

The Hon Martin Pakula, MP  
Attorney-General  
Level 26, 121 Exhibition Street  
Melbourne VIC 3000  
[Martin.Pakula@minstaff.vic.gov.au](mailto:Martin.Pakula@minstaff.vic.gov.au)

**Copy to:**

The Hon Fiona Richardson, MP  
Minister for Women and the Prevention of Family Violence  
Level 1, 2 Treasury Place  
East Melbourne VIC 3002  
[Fiona.Richardson@minstaff.vic.gov.au](mailto:Fiona.Richardson@minstaff.vic.gov.au)

The Hon Martin Foley, MP  
Minister for Equality  
Level 22, 50 Lonsdale Street  
Melbourne VIC 3000  
[Martin.Foley@minstaff.vic.gov.au](mailto:Martin.Foley@minstaff.vic.gov.au)

**By email**

3 September 2015

Dear Attorney-General

**Updating our *Equal Opportunity Act 2010 (Vic)***

We are writing to you as legal and community organisations, unions and academics that assist and represent vulnerable people who experience discrimination – women, victims of family violence, Aboriginal and Torres Strait Islander people, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, youth, people with disabilities, seniors, people from diverse cultural backgrounds and homeless people. Collectively, we have significant expertise in discrimination law and a strong interest in ensuring Victoria's equal opportunity law operates to prevent discrimination and provide access to justice for victims.

We warmly welcome the Victorian Government's commitment to equality and restoring balance to the *Equal Opportunity Act 2010 (Vic)* (the EOA). The 2010 EOA was introduced by the Brumby Labor Government to modernise Victoria's equal opportunity law and tackle systemic discrimination. The reforms equipped the Victorian Equal Opportunity & Human Rights Commission with a suite of investigation, compliance and enforcements powers that enabled discrimination to be investigated and resolved by the regulator to achieve broader changes in practice across an organisation or industry, rather than relying on vulnerable individuals to bring complaints to resolve individual cases of discrimination.

Unfortunately, as you would be aware, the EOA was amended in 2011 by the former Coalition Government before these reforms could come into effect. These amendments also repealed the limitations on discrimination in employment by religious organisations.

## 1) Repealing the 2011 amendments to the EOA

We urge you to act swiftly and repeal the 2011 amendments to enable the EOA to achieve its potential in tackling systemic discrimination. We welcomed the ALP's commitments to this effect in the lead up to the election last year and its equality reform agenda more broadly.

## 2) Amendments to reflect best practice & learnings since 2010

In addition, given the EOA has now been in operation for a number of years, it would be timely to update the Act to reflect learnings and developments from other jurisdictions since 2010. The key improvements that we consider to be priority issues are outlined below.

- a) *EOA should cover all actions of public authorities in line with the Charter*
  - The EOA should be amended to prohibit discrimination by public authorities in any area of public activity. The current restriction to 'services' (and other prescribed areas) means that legitimate complaints of discrimination cannot proceed because the affected person cannot demonstrate the conduct occurred in the provision of a 'service'. It also means that parties to a discrimination proceeding expend significant resources arguing whether a particular government action can be characterised as a 'service' rather than resolving the substance of a complaint.
- b) *Update protected attributes to protect particular classes of people*
  - The 'gender identity' attribute in the EOA should be updated to more respectfully protect transgender and intersex people from discrimination in line with the *Sex Discrimination Act 1984* (Cth) including a distinct attribute for intersex people. We urge you to consult with transgender and intersex groups on these changes.
  - The attribute 'victim of family violence or stalking' should be added to complement existing protections in the *Fair Work Act 2009* (Cth) and assist women and others struggling with the impact of violence.
  - The attribute of 'irrelevant criminal record' should be added, consistent with protections in the Northern Territory, Tasmania and the human rights complaints jurisdiction of the Australian Human Rights Commission. Discrimination on this basis is a barrier to rehabilitation and reintegration into society, which can in turn contribute to recidivism and more crime.
- c) *Narrow the religious exceptions to reflect best practice*
  - We welcome the Government's commitment to restoring the 'inherent requirement' test to discrimination by religious organisations in employment. However, the exceptions for religious organisations and individuals remain unjustifiably broad and impact on vulnerable people, including in the delivery of tax payer funded services.
  - The amendments to the *Sex Discrimination Act 1984* (Cth) made in 2013 to introduce protections for LGBTI people contained an important limitation to discrimination in Commonwealth funded aged care which has been successfully implemented with support from faith based service providers in the aged care sector. Given the increasing number of services contracted out by Government to private agencies it is imperative that LGBTI people, single mothers, divorced people and unmarried couples do not suffer discrimination when accessing housing and homelessness services, youth support services, welfare services, disability care and more. The EOA should be amended to prohibit discrimination by faith based organisations if they are funded by government to deliver services.
  - If discrimination by faith based organisations in service provision or other areas were to continue to be permitted, we suggest the introduction of a requirement to publish the intention to discriminate so that individuals, whether job seekers, customers or parents of school children, can make an informed choice about whether to subject themselves or their children to discrimination. Such a requirement would introduce greater fairness in the application of the religious exceptions, reflecting the principles of transparency and consistency highlighted in *Christian Youth Camps Ltd v Cobaw* [2014] (VSCA) 75.

