examined were significantly associated with self-reported racism. Further, 44% of the studies that examined objectively measured health outcomes (including blood pressure, obesity and mortality) found a significant association with self-reported racism (Paradies 2006). These findings are significant in terms of the potential for reduced or loss of income for those affected and for the health burden born by both society and the individuals involved.

At the organisational level, failure to implement effective diversity plans and to reduce discrimination can present a number of significant challenges. Labour shortages and high staff turnover can result in significant costs to an organisation. Further, racial discrimination in an organisation can result in a homogenous workforce. This can encourage ‘group think’, the process in decision-making bodies where no-one asks questions because the culture is conformist, reducing both innovation and productivity (Burton 1995). It is therefore in the interests of individual businesses to address barriers that may be reducing the depth, quality and longevity of the potential labour pool.
2.2 Impacts on the individual and the community

Beyond income security and economic productivity, employment is also critical for the opportunities it affords for social networking and identification with, and participation in, society. Unemployment and underemployment attributable to discrimination and experiences of racial discrimination in the workforce can compromise a person’s social integration into Australian society. This has general consequences for social cohesion.

As noted by Allbrook (2001) and McKenzie (2003), racism has an impact on social cohesion, economic productivity, public perceptions of safety and the broader psychological and physical health burden of the community. Hence, the cost of racial discrimination in employment extends beyond productivity losses and has broad-ranging social and economic repercussions that can extend well beyond the racist event or experience (Emo & Preston 1992).

Mario was hired via an agency to work as a gardener for a local council on a casual part-time basis.

During the eight weeks he was on placement he was bullied at work. Mario had to work in a truck with a council worker who called him names like ‘short wog’.

Mario eventually resigned because of the bullying, and gave the council and agency notice and the reasons for his resignation.

Submission to the Community Consultation (Job Watch 2007)

2.3 Findings

There are individual, social and economic costs and risks of racial and religious discrimination in employment.

These include:

- unemployment and underemployment of migrants with skills
- potential productivity losses
- homogeneity in the workplace, potentially stifling innovation
- unnecessary skill shortages
- social isolation and exclusion
- an increased health burden.
3 The benefits of addressing discrimination

‘There is no better place, occasion, or time to be addressing the critically important themes of migration, economic growth and social cohesion … No better place – with successive waves of immigration turning Victoria into a multicultural success story and underpinning our economic development and reputation as one of the most welcoming and tolerant places in the world. Immigration has been an important part of Victoria’s past … And it will continue to play a critical role in our future … successful immigrant societies accept that diversity does present challenges, but societies that work to overcome those challenges reap the benefits in the longer term.’

Premier of Victoria, the Honourable John Brumby

3.1 Harnessing talents and capabilities

Avoiding the risks and costs identified with ongoing racial and religious discrimination in employment is critical for both Victoria and Victorians. As one of the fastest growing, most diverse states in Australia, Victoria faces major challenges posed by global competition, technological change, climate change and increasing shortages of water. In this environment Victoria needs to harness the talents and capabilities of all its working age population if it is to keep prospering into the future.

As noted by Krama (1997), diversity management is likely eventually to be driven by demographic realities as women, older workers and those from diverse ethnic backgrounds constitute a larger proportion of the workforce. Ensuring that these workers are valued and treated with fairness and equity will in turn determine their productivity and loyalty, creating greater incentives for ensuring culturally inclusive environments. In Australia there needs to be greater recognition of the potential and actual contribution of migrants and refugees to solving skill shortages. Evidence of stunted employment opportunities and underemployment of CALD background people indicates we are not using all our population’s talents.

2 Metropolis Conference, 9 October 2007, Melbourne.
3.2 Increasing innovation and productivity
Addressing and eliminating discrimination will benefit Victoria by increasing the diversity of the workforce. Research has shown that heterogeneity/diversity increases productivity and reduces costs and group think (Burton 1995). Diversity stimulates creativity and fosters innovative thinking (Adler 1997; Richard 2000). The ideas from ethnically diverse groups were found in one study to be of higher quality than those coming from homogenous groups (Burton 1995; McLeod, Lobel & Cox 1996). More innovative teams produce more innovative solutions to problems. Culturally diverse teams are made up of people with different backgrounds and life experiences, helping them to see problems from a variety of perspectives.

More broadly, research by Bertone and Leahy (2001) found that companies in Australia that adopted clear diversity policies and strategies noted significant advantages. These include:

- greater employee commitment
- greater market share
- greater customer satisfaction.

Research has shown that equal employment opportunity policies have had a positive effect on the productivity of enterprises in Australia and the United Kingdom (Perotin, Robinson & Loundes 2003). As Cope and Kalantzis (1997) have observed, using diversity as a resource can bring powerful benefits to business and society. In short, good racial equality practices can help businesses to achieve business growth and productivity improvements as well as to reduce exposure to risk.

Diversity should be an integral part of any corporate strategy. Recruitment, training, performance management and compensation should be altered to respond to diversity related issues. As noted later in this report, a number of major corporations in Australia are already actively responding to diversity. In the absence of legislative requirements this is entirely voluntary. Consequently, approaches have not been systemically introduced despite the evidence of a strong business case for adoption of these principles.
3.3 Meeting ethical and moral obligations
Finally, it should be noted that while the business case and contemporary demographics provide a strong impetus for undertaking equal opportunity and diversity management approaches, the importance of addressing discrimination needs to extend beyond its economic impact. Equal opportunity and human rights policies and practices within organisations need to be recognised as part of the ethical and moral obligation of Victorians and an expression in both law and policy of the values and social vision of the State Government’s *A Fairer Victoria*.

3.4 Findings
The benefits of preventing and addressing racial discrimination in employment and adopting diversity management approaches include:

- greater utilisation of migrant skills
- greater employee commitment
- greater market share
- increases in innovation
- greater customer satisfaction
- retention of skilled migrants in Victoria
- attraction of skilled migrants to Victoria.
4 Evidence of racial discrimination in employment

The community consultations conducted by the Victorian Equal Opportunity Commission and the Victorian Multicultural Commission in 2007 highlighted a range of consistent themes around the experiences faced by CALD communities. They showed that discrimination in employment remains an issue for many Victorians from CALD backgrounds. These experiences were also highly consistent with the research findings in Australia and internationally. The implication is that these are not isolated incidents – they are part of both a local and a global trend.

Discrimination in the workforce is one of the most consistently reported institutional forms of discrimination. For example:

- According to a recent survey by Dunn and Forrest (cited in VicHealth 2007), one in six Victorians have ‘occasionally’ felt discriminated against in the workplace, and close to 1 in 50 have experienced it ‘often’.

- In 2005–06, the Australian Human Rights and Equal Opportunity Commission (HREOC) received 259 complaints under the Racial Discrimination Act. In 2004–05, 167 complaints were lodged. The significant majority of these complaints were related to employment (48%).

- In 2006–07, 201 complaints of racial and religious discrimination in the area of employment were lodged with the Victorian Equal Opportunity and Human Rights Commission out of 1765 complaints – 7% of all complaints. Of these, 41% alleged less favourable conditions and benefits, 24% harassment in the workplace, 24% humiliation/denigration and 6% did not gain employment.

- Job Watch, the Employment Rights Legal Centre, noted in their 2007 submission to the community consultations that their telephone advice service took 378 calls from Victorian workers and job seekers about racial and religious discrimination between 2002 and 2006. The majority of these calls came from the manufacturing sector, with a small majority coming from organisations with fewer than 100 staff.

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3 The submission noted that the overwhelming majority of these came from employees and victims of discrimination.
In light of evidence that there is under-reporting of complaints, these figures are likely to represent only a fraction of the true extent of discrimination in employment. The experience of discrimination is likely to be influenced by the nature of the employment and by gender, qualifications, country of origin, ethnicity and religion of applicants and employees.

The community consultations and the literature highlight a number of forms of discrimination experienced by CALD communities in Australia. These include:

- discrimination in recruitment
- underemployment and lack of recognition of qualifications
- discrimination and disadvantage in accessing and utilising job search agencies
- over-representation of migrants in low skilled, low paid employment
- under-representation of migrants in the public sector
- bias against migrants in promotional opportunities
- intimidation in the workplace
- religious discrimination
- additional discrimination related to gender
- discrimination in small and medium enterprises (SMEs)
- racism in the media and stereotyping of communities
- difficulties accessing the complaints process.

Each of these is reviewed in more detail below.

### 4.1 Discrimination in recruitment

Discrimination in recruitment is a recurring theme in the literature. There are clear unemployment rate differentials between those who are from non-English speaking countries and those who are born in Australian or migrants from English speaking countries. A study by Evans and Kelley (1991) based on a representative national sample of 3,000 people found evidence to support this claim. They found that 30% of native Australian employers preferred to hire Anglo-Celtic Australians. Further, they concluded that the same proportion of employees preferred a segregated workforce.
Sunil qualified as a teacher a few years ago. He has found it very difficult to get regular employment. He has worked mainly as a relief teacher. He is very committed but believes that he is discriminated against because he is Indian. Sunil generally gets a cold response from students, their parents and other teachers. He has no difficulty in understanding them, but states that they make excuses when they have not done the work required and blame the fact that they cannot understand him.

Two years ago he saw a job advertised – they were desperate for a maths and science teacher. Sunil rang and had a good discussion with the school principal, until the principal asked where he was born. When he stated India, the principal went quiet. Sunil sent in an application but did not get an interview. They stated they wanted more experience. He once spoke to the Commission but they told him he needed specific incidents of discrimination.

Sunil is quite desperate. He is alone here and has no family.

Submission to the Community Consultation (Job Watch 2007)

A number of participants told the consultations that their names, their accents and visible differences such as skin colour and the wearing of a hijab made it difficult to secure appropriate employment. Individuals noted that they were often told that they would not be a good ‘cultural fit’.

As one Somali man noted:

Our educated young people … are discriminated against because when they go for an interview they see a black Muslim and my daughter is unable to get a job because of her race and religion.

