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**ECCV Submission
To the Attorney-General's Department
on the
Consolidation of Commonwealth
Anti-discrimination Laws
February 2012**

Assistant Secretary
Human Rights Policy Branch
Attorney-General's Department

Dear Assistant Secretary,

On behalf of Ethnic Communities' Council of Victoria (ECCV) I am pleased to present this submission to the Attorney-General's Department and the Minister for Finance and Deregulation.

As the state-wide peak advocacy body that lobbies all levels of government on behalf of Victoria's multicultural communities, ECCV welcomes the opportunity to make a contribution to consolidating the Commonwealth anti-discrimination laws.

For over 30 years ECCV has remained the principal liaison point between ethnic communities, government and the wider community and has been a key player in building Victoria as a successful, harmonious and multicultural society.

Following our report *Strengthening Families, Strengthening Communities: CALD Communities Taking Action Against Family Violence*, ECCV endorses the submission of the Australian Domestic and Family Violence Clearinghouse (ADFVC) on the Consolidation of Commonwealth Anti-Discrimination Laws.

I look forward to further opportunities to contribute to Australia's Human Rights Framework, on behalf of Victoria's culturally diverse communities.

Sincerely

Joe Caputo OAM JP
Chairperson

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Key Recommendations:

- a. That the consolidated Act incorporates the principles within the Racial Discrimination Act 1975 and its amendments.
 - b. That the role of the Australian Human Rights Commission (HRC) is extended to include a monitoring role in the elimination of discrimination.
 - c. That the Australian Human Rights Commission conducts an anti-racism public education campaign.
 - d. That the Australian Human Rights Commission conducts a public education campaign in a variety of community languages on how to make complaints about incidents of discrimination.
 - e. That a cost-effective and informal alternative such as culturally responsive mediation be provided in racial discrimination cases.
 - f. That the victims of domestic violence from culturally diverse backgrounds be adequately protected in the consolidated Act and the Commonwealth anti-discrimination law reforms.
1. ECCV supports the consolidation of the Racial, Sex, Disability and Age Discrimination Acts and other human rights conventions and Bills, to better protect people from culturally and linguistically diverse backgrounds from discrimination and to assist the community at large to understand their anti-discrimination rights and obligations.
 2. Whilst ECCV does not have the legal expertise required to provide detailed judicial advice, this submission represents the main principles regarding racial discrimination that we believe should be considered in the consolidation of Commonwealth anti-discrimination Acts and Bills. Some specific case examples and feedback from communities are included to demonstrate the impact of direct and indirect discrimination on individuals from culturally and linguistically diverse backgrounds.

Meaning of discrimination

3. Upholding multiculturalism, community harmony and social justice, ECCV believes that racism and discrimination have no place in our society. Furthermore ECCV affirms that living free from racism is a fundamental human right and that the new consolidated anti-discrimination Act should preserve a strong focus on racial vilification.
4. ECCV supports reducing the complexity in regulation and encourages the Government to ensure that the unified laws adequately protect people across Australia from discrimination on the grounds of race, colour, descent, national or ethnic origin, and immigration status.
5. ECCV believes it is important that a unified anti-discrimination Act would protect areas of public life and uphold non-discriminatory media reporting especially regarding people's race, colour, religion, national or ethnic origin.

Special measures

6. The following examples of marginalisation should be taken into account in developing a consolidated anti-discrimination Act. ECCV feedback indicates that young graduates from new and emerging communities experience inordinate difficulties gaining

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employment. Further ECCV feedback and the report *Heart Break Hotels – the Crisis Inside Melbourne's Luxury Hotels* produced by the Victorian Immigrant and Refugee Coalition (VIRWC 2010) demonstrate how workers from non-English speaking backgrounds experience considerable disadvantage, are victimised and are sometimes unfairly bypassed in job advancement opportunities by employers. ECCV recommends 'special measures' to ensure these culturally diverse workers are treated fairly.

7. ECCV acknowledges that people from emerging communities, many of whom have had a history of moving through a number of refugee camps in different places, require additional assistance to enter and progress in the workforce. ECCV believes that 'special measures' in the form of positive actions regarding racial discrimination should be allowed to assist people from culturally diverse backgrounds to enjoy their human rights as they may have greater social, cultural and economic disadvantages than many others in the society. Special measures such as employment assistance programs as well as education and training incentives, and establishing targets and scholarships are particularly important for people from new and emerging communities. This type of inclusive action would provide positive workforce participation outcomes and avoid the possibility of future entrenched discrimination and disadvantage that could arise from long-term unemployment.

