

Furthermore, Justice Harper thought that if full time attendance at the workplace was appropriate and adapted, then by applying to be relieved of this requirement, Ms Schou was seeking "a favour" of her employer. The Act therefore had no role to play because it is not intended to "compel the bestowing of special advantage" and Ms Schou was "simply treated as all other sub-editors were and are treated: not better, but certainly not worse."

Inherent in these statements is the idea that equality is about treating people the same, and hence discrimination is about treating people differently. But central to the idea of indirect discrimination is the premise that sometimes treating all people

the same *is* discriminatory, because the same treatment can have different impacts on people depending on the surrounding social, economic, and cultural circumstances. Requiring all employees to attend the workplace full time can be discriminatory when it is taken into account that female employees with children generally have family responsibilities which their male counterparts do not and these responsibilities are inconsistent with the traditional workplace structure. Unless this is recognised, there is little scope for altering workplaces structured around male employees with full time availability to accommodate female employees who have substantial additional responsibilities in the private sphere.

The issue of altering the traditional workplace structure to enable women to have careers, as well as taking on the role of primary carer to their children, is a complex one. However a legal obligation on employers to accommodate employees with family responsibilities where technology is available, subject to cost and workplace efficiency, seems a good place to start. If Justice Harper is right, however, in thinking that accommodation of women who bear the dual role of employee and carer is not a matter for the law but a "favour" at the discretion of individual employers, then equality for working women in real terms rather than in rhetoric will remain elusive.

The Health Records Act 2001 (Vic)

Catherine Symons, Corporate solicitor, GSO

Late last year, amendments to the Privacy Act 1988 (Cth) were introduced, the effect of which has been to extend the coverage of privacy law to the private sector.

These changes received moderate media exposure at the time and have seen the advent of new documentation requirements, including the need for businesses to make available a privacy statement, which is an exposition of that organisation's policies for the handling of personal information.

Taking a back seat to the Commonwealth initiative is a new piece of Victorian legislation, the *Health Records Act 2001 (Vic)*.

This State Act has to date been overshadowed by its Federal counterpart but will assume greater prominence in the lead-up to its introduction on 1 July 2002.

The Health Records Act establishes a separate regulatory regime for the handling of health information and applies with particular vigour to health service providers.

Any individual or organisation that provides a health service (for example, provision of a medical, aged care, disability or recreation service) will be classified as a health service provider for the purpose of the State Act. The effect of this classification is that any personal information collected for the purpose of providing the health service, such as a patient's contact details, will be considered health information.

Both the Commonwealth and State privacy schemes take a similar approach to health information and accord it special treatment. Under the Commonwealth law it is placed in the category of "sensitive information".

The Victorian legislation introduces a set of 11 Health Privacy Principles ("HPPs") that cover similar ground to the Commonwealth National Privacy Principles. However, the standards contained in the Victorian legislation are more stringent and have particular application to health service providers.

The HPPs can be summarised under the following headings:

Collection and use of health information

An organisation can only collect health information where this is necessary for the performance of an activity or function.

An organisation can only use or disclose the health information for the purpose for which it was collected unless the individual's consent has been obtained.

Data quality and security

An organisation must take reasonable steps to ensure that the health information it holds is accurate, complete, up-to-date and relevant to its functions. It must also safeguard the information against misuse, loss, unauthorised access and modification.

An organisation will generally be prohibited from destroying or deleting health information about an individual until at least 7 years have passed since the individual's last attendance.

Transparency

An organisation must document clearly expressed policies on its management of health information and make this statement available upon request.

Access and correction

An organisation is required to provide access to health information and to allow individuals to make corrections to the information where this is necessary to maintain the integrity of the record.

An organisation must, upon request by an individual, make health information relating to the individual available to another health service provider.

Identifiers and anonymity

An organisation may only assign an identifier to an individual if the assignment is reasonably necessary to enable the organisation to carry out any of its functions efficiently.

An organisation must allow individuals the option of entering transactions anonymously wherever this is lawful and practicable.



Transborder data flows

An organisation can only transfer health information outside Victoria if the recipient is subject to laws which are substantially similar to the HPPs.

Transfer or closure of the practice of a health service provider

Before the business of a health service provider is either transferred or closed down, the health service provider must give notice of the proposed transfer or closure to patients and former patients to allow those individuals to apply for their health information before the change takes effect.

Farewell to Ian Dunn

The Young lawyers' Section bids a fond farewell to Ian Dunn former CEO of the Law Institute. Ian Dunn first became involved in the Law Institute through the Young Lawyers' Section, as has been an ardent supporter of junior practitioners in Victoria since that time. We also extend a warm welcome to John Cain (former managing partner of Maurice Blackburn Cashman) as the new CEO.

For more information about the Health Records Act you can visit the website of the Health Services Commissioner, at www.health.vic.gov.au/hsc.

Refugees Yes or No!

HYPOTHETICAL

HYPOTHETICAL ON REFUGEES - 8 MAY 2002

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Claudia Karvan (A Secret Life of Us), Richard Fidler (ABC), Caroline Tran (Triple J), My Ahn Tran (Victorian Bar), Robyn Spencer (One Nation), Jill Singer (Herald Sun), Andrew Bolt (Herald Sun)

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VENUE: Melbourne Town Hall

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