

Strong community support for new legislation

A survey of 650 Victorians found strong community support for the Racial and Religious Tolerance Act according to the Minister Assisting the Premier on Multicultural Affairs, Mr John Pandazopoulos. Speaking at the launch of a community education campaign for the introduction of the Act, Mr Pandazopoulos said the survey revealed that almost 80% of people backed the law.

“The reasons people gave for supporting the legislation included its promotion of tolerance and that it provides people with the freedom to follow their own religious beliefs,” he said.

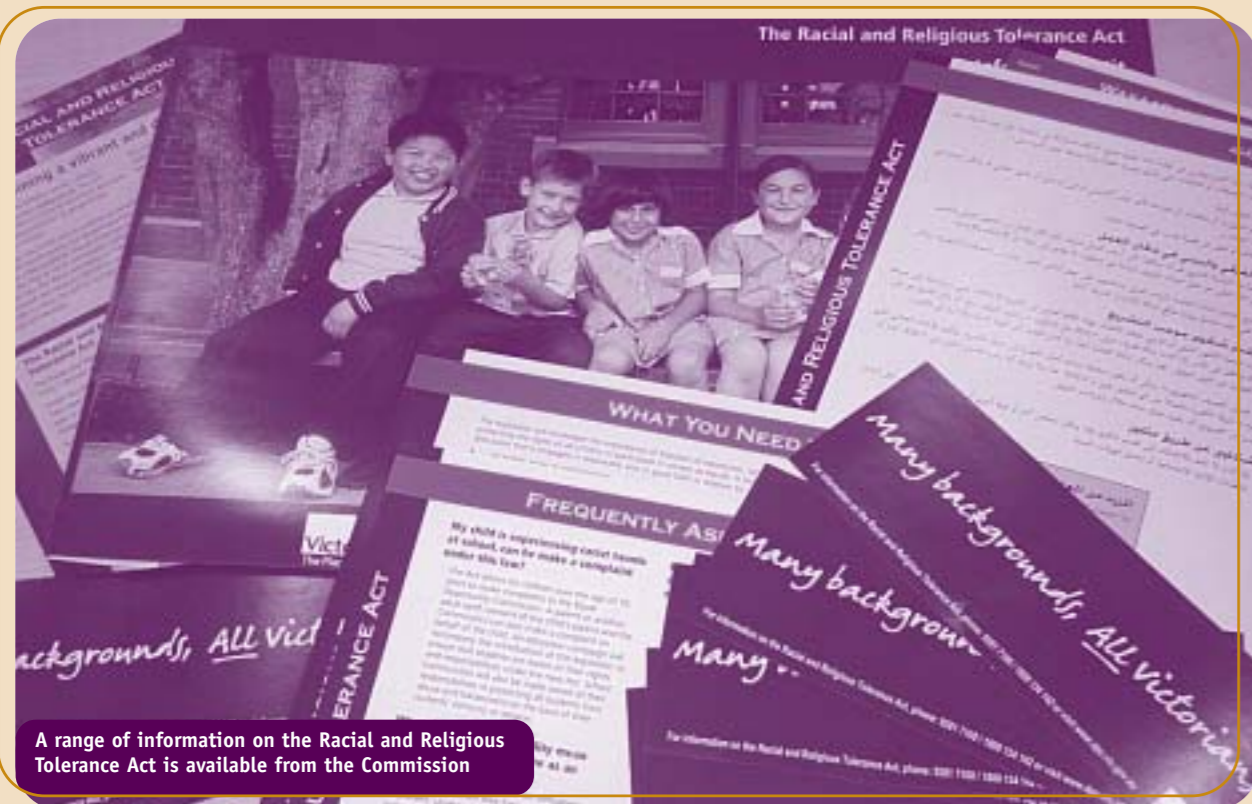
The Act states that people must not engage in conduct that incites hatred against, or serious contempt for, a person’s racial or religious background. The Act covers public behaviour, including internet and email, which have the effect of inciting hatred, serious contempt for, or severe ridicule of people’s racial or religious backgrounds and practices.

The research showed a lower awareness of the Act among people from non-English speaking backgrounds compared to the general community - a situation the education campaign aims to correct.

Mr Pandazopoulos called on community organisations to help ensure people understood their rights and responsibilities under the Act. In particular, he called on community organisations to ensure they were fully informed about the Act’s Representative Complainant provision which allows any person with a complaint under the Act to nominate another person to lodge the complaint with the Equal Opportunity Commission on their behalf.

“Victorians from non-English speaking backgrounds will be looking towards community organisations as a source of information about the Act, and further down the track may seek their assistance in making a complaint,” Mr Pandazopoulos said.

