

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 4 August 2009

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Witnesses

Ms L. Yilmaz, General Manager, Industrial Relations, OHS and Training, and
Ms G. Marton, Workplace Lawyer, Victorian Automobile Chamber of Commerce.

The CHAIR — The next witnesses are Leyla Yilmaz and Gabriella Marton from the VACC. Thank you for attending these public hearings. The purpose of these hearings is to report to the Parliament on whether any amendments should be made to the exceptions and exemptions in the Equal Opportunity Act 1995. Anything you say or publish before the committee today is protected by parliamentary privilege. However, once you leave the hearing anything you say or publish outside this room is not so protected. I invite you now to make a brief statement to the committee on the relevant issues that you consider important to your organisation concerning the inquiry. We will follow that up with a series of questions.

Ms YILMAZ — Thank you, Chair. I am Leyla Yilmaz from VACC. My position is General Manager of Industrial Relations, OHS and Training. With me I have Gabriella Marton who effectively represents a large body of our members who either need support in the area of equal opportunity or perhaps even representation in the area of equal opportunity. I will commence with a very brief opening statement. I know our submission is quite short; we intend to go straight to the point. Perhaps through your questions we might be able to add some flesh to those points.

VACC is an employer organisation. At the moment we have almost 5500 employers across Victoria and Tasmania who are members of our organisation. That is across both the metropolitan area and the regional area of both states. Our members are those businesses in the motor industry. We do not represent the major manufacturers, but we represent all the businesses that have anything to do with a motor car once it leaves the production line — the new car dealers, the used car dealers, towing operators, body repairers, specialist little manufacturers that have to modify vehicles and so on, right up until the end of the life of the vehicle, so even the recyclers are our members, and all of those businesses that assist in the running requirements of a vehicle. A large body of those businesses that are our members are very small employers. Ninety per cent of our members have less than 10 employees, and we have a large body of those with less than 5 employees.

These businesses do rely on VACC, predominantly through the industrial relations department, to provide them with daily support. We have a telephone advisory service that assists them. We take up to 100 calls a day, assisting members across a range of industrial relations, OHS, HR and training issues. In addition to the telephone advisory service, we provide members with training. We also represent them when they do get themselves into strife. We assist them with the drafting of policies and so on, and we also have many resources available to assist them in their day-to-day operations in their businesses.

As I said, they are predominantly small employers. It is an industry that does rely very heavily on trade skills. So many of the people who are in fact operators of business have actually worked their way up, usually through an apprenticeship; something in the automotive industry or in the sales area and eventually work their way up to management roles and eventually either own an operator business or manage a business on behalf of a dealership.

Our members are required to comply with both federal and state legislation, and of course our support services cut across all of those jurisdictions. Just in relation to this particular inquiry here, our submission is concentrated on predominantly the exemptions contained within divisions 1, 2 and 4 of the act. There are 10 exemptions which we have referred to. We felt at the time of writing the submission that they were the 10 most relevant to our members that operate across the state of Victoria.

The advice contained in the submissions to this inquiry was intended to go straight to the point and just simply articulate from a practical perspective, given our experience with our members as well as being an employer ourselves — a larger employer, but we can understand our members' issues very clearly — we are able to address those issues of most importance. They are the ones that we have articulated in our submission. There are 10, as I said, that we have made reference to.

Our members and VACC support equal employment opportunity principles. In fact a lot of our work goes to providing quite a significant amount of support to members. Some of our members, because they do not have the HR experience themselves, often turn to us, as I said earlier. So even insofar as asking for support in the development of policies and the induction of staff — that is often what they will actually use our organisation for.

Gabriella had in fact developed quite some time ago some training for managers. So we have a number of members who operate a number of dealerships, and some in particular utilise our induction service so that the

training for all of their staff on equal employment opportunity is done at arms-length. They have a policy, and training is done through VACC, Gabriella in particular. That way they are able to impose on their staff a clear understanding of what their obligations are as well as a mutual understanding of what the employer's obligations are towards them.

The other point I just want to make before I close is that, as I said, our members operate across both federal and state jurisdictions. There is a large body of legislation that does cut across equal employment opportunity. We have the Workplace Relations Act; being a federally registered employer body we are of course concerned with that. It is also an industry that offers many employment opportunities to young people — work experience opportunities, apprenticeships, traineeships. As a consequence a lot of young people coming into the industry need a fair bit of protection and guidance, and employers need to do the right thing there as well.

It is an industry that often operates 24 hours a day, so we have rules about when children can work and cannot work as well. It is a highly regulated industry as well; you just need to look at dealerships and towing operations and so on — there are separate pieces of legislation that affects those businesses as well.