Harassment

8. ECCV acknowledges that Australians have a reasonable degree of comfort with cultural diversity and that we need to preserve our freedom of speech. ECCV notes however that various forms of racism exist that could be direct or indirect, overt or covert, and even include 'bystander racism' that can have a 'troubling' or harmful impact on the victim. ECCV believes that where and when such discrimination occurs, it is important that the consolidated anti-discrimination Act acknowledges and tests the incident.
9. ECCV feedback indicates that people from culturally diverse backgrounds in trade apprenticeships suffer unfair victimisation, often not reported, resulting in them dropping out of the workforce. ECCV would like to see a positive anti-discrimination duty imposed in the workplace so that employers understand their legal obligations and how to comply with them. ECCV would also like to see the prohibition on harassment to include all protected attributes relating to cultural difference.

Protected Attributes

10. ECCV supports the explicit coverage by the consolidation Bill where two or more aspects of discrimination against a person's identity are protected for example; a person from a non-English speaking background may experience discrimination because of both her gender and ethnicity, or his disability and ethnicity.
11. ECCV advocates for the retention of current core Commonwealth anti-discrimination attributes such as race, including colour, descent and national or ethnic origin, that a person is or has been an immigrant and one's religious affiliation. In particular immigrant and refugee status should be included as people from new and emerging communities with possible past traumatic pre-migration experiences may result in a person being more vulnerable and lacking core workforce skills, but not the desire to work.
12. ECCV feedback indicates that domestic violence amongst families from culturally diverse backgrounds is a hidden issue that still requires more support. ECCV would

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like the anti-discrimination law reform to ensure that it improves the protection of victims of domestic violence and includes the attribute: 'status as a victim of domestic violence'¹ as specified in the Australian Domestic and Family Violence Clearinghouse (ADFVC) submission.

Protected Areas of Public Life

13. ECCV would like to see a greater public knowledge of the range of legislation and penalties in place in Victoria and Australia to deter racism and discrimination. ECCV therefore recommends an anti-racism public awareness campaign that addresses issues of racism or ethnicity-based discrimination, harassment or vilification especially in the areas of employment and education.
14. ECCV would like the consolidated Act preserve the following elements of the current Racial Discrimination Act 1975 and its amendments under which it is against the law for people to discriminate against another person in:
 - employment, such as getting a job or applying for a promotion
 - education, whether at school, university, TAFE or other colleges
 - access to premises such as shops, libraries or hospitals and other buildings used by the public,
 - buying goods and using services, such as being served in a restaurant or using taxis, banks and legal services
 - accommodation, such as renting a unit or house or buying and selling land
 - activities of clubs or associations, such as joining a sports club or RSL
 - Commonwealth Government laws and programs, such as voting and information in accessible formats
 - playing sport, enrolling, competing or access to mainstream competitions².
15. ECCV would like to see the consolidation laws prohibit requests for information such as cultural, linguistic and spiritual backgrounds where such information is irrelevant and could result in discrimination against a person.
16. Concerning racial hatred and vilification, ECCV advocates that the consolidated anti-discrimination Act prohibit offensive behaviour using speech and writing both in public places and by employers in positions of authority. Examples of offensive behaviour are taken from the Human Rights Australia website for example:
 - offensive racist comments or drawings in a newspaper, leaflet, website or other publication
 - making racist comments on e-forums, blogs, social networking sites
 - writing racist graffiti in a public place

¹ Refer to Australian Domestic and Family Violence Clearinghouse (ADFVC) *Submission on Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*

² Acknowledgments to Australian Human Rights Commissions website on Plain Language Guide to Racial Discrimination accessed at 30.1.2012 at http://www.hreoc.gov.au/racial_discrimination/guide_to_rda/index.html

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- making racist speeches at a public rally or assemblies
- placing racist posters or stickers in a public place
- making racist comments at sporting events to players, spectators, coaches or officials
- making a racially abusive comment, joke, song or gesture in a public place: including shops, workplaces, parks, public transport, and schools.