The education campaign includes a range of initiatives such as factsheets in a number of different languages and key events such as a forum on workplace diversity and a series of community briefings. There is a strong youth focus with materials prepared for students as well as ongoing sports and art programs on the theme of racial and religious tolerance.



A range of information on the Racial and Religious Tolerance Act is available from the Commission

roundUP

Transgender hero packs a punch with humour



Georgina Beyer

People literally spilled out the doorways of the Commission to hear New Zealand MP and transgender hero Georgina Beyer speak on Monday 14th January. A guest of the Midsumma festival, Georgina captivated more than 140 people for an hour as she recounted her life and times. Despite the discrimination and challenges that she has faced, Georgina’s ability to laugh at herself has won her a legion of fans.

A former theatre, film and television actor, Georgina appeared in the soapie ‘Close to Home’ twice, first as a man and then a few years later as a woman. Her early adult years were spent in the Wellington drag scene and as a prostitute.

Born George Bertrand in 1957 she said she was happier dressed as a girl from the age of four. She describes her sex reassignment surgery of 1984 as the “greatest achievement of my life”.

She was elected Mayor of Casterton District in 1995 and won the Federal seat of Wairarapa for the Labour Party in 1999, becoming the first transgender MP in the world. The same year she released her autobiography ‘A Change for the Better.’ (Oct 1999, Random House)

Sexual Harrassment: An International Women’s Day seminar

About 60 representatives of Victorian women’s groups attended a seminar on sexual harassment held at the Commission on International Women’s Day, Friday 8 March.

The seminar was organised by Working Against Sexual Harassment, (WASH) an independent coalition of organisations that recognise the need to address sexual harassment as a serious problem in Victorian workplaces. Organisations involved with WASH include:

- CASA House (Centre Against Sexual Assault)
- Victorian Immigrant & Refugee Women’s Coalition
- Feminist Lawyers
- Women’s Electoral Lobby (WEL)
- Victorian Women with Disabilities
- YWCA (Vic)
- Victorian Women Lawyers
- Victorian Women’s Trust (VWT)

- Victorian Trades Hall Council.

The Commission has witnessed a 700% increase in sexual harassment complaints in the last decade.

The seminar featured speeches from academic, business and union leaders and marked the start of a campaign to raise public awareness about the extent and impact of sexual harassment in the community.

The keynote address was delivered by Professor Margaret Thornton, one of Australia’s most eminent legal scholars who has published extensive works on the concept of legal ‘equality’ and chaired the NSW Committee on Discrimination in Employment and Occupation.

Other speakers included ACTU President Sharan Burrow and Law Reform Commissioner, Marcia Neave.

The seminar also involved workshops on research, business and advocacy responses to sexual harassment.

About EQ

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Launch of Parents and Carers at Work

Family friendly workplaces reap rewards

Employers risk paying out thousands of dollars in discrimination claims unless they adopt more flexible working policies to accommodate parents and carers. Even worse, organisations risk their bottom line unless they accommodate the reasonable needs of employees.

The Equal Opportunity Commission Victoria recently launched employer guidelines on treating parents and carers fairly in the workplace. Launched by Bank of Melbourne CEO, Ann Sherry, Parents and Carers at Work encourages employers to strike a balance between their operational and financial considerations and the reasonable needs of employees. The publication is a guide for best practice which includes:

- part-time and job-share options
- flexible working times
- working from home when appropriate
- greater flexibility in granting a last minute absence in an emergency

While the guidelines deal with avoiding discrimination, Ms Sherry said family friendly work policies also made good economic sense. She said most businesses failed to recognise the importance of retaining good staff as an economic imperative.

“Everyone says that their business is their people but few organisations actually act like this is the case,” she said.

In 1992 the Bank of Melbourne was the first employer in Victoria to establish a workplace childcare centre. In 1995 Westpac became the first private sector employer to offer women six weeks paid maternity leave. In 1998 it broke the gender barrier to offer six weeks paternity leave.

The return to work rate more than paid for the maternity leave

“We needed a 10% increase in the return to work rate over three years to pay for the maternity leave. We got 40% in two years,” Ms Sherry said.

The bank is now looking at allowing employees to use their untaken sick leave as carers’ leave to enable people to look after ill relatives.

“Most employees don’t use up all their sick leave but for the employer it’s a contingency that’s already budgeted for.

We’re looking at ways of making leave more flexible for our employees because from an employer’s perspective leave is leave,” Ms Sherry said.

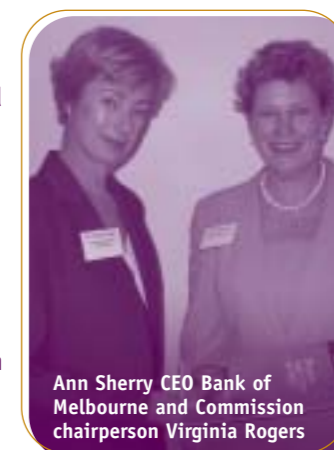
This move, like all of the bank’s family friendly initiatives are designed to position the organisation for the future.

