

## Protection against hate crimes in Victoria

Jewish Community Council of Victoria AGM, 22<sup>nd</sup> November 2010

Dr Helen Szoke, Commissioner

Victorian Equal Opportunity and Human Rights Commission

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May I begin by acknowledging the traditional owners of the land on which we meet - the people of the Kulin nations - and pay my respect to elders, past and present.

Thank you for the opportunity to talk with you tonight. In many ways, your organization and the Victorian Human Rights Commission share a common ground - the elimination of racism and discrimination and the promotion of a better society through understanding and cooperation between people from all backgrounds. Of course, we all know that although we have made some big steps towards achieving this goal in recent years, it is yet to be achieved. I'm sure we also all agree that when it comes to discrimination and human rights abuses it's not about tolerating this at a low level - it's about recognition that such abuses shouldn't occur at all.

The Jewish Community Council and the Commission also use similar methods to achieve our goals - we both understand the importance of focusing on training and education, community outreach, multicultural relationship building and responding to incidents of racism and discrimination. We understand the importance of social justice, business and union relationships and working with today's young people. We also understand the important place of the rule of law in creating a better and more just society. In your case, you have a specific community of interest. In my case, our community of interest is all Victorians, whether they be people with a disability, people with different religious beliefs, people who are same sex attracted, people who are old or young.

The Commission's work is guided by Victoria's legislative framework and today I would like to talk to you about the current laws that are in place, and law reform that is underway, to protect the Victorian community from discrimination.

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I think what I should do is concentrate first on the Commission's role and on what protections currently exist within Victoria in relation to racial and religious discrimination and vilification, and human rights protections more broadly.

In doing so, I would like to preface my comments with a couple of contextual statements:

1. protections afforded by law are crucial when it comes to discrimination and vilification. I will outline some of the law reform proposals that are afoot at the moment and my Commission's views about that;
2. law and order enforcement is also crucial, and it is critical that this is informed by human rights and protects basic human rights;
3. where an individual brings a course of action, we should not underestimate the significance of this in terms of the onus that rests on that individual. We have seen that Menachem Vorchheimer has taken this approach in the matter of his own case, but we should have systems in place that deal with systemic issues rather than leaving it to individuals to reform a system, or a community on the basis of their lived experience;
4. we should not underestimate the importance of education, information, and government policies that encourage multiculturalism and indeed that resource it in its implementation.

I would also say that race and religion is a particular area of focus. But our own work shows that all areas of discrimination can be the basis of prejudice motivated reaction, and to this end, we try as a Commission to keep a broad focus, looking at the work of people with a disability, age discrimination, the prejudice experienced by people who are same sex attracted, which forms the focus of our work in the sport area.

### The Commission

The Commission has responsibility under three pieces of state legislation - the *Equal Opportunity Act 1995*, the *Racial and Religious Tolerance Act 2001* and the *Charter of Human Rights and Responsibilities Act 2006*.

We have specific functions including helping resolve complaints about discrimination, sexual harassment, and racial and religious vilification through our complaint service. For example, in the past financial year the commission received 266 complaints of discrimination based on race or religious belief and a further 34 complaints were made under the RRTA.

We also provide education about equal opportunity, human rights and racial and religious tolerance, undertake projects and activities aimed at eliminating discrimination and religious and racial tolerance, conduct research which focuses on systemic issues and specific functions under the Charter which include monitoring, reviewing and intervening in matters before courts and tribunals.

Some of you may know about the Charter. It enshrines 20 civil and political rights that relate to freedom, respect, equality and dignity.

Since the Charter's introduction, every law that is introduced into Victorian Parliament has undergone a human rights assessment to demonstrate its compatibility with the human rights contained in the Charter, government activity has been viewed through a human rights lens, and our courts and tribunals have taken into account not only the Charter but also international human rights law in their deliberations.