In addition to equal opportunity legislation, there is the Workplace Relations Act, specific working with children regulations and other regulations such as the tow truck regulations and the Motor Car Traders Act and so on. The major concern for our members over the years has been the issue of jurisdiction hopping. They do not understand legislation, they do not read legislation.

The simple question is: you tell me what I need to do to comply, and how do I protect myself in the event that I get into trouble? Those are their main queries; they are not particularly concerned about whether it is federal or state legislation, hence our training is often geared that way. But there is a need for them to have some confidence that when they in good faith have done the correct thing — they believe they have done the correct thing; they believe they have complied with the principles of equal opportunity — they need to feel some confidence that they are not going to be got at through some form of claim through various jurisdictions.

That is a very real fear; it does happen. We often do get claims where individuals go from jurisdiction to jurisdiction, and it is a bargaining point for reaching settlements. Thank you.

The CHAIR — Thank you. My first question is about the exception for small businesses, section 21. Small businesses have to abide by the Equal Opportunity Act in spheres other than — the only one that is accepted is recruitment, so I am wondering why it would be so onerous to also then follow equal opportunity requirements for recruitment. In your submission you suggest there may well have to be specialist people used to ensure that there is non-discriminatory employment, but the employees have to know about the Act anyway in terms of their overall business.

Ms YILMAZ — That is true, and there is a requirement on them to comply with federal legislation, and there are protections with regards to unlawful discrimination under the federal Workplace Relations Act; so they clearly understand that, but this goes to the point of the jurisdiction hopping in particular, and the level of confidence exerted by our smaller members, in particular.

If they have done the correct thing, then they should be protected; they should not be open to further disputation in another jurisdiction again; so it is a form of protection and in particular, in relation to the comment with regards to specialist advice, at the moment members do use VACC for that type of specialist advice; they do not have HR personnel in their businesses, but the prospect of real claims arising from the removal of this exemption will create in them a feeling that they need to have additional protections in place in the event that a claim is made, and we do see that in the day-to-day dealings with members. Ms Marton may like to comment further.

Ms MARTON — Yes, particularly I presume that small members are concerned with respect to maintaining further documentations and for how long, if it is related to selection and recruitment procedures and information which they also need to keep in terms of complying with the privacy legislation. So for them it is a matter of really understanding what they need to keep in case there were any claim or prosecution or issues relating to why somebody had not been offered employment, and then how to keep it and for how long in the various jurisdictions, which is a significant issue.

The CHAIR — My other question is about youth wages. Why do you prefer to maintain youth wages rather than payments based on skill and experience?

Ms YILMAZ — The issue with youth wages is that in terms of our industry, as I mentioned, there are many opportunities for young people to enter the industry, and usually that entrance is through a taster — through work experience. It is either work experience at school, organised through the school with the authority of the school, or it could be young people who simply knock on the door of a business and ask, ‘Can I come in every Saturday and just get a bit of a taste for what this business can offer me in terms of further employment opportunities?’.

So from that perspective the view of our members is that these young people are coming in, they just want to get a bit of a feel for the industry, they are not productive, they do not really have skills, but the fact that it is a junior rate is the incentive to give them the opportunity to come in and actually do some work and learn about the type of opportunities in that business because, like I said earlier, it is a highly regulated industry, it is a very technical industry, it is potentially a dangerous industry, so there is a fair bit of supervision required and that means taking what we deem to be productive people off the tools to supervise these young people, and all of this is down time.

When you look at ANZSIC data, the vast majority of our industry is in the retail trade. We are not traditionally a shop, like a Kmart or whatever — it is an entirely different business. You walk into a dealership or a small repairer on a corner anywhere just out of Melbourne, and there are numerous pieces of equipment being used which could be potentially dangerous. There are the customer relation skills, the technical skills, and the health and safety regulations.

It is also an industry that is very highly competitive. The profit margins are very small in this industry, something in the vicinity of between 3 and 5 per cent, so you do need the incentive for these employers to give these people an opportunity. There was a huge fear when we were debating the issue of adult apprenticeship wages that there was a fair bit of research done to ascertain what was the difference in skill level between a mature adult undertaking a first year apprenticeship and a young person coming out of year 11, and we found absolutely no difference. The only difference was the maturity level. That was the only difference. In terms of skill there was no difference.

When we did introduce higher rates for adults in the apprenticeship area we saw a significant drop in commitment from the industry to those adults. This is something that has had to claw back slowly, but we have not reached the same numbers that we had prior to the introduction of an adult apprenticeship wage so from that perspective it is very important.