“In the future there is going to be a much smaller pool of workers to draw from and they’re going to want to work for me. We’re already seeing

graduates actively pursue Westpac as an organisation they want to work for because of our family friendly policies,” she said.

The Equal Opportunity Act prohibits discrimination on the basis of parental and carer status (among other things) in most employment situations.

In 2000/01, the Commission received 108 complaints on the basis of parental status and 45 complaints on the basis of carer status. Almost all the complaints were related to incidents in the area of employment.



Ann Sherry CEO Bank of Melbourne and Commission chairperson Virginia Rogers

Free copies of Parents and Carers at Work can be ordered from the Equal Opportunity Commission.
Tel: (03) 9281 7122.

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Virginia Rogers
CHAIRPERSON
EQUAL OPPORTUNITY COMMISSION

VIEW

Parents and Carers at work: Towards family friendly workplaces

Can an employer refuse a request for flexible working conditions when that request is made because that employee has a child? Most employers want to do the right thing - but they sometimes have trouble identifying how the prohibitions on discrimination on the basis of parent status and carer status apply in practice.

Now the Equal Opportunity Commission has produced guidelines to help.

Why are these guidelines necessary?

Five years ago the Commission received 29 complaints of discrimination on the basis of parent status, but not one complaint on the basis of carer status in the area of employment. Last year the Commission received 108 complaints on the basis of parent status and 45 on the basis of carer status.

Most employees who are dissatisfied with their relationship with their employer do not come to the Commission. This does not mean that most employers do not have a problem. Employees who think that their employer is not treating them fairly are likely to be less productive, and the employer is likely to have a higher staff turnover.

It is sometimes difficult to be precise about an employer's obligations when an employee with a child, or a frail relative, asks to work from home one day a week. If an employer decides that no employee can work from home then on the face of it, all employees are being treated equally. There is no direct discrimination.

However, it may be that the employer is indirectly discriminating against the employee with the child/frail relative. If one can argue that the employer is imposing a condition that all employees must attend the workplace to work, and employees with children/frail relatives will generally find it harder to comply

with this requirement than employees who do not, it could be indirect discrimination. Indirect discrimination is unlawful if it is unreasonable.

Determining whether such a requirement is unreasonable will depend on an assessment of the facts in each particular instance.

The guidelines provide practical advice to employers on how to approach requests for flexible working conditions. They are guidelines for best practice. There are no hard and fast rules.

Employers should not dismiss such requests out of hand. If a complaint was made to the Commission because an employer had refused a request for flexible working conditions, it would be hard for the employer to show that it had acted reasonably if it had not even considered the request.

Rigid hours can be a no win for everyone

The average cost of resolving a discrimination complaint is \$35,000. This does not take into account the impact of negative publicity, lost productivity, or the cost of replacing an employee who leaves because of management inaction. On the other hand, studies show that giving workers control over how to complete their tasks, and flexibility in their work hours is good for business. A London School of Economics' study found that rigid control of workers' time stresses employees, decreases motivation and leads to staff turnover.

Britain's Industrial Society found that managers with flexible work arrangements had far higher output than those who did not. Likewise, a Boston College study of six leading US companies found that most workers who shifted to flexible work arrangements improved their work output and quality.

Many complaints could be avoided if employers implemented the suggestions in the guidelines. ③

It is sometimes difficult to be precise about an employer's obligations when an employee with a child, or a frail relative, asks to work from home...

what's NEW?

New brochures: Same sex relationships



In January, the Commission published a brochure on same sex relationships as part of our 'Your right to a fair go' series of brochures. This publication sets out the implications of changes that provide further legal recognition of same sex couples under Victorian law. The *Statute Law Amendment (Relationships) Act 2001* (Vic) and the *Statute Law Further Amendment (Relationships) Act 2001* (Vic), collectively known as the Relationships Acts, changed more than 50 Victorian Acts of Parliament to ensure that all couples are treated equally. Before these

changes, laws relating to property rights, compensation and superannuation gave special rights to heterosexual couples. Free copies of the brochure 'Your right to a fair go - same sex relationships' can be ordered by contacting the Commission. Tel: (03) 9281 7122

We are in the process of updating the 'Your right to a fair go' series of brochures. Stay tuned for the release of new titles covering physical features, marital status, pregnancy and breastfeeding, carer and parental status, and personal association. ③

EQUAL OPPORTUNITY WORKSHOPS

Handling equal opportunity disputes: new tools for managers

The effective implementation of equal opportunity policies in the workplace requires the commitment of a skilled management team. Managers are in the best position to ensure that equal opportunity policies are understood and adhered to. Managers also have a responsibility to create an understanding of zero tolerance for harassment in the workplace. It is not enough just to have policies sitting in manuals. They must be given some life-force, and managers are perfectly positioned to convert the rhetoric to a lived reality.

