

ports are discussed in the October 1989 issue of *Reform*.

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discrimination

The persistence of what looks like sexual discrimination is felt to belie the church's professed concern for social justice.

Jennifer Gribble, *Current Affairs Bulletin*, February, 1990.

In 1989 the Victorian Attorney-General directed the VLRC to review the Equal Opportunity Act 1984 (Vic). The VLRC has now released a second discussion paper, *Equal Opportunity Act Review*, and is seeking community response.

grounds of discrimination. The Act primarily prohibits discrimination on the grounds of race, sex, impairment, marital and parental status, and religious and political belief and activity. The VLRC proposes that it be extended to prohibit discrimination on a number of new grounds, the major ones being age, sexuality, and irrelevant criminal record.

age discrimination – the VLRC proposes that:

- The prohibition on age discrimination should generally cover the same areas which are prohibited in the other grounds, such as employment and education. For example it would be unlawful to advertise for a person of a particular age or age group, unless there was a legitimate reason to do so, such as specifying a baby as a model for a baby products advertisement.
- Employers should be prohibited from requiring employees to retire at a specific age. The NSW, South Australian and Western Australian Governments also intend to prohibit compulsory retirement on the ground of age

- Certain kinds of age discrimination should be permitted to continue. Two of particular significance are:

- concessions (eg, cheaper fares for young and old passengers)
- age-related wages.

sexuality – discrimination on the grounds of heterosexuality, homosexuality, bisexuality and transsexuality would be prohibited. Discrimination on the ground of paedophilia is not included.

irrelevant criminal record – This would complement the 'spent convictions' scheme currently proposed by the government (ie, that after a designated period, such as ten years, a conviction would be deemed to be 'spent' – ie, irrelevant – for most purposes). The major difference is that the Commission proposes that a criminal record could be 'irrelevant' for a particular purpose even though it is not 'spent' under the spent convictions scheme. For example, a conviction for a car driving offence, whenever it happened, is likely to be irrelevant to the job of a bank teller.

areas of discrimination. The Act prohibits discrimination on the specified grounds only in specific areas such as employment, education, and the provision of goods and services. Some areas are exempt (eg any activity covered by religious doctrine, such as the ordination of priests), and there are exemptions within some of the specified areas (eg, employment for personal services in a private home).

The Commission proposes the abolition of some exemptions, in particular:

- (a) *superannuation* – this is currently totally exempt (eg, an employer can offer it to male employees but not to female employees). The Commission proposes that discrimination should be prohibited unless it can be justified on actuarial, statistical or other reasonable grounds. This

uses the same principle currently applied to discrimination in insurance.

- (b) *small businesses* – the Act currently applies to employers only if they have four or more staff. The Commission proposes that it should apply to all employers, as do the Commonwealth racial and sex discrimination Acts.
- (c) *industrial agreement and arrangements* – it is not unlawful to discriminate if the act is done in accordance with an ‘industrial relations agreement or arrangement’, even though it is not the subject of an award. The Commonwealth and the other States do not have this exemption, and the Commission proposes that it be abolished. However, it does propose one exemption – where the agreement or arrangement is for compulsory union membership – and believes that this should be the subject of a separate review.

other unlawful acts. The Commission proposes that it should be unlawful to ask for information which might provide a basis for discrimination, unless it is reasonably required for a non-discriminatory purpose, eg, to enquire about a person’s marital status, or whether they have made a Workcare claim. This would enhance the effectiveness of the legislation, because it is difficult to prove that a person who has asked for such information has actually used it to discriminate unlawfully.

enforcement of the legislation. The Commission proposes a number of changes in the procedure for handling complaints of discrimination, and to assist people to comply with the legislation, including:

- a broader range of complainants eg allowing an ‘agent’ such as a union or an ethnic organisation to complain on behalf of an individual
- time-limits on procedures, to ensure that complaints do not drag on indefinitely, and can be brought to a hearing within a reasonable period
- the Equal Opportunity Commissioner should be able to provide written advice which protects a person who acts in accordance with it against legal action.

Comments on the Commission’s proposals should be made in writing to the Law Reform Commission of Victoria, 7th Floor, 160 Queen Street, Melbourne, Vic, 3000.

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our cover: sir owen woodhouse

No more important opportunity lies open to the law reform agencies to contribute to highly significant and wide-ranging issues than is provided by recent watershed decisions of New Zealand and Australia not only to accelerate but to deepen and give new strength to their relationship. The stated objective of the Closer Economic Relations concept is to quickly achieve a completely free trade area. In itself this is a considerable movement for both countries. But it is a movement which could well be taken further – into an effective form of common market. There are the even wider defence and economic purposes of providing a focus of strength and stability for the whole region.

Address by Sir Owen Woodhouse
Australasian Law Reform Agencies Conference,
1988.

The founding and current President of the New Zealand Law Commission, Sir (Arthur) Owen Woodhouse, KBE, DSC, was born in Napier, New Zealand, in 1916. He graduated with an LLB from the University of New Zealand.