



**A•S•U**

**Australian Services Union**

Victorian Authorities and Services Branch

Equal Opportunity Review  
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By fax: (03) 8684 1300

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**Submission to the Equal Opportunity Review**

In accordance with the terms of the Discussion Paper and Terms of Reference, please find enclosed the ASU Victorian Authorities and Services Branch submission to the Equal Opportunity Review.

Yours faithfully,

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## ASU Victorian Authorities and Services Branch

### Submission to the Equal Opportunity Review

The ASU Victorian Authorities and Services Branch ("ASU") acknowledges a need for the provision of appropriate tools, resources, guidance and education to recognise, eliminate and actively prevent discrimination and associated disadvantage.

It also recognises the need for a careful balance between transparency and independence in the administrative functions performed by the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC"), and the importance of providing advice, assistance and appropriate confidentiality to people and organisations experiencing discrimination or disadvantage.

On this basis, it welcomes the review of the *Equal Opportunity Act 1995* ("EO Act") and submits the following observations, comments and recommendations for consideration.

#### 1. "Own motion" investigations

In the ASU's view, a statutory own motion power to investigate individual, systematic and thematic discrimination and disadvantage in both the private and public sectors would further the educative functions and objectives of the VEOHRC and assist in actively deterring and preventing discriminatory conduct and/or practices.

It would also promote the development of best practice models for dispute prevention and settlement and assist in a more proactive approach to equal opportunity, human rights and associated duties and obligations.

**Recommendation:** The ASU recommends that the VEOHRC be granted a statutory power to investigate individual, systemic and thematic discrimination and disadvantage on its own motion in the Victorian private and public sectors.

This investigatory power should be enlivened where there is a reasonable connection with either the EO Act or the Charter of Human Rights and Responsibilities ("the Charter").

#### 2. The Charter

The ASU notes the operation of the Charter, in particular the provisions which prohibit public authorities (including employees of the public service, entities that perform functions of a public nature, local councils, police and others) from conduct or decision-making which is incompatible with the human rights expressed in the Charter, and failure to give proper consideration to a relevant human right in making a decision.

As the independent monitor of the operation of the Charter, the VEOHRC plays a critical role in assessment and compliance measures, and intervention in proceedings involving the Charter (via Clause 40 of the Charter itself). Where proceedings do not involve the Charter however, the VEOHRC's capacity to intervene in VCAT proceedings is subject to the granting of leave by VCAT.

**Recommendation:** The ASU recommends the conferral of a specific power to the VEOHRC to intervene in proceedings which relate, whether in combination or separately, to the operation or terms of the Charter and/or the EO Act, irrespective of whether or not an affected person has been identified.

#### Combining reactive and proactive measures

The current complaint-based model by which the VEOHRC addresses issues of discrimination and disadvantage is, in and of itself, a reactive one. It relies upon complaints as a starting point for investigations and inquiries, and its scope is confined to those matters which are formally raised with it, which in turn are confined to particular facts and circumstances.

Given the small proportion of people affected by discrimination who proceed to the point of making a complaint, the ASU submits that a broader, proactive approach will assist in creating greater awareness of rights and responsibilities, empowering people affected by discrimination and disadvantage and identifying thematic or systemic areas where policy or legislative change may be required.

**Recommendations:** The ASU submits that the following measures and initiatives will achieve the purpose and spirit of both the EO Act and the Charter, and assist in proactively pursuing the elimination and prevention of discrimination and associated disadvantage:

1. Specific reference to the Attorney-General's Justice Statement of key principles in the EO Act;
2. A statutory requirement for all employers and principals to issue a document which lists applicable Acts and Regulations, along with the process for making a complaint to all new and existing employees and other workers in the Victorian private and public sectors;
3. Capacity for the VEOHRC to summarise agreed points from de-identified individual conciliations which can be made public to contribute to precedent-setting or development of standards or area- or group-specific comments, guidance notes or inquiries;
4. Discretionary capacity for the VEOHRC to refer matters to State or Federal authorities for further investigation;
5. Capacity for affected/interested persons (including individuals and entities with a connection to the subject matter) to request (whether via the EO Act or regulations, or the Charter) that the VEOHRC initiate an investigation in relation to a particular issue or concern, whether individual or systemic;
6. Subject to any challenges relating to inconsistency with the federal framework, a statutory capacity for the VEOHRC to develop voluntary or mandatory codes of practice in relation to the prevention and elimination of discrimination on prohibited grounds and for the VEOHRC to have regard to compliance with such codes in individual matters;
7. Capacity for the issuing of a certificate on either agreed facts, or facts in issue for use in proceedings which may be issued in VCAT or another court/tribunal to expedite resolution of complaints and reduce duplication of process (and costs);
8. Capacity for the VEOHRC to issue "guidance notes" on process and administration of making complaints
9. Capacity for parties to voluntarily submit to external approved dispute resolution processes/providers as an alternative to VCAT proceedings;

10. Capacity for VCAT to hear and order redress to affected persons, other than a complainant;
11. Capacity for VCAT to hear and determine conflicts of interest in relation to the VEOHRC's role and functions, to clarify and confirm the VEOHRC's role and encourage transparency in its functions and governance;
12. Specific capacity for the VEOHRC to consider previous actions/rulings/decisions or determinations made in respect of a respondent or complainant when determining issues relating to offences or penalty where, for example, it considers that there are issues of systemic or thematic concern;
13. Capacity for VEOHRC to review a public authority's programs and practices on its own motion or upon request by an affected party or entity, to determine that public authority's compatibility (or otherwise) with human rights under the Charter and the EO Act;
14. Presumption of confidentiality in relation to the making of an application to VCAT, save for specific circumstances (such as consent by parties); and
15. Model timeframes for processes conducted by the VEOHRC.