

EQUAL OPPORTUNITY REVIEW

Submission from: Ministerial Advisory Council of Senior Victorians

Address: GPO Box 2392
Melbourne 3001
Telephone: 9208 3877
Email: macsv@seniors.vic.gov.au
Contact Person: Merle Mitchell AM, Chairperson

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BACKGROUND

The Ministerial Advisory Council of Senior Victorians (MACSV) was established in 2001. The MACSV works with the State Government to improve the quality of life and wellbeing of older Victorians. We do this by:

- Providing information and strategic advice to the Minister for Senior Victorians, the Office of Senior Victorians, Aged Care Branch, Department of Human Services and other Victorian Government bodies on matters affecting the needs, interests and wellbeing of senior Victorians and on specific matters of concern to the Minister.
- Gathering and exchanging information by acting as a point of referral between the community and the Victorian Government on issues of interest to senior Victorians.

GENERAL COMMENTS

The MACSV welcomes this opportunity to comment on the initial Equal Opportunity Review discussion paper. We consider that this review is timely and we look forward to providing feedback on the findings from this initial consultation and proposals for future action.

Although our specific comments refer to discrimination against older people based on age, we are concerned about preventing and challenging discrimination against individuals and groups of people based on any age.

We do wish to note that discrimination on the grounds included in the Equal Opportunity Act

1995 will probably never be eliminated, however the goal should be its positive reduction wherever possible. The Act relates to specific acts of discrimination by identifiable persons whereas much actual discrimination is caused by institutional or social factors. A much wider consideration would be required to consider the broader impact of social discrimination.

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EQUAL OPPORTUNITY REVIEW -SPECIFIC COMMENTS

Experience of discrimination

2.1.1

What evidence is there of the grounds and areas in which discrimination (whether individual or systemic) is still occurring (particularly those that are not being reflected in complaints statistics)?

The MACSV is aware of anecdotal evidence about discrimination of older people, particularly in attitudes of younger people viewing and treating older people based on stereotyping their abilities, qualities and needs.

This includes dismissive approaches by health care providers who do not offer treatment saying “what do you expect at your age?”. Some providers do not provide information about conditions based on a patronising attitude that older people “would not understand” or will have difficulty coming to terms with the information -“it would not be good for you to know”.

We continue to hear of difficulties for “older” workers in being considered as serious contenders for employment. As a result they are also not offered opportunities to maintain and update skills resulting in a loss of productivity. “Older” in this case means people aged 45 + (as noted in the 2007 publication Longevity and Social Change in Australia – Allan Borowski (ed.), Elizabeth Ozanne (ed.), Sol Encel (ed.))

We are concerned that providing information on websites as the preferred means of communication by government departments discriminates against older people, many of whom do not access the Internet. The costs of printing information from websites for those who do have access can also be an issue.

Some older migrants have not had the opportunity to learn English. Unintended discrimination against older people who do not speak English occurs when information in hard copy in languages other than English is not available.

Discrimination in provision of goods and services may also be based on the apparent invisibility

of older people. We know from personal experience that some businesses and retail outlets serve younger people first even when older people have been waiting longer.

2.1.2

What is the impact of discrimination?

Discrimination, whether it is direct or systemic, devalues the capacities and contributions of older Victorians. Systemic discrimination sends messages to both those who may discriminate and to older people themselves, that older people are second class citizens.

Poor service provision impacts on older people in many aspects of daily life. If health care is not provided because a person is older; if a person is not interviewed for a position for which they are suitable; if older people are not aware of government services and initiatives because information is difficult to obtain, the overall quality of life for individuals and for our society as a whole is compromised.

2.1.3

What are the consequences of not addressing this discrimination?

The contribution of older people to their communities will be severely diminished. Demographic projections make it very clear that the number of older people in Victoria is growing. If we do not address discrimination against older people, divisions between generations will become entrenched and the quality of life of many older Victorians will be reduced.

On a practical level, discrimination against older people in the workplace, both in obtaining employment and accessing training to acquire new skills, will create financial problems for older people who may need to continue to work to fund their retirement and for employers already struggling to cope with workforce shortages.

