

The Victorian Women's Trust:

Consideration of the Exposure Draft Human Rights and anti-Discrimination Bill 2012.

Comments and Suggestions.

The Victorian Women's Trust is dedicated to policies, programs and projects working for a "world where women and girls stand equally with men and boys, and take up all of life's opportunities without fear, harm, discrimination or disadvantage".

The Trust has not put a full submission to the Inquiry. Following our attendance at the Public Hearing in Melbourne on January 23 we would like to make the following comments and suggestions for consideration by the Commission before its report date, February 18.

The Trust supports the aims of the Inquiry; consolidation and harmonization of current relevant legislation at federal and state levels in the context of the principles of:

- Reducing complexity and inconsistencies
- No reductions in existing protections
- Ensuring simple, cost-effective mechanisms for compliance and disputes resolution
- Clarification and enhancement of protections where appropriate
- Establishing a multisectoral approach to forms of discrimination

The Trust also understands and supports the Inquiry's work as framed by the objects of the Human Rights and Anti-Discrimination Bill 2012. These objects are best summarised as:

- The elimination of discrimination, sexual harassment and racial vilification operating in terms of International Human Rights and ILO obligations
- Continued effective operation of the Australian Human Rights Commission
- Promotion of the principles of equality and dignity
- Recognition of use of special measures for reasonable adjustments for advances to equality
- Enabling accessible complaints procedures and just outcomes, ie facilitation of compliance with the Act

In general the Trust welcomes and supports the draft Bill and the proposal for review of parts of the Bill and their effective application within three years.

Many aspects of Anti-Discrimination law and practice affect women and are of interest to the Trust, especially issues considered by the Inquiry and those raised by submissions to the

Inquiry. These include the meaning of discrimination, exceptions and exemptions, protected attributes, areas of public life, the burden of proof.

Consideration of the Role of the increasing importance of the worldwide web, the new social media.

There are additional issues we believe should have a place in this legislation especially considering the changing nature of the social media and communications context in the 21st century and the enormous and universal presence of the worldwide web in all aspects of life. Discrimination legislation and its application needs to take this into account. We are concerned with the rise of online discrimination in this sphere in abuse, vilification, way beyond what is acceptable generally in the public sphere in more traditional social interaction and media. Individuals and organizations with protected attributes are likely targets, especially women (included in the protected attributes in numbers of categories). This has been highlighted recently in the sexism and misogyny debate with the PM and other women in public positions in national focus. The Trust believes this arena will require greater attention for all kinds of anti-discrimination law and will need to be incorporated explicitly in legislation like that being considered by this Inquiry. The Trust has considerable research and data as major section of our Report, ***A Switch in Time, restoring respect to Australian politics***, (accessible at <http://www.vwt.org.au/initiatives-25.html>).

Consequently we make the following comments and suggestions.

Meaning of Discrimination: Unfavourable Treatment

In light of our grave concerns about the lack of accountability and civility online and the influence this will have more generally we support the intention of the addition of 19 (2) in Division 2 Meaning of discrimination.....

To avoid doubt, unfavourable treatment of the other person includes (but is not limited to) the following:

- (a) Harassing the other person*
- (b) Other conduct that offends, insults or intimidates the other person.*

The Trust is aware of the debate arising around civil liberties and the principle of the freedom of speech as a key tenet of democracy. But free speech is not an absolute, nor does it trump other important values in a liberal democracy. In democracy there are acceptable limitations already in law (defamation and libel laws) and social norms which place limits on our freedom of speech.

In this regard we are supportive of part of the Law Council's recommendation 2 (B) that the test for discrimination have a more objective basis for 19 (1) and 19(2) and they refer to the ACT Discrimination Act 1991 section 8 or the Victorian Equal Opportunity Act 2010

Section 8, (2) In determining whether a person directly discriminates it is irrelevant-

- (a) whether or not that person is aware of the discrimination or considers the treatment to be unfavourable;**
- (b) whether or not the attribute is the only or dominant reason for the treatment, provided that it is a substantial reason.**

If the Inquiry does not take up this recommendation from the Law Council the Trust supports the proposed clause as it is.

Exceptions and Exemptions

We are concerned that all exceptions and exemptions are properly and fairly considered. It is crucial they do not impede the intention of the legislation to eliminate discrimination against women and all those with protected attributes. They must ensure that progress continues in terms of the intention of the legislation to eliminate all forms of discrimination.

The Trust supports the review of exceptions/exemptions planned within the next 3 years and the Law Council's expansion of these considerations.

Protected Attributes and Areas of Public Life

The Trust supports the additions to the list of protected attributes of gender identity and sexual orientation.

The Trust believes that areas not covered in the protected attributes list and the areas of public life must be considered thoroughly given the obvious discrimination suffered and the documentation and research available. Domestic violence, criminal records and homelessness have been raised in submissions for inclusion.

Burden of Proof

The Trust supports the shift to the sharing of the burden of proof included in the Draft Bill.

The Victorian Women's Trust looks forward to ongoing involvement in these important areas of public policy and legislation.