Exceptions and Exemptions

17. ECCV acknowledges that temporary exemptions should remain available in anti-discrimination laws to provide a balance between freedom of speech and the right to live free from racial vilification when it is done within reason and in good faith for example in an artistic work and performance; an academic discussion or debate; and a fair and accurate media report. An individual should be able to hold a personal view about religious groups as long as that view is not expressed publicly in a hurtful way. ECCV re-affirms the vital role of the Human Rights Commission in assisting with determining such exemptions³.

Complaints and Compliance Framework

18. ECCV advocates for increased information about access to the right support services to assist people who are experiencing racial vilification in the workplace.
19. As the majority of discrimination and harassment complaints relate to the workplace and the provision of services, according to the consultation Discussion Paper, ECCV advocates for incentives for cultural diversity sensitivity training in all workplaces as well as guidance and assistance for employers to establish policies and procedures that address discrimination issues.
20. ECCV believes that many people from non-English speaking backgrounds are not well informed about where and how to make a complaint when they are discriminated against and that it can be made in any language. ECCV advocates for a public education campaign in a variety of community languages that promotes how to make a complaint to the Human Rights Commission.
21. ECCV further calls on such a public education campaign to be conducted in partnership with ethnic and multicultural community organisations to provide coordinated support in reaching people from culturally diverse backgrounds.

Culturally inclusive action plans

22. ECCV believes that everyone in society has a role to play in ensuring that people from diverse cultures have the right to live in a harmonious society, to feel safe and secure and to reach their full potential in the workforce and their

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³ “When is racial hatred not prohibited by the Act?” listed on Human Rights Commission website accessed 30.1.2012 at http://www.hreoc.gov.au/racial_discrimination/guide_to_rda/index.html



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community life. ECCV believes that businesses, government departments and community organisations would benefit and learn from best practice examples of a culturally inclusive workplace.

23. ECCV believes employers should receive assistance from the Australian Human Rights Commission and relevant state authorities to ensure their policies and procedures are inclusive and fair. They should then be encouraged to market their commitment to equality in cultural diversity on the Commissions' website. This would provide valuable insights into a variety of anti-discrimination approaches enabling employers to learn from best practice action plans about processes such as the recruitment, training and retention of culturally diverse staff.
24. ECCV supports the empowerment of the Human Rights Commission to take on a stronger guiding and monitoring role such as the certification of special measures regarding the employment, training and on-going mentoring of people from new and emerging communities. This would allow businesses to adopt equal opportunity measures with more certainty and clarity in meeting the obligations of the anti-discrimination laws.

Mediation

25. ECCV acknowledges that many aggrieved individuals from an immigrant or refugee background who experience racial discrimination in the workplace or in a public space, do not have the financial means to undertake legal proceedings. ECCV therefore encourages the development of low cost and informal conflict resolution alternatives. For example the Australian and state-based Human Rights Commissions could provide a community mediation service to resolve disputes. ECCV advocates that mediators would need to be accredited under the National Mediator Accreditation System as well as have cultural responsive training.
26. ECCV advocates for informal mediation as an effective way of addressing prejudice, intolerance and discrimination regarding multi-faith groups such as Australia's Muslim communities. In addition ECCV advocates for bilingual accredited mediators especially in the community languages of new and emerging communities for more effective resolving of disputes involving people from non-English speaking and religiously diverse backgrounds.

Options to improve the court stage of the complaints process

27. The formality of the courts and justice system is often a barrier to people from non-English speaking backgrounds that experience unlawful racial discrimination. Whilst unable to provide detailed recommendations in this area, ECCV supports reforms that would make access to courts and the justice system easier and more culturally responsive for people from culturally diverse backgrounds. An improvement would be allowing an *amicus curiae* or 'friend to the court,' and more specifically a multicultural 'friend to the court,' to assist the court on points of law especially for people from culturally diverse and non-English speaking backgrounds.

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Extend HRC beyond its current role

28. ECCV applauds the good work of the Australian Human Rights Commission around unlawful discrimination, public education on human rights and regarding equal opportunity in employment. ECCV would however like to see the role of the Commission extended beyond its current functions to include a monitoring role in the elimination of discrimination.

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