An Indian Sikh gentleman noted one manager had told him that he should stop applying for jobs within an organisation because:

He want[ed] Australians working there.
Recent migrants are at an employment disadvantage for multiple reasons, and this disadvantage may persist for a considerable period. A study of 150 refugees from the former Yugoslavia, Africa and the Middle East found that unemployment rates were 32% for the African refugees, 38% for the Middle Eastern refugees and 14% for those of Yugoslavian background (Colic-Peisker & Tilbury 2006). Colic-Peisker and Tilbury acknowledged that differences in willingness to ‘take up any job on offer’ would significantly impact on unemployment rates. However, they proposed that the cultural similarity of the Yugoslavians facilitated their entering the workforce and that potentially ‘white’ European refugees experience less discrimination as they are less visibly different than people from the Middle East and Africa.

Discrimination in the recruitment process is not limited to visible difference. Research originating in the United Kingdom and replicated in Australia has consistently shown discrimination on the basis of names. In both Australia and the United Kingdom a ‘correspondence test’ was used in the research. This involved investigators sending fictitious letters of inquiry from prospective applicants to employers where the surname of the applicants signalled their ethnic background (William, Darity & Mason 2004). In Victoria the research found that those with Vietnamese and Greek sounding names had significantly less success in gaining job interviews than those with Anglo-Saxon names, despite the details in the applications being identical. Specifically, a Vietnamese sounding applicant was seven times less likely to be offered an interview than an applicant with an Anglo-Saxon name, while a Greek sounding applicant was three times less likely. Those with Vietnamese sounding names were often told the position had been filled when at the same time Anglo-Saxon applicants were invited for interviews (Riach & Rich 1991, 1992). Similarly in New Zealand, Chinese and Indian applicants had much less chance of being offered an interview than European/Paheka counterparts (Wilson et al. 2005).

Consultation participants also highlighted that a lack of local experience was often used to justify racial discrimination in the hiring process. A qualified engineer was told that he needed more local experience despite having extensive experience in his own country. Many participants noted that their skills and overseas experience were overlooked despite clear instances where technical knowledge and not local experience was required to undertake the role effectively. Not having local work references was also named as an impediment to securing employment or as potentially providing a covert excuse for racial discrimination. Participants asked that criteria such as local experience be removed from employment applications arguing
that the value of this experience to the position was often ambiguous and that they were immediately disadvantaged in the market place.

A critical piece of research on the recruitment industry in Victoria was undertaken by the Commission in 2002. This research examined the industry’s awareness and understanding of equal opportunity laws and practice. Included in the research was a survey of a representative sample of disadvantaged people, including those from CALD backgrounds. Most of the job seekers told interviewers that they were not likely to lodge complaints, noting that it appeared pointless as their employer would swear that they had not been discriminatory. They also felt too intimidated to make a complaint.

While a significant proportion of recruiters argued there was no need for further equal opportunity training they also reported that training needed to be more applied and relevant to any client bias in the selection process. Recommendations included training and the establishment of a self-regulated code of practice for the recruitment industry (VEOC 2002).

4.2 Underemployment and lack of qualifications recognition

We came here with a number of highly qualified people that are professional back in Iraq. When we approach the service providers to try to get work in our profession there are too many barriers in getting qualifications and getting local work experience. This is so hard because having qualifications recognised is so expensive and in the meantime we need to support our families. This is a big problem for our community in not being able to fill the roles that we did back home. We need more practical ways to be able to practice our professions.

Iraqi male, Shepparton Community Consultation

It has been well documented that skilled migrants and refugees experience problems in accessing jobs equal to the work they had prior to migration. Their skills and abilities are often not recognised by potential employers, leading to unemployment and underemployment in jobs that fail to utilise their skills. This is in spite of State and Federal Government services designed to promote and facilitate the recognition of credentials such as university degrees and trade qualifications (see Iredale 2001; Wagner 2003; Wagner & Childs 2006). Research has shown that those from non-English speaking backgrounds struggle to find gainful employment within Australia and are often underemployed, even when they have relative proficiency in the
language (Hawthorne 1994; Junankar & Mahuteau 2004; Kler 2006). There is clear evidence that overseas qualifications can go unrecognised and migrants and refugees often experience downward occupational mobility (Ho & Alcorso 2004).

The Organisation for Economic Co-operation and Development (OECD) has identified over-qualification – highly qualified individuals working in jobs that can be classified as low and medium skilled – as a significant problem. In the first two years after arrival, 47% of all highly qualified migrants to Australia are in low or medium skilled jobs (compared to 23% for Australian-born workers). This rate decreases to 40% after five years (Liebig 2007).

Lack of recognition of qualifications and the consequent fear of disclosing qualifications for fear of losing their current, relatively less skilled employment was also a constant theme throughout the community consultations. A number of trained doctors and engineers noted that they had secured employment in unrelated, relatively unskilled jobs and had hidden their qualifications from employers. The consultations heard that one participant had been fired from her job as a kitchen hand on the day she admitted to her employer that she was a doctor. Another participant told the Commission he had hidden his experience as an engineer in the belief that he would be sacked because he was overqualified.

Highly skilled migrants working in low and medium skilled jobs represent inadequate use of skills and lost productivity to the Australian economy (both in terms of not utilising the full potential of the migrant and in not filling the skills gaps in demand). This situation also limits the earning potential of the migrant, which impacts on their social inclusion and integration. This can lead to negative word-of-mouth messages to the migrant’s source country and possibly result in lost migration opportunities.

The OECD attributes the high levels of over-qualification to:

- lack of access to social security (pressuring migrants to quickly take a job to obtain income even at the expense of occupational downgrading)
- lack of access to most labour market programs in the first two years after the migrant gains permanent residency.
A number of other factors also act as barriers to gaining employment appropriate to the migrants’ skills and experience. These include:

- low English language competency
- limited professional and industry networks (for access to non-advertised jobs and referees)
- limited experience in Australian workplace and job-seeking cultures
- difficulties with qualifications and skills recognition procedures and timelines (particularly for licensing and professional association purposes)
- limited access to training and skills upgrading.

The OECD identifies temporary and assisted work placements in skilled jobs as being particularly effective in tackling over-qualification (such as Victoria’s Workforce Participation Program Overseas Accountants pilot program). However, it notes that funding for these measures is limited – funding is currently provided only by Victoria and South Australia. The OECD also identifies mentoring as a low-cost and potentially effective measure to address the issue.

When I arrived here I handed out my qualifications as a nurse. However, my qualifications here are not valid. In order for me to get my qualifications recognised here I need quite a bit of money to be able to do this. But how can I achieve this when I need money first and cannot get a good paying job. I do not consider this as discrimination: it is part of life and the journey.

*Sudanese male, Dandenong Community Consultation*

This lack of successful skill transfer means that people from CALD backgrounds are often obliged to undertake further study in order to be recognised as professionals or to work in their previous trade. Some are required to learn an entirely new trade or profession and therefore must enrol in a new course of study (Wagner 2003). The costs of undertaking education, having qualifications assessed or undertaking entrance examinations can be high and potentially prohibitive for new migrants.

This was a key issue also raised by the consultation participants, and internships to support professionals to take these courses were viewed as limited. Further, the time and resources required to upgrade qualifications or have qualifications recognised were viewed as prohibitive.
Problems for overseas trained doctors can be particularly acute as many have difficulty gaining registration to practice on a permanent basis in Australia, particularly those from non-English speaking countries (Hawthorne 1997; Iredale 2001).

I am a qualified veterinarian but am still struggling to have my qualifications recognised after seven years. The OQU [Overseas Qualifications Unit] recognised the qualification but the Vet Board had a series of further tests to make sure [my] OQ the same. The expensive texts made it too expensive to complete further training requirements.

Sudanese male, Dandenong Community Consultation

According to Iredale (2001), ‘Western qualifications are more highly regarded by both employers and within the recognition process’. In the 1990s, Hawthorne found that migrant engineers coming from English speaking countries and those of European descent were more favoured by employers than those of Asian and Middle Eastern origin, and this was reflected in their professional employment rates (Hawthorne 1997).

Studies on Filipino nurses highlighted that many had been relegated to nursing aides or enrolled nurses after immigration (Hawthorne 2002; Iredale 2001). Similarly, Hawthorne (2001) found that English speaking background (ESB) nurses were often employed in private hospitals (high status areas) and had clear promotional opportunities while NESB nurses tended to work in public hospitals or nursing homes and did not appear to have the same opportunities. In a more positive vein there has been some research suggesting improvements to the qualification recognition process for NESB nurses in Australia through competency based assessment, especially in Victoria and New South Wales (Hawthorn 2003).

This clearly suggests that this is an area that can be significantly influenced by government policy and appropriate industry standards and recognition processes.

Issues around recognition of experience in the trades were also raised in the community consultations. The requirement for formal qualifications is particularly problematic for migrants from developing countries where no formal qualifications exist and where skills in areas such as carpentry and panel beating are learned on the job. As the following case study shows the requirement for one individual to prove himself without qualifications had resulted in exploitation by an employer.
The recognition of qualifications is not the issue, it can be done here by going to the Overseas Qualifications Unit. However, the reality is that we need the Federal Government to subsidise intensive bridging courses for migrants and refugees so that they can get their skills recognised quickly with assistance to support their family at the same time. If this happened then when we are working we could pay back this assistance as well as contributing to the economy and the local community.

People with a profession [such as] carpentry ... it is well known that in Third World countries you learn a profession without being qualified but when you come to Australia with all of these experiences we do not even get the chance to have a trial. We need a subsidised program that will allow people in our community to have a trial at work so if they prove themselves like with Commonwealth Support Rehabilitation Program this would be of great benefit. I approached different factories after I arrived as a carpenter and accepted a job and had to prove myself. When he noticed that I had the skills then he said that I will take you on but would only pay me nine dollars an hour for 38 hours a week for the first two years which is discriminatory, I was earning less than being on Centrelink.

*Iraqi male, Shepparton Community Consultation*

A number of countries competing with Australia for the limited pool of potential skilled migrants have developed policies and initiatives to maximise economic and social inclusion for newly arrived migrants. These initiatives assist in:

- increasing the productivity of the migrant (by making greater use of their skills and experience)
- better meeting the skills needs of the destination economy (by filling the skills gaps that the migrant is attracted for)
- reducing social disharmony.

Countries with policies and mechanisms that reduce levels of social disharmony and measures to increase the economic wellbeing and job satisfaction of new arrivals are attractive as migration destinations.
4.3 **Discrimination and disadvantage in accessing and utilising job search agencies**

Job agencies use you as a number instead of trying to get you a job.

*50-year-old woman Somali woman, Broadmeadows Community Consultation*

Job agencies intimidate you, they are making money from the government and they do not provide the right information about what training you need … They do this to people that do not know the rights and who do not speak English properly.

