

12 May 2008

Mr Julian Gardner

Equal Opportunity Review Team
c/- Department of Justice
24/121 Exhibition St
Melbourne Vic 3000

By email and post

Dear Mr Gardner

Submission in response to the Equal Opportunity Review – Options Paper

We are writing in response to the Equal Opportunity Review Options Paper (the ***Options Paper***), the second stage of consultations to review the Victorian *Equal Opportunity Act 1995* (the ***Act***). The PILCH Homeless Persons' Legal Clinic (the ***Clinic***) also made submissions in January 2008, to the first stage of the review, under the Equal Opportunity Review Discussions Paper (the ***Discussion Paper***). In addition, the Clinic made submissions in April 2008 in response to the Department of Justice's review of the exceptions and exemptions (the ***Exceptions Review***) in the Act to determine their compatibility with the *Charter of Rights and Responsibilities Act 2006* (the ***Charter***).

The Clinic's response to the Options Paper is a reiteration of our comments and recommendations set out in our submissions under the Discussion Paper and the Exception Review. The Clinic urges the Victorian government to amend the Act to incorporate 'social status' (which includes: people experiencing homelessness; the unemployed and recipients of social security) and 'criminal record' as protected attributes and to ensure that all provisions within the Act afford adequate and effective protection of human rights for *all* Victorians in accordance with the Charter.

The Clinic's submission under the Discussion Paper

The Clinic's submission to the Discussion Paper highlighted that the Act currently provides individuals with inadequate protection from, or redress in relation to, discriminatory treatment on the grounds of social status or criminal record. The Clinic's submission called for the Act to be amended to incorporate 'social status' and 'criminal record' as prohibited grounds of discrimination in order to improve the promotion and protection of the right to equality and non-discrimination under Victorian law. The Clinic maintains that such reform is imperative to ensure that some of the most vulnerable members of our community are protected from unfair and unjust treatment and to guarantee the effective protection of people's fundamental human rights, in accordance with the Victorian government's obligations under both domestic and international law.

The Clinic provided clear qualitative evidence in its previous submission(s) to reinforce that such law reform is necessary in order to counteract the devastating impact of social status and criminal record discrimination on some of the most marginalised and disadvantaged members of our society. In particular, this evidence highlights that the majority of people experiencing

homelessness or at risk of homelessness routinely experience discrimination at the hands of accommodation and goods and service providers. For example, as the law currently stands:

- a service provider, such as a real estate agency or caravan park owner, can refuse accommodation to someone (who may be homeless or precariously housed) because they want to pay either with a cheque from a welfare agency, or from their social security benefits; and
- an individual may be refused a job that they can adequately perform due to an old or irrelevant criminal record.

Such discrimination not only stymies an individual's genuine attempts to integrate into the community and contribute to Victoria's economy, but, it also serves to entrench people in homelessness, unemployment and poverty. Furthermore, an analysis of comparative jurisdictions, such as New Zealand and Canada, reveals that amendment to the Act is required in order to bring Victorian law into line with international public policy developments.

In support of the above, and as set out in our previous submission(s), the Clinic makes the following key recommendations:

(a) Social status:

- Amend section 6 of the Act to include 'social status' as an attribute on the basis of which discrimination is prohibited.
- Amend section 4 of the Act to include a definition of 'social status' that means a person's status of being: (a) homeless; (b) unemployed; or (c) a recipient of social security payments.
- Amend section 4 of the Act to include the definition of homeless that is set out in the *Supported Accommodation Assistance Act 1994* (Cth).

(b) Criminal record:

- Amend section 6 of the Act to include 'criminal record' as an attribute on the basis of which discrimination is prohibited.
- Maintain a reasonable exception within the Act to enable discrimination against a person on the basis of criminal record where such discrimination is necessary and proportionate to a legitimate aim. For example, discrimination on the basis of criminal record may be necessary for employment purposes and for the protection and safety of others.

The Equal Opportunity Act 1995 requires significant reform

The Clinic implores the Government to reform the Act to ensure that it conforms with domestic and international human rights obligations and so that it effectively protects *all* Victorians, particularly those who in society who are most disadvantaged and marginalized, from discrimination and unequal policy and practices. Adequate and effective protection from discrimination will enable homeless and unemployed people, recipients of social security and people with a criminal record to access employment, accommodation and other goods and services on an equal footing with the rest of the community. Social inclusion and participation in civil, political, social, cultural and economic life can reduce and resolve marginalisation, disadvantage and poverty, all of which are causal factors and risk indicators of homelessness, unemployment and criminal activity. The social benefit of addressing discrimination on the ground of social status and criminal record for society, from both an economic and a human rights

perspective, as well as for the individuals themselves, clearly outweighs the minor costs that may be associated with such law reform.

The above recommendations are directed towards the enhanced promotion and protection of human rights. Given the Victorian government's commitment to the fulfillment of human rights for *all* Victorians under the Charter, it has a mandate to give proper consideration to the adoption of these recommendations as a matter of urgency.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caroline Adler', with a stylized, flowing script.

Caroline Adler
Manager and Principal Solicitor
PILCH Homeless Persons' Legal Clinic

cc: The Hon Rob Hulls MP, Attorney-General