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The Victorian Equal Opportunity and Human Rights Commission has a unique reporting function which comments on progress to achieving a human rights culture, which is delivered to the Attorney General and then tabled in Parliament every year.<sup>1</sup>

The Charter makes specific recognition of freedom of thought, conscience, religion and belief, including the freedom to choose to belong to any religion, and the recognition that no one can be coerced or restrained in a way that limits their freedom to adopt a religion.

The Charter also recognizes cultural rights by stating “All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practice his or her religion and to use his or her language.’

Of course, the Charter also includes recognition that every person is entitled to the equal protection of the law against discrimination.

The emphasis of the Charter is cultural change, and frames much of our law and policy making since its adoption. This law not only promotes an improved realisation of human rights in the future, but safeguards what we already enjoy.

The current Equal Opportunity Act has been in place since 1995 and builds on a tradition of anti-discrimination legislation in this state over several decades now. The Act offers protection against discrimination on the basis of 18 different attributes including race and religion.

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<sup>1</sup> See [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

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The Equal Opportunity Act has recently been amended to strengthen it and put a new focus on addressing the causes of discrimination. I will outline the changes that have been made.

The reform of the EOA has taken a broad and positive focus to address systemic discrimination. For the first time in Victoria, there is an onus, or a positive duty, on businesses, government, educators and goods and service providers - on all people with an obligation not to discriminate - to take reasonable and proportionate steps to eliminate discrimination as far as is possible.<sup>2</sup>

We are summarizing this as predicting where discrimination may occur, putting efforts in place to prevent it happening, promoting the concepts of equal opportunity and finally protecting those who may be subject to discrimination. This is a convenient characterization - the 4 P's - but it is completely relevant to the new regulatory regime that would be offered by this Act.

In addition the Commission has a different set of regulatory tools, which includes the development of practice guidelines, sample policies, Action Plans by duty holders, a Public Inquiry function which is subject to the Attorney-General's consent, an investigation function which is not reliant on a complaint being brought to the Commission, and the Commission may also be invited to conduct policy and practice reviews under the EOA.<sup>3</sup>

Under the new investigation power, the Commission may investigate a matter that appears to be a serious breach of the Act and relates to a group of people - the focus

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<sup>2</sup> S 3 (d) EOA 2010

<sup>3</sup> See EOA 2010 Part 9 'Investigations and Public Inquiries' and Part 10 'Practice guidelines, Reviews and Action Plans'.

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is on serious of systemic issues rather than the Commission investigating every single act of discrimination that occurs.

We hope this power will enable us to negotiate positive outcomes through voluntary approaches to compliance, but this investigation function may also lead to the duty holder entering into an enforceable undertaking that details exactly how they will stop the discrimination that has been occurring.

In Victoria, we also have the *Racial and Religious Tolerance Act*, which makes it against the law to vilify a person or group of people on the basis of their race or religion. There is a high threshold for what constitutes vilification and the Act is designed to prohibit “serious behavior”. That is, it includes only behavior that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person, or group of people because of their race or religion. “Incitement” is more than just merely holding a view or expressing an opinion; it is the encouragement or promotion of hatred towards others. The type of behaviour covered by the Act includes verbal abuse where others can overhear it, statements made at meetings, in publications and on the Internet. Menachem Vorcheimer’s case was made with the support of RRTA laws.

So there are many existing anti-discrimination laws within Victoria, including some that have been recently strengthened, and it’s important to be familiar with them and understand the protection they offer.

However there is also further law reform on the horizon, of which I’m sure you are aware. The Commission is often called upon to give advice to government or to make submissions to public inquiries that concern matters of human rights. One such

submission that may be of particular interest to you, as I know your organisation has also made a submission, is our submission to the EAMES enquiry.

### EAMES Enquiry and Future Law Reform

In 2009 changes were made to the Sentencing Act which required a sentencing court to consider whether an offence was motivated by hatred of or prejudice against a group of people with common characteristics - essentially, whether or not a crime was a 'hate crime' or 'prejudice motivated crime'.