Mrs PEULICH — So would you say that youth wages improve the chances of a young person obtaining a job in the employer organisations that you represent?

Ms YILMAZ — Yes, in our view they certainly do. It gives them a step in the door, and once they do develop some skills they are able to pay them beyond that.

Mrs PEULICH — And they are in a better bargaining position?

Ms YILMAZ — Yes, because employers will pay depending on what the skill level is. We do some research on a regular basis in terms of what apprentices are paid in the industry as well, and we are able to find that there are sectors in the industry that can sustain payments in excess of even award minimum rates for apprentices, and we do find, particularly when they are more productive in years 3 and 4 of their apprenticeship — and they can be up to a maximum of 4 years — that that is often when they will be paid well in excess of the minimum award rates.

Mrs PEULICH — Within your membership base do you have any businesses that are home-based or co-located?

Ms YILMAZ — No. All of our businesses must be registered, and there are various health and safety regulations, so it needs to be a proper business as registered both in the municipality as well as in the state. And we do not support backyarding. It is an illegal form of trade in the industry.

Mr BROOKS — I return to section 21. It is probably fair to say that your members, in the majority, would be employing people based on the very best candidate for a job, so when I think in terms of existing practice, it is probably already compliant almost entirely with the intentions of the Equal Opportunity Act, if it was amended to include selection. I am wondering what the impact would be if that exemption was removed, in terms of both the training and advice that would be provided from your organisation to your membership? How do you think that would play out and how do you think it would impact on your members?

Ms MARTON — I would like first to put to you an example where this small exemption and family business comes into operation. A large number of our members operate service stations, and they operate them as licensed agents. Usually licensed agents provide mostly nothing else other than their know-how, but that know-how is the most important part of the business. Usually they bring their own family members, or people who they usually use, to work together and who know how to best manage a particular business — for example, there is a stage when what we would legally call a transmission of business situation occurs, and they would be in one way even further restricted in who they can employ and would not be able to bring in their own usual team of family members, who they can work with. Because the legislation would impose further restrictions on them, there would be a limitation on who they could select and they would be forced to employ people who they would not have known. This is just a practical example on a big segment of the industry which operates in a particular and unique way.

Ms YILMAZ — The same principle applies in regard to small business, and again it comes back to that confidence level.

Mr BROOKS — I suppose what I am asking is in terms of the training that you already provide, and the advice that you already provide, in terms of compliance with the Act across the rest of the areas, would it be difficult to extend that to providing advice and training up your members in terms of selection requirements as well?

Ms MARTON — If I may put to you that in 2001 we carried out extensive research regarding the future of employment arrangements and skill resources for our industry. It was carried out by the National Key Centre in Industrial Relations at Monash University. Amongst other things the questionnaire used asked employers about their recruitment practices, what kinds of policies and paperwork they have or do not have, what kind of assistance they would require when employing various recruitment practices and what are the incentives or disincentives in terms of employing additional staff and additional junior staff.

Certainly it appeared from that particular survey that they would have required further assistance in establishing how to establish selection criteria, how to establish the appropriate questions in the job interview. In all practical terms it is quite easy to say that we could provide certain policies and assistance, but when it comes to actually being able to put together the right selection criteria, the job advertisement which complies with the legislation, asking the right questions and ensuring that job application forms do not contain inappropriate questions, it might sound easy, but when it is actually a requirement to provide it for every single business involved, it will be quite different, and when it requires assistance, it is quite significant assistance.

Mr BROOKS — Thank you.

Mr SMITH — I have one question. I am interested to know how the exception regarding political employment would affect your members?

Ms YILMAZ — We put that one in, not so much because it affects our members but as an employer organisation it was an in-principle support to that proposition. As an employer of an employer organisation, whilst I have never asked, ‘Are you committed to the employer movement?’, I have been subjected to such questions when I have applied for a job with a union before, so I think it is something that would be relevant. It is not relevant to us but in principle we are in support of that.

Mr SMITH — I understand.

Ms YILMAZ — Because there are, I believe, some examples in our community where you do need to have a commitment to a set of belief systems or principles in order to carry out your job correctly.

Mr SMITH — I agree.

Ms YILMAZ — I would suggest that having a commitment to unionism and the right to be a member of the union would be a very significant point. To have a commitment to a particular type of political party, I would suggest, would also be a very significant point.

Mr SMITH — Absolutely. Thank you.

Mrs PEULICH — I want to say that the VACC produces a very good magazine which I enjoy reading.

Ms YILMAZ — Oh good, thank you.

The CHAIR — Leyla and Gabriella, thank you for your efforts in coming to the committee and providing such important insights.

Witnesses withdrew.