### 3) Technical amendments to improve the operation of the Act

We attach a table outlining the above proposals in greater detail together with a number of technical amendments that would improve the operation of the Act. We do not purport to present a comprehensive list of ways in which the EOA could be improved or strengthened, as would be appropriate for a wholesale review of the legislation. Instead we have proposed a relatively small number of improvements drawn from our experience assisting individuals to resolve complaints through mediation and hearings at VCAT. While modest and relatively uncontroversial, we believe these changes would make a significant improvement to the functioning of Victoria's equal opportunity laws and deliver a fairer and more accessible system for complainants.

We would welcome the opportunity to meet with your office and department to discuss these proposals further.

Yours sincerely



Anna Brown  
Director of Advocacy & Strategic Litigation  
Human Rights Law Centre  
+61 3 8636 4456  
[Anna.Brown@hrlc.org.au](mailto:Anna.Brown@hrlc.org.au)

**For and on behalf of**

	<b>Signatory</b>	<b>Contact</b>
1	Associate Professor Anna Chapman (Melbourne University)	Anna Chapman
2	Australian Council of Trade Unions	Ged Kearney
3	Professor Beth Gaze (Melbourne University)	Beth Gaze
4	Bisexual Alliance Victoria	Rebecca Dominguez
5	Carol Andrades (Ryan Carlisle Thomas)	Carol Andrades
6	Disability Discrimination Legal Centre	Julie Phillips
7	Dr Dominique Allen (Deakin University)	Dr Dominique Allen
8	Federation of Community Legal Centres	Liana Buchanan
9	Fitzroy Legal Service	Claudia Fatone
10	Flemington Kensington Legal Centre	Anthony Kelly
11	Human Rights Law Centre	Anna Brown
12	Jobwatch Inc	Zana Bytheway
13	Justice Connect	Fiona McLeay
14	Law Institute of Victoria	Katie Miller

15	Liberty Victoria	George Georgiou
16	Minus 18	Micah Scott
17	Organisation Intersex International Australia	Tony Briffa
18	No to Homophobia	Jamie Gardiner
19	Professor Sara Charlesworth (RMIT)	Sara Charlesworth
20	Transgender Victoria	Sally Goldner
21	Victorian Aboriginal Legal Service	Annette Vickery
22	Victorian Gay & Lesbian Rights Lobby	Sean Mulcahy
23	Victorian Trades Hall	Luke Hilakari
24	Victorian Women's Lawyers	Kirsten Adams
25	Western Community Legal Centre	Catherine Hemingway
26	Women's Legal Service Victoria	Joanna Fletcher
27	Villamanta Disability Rights Legal Service	Deirdre Griffiths
28	YWCA	Caroline Lambert