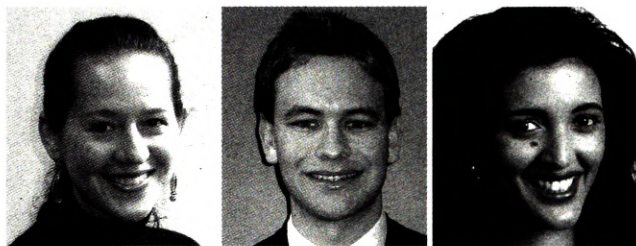


# Discrimination in the law forum



By Annabelle Nilsson, Law Student, Monash University, Andrew Jones, Articled Clerk, Deacons and Iresha Herath, Solicitor, Mallesons Stephen Jaques

In late May, the Young Lawyers' Law Reform Committee (YL LRC) held a Discrimination in the Law Forum, with the support of Liberty Victoria, the Victorian Council of Social Service (VCOSS), the ALSO Foundation and Mallesons Stephen Jaques, who hosted the event.

The aim of the evening was to forge a relationship between community groups and Young Lawyers, and to stimulate brainstorming for the content of a submission to the Discrimination in the Law Inquiry which is being conducted by the Scrutiny of Acts and Regulations Committee (SARC).

SARC chair Lily D'Ambrosio gave a warm welcome to attendees and was followed by speakers from VCOSS, SARC and the Equal Opportunity Commission (EOC).

Dominique Saunders presented an introduction to the Forum, which focuses on identifying, and advising on the retention, amendment or repeal of Victorian laws that discriminate, or potentially discriminate, against people on the attributes listed under s207 of the *Equal Opportunity Act 1995* (Vic) (*EOA*). These attributes are:

- age;
- breastfeeding;
- gender identity;
- impairment;
- industrial activity;
- lawful sexual activity;
- marital status;
- parental status or status as carer;
- physical features;
- political belief or activity;

- pregnancy;
- race;
- religious belief or activity;
- sex;
- sexual orientation; and
- personal association.

EOC Commissioner Jamie Gardiner gave an overview of the *EOA* and the exemptions that apply to discriminatory conduct. VCOSS CEO Cath Smith followed with an overview of general concerns from non-government organisations' perspective. Some of these concerns were based on the status of poverty and homelessness, two attributes not protected by the *EOA*.

To facilitate discussion, representatives from the YL LRC provided examples of direct and indirect discriminatory conduct, application of the exemptions under the EOC, and highlighted some discriminatory Victorian Acts.

A meeting was held the following week for attendees to discuss the content of a possible submission. Some points of interest discussed were:

- The fact that international students are not granted any concessions on public transport, relevant in Victoria, Queensland and New South Wales.
- The exclusion of single mothers and women in same sex relationships from receiving IVF treatment.
- The exclusion of same sex couples from adopting children.
- An amendment to the *Birth, Death & Marriages Registration Act 1996* (Cth) (this recently has

passed the Lower House) which qualifies gender reassignment by genitalia, as opposed to other physical features, cultural and social aspects.

- The issue of youth wages as opposed to trainee wages.
- Section 76 of the *EOA* which is an exemption for religious schools. This has given legislative protection to common practices in certain private schools of discriminating against homosexual students and teachers.
- Section 27B of the *EOA* which allows for employers to discriminate on the basis of gender identity where the employer received no notice of the employee's gender identity.

The YL LRC is currently researching the above points and is liaising with the LIV's Workplace Relations Committee. It is hoped that the SARC will grant the LIV an extension to make a submission to the Inquiry.

In addition, the YL LRC has had the opportunity to forge a relationship with several community representatives. In particular, Adam Pickvance, CEO of the ALSO Foundation, has been very proactive in the process. Adam assisted with organising the Forum and provided guidance with research and potential topics for a submission.

The Forum has helped raise the profile of the Young Lawyers' Section and has acted as a springboard for the follow up of issues that do not fall within the scope of the inquiry, namely, the exclusion of poverty and homelessness from the EOC. The feedback from attendees was positive. ■

## Where Victoria stands on equal opportunity legislation in relation to other states, the territories and the Commonwealth

### STATE OR TERRITORY

All Australian states and territories had enacted equal opportunity or anti-discrimination legislation by 1996.

South Australia was the first state to pass anti-discrimination laws in the *Prohibition of Discrimination Act 1966* (SA), prohibiting discrimination based on race. In the *Sex Discrimination Act of 1975* (SA), South Australia was also the first state to prohibit discrimination based on gender.

In 1977, both Victoria and New South Wales enacted equal opportunity legislation. Western Australia enacting equal opportunity legislation in 1984, the Australian Capital Territory and Queensland in 1991, the Northern Territory in 1992 and Tasmania in 1998.

However, the state equal opportunity legislation does vary as to the grounds on which discrimination is unlawful. For example, under Victorian, Queensland, Northern Territory, Western Australia and Australian Capital Territory equal opportunity legislation, discrimination based on political or religious beliefs or activities is prohibited. This form of discrimination is lawful in South Australia and New South Wales. Further, in Western Australia, there is no prohibition against discrimination based on sexual orientation.

### FEDERAL

Following are the main federal equal opportunity or anti discrimination Acts:

The *Racial Discrimination Act 1975* (Cth) prohibits discrimination based on race, national or ethnic origin.

The *Sex Discrimination Act 1984* (Cth) prohibits discrimination based on gender, marital status, pregnancy, family responsibility (where a person is dismissed from his or her job for this reason), and makes sexual harassment unlawful.

The *Human Rights and Equal Opportunity Commission Act 1986* (Cth) prohibits discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

The *Privacy Act 1988* (Cth) details guidelines which government departments must comply with when dealing with personal information, including collecting, storing, using, or allowing others to use the information.

The *Disability Discrimination Act 1992* (Cth) prohibits discrimination based on physical, intellectual, psychiatric, sensory, neurological, or learning disabilities, physical disfigurement and the presence of a disease-carrying organism (for example, the HIV virus) in the body.

The *Equal Opportunity for Women in the Workplace Act 1999* (Cth) requires higher education institutions, and employers with more than 100 employees, to put in place programs facilitating equal involvement of women in their organisations.