This is where the Commission's training program can help. The program consists of 11 workshops under the themes of:

- The Commission and the Acts
- Implementing equal opportunity in the workplace
- Managing workplace complaints.

The training addresses equal opportunity on two levels:

1. Preventative mechanisms to avoid discrimination and harassment occurring at all

2. Effective intervention to minimise the impact on the individuals concerned and the organisation

The vast majority of employees want their workplace disputes resolved informally as long as they can be assured that resolution will be quick, simple and fair. Most employees believe their managers should be responsible for this process. Unfortunately, too often managers do not have the skills and resources to manage these disputes and the tragic outcome is that the problems are exacerbated.

A new workshop, 'The role of managers in complaint handling' is now available. We have been conducting this program very successfully on-site with a number of organisations. Managers are also encouraged to attend 'Introduction to mediation in managing conflict' as this is targeted at people involved in conducting mediation as a means to resolving complaints informally.

For more information about our training calendar and on-site education and consultancy services, contact Jenni Coady on 9281 7126.

Interpretation of the meaning of the small business exception in section 21 of the *Equal Opportunity Act 1995* (Vic)

Appeal Rubinstein v Actodee Pty Ltd trading as Muchi Designs [2001] VCAT 1753 Victorian Civil and Administrative Tribunal decision handed down by Deputy President Cate McKenzie on 14 August 2001

Facts

In March 1999 the complainant, Ms Sala Rubinstein accepted a verbal offer of employment made by Ms Joanne Arbib, an agent of the respondent company Actodee Pty Ltd, trading as Muchi Designs. In June 1999 the respondent confirmed this offer in writing. Both parties agreed Ms Rubinstein would start work at the company in early August 1999. In July 1999 Ms Rubinstein had operations on her head and stomach in relation to a suspected melanoma. Ms Rubinstein and her daughter informed Ms Arbib of the operations but at no time was it stated that she would not start work on the agreed date. On 29 June 1999 Ms Arbib wrote to the Ms Rubinstein stating that she understood that cancer had been diagnosed and that as a result, she was no longer able to fulfil the duties of the job offered to her by the company.

Ms Rubinstein claimed the respondent had directly discriminated against her on the basis of her impairment in the area of employment and had breached the *Equal Opportunity Act 1995* (Vic).

Outcome at the Equal Opportunity Commission Victoria

The Equal Opportunity Commission was unsuccessful in conciliating the complaint. The complainant referred the matter to the Victorian Civil and Administrative Tribunal (VCAT).

Application before VCAT

The respondent applied to VCAT, under section 75 of the VCAT Act, to have the claim struck out or dismissed on the grounds that it was 'manifestly hopeless or no reasonable grounds could justify relief'. The respondent argued that it had a defence to the complaint that so completely answered the claim that it made it manifestly hopeless. The respondent argued that the exception found in section 21 of the *Equal Opportunity Act 1995* (Vic) applied and that its conduct was not unlawful.

Section 21(1) states;

'An employer may discriminate in determining who should be offered employment if the employer employs no more than the equivalent of 5 people on a full-time basis (including the people to whom full time employment is offered).'

The respondent argued that when section 21(1) speaks of determining who should be offered employment, employment is used to mean the use of the particular person's services, rather than the employment relationship or contract. The respondent argued that the exception found in section 21 applied until the time when a person actually starts work as an employee.

Decision

The respondent's application was dismissed.

Deputy President McKenzie found that the respondent misinterpreted section 21. She stated that section 21(1) in its ordinary meaning relates not to anything that happens before a person starts work as an employee, but to a determination by the employer of who should be offered employment. The Deputy President held that once there is a concluded contract of employment, irrespective of whether the employee has started work under that contract, section 21 does not apply.

The Deputy President also stated section 21 has no application once the employer has determined to whom to offer employment, irrespective of whether the person to whom the offer is made has accepted the offer.

The Deputy President adopted a narrow interpretation of section 21 which is in line with the wording of the other exceptions found in the Act. Such an interpretation, she stated, is in line with the second reading speech for the Bill which eventually became the Act and the objectives of the Act.

Accordingly it was held that section 21 did not completely answer the complainant's claim so as to make the claim manifestly hopeless.

What this case means

This decision provides further interpretation into the meaning of the small business exception found in section 21 of the *Equal Opportunity Act 1995* (Vic). The decision limits the operation of the exception so as to only apply to the act of determining who is to be offered employment. Once an employment contract is entered into, irrespective of whether the employee has started work, the exception does not apply. ③