*50-year-old Somali man, Broadmeadows Community Consultation*

A further issue raised in the consultations was the attitudes, resources and cultural and linguistic competencies of Job Network agencies and employees. In Dandenong and Shepparton particularly, concerns were raised regarding the willingness and capacity of staff to support migrants to obtain relevant employment. The critical role of these agencies and the particular vulnerability of these clients was clearly of concern. Participants noted that staff often did not have the time or the resources to deal with individuals who had English as a second language. Further, there was a perception held by members of the Somali community that the potential for racial and religious discrimination and the consequent difficulty in securing employment for members of the community resulted in a greater reluctance to appropriately case manage individuals from their community.

As the critical interface between new migrants and employers, the Commonwealth Job Network members play a vital role in supporting refugees to find gainful employment. A 2004 paper published by the Brotherhood of St Laurence (Kyle et al. 2004) also highlighted the issues for refugees in accessing and utilising these services. One of the most critical problems is that mainstream employment service providers are simply not trained to work with refugees and to be able to address their complex needs. These employment agencies are also not equipped with appropriate information regarding traineeships and other education and training options for refugees and migrants. This gap in service provision effectively limits future job opportunities for many refugees who are unaware of their options. Kyle et al. (2004) note that there often is also an absence of workplace support and ongoing mentoring. Problematically, there is anecdotal evidence of ‘parking’ of refugee case files – that is, doing little or no work on more disadvantaged groups and focusing on individuals who are easier to place. The inadequate support for job placement presents a further barrier for migrants, particularly refugees, indirectly discriminating against them in their search for relevant employment.
During the community consultations, Job Network providers also raised the difficulties they have in seeking employment for CALD community members and the discrimination they see their clients experience.

An employer called up and asked for a receptionist. I recommended a Chinese woman who had great experience at the Shanghai Hyatt and has worked in China at a trade company. She was bilingual. They were very excited until they heard that her experience was in China and that she was Chinese. The employer asked if she had a Chinese accent and I said yes, she was very well spoken but she did have an accent. She [the employer] told me that yes she wanted an Australian accent not someone with any other accent. So I am in a bind because I can place some of my clients with them. However, knowing that she is racist it puts me in an awkward position. My client the Chinese lady told me not to get too upset because it happens all the time to her. However, she did not want me to do anything as she was afraid to complain and the problems that it would cause her. Training for Job Network providers would be a very positive thing as they are dealing with them at the coalface.

Job Network member employee, Dandenong Community Consultation

I recently provided the resumes of nine young people between the ages of 16 and 25 to a city financial institution. Of the nine names provided only the four Anglo-Saxon names were given interviews, despite the other five with Asian names being equally and better skilled.

Youth Job Network member employee, Footscray Community Consultation

A final point with respect to the Job Network is the limited access to services in the first two years after arrival for migrants not on Humanitarian visas. For these migrants there is a two-year waiting period for access to welfare payments and to the higher levels of assistance for disadvantaged job seekers available in the Job Network system, although they can access job matching services and job search training. This is despite the fact that many migrants are clearly disadvantaged in job seeking due to a lack of local business networks, understanding of the job market and Australian business places, and job search and interview skills in an Australian context. Victorian Government policy calls for the Commonwealth to remove its two-year restriction on full access to the Job Network for skilled migrants and their spouses in regional Australia.

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4 Humanitarian visas are held by migrants who come into Australia via the Federal Humanitarian Program for refugees and others in humanitarian need.
4.4 Over-representation of migrants in low skilled, low paid employment

The corollary of the discrimination evidenced in recruitment and job search is the research highlighting the over-representation of migrants in manual and low paid employment. Bertone (2004) found that NESB migrants have traditionally been over-represented in such work across the manufacturing, infrastructure, transport and building/construction industries. This appears to be changing, however, due to the growth of the service sector over the past two decades. This growth has produced high numbers of both low paid jobs (such as cleaning, hospitality and retail work) and high paid jobs (such as professional and managerial work). NESB migrants can now be found at both ends of the occupational spectrum. While NESB women are still over-represented among manual labouring and semi-skilled jobs, they are well represented in professional occupations. Both NESB men and women are under-represented within managerial and trades jobs (Bertone 2004; Watson 1995).

Connie’s husband Tony had been working as a sales manager for a transport company for nearly 12 months on a permanent full-time basis. Tony had been working a 60-hour week but only getting paid $40,000 a year. He was asked to work every Saturday, which he was unable to do because he had to look after the children while Connie worked. Tony’s employer called him a ‘wog boy’ every day.

Submission to the Community Consultation (Job Watch 2007)

4.5 Under-representation of migrants in the public sector

The under-representation of migrants employed in state and federal public services is only a relatively recent area of research in Australia. The data emerging again points to potential discrimination on a large and systemic basis (Bertone, Leahy & Doughney 2005; Constable et al. 2004; Hugo 2004; Wagner & Childs 2006). Research undertaken in Victoria based on an analysis of 20,000 responses from the 2004 Victorian Public Sector Equal Opportunity Survey found that 9.4% of employees were NESB migrants (Bertone, Leahy & Doughney 2005). This is approximately half the Victorian workforce average. Additionally, language diversity among Victorian public servants is generally much poorer than in the Victorian population. Apart from six languages – Hindi, Croatian, German, Dutch, German, French and Spanish – the sector contains two-thirds less language diversity than the Victorian population. Those
languages that are clearly under-represented in the sector include Greek, Italian, Vietnamese, Cantonese, Arabic, Turkish, Macedonian, Sinhalese and Maltese.

4.6 Bias against migrants in promotion

Alex has worked as an employment consultant for a large communications corporation for a few years. He was born in Sri Lanka.

Alex believes he has been treated very badly for the past year. He believes he has been "targeted" due to his race. He stated that his performance was often the best in the organisation and he was there the longest but he was regularly passed over for promotions.

Alex had a workplace injury and was treated badly because he put in a claim. He was scrutinised very closely – his employer going to great lengths to check up on him.

Submission to the Community Consultation (Job Watch 2007)

The Bertone, Leahy and Doughney (2005) research in the public sector also shows that recruitment and promotion systems are biased against females and those from CALD backgrounds, with the average bias against NESB applicants being 3% in the initial appointment process (Doucouliagos et al. 2004). This initial disadvantage is compounded by significantly lower returns to education by NESB employees than by other groups. NESB employees with degrees and post-graduate qualifications also receive 8% and 14% lower pay respectively than similarly qualified Australian-born employees (Doucouliagos et al. 2004).

NESB people in the sector are also more likely to report having had no promotions since entering the public service. NESB women are distinctly disadvantaged in this regard – nearly 50% of NESB women had had no promotions compared to 44% of ESB women and 40% of ESB employees overall. Even when they have received a promotion, NESB people report having had fewer promotions. Again, NESB women are more disadvantaged in this regard, even when the number and age of children are taken into account. Although promotion rates for NESB employees improve with the length of residence in Australia, it takes up to 24 years for the rates to approach those of Australian-born employees. It is interesting to note that NESB PhD holders in the sector earn 57% less than an ESB person with an identical qualification (Bertone, Leahy & Doughney 2005).
A final issue with respect to discrimination and disadvantage is the representation of individuals with CALD backgrounds in positions of authority. It is critical that any affirmative action in the recruitment of employees from ethnic minority backgrounds is supported not only by promotional opportunities but also appropriate representation within critical leadership positions in the State. As at June 2006, new Victorian appointments to Government boards and committees by people from CALD backgrounds represented 7.5% of current membership. This compares with their proportional representation in the community for this period of 24.5% (VMC 2007). This under-representation has significant implications for perceptions of influence, upward mobility and the integrity of diversity strategies.

### 4.7 Intimidation in the workplace

Ravi – in his late 40s – was born in Sri Lanka. He had been working for six months as an assembler for a small manufacturing firm.

Ravi was the only black man at work and since he started he had been given a hard time. There were comments about his race and Ravi had to buy his own milk – he was not allowed to use the other employees’ milk. He was not allowed to talk on the phone while other people were allowed to do so.

Ravi had a work injury a couple of months ago and the doctor filled out a WorkCover certificate. His employer did not lodge the WorkCover claim and wasn’t going to, so Ravi had to pay his own medical costs.

He was terminated and told there wasn’t enough work. Ravi maintains that there was plenty of work.

*Submission to the Community Consultation (Job Watch 2007)*

Intimidation, discrimination and bullying within the workplace were recurrent themes in the consultations. A number of participants were in precarious, low skilled, casual or short-term employment and consequently felt particularly vulnerable in their positions. Many felt that their lack of opportunities consequent to both discrimination and lack of skill recognition resulted in exploitation, abuse and underpayment. Exploitation included greater work loads and lesser pay for equivalent work. Further, some members from the Somali community noted that failure to comply with any expectation of employers was perceived as being an indictment on the entire community, potentially having consequences for other members of the community currently working or wishing to work within the organisation.
Women voiced their concern about being particularly vulnerable:

In the home country women were educated and had good jobs, but this is not accessible here – women don’t know what rights they have here – they rely on work to survive – not much choice and have to keep working.

One participant noted that she had been sexually harassed, but when she complained she had been told that nothing would be done because it looked bad for the company. Another woman who reported sexual harassment was accused of maligning the man and subsequently pulled out of the workplace.

A number of women had experienced harassment and had either been told that nothing could be done, had to resign or had to simply tolerate the abuse. For those women that remained in the workplace the fear of losing the job and not being able to get further employment was sufficient to continue to tolerate the abuse.

Koula works as an analyst for a small business. Her contract is being re-negotiated and her employer wants her to do additional duties, which she isn’t happy about.

Koula isn’t satisfied at work generally and this is due to fairly regular unwanted advances of a sexual nature and some rude remarks about her Greek Orthodox religion and ethnicity.

Submission to the Community Consultation (Job Watch 2007)

The abuse experienced by participants was not limited to sexual harassment by employers. As one woman said:

I noted that my colleagues laughed at me.

Another woman observed:

I have been in Australia for more than 10 years ... over these years, wherever I go, I can always feel the discrimination against Asians from both patients and colleagues.

