

VACC Submission on Exposure Draft of the Human Rights and Anti- Discrimination Bill 2012

Dated Friday 21 December 2012



1. VACC and the Retail Automotive Industry

The Victorian Automobile Chamber of Commerce (VACC) is a federally registered, peak industry employer association in the retail automotive industry (RS&R Industry) representing 5,300 members in Victoria and Tasmania. VACC also represents 335 businesses in Queensland, which have joint membership of both the Motor Trades Association of Queensland and our organisation. This representation covers businesses that operate in over twenty industry sectors (set out below) employing over 40,000 employees in the automotive repair, services and retail sector.

The RS&R Industry comprises car retail, wholesale, distribution, repair, maintenance and service of motorcars, motorcycles, trailers, caravans and the like and equipment or parts or components thereof, the supply of running requirements for the above mentioned vehicles and the like, fuel retail, automotive electrical services, smash repair, tyre retail (including repair and manufacture of retreads), automotive repair and service, and automotive parts and component manufacture, and special vehicles manufacture.

VACC principal services

VACC supports the RS&R Industry by providing a comprehensive range of services including the following:

- Public affairs advocacy and representation of key industry policy issues to government and other industry stakeholders
- National industry magazine highlighting current and emerging industry issues
- Preparation of submissions on industry issues to Federal and State Governments
- Supply of apprentices through the VACC Auto Apprenticeship Scheme which currently employs over 500 apprentices and trainees working within the retail automotive sector across Victoria and Tasmania
- Technical advice to members within a range of industry sectors
- Promotion of the industry including the Melbourne International Motor Show
- Community events sponsorship
- Education and training sponsorship
- Road safety information
- Industrial relations, OHS and environment advisory services

- Newsletter highlighting issues in industrial relations, OHS and environment
- Industry courses organised through the Skills Development Centre, and
- Surveying and supply of statistics and economic data.

Industry sectors represented by VACC

VACC provides services to the following sectors in the RS&R industry:

- New car dealers
- Used car dealers
- Commercial vehicle dealers
- Truck repairers
- Motorcycles dealers
- Farm machinery dealers
- Commercial vehicle body builders
- Radiator repairers
- Air-conditioning specialists
- Automobile repairers
- Auto-transmission specialists
- LPG specialists
- Automotive electricians
- Alternative fuel specialists
- Service stations and convenience stores
- Tyre retailers
- Smash repairers
- Towing operators
- Roadside service contractors
- Automotive recyclers and dismantlers
- Car hire and rental
- Engine re-conditioners
- Windscreen fitters
- Automotive accessory retailers
- Motor trimmers

- Exhaust and undercar specialists
- Diesel specialists
- Vehicle painters
- Car detailers
- Car wash businesses
- Roadhouses and truck stops

2. VACC and anti-discrimination complaints

In the past 28 years, each time an Act or legislative instrument relating to equal employment opportunity was made or reviewed by state or federal legislators, VACC made submissions based on its own and its members' experiences. The current Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Draft Bill) is no exception.

Since the inception of anti-discrimination legislation, employers in the Victorian and Tasmanian RS&R Industry have accepted the policy considerations underpinning the legislation and have sought to comply with its regulatory implications.

Approximately 75% of anti-discrimination complaints against VACC members are filed in the Victorian Human Rights and Equal Opportunity Commission. Disgruntled employees of VACC members do not often file complaints against their employers in the Australian Human Rights Commission (AHRC).

The majority of anti-discrimination complaints against VACC members filed with the AHRC related to disability discrimination and sex discrimination. Around 80% of the disability discrimination complaints relate to the alleged termination of employment on the ground of an employee's temporary absence from work due to illness or injury or on the ground of their incapacity to perform the inherent requirements of the pre-injury job. The sex discrimination complaints have largely related to workplace sexual harassment and discrimination allegations on the ground of pregnancy.

In the last five years, there were very few unlawful termination claims on the grounds of discrimination filed against VACC members at Fair Work Australia (including its predecessor, the Australian Industrial Relations Commission). Since the commencement of the adverse

action provisions of the *Fair Work Act 2009*, a relatively low number of aggrieved employees of VACC members filed claims in Fair Work Australia alleging discriminatory treatment by their employer in the course of their employment.

3. General comments

Although the Draft Bill consolidates five pieces of anti-discrimination legislation into one Act, employers in the Victorian, Tasmanian and Queensland RS&R Industry are still subject to both federal and state anti-discrimination laws. In addition, RS&R Industry employers need to comply with anti-discrimination provisions of non-discrimination statutes such as the Victorian *Occupational Health and Safety Act 2004* and the *Fair Work Act 2009*¹ and subordinate legislation in the form of federal awards. VACC believes that the current differences between the federal and state anti-discrimination laws impose a myriad of regulatory obligations that can be challenging and confusing for small and medium-sized businesses. The proposed consolidation of the existing federal anti-discrimination laws does not eliminate all the inconsistencies in state and federal legislation nor does it discourage forum shopping.

Under the Victorian *Equal Opportunity Act 2010*, “medical history”, “nationality or citizenship” and “social origin” are not protected attributes. The *Fair Work Act 2009* prohibits discrimination on the grounds of national extraction and social origin amongst other grounds. The introduction of “medical history” and “nationality or citizenship” as protected attributes under section 17 of the Draft Bill will increase employers’ obligations and the costs of compliance with the consolidated anti-discrimination laws.

When VACC members are required to defend adverse action complaints from aggrieved employees under the *Fair Work Act 2009*, they feel at a disadvantage because of the reverse onus of proof. The proposed reverse onus of proof under section 351 of the Draft Bill is a significant departure from the existing federal anti-discrimination legislation and employers will view this with similar apprehension.

¹ For example, the *Fair Work Act 2009* prohibits discrimination, termination of employment on discriminatory grounds and provides flexible work arrangements for employees with family responsibilities.

The time involved and the costs associated with defending a complaint are significant. VACC members who own small and medium-sized businesses often feel compelled to make pay-outs because of commercial considerations. They believe that the complaint-based system of dispute resolution rewards employees who are 'out to make trouble'. As section 133 of the Draft Bill provides that each party is to bear their own costs, vexatious complainants will have less of a deterrent to pursue their claims. This will also force defendants to make a settlement offer, even for claims with little or no merit, rather than face an enormous costs bill themselves.

In our view, any reform to federal anti-discrimination legislation should result in a greater emphasis on education and promotion of anti-discrimination principles. Employees' poor knowledge of what constitutes unlawful discrimination can prompt them to argue that they have been discriminated against even when they have not.

4. Further comments

For further information, please contact Bill Chesterman on 9829 1111.