A number of cases where this has been considered since 2009 have indicated some challenges in terms of how the law may apply.

The Government appointed the Hon Geoffrey Eames QC in December 2009 to conduct a review of identity motivated hate crime and in particular, to report on whether the current criminal offences and penalties are adequate and whether there is a need for specific hate crimes offences.

My own Commission has had reservations about the operation and accessibility of the RRTA. There have been difficulties with the threshold tests for both vilification and serious vilification, a lack of understanding about these provisions amongst both law enforcement and the community, and the need for an aggrieved person to be identified in order to pursue a claim.

We have therefore welcomed the opportunity to respond to the Victorian Government's review of identity motivated hate crime.

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We believe it's necessary to strengthen the capacity of the justice system to respond to hate conduct and crime, and to do so in a way that is consistent with the Charter of Human Rights.

In our view, this would mean strengthening civil and criminal provisions protecting people from hate conduct. Such remedies are necessary because hate crime and hate conduct have a disproportionate impact on particular groups - groups characterized by race, religion, sex, sexual orientation, gender identity, age, impairment or homelessness - and their ability to realise other human rights. Call it the domino effect of discrimination.

The Commission believes that a legislative framework which recognises that hate conduct and crime are part of a continuum of behaviour will be the most effective in both providing redress for victims and sending a strong message about acceptable conduct in an inclusive community.

In short, we have recommended that this model include:

- A provision in the *Equal Opportunity Act* prohibiting offensive, insulting, humiliating or intimidating conduct against people, or a group of people, not just based on race or religion, but also sex, sexual orientation, gender identity, age, impairment and homelessness
- Inclusion of exceptions for behaviour in this provision consistent with existing exceptions in the *Racial and Religious Tolerance Act 2001* (RRTA)
- Removal of the criminal element for serious vilification from the *RRTA* and incorporating this in legislation which deals with criminal offences
- Recognition of hatred against groups in appropriate criminal provisions to correspond with Sentencing Act provisions.



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Research indicates that a high frequency of vilification or hate speech against a particular group has a profound effect on the individual and group members, but can also lead to more serious behaviours including discrimination and violence against those group members. As I'm sure you are aware, hate crimes have tremendous social, cultural and economic implications. Sending a clear message to the community that hate conduct is unacceptable by specifically making it unlawful at a civil and criminal level should have a preventative effect and so reduce the incidence of more serious conduct.

As we've seen through the RRTA experience, the strengthening of civil protections of vulnerable groups for hate conduct also provides those groups with less formal and more accessible means of redress through the Commission's alternative dispute resolution service. This service can provide a quick and appropriate remedy for the victims of hate conduct, but also has a broader, educative effect on all parties involved in the dispute. This capacity is enhanced by the recent amendments to the EOA which focus the Commission's complaints process on providing a quick, informal dispute resolution process and I'm pleased that the new dispute resolution provisions will also apply to the RRTA.

This is of particular relevance to the Jewish community given the clear discrepancy between the number of incidents of hate crime reported to Victoria Police and to Jewish community institutions. The fact that many cultural groups may face barriers in relation to reportage means any less formal, more accessible means of redress, or more preventative methods to stop hate crimes are vital to consider.

At the end of the day, if we are tackling discrimination or vilification, it has to be with a suite of endeavours that address behaviour and rules and cultures that are

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discriminatory or that lead to vilification. Law reform is important, but we also need to understand the protections that exist for all people under the existing laws. And we must always remain vigilant.

My father, who was a refugee following the second world war, lived the experience of isolation and non-inclusion in the 1950's when he came to this country. As a country of settlers, we should be better at being inclusive and being strong about non-tolerance of behaviours that at best exclude and that at worst cause harm to communities of people.

"We are all different; because of that, each of us has something different and special to offer and each and every one of us can make a difference by not being indifferent." - Henry Friedman Chairman of the Holocaust Education Centre, Washington.

This is the challenge for us all.