Anecdotes of racial abuse by employers, colleagues and clients were noted for both men and women in all the community consultations. This abuse included comments about ethnicity and religion, undermining an individual’s authority and reinforcing or creating stereotypes by making generalisations about the productivity and abilities of specific communities. Participants highlighted experiences of social isolation, having their views ignored, being teased and being allocated unpleasant tasks. They directly
attributed these experiences to their cultural, linguistic, religious or physical ‘differences’.

There was relative consensus that participants in low skilled or precarious employment had been subject to particularly high levels of intimidation and abuse. Many noted that because of the power imbalance they did not believe there was any recourse available to them:

We have to work these jobs and the boss knows that. They take this opportunity to exploit our labour.

### 4.8 Religious discrimination

Imran has been employed as a full-time forklift driver on a fixed-term contract. When Imran first started working last year, he was called Bin Laden by co-workers and was spat at by colleagues, including the union delegate. Imran complained to the employer about these incidents. At first the employer said they were going to investigate his complaint, but then the offending workers went on strike, demanding that Imran be excluded from the workplace.

In response to this industrial pressure, Imran was stood down on full pay. The company then found Imran another placement that was located directly next door to the previous worksite. On Imran’s first day at this new location, a co-worker asked him what his religion was. When Imran said he was a Muslim, the co-worker asked him if he was a terrorist. Imran told his employer that he was still being subjected to religious vilification/racism and could not work due to the stress and depression that this was causing him. Imran obtained a WorkCover medical certificate for his absence.

Imran said every time he told the HR person at the company about the racist treatment she tried to explain away the incidents, rather than ensuring that the employer complied with its obligations under OH&S and discrimination laws.

Imran has been in contact with the Commission about a possible religious/racial discrimination claim.

 Submission to the Community Consultation (Job Watch 2007)

Since the 11 September 2001 terrorist attacks in the USA, there has been increasing awareness and reporting of religious discrimination, and particularly discrimination against Muslim Australians. In a consultation process involving 1,426 people, Poynting and Noble (2004) found that Muslims were far more likely to report they had experienced racism, from both a personal and community perspective, compared to non-Muslims. As reported by Tilbury and Colic-Peisker (2006), employers can be
hesitant about employing Muslims because of issues such as prayer time that may create animosity among employees.

Supporting these findings, HREOC noted in its report on consultations with the Muslim community that:

Even after more than 10 years of residence in Australia, the unemployment rate for Muslims was still almost double that of the Australian average (HREOC 2003, p. 222).

A number of institutional barriers were identified, including employer aversion to people with Arabic or Islamic names, fear of client reactions and stereotypes of Muslim women (HREOC 2003).

4.9 Additional discrimination related to gender

Women can experience multiple barriers to employment entry including illiteracy, lack of recognition of overseas qualifications, lack of childcare etc. This takes place in a context where women from culturally diverse backgrounds are still over represented in low status, low paying jobs, with limited pathways for change or movement.

*Victorian Office of Women’s Policy (VOWP 2005, p. 52)*

Gender interacts with race, ethnicity and religion to create added challenges and barriers for CALD women in the Australian workforce. Researchers have documented the many ways in which culturally diverse women are disadvantaged in employment (Bertone, Leahy & Doughney 2005; Browne 1999). Examples include having greater concentration in low paid jobs, lower access to training and career opportunities and generally more arduous working conditions. Lower paid jobs where CALD women continue to congregate include contract cleaning, hotel laundries and housekeeping departments, clothing outwork, manufacturing production, aged care, child care and environmental services in hospitals (Bertone, Leahy & Doughney 2005; Browne 1999). This is in spite of studies showing that a significant proportion of such women hold post-secondary qualifications (Alcorso 2003). When human capital does not align with occupation, there is a strong suggestion that racism may be operating in subtle or direct ways.

Women do not only deal with barriers to appropriate employment, however. One of the few reports on violence against women in the workplace is *Safe at Work? Women’s Experience of Violence in the Workplace* by the Victorian Office of Women’s Policy (VOWP 2005). Twenty-seven women were interviewed in five focus groups that
were conducted in Italian, Greek, Vietnamese, Chinese and Turkish. All 27 participants had experienced and/or witnessed violence against CALD women in their workplaces. They noted that they or others had been scapegoated and/or blamed for the actions of others, humiliated, harassed, stalked, financially penalised, forced to overwork, verbally racially abused or subjected to excessive surveillance. Some had been sexually harassed. While this is a small sample, these findings were reiterated in the community consultations conducted for this report.

4.10 Discrimination in small and medium enterprises

Fidel works as a quality inspector in a medium-sized manufacturing company. He feels the workplace is very unsafe for many reasons, but is afraid of making any complaints in case he loses his job. Fidel has been in Australia for only one year. His boss constantly makes racial comments and slurs – for example, that he is a terrorist (Fidel lost his brother in a war in the Philippines, so this hurts him very deeply). The boss speaks like this to everyone. The employees are not union members, as the boss does not allow this, but Fidel is secretly a union member. He is afraid to contact the union in case the boss finds out and sacks him.

There are many unsafe work practices. In the past someone made a WorkCover claim and an inspector came but no changes were made. The employees were told to have an OH&S committee but it never happened. They work with coated fabric and this is extremely heavy. Fidel’s job is to push the drums of very heavy fabric into place. Last week he injured himself at work, he recorded the injury in the accident book and today he is sick off work because of the injury and stress, but he does not want to make a WorkCover claim as this may affect his future employment prospects.

Submission to the Community Consultation (Job Watch 2007)

While data on the experience of racial discrimination in small and medium enterprises (SMEs) is limited, internal analysis of complaints data by the Commission shows that in 2005–06 around 20% of employment based complaints where the size of the organisation was identified were lodged against organisations with 20 or fewer employees. While this figure cannot be extrapolated to the broader complaints population, an examination of the complaint files revealed that the vast majority of employers identified did not have equal opportunity policies in place. This is of particular concern because it indicates that a proportion of employers and employees in small businesses are unaware of what constitutes unlawful discrimination and
harassment conduct. It further reveals an absence of formal complaints mechanisms in these instances.

In the Commission's experience the effect of discriminatory conduct in such environments is likely to be significant, as workplaces are smaller and in many cases employees are expected to have relatively close working relationships between each other and with their employers.

Evidence from the community consultations highlight the particular vulnerability of these employees and the capacity for complaints to go unvoiced, unheard or, at worst, result in further discriminatory behaviour.

**4.11 Racism in the media and stereotyping of communities**

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<tr>
<td>We need mainstream media campaigns to denounce discrimination so that people begin to realise that it is not on.</td>
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<tr>
<td><em>Somali male, Broadmeadows Community Consultation</em></td>
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<tr>
<td>Poor representation of CALD people in employment impacts on community self-esteem and motivation.</td>
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<tr>
<td><em>Sudanese male, Dandenong Community Consultation</em></td>
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The consultations raised the issue of discrimination and racism in broader social discourse and their impact on participants' experience in the employment market and the workplace.

Those of the Muslim faith and migrants from African backgrounds felt that public discourse, particularly in the media and by senior political figures, had a significant effect on their ability to secure employment and on the conditions under which they worked. Two Muslim men noted that they had been fired the day after the Bali bombings.

A number of communities argued that educational campaigns highlighting the value of migrant workers and their skills and their contribution to Victoria was critical to changing their experiences in the workplace. Further, clear social marketing highlighting zero tolerance to racial discrimination was critical to not only highlight that it does occur but also to dispel myths that covert or obvious forms of discrimination are acceptable.
4.12 Difficulties accessing complaints processes

Due to their recent arrival and unfamiliarity with Victorian laws and systems many of the people consulted had not heard of the Commission. Upon hearing about it they acknowledged the need for educating the entire community about what is acceptable behaviour and the importance of anti-discrimination legislation.

A number of individuals in the consultation were unaware of any complaints process, and those that were aware believed or had had experiences that led them to believe that the complaints process would not support them.

Iman was born in Ethiopia and worked on a permanent full-time basis for over five years as a cleaner for a large recreational company. She was terminated from her job and believes it was due to the fact that she was black.

Iman’s co-workers and supervisor had been abusing her with offensive and racist language. Over a 12-month period Iman had made written complaints, but the manager and supervisor had not done anything about it. The union delegate became involved but the manager still did not act.

The manager suggested that the supervisor should apologise (which did not happen) but Iman said that was not sufficient because the situation had been making her stressed and sick.

Submission to the Community Consultation (Job Watch 2007)

A number of participants also felt excluded from the processes and organisations set up to address discrimination, particularly the Commission. Consistent with the research findings, those that had experienced discrimination in the workplace often did not know the appropriate channels, did not understand the processes to address the issue, did not understand or feel supported by the Commission, were fearful of the consequences of making a complaint or simply did not have the time or the resources to make a complaint.

There is clear evidence of different forms of discrimination manifesting in employment, and that it continues to limit the opportunities of migrants to fully participate within the economy and within society. As noted by Australian researchers Vasta and Castles (1996):

Official anti-racism is often only superficial and masks the continuing reality of racism in the labour market.
4.13 **Findings**

There is evidence of racial and religious discrimination in employment.

This includes evidence of:

- discrimination in recruitment
- underemployment and lack of recognition of qualifications
- discrimination and disadvantage in accessing and utilising job search agencies
- over-representation of migrants in low skilled, low paid employment
- under-representation of migrants in the public sector
- bias against migrants in promotion
- intimidation in the workplace
- religious discrimination
- additional discrimination related to gender
- discrimination in small and medium enterprises (SMEs)
- racism in the media and stereotyping of communities
- difficulties accessing complaints processes.
5 Addressing discrimination in employment

5.1 Findings from the literature

Despite the clear need for tools to address disadvantage and discrimination in employment, the literature in this area is limited. While a number of programs have been advocated there is little evidence of the efficacy of these programs. The following provides some findings and recommendations that emerge from the literature in the area of anti-discrimination legislation, employment assistance, public sector diversity strategies and positive organisational practices.

5.1.1 Anti-discrimination legislation

Anti-discrimination Acts and their attendant complaints processes are the key symbolic and formal mechanisms through which racial and religious discrimination is addressed. There are a number of concerns regarding the efficacy of legislative approaches to addressing racial discrimination, however.

