



### **Proposed amendments to the Equal Opportunity Act 1995 (Vic)**

Youthlaw, Victoria's state-wide community legal centre for young people, works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs within a human rights and social justice framework. Youthlaw is based at Frontyard Youth Services which provides a range of free services for young people aged 12-25 who are homeless or in need of support.

Youthlaw commends the Government for reviewing the *Equal Opportunity Act 1995 (Vic)* ("the Act") and for putting forward proposed amendments that will address systemic discrimination. Youthlaw endorses the Federation of Community Legal Centres' comprehensive submission and we are pleased to provide the following brief comments on the proposed amendments.

### **The Specifics of the Proposal**

#### **Section 104 - Representative Complaints and lodgement by authorised agent**

We welcome proposed amendments to the Act allowing for representative complaints to be lodged with EOCV, and providing capacity for the lodgement of a complaint by an authorised agent. Youthlaw supports a broader representative complaints mechanism, such as that contained in the Human Rights and Equal Opportunity Act 1986 (Cth).

Such amendments should help ensure marginalised young people can more easily access the complaints process via interested and trusted representative bodies.

#### **Section 136 - Remedies by VCAT**

Youthlaw supports the expansion of the powers of VCAT to allow for the making of orders affecting a broader group of individuals than the complainant.

Given that young people often report as having experienced systemic discrimination, this amendment will facilitate VCAT to make orders providing redress to the individual young person (the complainant), as well as other young people affected by the respondent's discriminatory behaviour.

#### **Section 9 – Indirect discrimination – definition**

Youthlaw supports the removal of the proportionality test (paragraph a) and "shifting the onus of proof from the complainant to show that a requirement or condition found to be discriminatory is reasonable in the circumstances" (paragraph c).

It is important that the Act has a workable definition of *indirect discrimination* the elements of which do not impose such an onerous burden of proof that a potential young person complainant is dissuaded from pursuing their rights.

#### **Section 3 – Objectives**

Youthlaw supports the proposed amendments to section 3 as outlined in the Issues Paper.

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The linking of the objectives of the legislation to the proposed Charter of Rights and Responsibilities will help make the concept of human rights, in particular the freedom from discrimination, relevant to young people's daily lives.

The introduction of concepts such as systemic causes of discrimination, the need to achieve equality and the importance of communities in promoting equality of opportunity, goes a long way towards acknowledging the complex interplay of these concepts in young people's experience.

### **Section 162 – EOCV's educative and research functions**

Youthlaw supports the expanded educative and research functions as outlined in the Issues Paper.

These expanded educative functions will work towards promoting greater awareness of rights amongst the community including children and young people and will help them to see the relevance of the right to equality of opportunity in their daily lives. Over time such community education will hopefully help to address systemic discrimination in a more preventative way.

### **Section 73 VCAT Act – Intervention power**

Youthlaw supports amendments that allow the EOCV to intervene in VCAT proceedings as outlined in the Issues Paper.

In as much as this amendment may promote consistent development of equal opportunity jurisprudence, young people accessing the complaints process would benefit from clear and reliable legal information in this regard.

### **Section 108 – Extension of time for investigation**

Youthlaw appreciates that in exceptional cases (i.e. complaints of systemic discrimination) EOCV may require longer than the standard 60 day period for notification to investigate and reach a decision. However Youthlaw would stress from a young person's perspective, the proposed 180 days (or half a year) is a significant time lapse that may impact on their willingness to access the complaint mechanism in the first place. Young people want accessible and timely complaint mechanisms.

### **The Gaps in proposed amendments**

While we support the measures outlined in the discussion paper, we believe there are some issues that not addressed which require more discussion if the reform is to have the desired impact. These issues include:

#### **Investigations**

Youthlaw recommends that the Commission be empowered to conduct investigations into systemic discrimination on the basis of protected attributes where there is evidence to suggest that a particular group of people are being discriminated against, but do not personally want to lodge an individual complaint. This would allow community organisations to submit issues and evidence to the Commission for investigation without the need to "wait" for a willing individual to

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complain. The current Act does not provide for the Commissioner's "own motion investigation" for systemic discrimination, except where the Attorney-General consents

### **Expansion of attributes**

Youthlaw has previously argued for an expansion in the attributes covered by section 6 of the Act to protect against discrimination on the basis of a criminal record, socio-economic background And employment status including protection of discrimination against people in receipt of social security benefits.

From our experience, discrimination may occur simply because a young person's primary income is a social security benefit and there may be a stigma attached to this. The benefit does not have to be an unemployment benefit. Young people can be discriminated against because they are in receipt of Youth Allowance or a Disability Support Pension for example. We endorse the definition of 'unemployment status' adopted by PILCH as this covers recipients of payments, benefits, pensions or allowances under the *Social Security Act 1991 (Commonwealth)*.<sup>1</sup>

Adding 'homelessness' and 'employment status' as attributes on the basis of which discrimination is prohibited, would be a welcome step towards bringing Victorian law into compliance with international human rights law, particularly under the *International Covenant on Civil and Political Rights (Article 26)*, the *International Covenant on Economic, Social and Cultural Rights (Article 2.2)* and the *Convention on the Rights of the Child (Article 2)*.

The issue of criminal record discrimination assumes particular importance because of the ever-increasing number of criminal history checks carried out each year. It is important that employers are able to refuse to employ someone whose criminal record is genuinely relevant to the inherent requirements of a position (see *Private Security Act 2004* and the *Working With Children Act 2005*). However, in Victoria there is no legislated spent convictions scheme nor are there any mechanisms to protect people from discrimination on the basis of an irrelevant criminal record. As a result a minor or irrelevant criminal history is proving, for many people, to be a systemic barrier to opportunity.

We note that the Victoria Police Information Release Policy releases criminal history information on the basis of findings of guilt rather than convictions. The discretionary powers of judges under the Sentencing Act 1991 (Vic) not to record a conviction, are undermined by the police policy of releasing information about findings of guilt without conviction. The resultant release of information and confusion about the meaning of criminal records has had a dramatic impact on ordinary people's lives, their families and their livelihoods. People have lost their jobs, refused employment and discriminated against on the basis of trivial matters.

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<sup>1</sup>PILCH submission: Amendment of the Equal Opportunity Act 1995 (Vic) to Prohibit Discrimination on the Basis of 'Homelessness' or 'Employment Status', 2005



### **Access to complaint mechanisms**

Often young people don't know how to make complaints or may not use existing complaint handling mechanisms because they are not seen as particularly 'youth friendly'. Education campaigns will need to be designed specifically for young people and complaint processes made more accessible to young people. Timely complaints processes are particularly important.

### **Exemptions**

Youthlaw is concerned about the use of residential tenancy databases by real estate agencies to check a person's rental history. These databases are operated by private companies and have largely gone unregulated which has resulted in people being unfairly discriminated against.<sup>2</sup> We do not believe that the use of this database information should be considered 'reasonable' given concerns about the current lack of checks and balances.

### **Appropriate resourcing**

Any reforms passed will need to be accompanied by an injection of substantial resources to increase the capacity of the Equal Opportunity Commission Victoria to meet the potential increase in complaints, the expectations of complainants and the community, and to undertake the increased research and educative functions. Furthermore, community organisations need to be adequately funded to ensure that appropriate and accessible education strategies for particular communities are developed and implemented.

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<sup>2</sup> Victorian Law Reform Commission (2005) Residential Tenancy Databases Report.