2.2.1

What factors should be taken into account when considering whether there is a case for reform of the laws to improve the complaints system and the system's capacity to address systemic discrimination?

Any reform of the complaints system can only be successful when there is an extensive and appropriate educational strategy in place which encourages and supports older people to feel confident to take action.

Existing initiatives

2.3.1

Are there good practices in place (whether in the public or private sectors) that are preventing or resolving individual or systemic discrimination?

While they were not primarily established as a complaints system, the development of Ombudsman roles in various areas of commercial activity does make a contribution.

In the federal sphere the Social Security Appeals Tribunal, the Superannuation Complaints Tribunal and the Administrative Appeals Tribunal are significant examples of moderately successful complaints systems without too much legal overlay and complexity. The requirement to inform clients of their rights has played an important role in the success of these tribunals.

Preventing discrimination

3.

Are the current ways of preventing discrimination working well or could they be improved?

One of the issues with the current system is that the general community, including older people, is not generally well informed about the details of equal opportunity and antidiscrimination legislation, how to take action if something goes wrong and the possible outcomes when action is taken.

The introduction of the Human Rights Charter provides a good opportunity for a community education strategy to be developed with specific target audiences in mind, including older people. This strategy could include information about discrimination based on age, including how to identify it and what to do if it is occurring. With access to better knowledge, those aggrieved may well be more prepared to make complaints and have their problems resolved.

Any prevention strategy should be aimed at those who discriminate as well as those adversely affected.

We would be pleased to further discuss how the MACSV could support any community education strategy targeting older people that may be developed as an outcome from the Equal Opportunity Review.

3.2.1.1

Would the provision of legal or strategic advice help to prevent discrimination by empowering people with knowledge?

Yes. (See answer to 3 above.)

3.2.1.2

Would the provision of legal or strategic advice (including information about conciliation and complaint outcomes), assist complainants to decide whether or not to pursue a complaint or use other means to resolve the dispute?

Yes, it is important that any advice given is accessible to the recipient.

3.2.1.3

Should legal or strategic advice be provided by the Commission or some other agency?

To enable good access, advice should be available from both the Commission and through the community sector, eg community legal services, neighbourhood houses and community groups.

3.2.1.4

Would specific advice on how to comply with the Equal Opportunity Act (for example for businesses and schools, accommodation providers, clubs and local government), improve compliance and prevent discrimination? If so, should this be provided by the Commission or some other agency?

Advice and information should be provided by both the Commission and other appropriate agencies such as community legal services.

3.2.4.1 Are the limitations on the Commission's power to conduct an investigation or inquiry 'of its own motion' necessary or would other measures such as a broader power to conduct inquiries and make binding recommendations be better at preventing discrimination?

The MACSV suggests that the Commission should have broader power to enable it to investigate and to make binding decisions; thus making it more effective in the elimination of discrimination.

3.2.4.2 It is outside the function of the Ombudsman to conduct own motion inquiries into the private sector. Should the Commission have the power to conduct these kinds of inquiries?

Yes, without it the Commission cannot complete its job. The Commission is in a good position to identify systemic and specific issues which could be addressed through a broader inquiry rather than responding to individual cases alone.

3.2.5.1

Are the current education powers sufficient or should they be clarified or expanded to enable the Commission to prevent discrimination more effectively?

Clarification and extension of the Commission's education powers should be a priority. This should include public education campaigns (see answer to 3 above).

3.2.6.3 Should the Commission be empowered to initiate claims at VCAT?

The current relationship with VCAT should continue but the Commission should have determining powers (see 3.2.4.1 above).

3.3.3.1 Are action plans a tool that should be used to prevent discrimination under the Equal Opportunity Act?

If action plans can be a tool to prevent discrimination, the suggestion should be explored.

3.3.3.2

If action plans are a tool that should be used, what role, if any, should the Commission have in registering the action plans, making them publicly available and / or commenting on them?

The Commission should take a major role in all of these. It is essential that information based on analysis of this data be available to the public.

3.3.4.1

Could more be done with the collection and analysis of complaints data and conciliation outcomes to improve the information available to the public?

The collection and analysis of complaints data would improve information available to the public.

This information could be used as part of the community education strategy.