Studies on Australian anti-discrimination laws show that:

- There is little awareness of anti-discrimination legislation by applicants (Bennington & Wein 2000).
- Indirect and subtle forms of racism are difficult to prove under the burden of evidence arrangements within formal legal frameworks (Gaze 2002).
- There are perceptions in communities that the processes are not simple and that the likelihood of resolution is low (HREOC 2001, 2003).
- There has been little impact on the positions of inequality and social disadvantage in which the groups ‘protected’ by anti-discrimination law exist (Gaze 2002).
- There is little impact on employment behaviour (Bennington & Wein 2000).

Access to the courts and conciliation processes requires:

- knowledge of legal rights and processes (Bennington & Wein 2000)
- trust of institutions and governments (HREOC 2003)
- resources and opportunities to file a suit/complaint (Gaze 2002; HREOC 2001).
A key requirement to ensure access to anti-discrimination legislation is knowledge and support for victims. While the use of representative complainants under the Equal Opportunity Act and Racial and Religious Tolerance Act and the provision of information in multiple languages support this, there has been little assessment of knowledge of rights within ethnic communities. A number of studies have shown a fear or distrust of authorities and a perception of difficulties in establishing claims and of low likelihood of resolution (Gaze 2002; HREOC 2001, 2004; SWLS 2007). This may be preventing communities and individuals from enforcing their legal rights.

Relatively few complaints of race discrimination are lodged at the Victorian Equal Opportunity and Human Rights Commission compared to the incidence of race discrimination that is said to be experienced in the Victorian community. This may be because people experiencing race discrimination (such as new migrants) are less aware of the complaints process or less able to see a complaint through to completion (PIAC & WBAWLC 2001). Race discrimination complaints are also notoriously difficult to prove, because unless the discrimination is blatant or overt it may not be possible to prove the discrimination was not for some other reason (Hunyor 2003).

Jones (1997) argues that the legislation largely plays a symbolic and educational role. The symbolic nature of the anti-discrimination legislation is questionable, however, if the legislation is not viewed as an effective instrument in providing genuine recourse to victims of discrimination, nor if it is countered by racist discourse from politicians effectively responsible for the enactment of the legislation.

As noted earlier, the Victorian Equal Opportunity Act is currently being reviewed. The review will consider the technical and definitional aspects of the law to ensure that the legislation itself does not act as a deterrent to the elimination of discrimination. Further, it will review the complaints processes and determine whether the allocation of any additional powers or functions to the Commission would further the objective of eliminating discrimination. This review has the potential to improve the efficacy of the legislation and the Commission. It is hoped that this report will further inform the process.

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5 In 2006–07, 8.7% of complaints received by the Commission were in relation to racial discrimination (VEOHRC 2007).
The legislation remains the primary formal mechanism to address the social and economic costs associated with racial discrimination in employment. As noted by the Commission:

The current statutory framework imposes significant limitations on the Commission’s ability and authority to address systemic issues and to require changes (VEOHRC 2008, p. 16).

5.1.2 Employment assistance

An assessment of employment assistance and NESB users in Australia was undertaken by the previous Commonwealth Department of Employment and Workplace Relations (DEWR). The suite of Job Network programs, including intensive assistance, job training and job matching services, were examined with respect to employment outcomes. The findings showed that for the year ending March 2003, 62.4% of those from a NESB in the program had an employment outcome (part or full time) within three months of assistance. This compared to 66.8% of the broader population. Qualitative research showed that job search training was useful, while intensive training was found to be less effective. Lack of interpreters during the interview process may have skewed this result, however (DEWR 2003, cited in McDonald, Bertone & McDonald 2004).

The following strategies have been argued to be more effective in addressing the recruitment needs of migrant communities:

- **English as a second language (ESL) courses combined with income assistance and labour market support services**
  Birrell and Hawthorne (1997) have noted the usefulness this strategy. The critical importance of ESL classes for NESB migrants is also highlighted in the most recent findings of the Third Longitudinal Study of Immigrants to Australia. It found that only 40% of those who did not speak English well and 28% of those who did not speak English at all were employed 18 months after arriving in Australia. This compared to 75% of those who spoke English well (Commonwealth of Australia 2007).

- **Work experience programs**
  These are particularly useful in early stages of arrival (Duivenvoorden 1997; Peterson 1999). The only exception is for those who require improvement in their English language proficiency (Peterson 1999).
Active delivery of information through mainstream and ethnic organisations
Specialist employment services (language and culturally matched service providers that are highly integrated with other settlement services) and long-term mentoring including job search assistance have been found to be useful (Kyle et al. 2004; Stevens 1998).

Wage subsidy and job search programs
These have been argued to have better employment outcomes than retraining programs (Jones & McAllister 1991).

Intensive, well-funded and well-integrated case management
This has resulted in higher levels of economic and social participation and less interference from barriers for disadvantaged job seekers (Perkins 2007).

5.1.3 Public sector diversity strategies
Bertone, Leahy & Doughney (2005) undertook consultations with ethnic community leaders, academics, government personnel and human resource managers in the public sector to suggest strategies for addressing discrimination and under-representation of migrant communities in the public sector. The recommendations included:

- initiating a change process aimed at increasing employment equity for CALD women and men. This would include a clear and strong policy that announces the intention to break down selection, promotion and other barriers to NESB employment in the sector.
- developing and implementing a cultural diversity awareness program for senior officers and human resource managers focusing on a census analysis, real case studies of disadvantage and best practice examples of how disadvantage can be addressed in employment policies
- taking action to redress the under-representation of NESB employees within the public sector through active recruitment campaigns, support for recruits, networking and mentoring
- supporting and informing NESB recruits to ensure that they have a positive employment experience and do not exit due to unrealised expectations
- monitoring policies to determine impact on numbers, classifications and career paths of NESB employees.
5.1.4 Changes in organisational practices

Recommendations emerging from the literature on organisational practices to address discrimination and encourage diversity include:

- **Changes in selection practices around names**
  This would involve coding job applications to replace the use of names, so that race and gender are more difficult to determine (Bart et al. 1997).

- **Cross-cultural training courses**
  These programs are designed to increase awareness of cultural influences on customer and workplace relations, improve knowledge and understanding of other cultures, and encourage better understanding of organisational cultural diversity policies and issues (including their significance to the organisation). According to Bean (2006), statistically significant improvements in staff understanding of cross-cultural issues can be evidenced post training.

- **Equal opportunity and human rights training courses**
  These courses educate employees, employers, organisations and industries about embedding equal opportunity and human rights principles into their workplaces. Training programs that are directly relevant to industry and that involve role plays support an applied understanding of equal opportunity and human rights principles (VEOC 2002).

- **Establishment of diverse selection committees**
  This can include creation of culturally diverse committees to conduct the initial screening of job applicants (Bart et al. 1997).

- **Targeted recruitment**
  This can involve working with community agencies to expand recruitment pools to include designated group members or advertising in languages other than English. The Canadian Employment Equity Act Annual Report 2006 gives examples of such programs. These include: advertising in Aboriginal languages in Aboriginal magazines/papers and sending notices to small, northern communities; Ontario Power Generation reviewing their screening, testing and interview practices; and Equitek using a strategic diversity sourcing expert and distributing job postings to over 250 designated group organisations.
➢ Cultural awareness programs
These are activities and events held by employers to increase cultural awareness among the workforce. Examples include concerts, arts events and meals designed to celebrate the different ethnicities of employees; educational activities around the International Day for the Elimination of Racial Discrimination; and the distribution of multicultural calendars highlighting multifaith holidays.

➢ Employee satisfaction surveys
This includes distribution of employee questionnaires on employee satisfaction and morale, including questions about barriers facing designated group members within their organisations (Bertone, Leahy & Doughney 2005; Canadian Equity Act Annual Report 2006).

5.1.5 Social marketing and advertising campaigns
Evidence in this area is limited. The few campaigns cited in Australia that have been evaluated and deemed successful were largely locally based, informed by explicit recognition of community misconceptions and framed within a positive context (Donovan & Lievers 1993; Donovan & Vlais 2006).

National and state campaigns noted in the Donovan and Vlais (2006) research included the Australians Against Racism’s ‘Faces in the Crowd’ campaign, which advocated the moral responsibility for accepting refugees in light of their social contribution and their need for support, and the multiple media campaign on Harmony Day (You, Me, aUStralians). Neither of these campaigns had any formal assessment, although there was some limited evidence provided by grant recipients from Harmony Day in Tasmania of a relatively strong awareness of the campaign. While both campaigns were framed in a positive context, it was noted that campaigns need to not only focus on those who are already supportive of diversity but also engage with those who are not (Donovan & Vlais 2006). Campaigns need to clearly identify and target the relevant audience.

5.2 Recommendations from the consultation participants
The communities that participated had clear and relatively consistent recommendations on addressing discrimination in employment. These were in the areas of education campaigns, support for securing employment, complaints processes and policy and legislative changes.
5.2.1 Education campaigns
The community consultations noted that state and locally based educational campaigns should:

- highlight the value of migrant workers to the economy
- highlight the value of overseas qualifications
- counter negative stereotypes
- highlight zero tolerance for discrimination.

5.2.2 Support for securing employment
Participants highlighted the need for:

- affordable bridging courses and exams for recognition of qualifications
- incentives for business to recruitment new migrants
- subsidised work experience
- cultural training for staff in Job Network organisations
- recruitment of more bilingual workers and workers from CALD communities
- mentoring programs.

5.2.3 Changes to complaints processes
As the complaints process is one of the key symbolic and practical means for providing redress for racial discrimination, the consultations highlighted the need for:

- increased dissemination of information on rights and complaints processes for CALD communities, particularly for women
- increased advocacy and support services (unions, local community organisations, etc.)
- greater cultural awareness of complaints handling staff
- greater and better relationships and communication between communities, community organisations and the Commission.
5.2.4 Policy and legislative changes
Participants argued that broader policy changes were required to address discrimination, including:

- affirmative action policies for recruitment and in the appointment of members of CALD communities to government boards and committees
- legislated equal opportunity and human rights policies and practices for all businesses and organisations.
6 Best and promising practice

While the problems arising from racial and religious discrimination are many, there is a growing international literature that proposes or documents intervention strategies and approaches to addressing discrimination. The Victorian Equal Opportunity and Human Rights Commission drew from some of these best practice approaches in their response to the Review of the Equal Opportunity Act.6

6.1 Government and public sector approaches

6.1.1 Complaints processes

The New Zealand Human Rights Commission introduced a mediation based Disputes Resolution Service in 2002. The approach adopted had an emphasis on low level, informal dispute resolution. As a result of the shift to this process a significantly higher number of cases were resolved within three months of the New Zealand Commission receiving a complaint (Human Rights Commission 2007). The complaints process can be instigated without a requirement for a written complaint. Instead, a party may contact the New Zealand Commission directly by telephone to receive advice or to provide details of the dispute. If required, a mediator assists.

