

Ms Merrin Mason
Executive Officer
Victorian Parliament Law Reform Committee
Level 8 / 35 Spring Street
MELBOURNE VIC 3004

25th July 2002.

Dear Ms Mason,

Re: Inquiry into Oaths and Affirmations with reference to the Multicultural Community.

Please find attached a copy of the Equal Opportunity Commission's submission to your Inquiry into Oaths and Affirmations with reference to the Multicultural Community.

Thank you for the opportunity to make this late submission, I look forward to commenting further at your public hearings.

Yours sincerely,

Dr Diane Sisely.
CHIEF EXECUTIVE.

EQUAL OPPORTUNITY COMMISSION VICTORIA.

SUBMISSION TO THE VICTORIAN PARLIAMENT LAW REFORM COMMITTEE INQUIRY INTO OATHS AND AFFIRMATIONS WITH REFERENCE TO THE MULTICULTURAL COMMUNITY.

INTRODUCTION.

The Equal Opportunity Commission Victoria ('the Commission') is the statutory body responsible for administering the *Equal Opportunity Act 1995* (Vic) ('the EOA'). In performing this role the Commission promotes everyone's right to equality of opportunity, and works toward the elimination, as far as possible, of discrimination against people on the basis of various attributes, including race and religion. The Commission is also responsible for eliminating, as far as possible, sexual harassment, and for providing access to redress for people who have encountered discrimination or sexual harassment.

THE RELEVANCE OF THE EOA TO OATHS AND AFFIRMATIONS.

In that the law concerning oaths and affirmations is set down by the *Evidence Act 1958* (Vic) the EOA does not have direct bearing on what procedures are or are not accepted in Victoria. The reason for this is section 69 of the EOA, which states:

69. Things done with statutory authority.

- (1) *A person may discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of –*
- (a) *an Act, other than this Act;*
 - (b) *an enactment, other than an enactment under this Act.*
- (2) *For the purpose of sub-section (1) it is not necessary that the provision refer to discrimination, as long as it authorises or necessitates the relevant conduct that would otherwise constitute discrimination.*

The Commission submits, however, that the objectives and principles of the EOA are relevant to this issue and provide guidance for identifying a practical response to this issue within a community of increasing ethnic and religious diversity. In particular the Commission refers the Committee to the concepts of accommodation and reasonableness.

Accommodation.

It is primarily in regard to disability discrimination that the concept of accommodation is encountered, but it is a useful guidance point in relation to many issues related to diversity. Accommodation involves recognising the differences within our community (some of which have always been present, whilst others are

more recent) and then identifying modifications to traditional practices and other strategies that foster mutual respect, inclusivity and social cohesion.

Reasonableness.

Reasonableness is a companion concept to accommodation under anti-discrimination law. Under the law there is no requirement to do everything that could conceivably be done to avoid discrimination, instead there is an obligation to do what is reasonable. When determining what is reasonable a variety of factors need to be taken into consideration including cost, practicality and other considerations relevant to the specific issue involved. In essence, the concept of reasonableness is geared towards identifying practical, common sense responses to particular matters in order that solutions may be sustainable.

OATHS AND AFFIRMATIONS IN A MULTICULTURAL COMMUNITY.

As other submissions have likely pointed out in more detail, the Victorian community is incredibly diverse, comprising people from XX different nationalities who practice XX faiths. Within such a community the Commission submits that the most appropriate strategy based on the principle of non-discrimination, is to abandon the practice of religious oaths and rely solely on the use of affirmations.

Accommodation and reasonableness.

Clearly the *Evidence Act* has sought to remain abreast of social changes through its recognition of oaths based on non-Christian religious beliefs. Within a community where so many different faiths are practiced however, ensuring the necessary understanding and resources for those charged with administering the system may well be unreasonable.

The Commission submits that persisting with current practices could only be viewed as being in accordance with the principle of accommodation if steps were taken to ensure all members of the Victorian community were able to make a religious oath. If this were not done, the system of oaths and affirmations would be at risk of incorporating and promoting a hierarchy of religions – those sufficiently well known, understood and recognised to be regarded as part of the system, and all others. At the same time, however, the Commission recognises that providing the necessary resources, including training, to ensure any Victorian who wished to could make an oath according to their religious belief would impose a considerable burden on the State at a time when there are a number of more pressing needs in relation to the administration of justice. This is particularly so given abandoning the practice altogether is an alternate means of ensuring equitable treatment of all members of the community.

Minimising confusion.

At a practical level, the Commission submits that adopting a practice of universal affirmations has the potential to reduce the risk of confusion – and inadvertent offence

– on the part of members of the community and those responsible for administering the system. In particular:

- Religious diversity often intersects with racial and linguistic diversity. When a system is kept as simple as possible so too is the information that needs to be conveyed – this is invaluable when seeking to communicate information by way of an interpreter, or via translation. Under the current system, not only is there the need for those administering it to provide more complex information to people who may not speak fluent English, those people might also be required to provide information concerning their religious beliefs and practices. This could often be both daunting and confusing.
- Quite inadvertently, discussion around issues of religion may lead to offence, particularly where it is incorrectly thought that people from a particular region or country tend to belong to one particular religion. At the very least, in situations where it may become necessary to question someone about their religious beliefs and practices it could be uncomfortable and disconcerting. The potential for this would seem to be avoided through a system based solely of affirmations.

CONCLUSION.

It is still not uncommon that when systems are changed to reflect the reality of our diverse community the accusation is levelled that there is no respect for past, historical practices. The Commission would submit that in a modern world, despite the nature of an individual's religious or spiritual beliefs, the primary motivation for truthfulness in testimony and documentary evidence should be respect for the law. Linking that respect for the law to a belief in God (or something assessed as being sufficiently similar) has the potential to suggest that some ethno-religious differences impact on honesty, and can also further complicate a legal system that many find confusing. In this context a move to a general practice of evidence by affirmation appears appropriate and timely.