If the dispute concerns the Government, the public sector or a law, the Attorney-General must be notified. New Zealand Commission staff work with the parties to try to settle the dispute. They may provide information, call roundtable meetings, meet people on a one-to-one basis or mediate by phone, email, fax or letter.

The approach adopted in New Zealand can be considered an ‘alternative dispute resolution’ approach. It differs from the Victorian system in that it:

- does not require formal investigations
- does not require a written submission
- leaves the substantive legal proceedings to a Tribunal
- avoids duplication of mediation and conciliation by both a Commission and a Tribunal (as is currently the case when a complaint is not resolved by the Victorian Commission and a complainant subsequently goes to VCAT).

6 For the Commission’s specific recommendations please refer to VEOHRC 2008.
6.1.2 Broadening equal opportunity legislation beyond complaints based approaches

The systemic nature of employment discrimination results in entrenched disadvantage and exclusion. Research by Fredman and Spencer (2006) and information from the review of the Victorian Equal Opportunity Act (DOJ 2008) indicates that elimination of systemic discrimination is likely to require changes to the framework of the Act that:

- allow discrimination to be addressed even where no complaint has been made
- allow systemic patterns of discrimination to be addressed where no single individual is responsible
- recognise that sometimes unequal treatment is required so that people have substantive equality as far as practicable. Substantive equality focuses on ensuring that people have equal opportunities in a real sense. It does not focus on similar treatment but rather on ensuring equality in a broader social sense.
- encourage active compliance with the Equal Opportunity Act rather than being reactive to complaints
- create a range of levers that motivate decision-makers to review policies and practices and to implement reforms (Fredman & Spencer 2006, p.16).

Fredman (2005, cited in Smith 2007) emphasises the importance of ‘positive duties’ in addressing systemic discrimination:

At the root of the positive duty … is a recognition that societal discrimination extends well beyond individual acts of racist prejudice. Equality can only be meaningfully advanced if practices and structures are altered proactively by those in a position to bring about real change, regardless of fault or original responsibility. Positive duties are therefore proactive rather than reactive, aiming to introduce equality measures rather than to respond to complaints by individual victims.

Fredman goes on to identify the important implications of such a duty. The duty does not fall on the individual to show specific acts of prejudice. Showing a pattern of under-representation or other evidence of structural discrimination is sufficient, and the one bearing the duty to respond is the organisation – the body most able to bring
about a change. The duty also requires structural change, not compensation for an individual, which will benefit a much larger group of people.

Positive duties have been introduced in other jurisdictions as a deliberate strategy to achieve substantive equality. Positive duties can require active steps to be taken by organisations without relying on individuals to bring complaints. This approach shifts the duty from individuals having to show that direct or indirect discrimination has occurred to organisations having a positive duty so that systemic issues are identified and addressed on a much larger scale.

The Commission, in its submission to the review of the Equal Opportunity Act, provided some examples of jurisdictions in which positive duties presently apply:

- The Australian *Equal Opportunity for Women in the Workplace Act 1999* (Cwlth) incorporates a positive duty with its requirement for the development of workplace programs.

- In the United Kingdom, public sector bodies have positive duties in relation to gender, race and disability. There is also a general duty to promote equality of opportunity that is enforceable through judicial review. These positive duties reach beyond the public sector to apply also to private bodies that perform public functions.

- In Canada, the Employment Equity Act 1995 contains a positive duty for federally regulated entities (both public and private) that employ more than 100 employees. Such entities must take active steps to identify, quantify and address employment barriers that restrict equal participation (VEOHRC 2008).

While the Multicultural Victoria Act generally covers these duties, it does not explicitly identify the elimination of unlawful discrimination as a core objective. The United Kingdom approach also significantly differs from the Victorian approach in its requirement for monitoring of the ethnicity of both staff and clients in the collection of statistics.
6.1.3 Creating action plans, guidelines, codes of practice and standards

Development of action plans, guidelines, codes of practice and standards is an approach already used in Australia.

Action plans are a way for organisations to develop and specify the steps that need to be taken to comply with equal opportunity laws. In developing action plans, organisations typically consult with stakeholders, review their policies and practices, identify barriers to equal opportunity and plan strategies to eliminate these barriers.

Guidelines refer to documents that provide assistance and instruction on how to comply with the Act. Guidelines can be prepared in consultation with the persons or organisations to which they are directed. They are not enforceable but could be taken into account by a court or tribunal in considering a complaint where relevant.

Codes of practice can set out directions for compliance with the Act. Codes of practice are distinguished from guidelines by their legal status and the process for their development. Codes of practice must be approved by an external authority (for example, the relevant Minister) before being published. Failure to comply with a code of practice does not itself give rise to a liability but must be taken into account by a court or tribunal where relevant to a complaint.

Standards can be similar to guidelines and codes of practice in that they provide more definite and specific benchmarks for compliance than the general duties under the Act. They are distinguished, however, by the fact that they are made by regulation and provide a complete statement of the law rather than merely providing guidance or directions on how to comply with the Act. Compliance with a standard is prima facie evidence of compliance with the Act. Non-compliance leads to liability under the Act.

Removing discrimination by creating standards, guidelines and action plans is required under the Commonwealth and State disability discrimination Acts. Under section 67(1)(k) of the Disability Standards under the Commonwealth Disability Discrimination Act 1992, HREOC has the power to prepare and publish guidelines for the elimination of disability discrimination. Standards under the Discrimination Disability Act can be made by the Attorney-General and require approval by Federal Parliament. These standards have the force of law.

Standards can be made in the areas of employment, education, public transport, accommodation and the administration of Commonwealth laws and programs.
Standards that purport to regulate the activities of an entire sector may face difficulties in achieving cross-sector consensus, however.

Standards may also be based on pre-existing technical standards, such as the Building Code of Australia in relation to access to premises. The Disability Standard on Accessible Public Transport 2002 is also reinforced through reference to a number of other Australian standards.

The Victorian *Disability Act 2006* requires the Victorian public sector to prepare a plan for the purposes of:

- reducing barriers to persons with a disability accessing goods and services or obtaining and maintaining employment
- promoting inclusion and participation in the community
- achieving tangible changes in attitudes and practices that discriminate against persons with a disability.

The Hong Kong Human Rights Commission (HKHRC), the United Kingdom Commission for Racial Equality (CRE) and the Equal Opportunity Commission of Northern Ireland (EOCNI) have all developed and issued codes of practice. Some of these codes are enforced by legislation and others are solely recommendations. Regardless of whether a code is mandatory or not, a court can take a code of practice into account if it is relevant to proceedings. For example, the HKHRC codes do not of themselves have any legislative force and a breach of a code does not render a person liable in any proceedings. However, in any proceedings a code of practice is admissible as evidence. Further, if any provision of a code appears to a court to be relevant, it must be taken into account when determining an issue. These provisions vest the HKHRC codes of practice with quasi-legislative force. Several codes of practice published by the CRE are statutory, which means that they may be used as evidence of a breach of the underpinning legislation during an employment tribunal case under the Race Relations Act in the United Kingdom.

6.1.4 Regular anti-discrimination reviews of government policies and procedures

The Western Australian Substantive Equality Project, run by the Western Australia Equal Opportunity Commission in conjunction with State Government agencies, examines policies and practices within each of the public service portfolios, assuming these are potential sites for racism, intended or otherwise. The project requires actions...
from each agency in the areas of policy and planning, service delivery and employment and training. Activities include needs assessment, systemic consultation with stakeholders, equality action planning, establishment of targets for all areas of an organisation’s operations, the dedication of resources to enable meaningful implementation of the policy framework, and the creation and implementation of formal and routine processes for monitoring progress and performance.

6.1.5 Preference in government contracts
Since 1986, the Federal Contractors Program in Canada has required organisations with 100 or more employees bidding for federal government contracts of $200,000 or more to undertake employment equity programs for women, Aboriginal peoples, people with disabilities and members of visible minorities (Jain 2001; Longfield 2002). In a similar vein, in Victoria the Attorney-General has stipulated that a certain percentage of women barristers must be used in order to be eligible for the tendering of legal services/procurement.

6.1.6 Employment of racism prevention officers
In 2007, as part of the Racism-Free Workplace Strategy in Canada, nine permanent racism prevention officers were hired across Canada. Their role includes training and education; assistance to visible minorities and Aboriginal people in relation to recruitment, advancement and retention; development of support networks; conflict resolution and strategic advice.

6.1.7 Labour market assistance programs
Examples of labour market assistance programs aimed at people from CALD backgrounds include:

- support for job searches
- comprehensive skills assessment processes
- development of experience and qualifications based on recognition of previous skills or experience
- access to professional networks and peer groups to help link people into the labour market and/or higher education
- generic and specific professional development programs addressing conventions and standards of professional practice in Australia (Wagner & Childs 2006).
In Victoria, a number of programs have been funded to support migrants and refugees into gainful employment. Two of these are the Workforce Participation Partnerships (WPP) program and the Global Skills for Provincial Victoria (GSPV) program. Under WPP, organisations are supported to provide disadvantaged Victorians with work experience and job skills training in a local context. Support is provided to organisations that provide mentoring for job seekers and post-employment support is provided to both employers and job seekers.

The GSPV program is a partnership between the Victorian Government and local governments. It focuses on working closely with regional employers and communities to develop and implement services to attract migrants to their region and to link migrants with local employers and professional communities. It also works to provide locally developed solutions to assist newly arrived migrants into employment, which may include local workplace orientation, mentoring, and access to local employer and professional networks.

Over 3000 jobseekers with barriers to employment have gained sustainable employment through WPP: 40–50% of WPP projects list CALD communities and recently arrived migrants as a target group. It should be noted that this program supports non-refugee CALD migrants who are not eligible for employment search support through the Commonwealth Job Network.

A further Victorian initiative is the Skills Stores service. The service, which is in various locations around provincial and metropolitan Victoria, helps clients gain recognition for current skills by assisting them to develop an initial skills profile and providing referrals to registered training organisations. It also provides guidance on how best to update or improve qualifications. The service is limited to referrals for vocational education and training.

Competency based skills assessment is also available for potential skilled migrants in key source skilled migrant countries in 10 key trade occupations. Skill level requirements are a Commonwealth responsibility.

The Youth Employment Scheme (YES) is an initiative designed to offer disadvantaged Victorians aged 15–24 years a career kick-start with traineeships and apprenticeships with the Victorian Government. The program is open to any Australian citizen or permanent resident aged between 15 and 24 who is not involved in tertiary study and

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7 Internal database, Workforce Participation Unit of the Department of Innovation, Industry and Regional Development.
not in full-time ongoing employment. Trainees receive on-the-job training and are paid national training award rates. A workplace manager provides trainees with workplace training and ongoing support and feedback throughout the traineeship. Trainees receive educational training outside the workplace one day a week. A group training company works with the trainee and their workplace manager to provide the other requirements needed to complete the trainee's certificate. The group training company is also responsible for all administrative, payroll and legal responsibilities for the trainee. This type of program provides both employment experience and training opportunities. It is an example of best practice that potentially could be extended by changing the age profile and targeting CALD community members who share many of the disadvantages of the youth groups currently targeted.

6.1.8 Community enterprise development initiative

The Community Enterprise Development Initiative (CEDI) is a project developed by the Brotherhood of St Laurence in partnership with the Department for Planning and Community Development (DPCD).

The initiative works with communities to develop enterprises that deliver a range of benefits, including job creation and community building. In 2004–05 CEDI worked with 12 neighbourhood renewal communities to develop community enterprises. These communities are now operating enterprises including fishing rod manufacturing, Christmas cake making, landscaping and minor home repairs. Over 100 jobs and training opportunities have been created. In 2006–08 CEDI provided staff support to an additional 15 communities. Each community received in excess of 15 days of staff time in the first year, with continued support in the second year. In 2008–10 CEDI will be working with additional communities across Victoria, building on its previous work and continuing to advocate the use of community enterprises as a development tool.

CEDI helps communities:

- identify feasible enterprise opportunities and concepts
- develop feasibility studies and business plans
- link groups to resources such as funding and business planning tools
- access training and coaching, through workshops and ongoing support
- access networking opportunities with other communities developing community enterprises and with expert assistance.
While CEDI provides a catalyst, the impetus and ownership of the community enterprise needs to come from the community and organisations that service the community. Results from the two years of operation show that nine CEDI enterprises are now operating with close to 30 full-time employees. Thirty-four employees have received vocational and/or accredited training during the process (BSL 2007).

6.1.9 Monitoring and reporting of demographic data of employees to determine equity in representation and promotions

In a similar vein to the United Kingdom Race Relations (Amendment) Act 2000, reporting on gender equity and female representation within the public sector and for organisations with over 100 employees is already required under the Commonwealth’s *Equal Opportunity for Women in the Workplace Agency Act 1999*. Organisations covered under that Act are now required to develop and implement a workplace program. They are also required to report biannually to the Equal Opportunity for Women in the Workplace Agency on the program and its effectiveness, including providing a workplace profile highlighting gender representation within the organisation and at various levels of authority.

6.1.10 Social marketing campaigns

The Just Like You Campaign in Victoria, an initiative of a number of Government departments, was launched in Cultural Diversity Week in 2006 to target ordinary Victorians who had become nervous or insecure about cultural diversity. The marketing campaign included television advertisements and posters. As part of the campaign, Yarra Trams, Connex trains and Metlink, in conjunction with the Commission, used posters portraying people from different cultural backgrounds on public transport from April to June 2006. The underlying message of the campaign was that as Victorians we all share many similarities even though we come from different backgrounds.8

6.2 Equity and diversity strategies in private companies

The Victorian Multicultural Commission’s Business Corporate Awards recognise best practice inclusive initiatives by businesses that utilise and promote Victoria’s multicultural advantage. In a similar vein, the Diversity@Work Awards recognise organisations and individuals from across Australia that have made an outstanding commitment to championing diversity within their workplace.

8 It was noted by Donna and Vlais (2006) that this campaign may have been too generic to target individuals with extreme views in either direction.
Some examples of projects, events and policies undertaken by large corporations to better manage and support a diverse workforce include:

- **KR Castlemaine Foods and the New Hope Foundation**
  
  KR Castlemaine Foods Pty Ltd is a large-scale producer of meat smallgoods based in the regional town of Castlemaine for over 100 years. It has recently experienced an increased demand for labour and skilled workers.

  In collaboration with the New Hope Foundation, and funded by the Victorian Government’s Workforce Participation Partnerships Program, KR Castlemaine Foods has engaged inclusive recruitment and training practices and supported the employment of over 50 African refugee workers.

  KR Castlemaine Foods had no previous experience of employing large numbers of workers with English as a second language and with minimal or no Australian work experience. Nevertheless, the employer has demonstrated a tremendous willingness to implement flexible and inclusive recruitment and training practices, as well as to engage in broader community inclusion activities.

  These activities resulted in the permanent employment of 45 African refugee workers by October 2007.

  Through engaging bilingual staff, KR Castlemaine Foods was able to equip African employees with an understanding of processes and requirements in the workplace. By working collaboratively with the New Hope Foundation, local community members and Castlemaine police, KR Castlemaine Foods also established a network to support the settlement needs of the African employees within the local community.

- **Australia Post diversity management strategy**
  
  Australia Post has a range of diversity management strategies for disadvantaged groups, including women, Indigenous Australians, people with a disability and those from non-English speaking backgrounds.

  Call centre staff are trained and accredited to interpret in 20 different languages and the representation of NESB people in the workforce exceeds that of the general workforce.
Global Tele Sales’ multicultural workforce

Global Tele Sales (GTS) is a wholly owned subsidiary of Lufthansa Commercial Holdings. GTS has eight customer service centres in locations around the world. The company chose to establish its centre in Melbourne in 1998 because of its cultural diversity and the ample availability of potential bilingual employees. Melbourne’s multilingual strengths convinced GTS it could successfully service its customers in all of the required languages from a single location.

At last count, GTS had over 22 different nationalities represented in its staff mix. Rather than ‘unifying’ the different cultures in the company, GTS encourages diversity. Its workers are encouraged to share their culture and beliefs with fellow employees from other cultural backgrounds. Instead of operating dedicated market/language teams, GTS has split its customer service teams into multicultural teams.

GTS utilises its knowledge of different cultures in Melbourne to support effective and appropriate delivery of its global services for Lufthansa.

Cultural Week@570 at ANZ Payments Centre

Cultural Week@570 was a week-long celebration of cultural diversity in the workplace held on 17–21 May 2004. The ANZ Payments Centre is a major back-office processing centre for ANZ and houses approximately 650 staff. All staff voluntarily participated in the celebrations.

The prime objective of the event was to recognise and celebrate both the cultural diversity within the ANZ Payments Centre and the benefits this diversity brings to the workplace. This involved dressing up in national dress, decorating the workplace, visits by dignitaries from different countries and provision of foods from different countries.

ANZ Payments Centre believes that by the end of Cultural Week@570 staff were far more conscious, accepting and tolerant of their workmates’ cultural heritage. This elevated cohesiveness of staff as result of embracing cultural diversity is of tremendous value to the ANZ Payment Centre. Increased knowledge about other cultures and greater interaction with colleagues facilitates a better experience for customers from diverse backgrounds.
International examples
In the United Kingdom, Ford set up a diversity team in 2000 to drive diversity in business, with each of Ford's 10 factories undergoing a diversity review. Four actions were identified: a dignity at work program, a new diversity training program, a review of recruitment and selection processes, and a corporate citizenship and communications strategy.

In Canada, Trans X Ltd created an anonymous call line in 2005 where employees could communicate security and harassment issues to management. Export Development Canada carried out an employee opinion survey which identified barriers for designated groups. An external consultant was engaged and private interviews were held to identify causes and solutions to the problems. Another Canadian company, Spectra Energy, offered 10 weeks employment-related training for skilled migrants, followed by six weeks of unpaid work experience. Citibank Canada celebrates a number of cultural events connected with the diversity of its workforce, such as Black History Month, Women's History Month, Asian Celebration Month and Chinese New Year (Canadian Equity Act Annual Report 2006).

6.3 Equity strategies for industry
6.3.1 Industry networks promoting anti-racism and the business case for diversity
In the United Kingdom, Race for Opportunity (RfO) is an association of member companies that works with organisations on an individual basis to provide specialist advice and support to help them meet their objectives on race and diversity. RfO also brings organisations together via a program of events to discuss topical developments and share good practice. It provides publications, research, legal updates and briefing papers to keep organisations informed and engaged and gives access to emerging good practice and case studies from other organisations working on race and diversity as part of a business agenda.

RfO also has an online benchmarking system that provides a clear evaluation of each organisation in relation to the network and relevant sector trends, and identifies the top 10 performing member organisations. RfO subsequently supports the results with feedback in debrief sessions. A report undertaken by an individual relationship manager highlighting the organisation's strengths and weaknesses is provided as well as support and advice on attaining a diverse competitive workplace and environment.
6.3.2 Development of employment equity indices


In collaboration with Images Interculturelles and the Canadian Race Relations Foundation, the Conseil des Relations Interculturelles of Quebec developed the EDIT tool for private organisations wanting to foster, stimulate and increase their growth through appropriate diversity and equity strategies. By using inclusive participation human resources point system indicators, organisations can now measure their ethnocultural diversity management and equity practices at various levels of their business model. The companies scoring the highest points are recognised and honoured at a special event showcasing the top diversified and talented enterprises.9

Participation in this process is entirely voluntary. As at October 2007, only 13 organisations had undertaken the self-audit. As the work only commenced in the second half of 2007, the long-term viability of the program is yet to be determined.

6.3.3 Industry audit tools

In Canada, a number of sector/industry-wide anti-racism programs have been established. The Canadian Bar Association (CBA) undertook a program to create an audit process for the sector and its organisations. The program known as the Equity and Diversity Audit Template for Law Firms provides principles, guidelines, and procedures for ensuring equity and diversity. Further, the Association highlights current challenges and best practices in effectively implementing equity and diversity practices in organisations within the legal profession.

In designing the template the CBA organised Canada-wide focus groups that demonstrated a desire in the legal profession for practical tools and strategies to effectively implement equity and diversity initiatives. The consultations pre-empted the establishment of diversity benchmarks for the profession as a whole as well as within each law firm and legal workplace. The CBA, law firms, law societies and legal associations use this audit template as an aid to further implementing equity and diversity initiatives.

9 More information is available at: http://www.conseilinterculturel.gouv.qc.ca
6.3.4 Support for qualifications bridging programs

The Nurse Policy Branch of the Victorian Department of Human Services offers scholarships to support international nurse graduates to meet Victorian registration requirements. These scholarships assist people who have had their nursing qualifications assessed by the Australian Nursing & Midwifery Council or Nurses Board of Victoria and who are required to undertake a competency based assessment program before becoming eligible for registration in Victoria.

6.3.5 Equal opportunity training and development of equal opportunity policies

Education consultants from the Commission work with organisations in the public, private and community sectors to help them design and implement strategies to eliminate discrimination and harassment. Their stated aims are to ensure that organisations:

- are equipped to implement equal opportunity strategies
- manage their own complaints more effectively
- minimise the impact of discrimination and harassment on individuals and the organisation.

To achieve these aims the Commission provides the following consultancy services:

- general advice on equal opportunity in the workplace
- reviewing an organisation’s policies and complaint handling procedures
- advice and support on how to conduct a workplace equal opportunity climate survey, needs assessment or training program
- ongoing equal opportunity assessments to monitor progress or developing needs.

The Justice for Refugee initiative funded in the recent State budget will also contribute significantly to providing a responsive justice system and training and information to new arrivals. Information will include equal opportunity and human rights training.
7 Recommendations

The following recommendations reflect the literature, local and international best and promising practice and, critically, the voices of the communities that contributed to the consultation process.

7.1 Changes to Commission functions and processes

In light of the limitations of the contemporary complaints processes identified in both the literature and throughout the consultation process there is a clear need to review current arrangements to ensure that the process is appropriately accessible, flexible, responsive and just. Further, it is critical at both a practical and symbolic level that the Equal Opportunity Act is viewed as an effective and appropriate tool for deterring and responding to acts of racial discrimination. As was clear from feedback from communities, this requires a better understanding of the legislation and a complaints process that is well understood, straightforward, easy to access, efficient and respectful of the needs and vulnerabilities of victims.

In order to provide a more direct and effective means of addressing the economic and social exclusion of this group of people from the workforce, the Victorian Equal Opportunity and Human Rights Commission makes two recommendations.

**Recommendation 1**

Changes be made to the *Equal Opportunity Act 1995* (Vic) as detailed in the Commission’s submission to the Review of the Act\(^\text{10}\) to allow for:

- imposition of a positive duty on private and public sector organisations
- incorporation into government procurement and granting policies requirements for contracting and grant receiving entities to have a framework to work towards substantive equality
- own motion inquiries to identify breaches or departures from positive duty
- the Commission to have the ability to issue compliance notices, require action plans and seek orders through the Victorian Civil and Administrative Tribunal (VCAT) for compliance
- simplification of the complaints system with flexibility that allows early access to alternative dispute resolution and to a hearing on the merits at VCAT.

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\(^{10}\) See the Commission’s submission to the Equal Opportunity Act Review Discussion Paper 2007 (VEOHRC 2008)
Recommendation 2

The Commission, in conjunction with the Department of Justice, develop strategies to improve access to information about equal opportunity legislation for newly arrived community groups and to further the aims of the Attorney-General’s Justice Statement – *New Directions for the Victorian Justice System 2004–2014* – to ensure individuals have access to justice.

The Justice for Refugees initiative announced in the recent State budget will contribute significantly to providing a responsive justice system and information to new arrivals.

7.2 *Changes to Victorian public service processes and policies*

The Victorian public service is one of the key administrative vehicles through which the principles and values articulated in State legislation are expressed. As such, it is a critical site for change in reducing and eliminating racial discrimination. Further, as one of the largest employers in Victoria, any change that reduces the racial discrimination experienced by Victorians within the public sector will have a significant practical and symbolic impact on ethnic minorities and their experiences of discrimination.

In light of the research on representation of ethnic minorities in the public sector and clear disparities in promotional opportunities, more research, better data collection, contracting arrangements that reflect equal opportunity and human rights principles, and the creation and promotion of equity strategies for appropriate recruitment and representation of CALD communities are required.
Recommendation 3

The Victorian public sector to collect ongoing demographic data on its employees, including country of birth, ancestry, languages spoken at home and religion.

This data be collected and analysed biannually against employment data, including recruitment, retention, promotion and separations data, as part of reporting requirements under the *Multicultural Victoria Act 2004* (Vic).

The information reported be used to identify major improvements and initiatives that promote multiculturalism or that meet the needs of culturally and linguistically diverse communities.

Best practice employment practices by the Victorian public service be included as part of these reporting requirements to identify major improvements and initiatives that promote multiculturalism or meet needs of culturally and linguistically diverse communities.

Recommendation 4

The Victorian public sector, in conjunction with the Victorian Multicultural Commission, the Victorian Equal Opportunity and Human Rights Commission and the State Services Authority, develop promotional strategies and equity initiatives for people from culturally and linguistically diverse backgrounds with the purpose of encouraging recruitment and providing exemplars for the private and community sectors.

Recommendation 5

The State Service Authority establish a program similar to the Youth Employment Scheme specifically targeted at relevant disadvantaged members of culturally and linguistically diverse communities, irrespective of age.
7.3 Encouragement of business to value and support diversity and equity

Support is required to encourage business to actively reflect and undertake policies and planning to encourage diversity and ensure equitable practices. As noted in the literature review and the consultation findings, while a few organisations have undertaken good work in this area, they remain a minority. In conjunction with any marketing campaign highlighting the benefits of migrants to industry, work is required to outline principles, guidelines, procedures, current challenges and best practices in effectively implementing equity and diversity practices. Race for Opportunity is a potential model for undertaking such work. Currently, the Workforce Participation Partnerships program in the Department of Innovation, Industry and Regional Development works to attract business migrants to Victoria and is best placed to pursue such an approach in the future.

**Recommendation 6**

The Commission, the Department of Innovation, Industry and Regional Development, the Victorian Multicultural Commission, the Victorian Employers Chamber of Commerce and Industry and other employer bodies allocate resources and work together to:

- implement a social marketing campaign to encourage employers to adopt culturally inclusive workplace policies
- promote best practice in the area (potentially building up a library of case studies based on the Victorian Multicultural Commission’s Business Corporate Awards)
- establish a voluntary benchmarking program for organisations to assess their diversity practices.
A further issue that was highlighted was the potential gap in knowledge, understanding and practical implementation of equal opportunity and human rights principles in small and medium businesses. The difficulties in applying the Race for Opportunity model to these organisations are the absence of substantial empirical research on this issue, a lack of understanding of the barriers and informational gaps of the sector and the absence of best practice models that are effective, appropriate and reasonable for smaller businesses. Greater research and consultation with the sector is required to investigate ways to ensure understanding of the issues and effective implementation of equal opportunity and human rights principles.

**Recommendation 7**

The Commission, with the support of the Department of Innovation, Industry and Regional Development and employer groups, undertake:

- a discrete research project on the nature and prevalence of discrimination in small and medium businesses and on the knowledge among business owners of equal opportunity principles.
- a consultation on effective, appropriate and reasonable measures to address any gaps in knowledge and effective implementation of equal opportunity and human rights principles within these businesses.

### 7.4 Improved support for migrants seeking employment

Both the community consultations and the literature highlight the critical importance of appropriate support for migrants in securing employment. The consultations show that many migrants lack information on services, educational options and how to get their qualifications and skills recognised. Further, there are clearly issues regarding the ability of a number of migrants to fund courses and to cover the economic costs in terms of income forgone. Evidence is also emerging that mainstream labour market assistance programs are not meeting migrant needs, particularly for those with limited English language or formal education or those whose work experience has primarily been in developing countries.
In light of the glaring skill shortages and the ageing of the population it is critical that Victoria creates an environment where the skills of migrants are fully utilised. Measures need to be taken to recognise migrants’ skills and to ensure that the State continues to be competitive in attracting migrants in a global environment where skill shortages and declining birth rates are challenging most developed nations.

A further issue that was raised in the consultations was the absence of recognition of trade skills for migrants with significant experience and no formal qualifications or unrecognised qualifications, and the consequent potential for exploitation. Migrants with significant experience in many of these areas simply do not need the extensive formal education that is currently required for their skills to be recognised. A process for evaluation of migrant skills or a standardised, reduced apprenticeship period is required. Skill level requirements are a Commonwealth responsibility.

**Recommendation 8**

- The Victorian Government’s Skills Stores further promote and provide personalised support for people from culturally and linguistically diverse backgrounds to upgrade their skills and to gain formal recognition of their skills.

- This support to include specialist job search assistance about qualification recognition processes, education (including English as a Second Language classes), training opportunities, and scholarships and higher education loan programs (such as FEE-HELP) for bridging courses.

**Recommendation 9**

Scholarships for bridging courses be made available by relevant government departments in areas of skill shortages based on the Victorian nursing model.
A final issue with respect to job searching for migrants is the economic cost of searching for employment and undertaking ESL classes and bridging courses. Both the literature and the community consultations highlighted that this is a serious problem for many migrants. Providing better information at the Skills Store is a first and critical step in this process.

With respect to English language classes, the Commonwealth Government is currently reviewing its Adult Migrant English Program. This review will include examining options around traineeships in both English and work readiness that will allow new entrants to continue their English language tuition while developing knowledge, skills and experience in the Australian workplace, and providing additional English language tuition hours to those students most in need.

**Recommendation 10**

The Victorian Government contribute to the Commonwealth review of the Adult Migrant English Program pointing out the broad range of barriers and costs associated with searching for employment and undertaking English as a Second Language classes and bridging courses and the benefits of the Program being accessible and flexible.

Further work also be undertaken by the Department of Industry, Innovation and Regional Development to actively engage with the Department of Education, Employment and Workplace Relations on professional bridging programs and qualification tests, their economic and financial costs, success rates and migrant experiences to examine the financial viability of these programs for various migrants groups and to explore, where relevant, means to ensure equity in access to various programs.

**Recommendation 11**

The Commission:

- provide regular equal opportunity and human rights training for service providers in strategically located Job Network members
- promote its Recruitment Industry Best Practice Guidelines to Job Network members and the recruitment sector.
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