



Victorian Equal Opportunity
& Human Rights Commission

Rights and Responsibilities 2014

Submission to the Australian Human Rights Commission

31 October 2014

The Commission's interest

The Victorian Equal Opportunity and Human Rights Commission (the Commission) is an independent statutory authority with responsibilities under three laws that protect and promote the rights of people in Victoria:

- the *Charter of Human Rights and Responsibilities Act 2006* (the Charter), which protects 20 fundamental human rights and freedoms;
- the *Equal Opportunity Act 2010* (the EO Act), which makes it unlawful to discriminate against people on the basis of a list of protected attributes; and
- the *Racial and Religious Tolerance Act 2001* (the RRT Act), which makes it unlawful to vilify people because of their race or religion.

The Commission brings a unique perspective to this consultation through its statutory functions under the Charter, the EO Act and the RRT Act, and its engagement with these laws on a day-to-day basis with government, the community and in the courts. Significantly, the Commission has consulted broadly with the Victorian community and government about rights and responsibilities in a number of different forums.¹

In this submission, the Commission uses the term “rights” to include the rights and freedoms that are protected by the Charter and other laws.

Statutory protection of rights

The Commission strongly supports having a statutory framework to protect and uphold rights and responsibilities. In the Commission's experience, law is an essential part of the framework for protecting and balancing rights and is an important driver for social change.

In Victoria, the Parliament has passed a number of laws that aim to protect and promote people's rights. These laws, including the Charter, EO Act and RRT Act, reflect the fundamental values of the Victorian community as expressed through the Victorian Parliament.

Prior to the introduction of the Charter, a Human Rights Consultation Committee was appointed to consult with the Victorian community about their views on human rights and whether Victorian law needed to be changed to introduce a charter of rights. Over a period of 6 months, the Committee held 55 community consultation meetings, information sessions and public forums, and 75 consultations with government and other bodies.² Of the 2524 submissions received by the Committee, a substantial majority supported a change in Victorian law to better protect human rights.³ The Committee reported that:

Many people want to see their human rights better protected to shield themselves and their families from the potential misuse of government power. For even more people, however, the desire for change reflects their aspiration to live in a society that continues to strive for the values that they hold dear, such as equality, justice and a ‘fair go’ for all.

¹ For example, under the Charter, the Commission is required to report annually to the Attorney-General on the operation of the Charter (section 41(a)). To prepare each report, the Commission consults with state and local government and community groups regarding the Charter: see <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports>.

² Consultation Committee, Department of Justice, Victoria, *Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee* (2005), v.

³ Ibid 2. 84% of people that the Committee spoke to or received submissions from (or 94% if petitions are included) supported stronger protection.

The idea of a community based upon a culture of values and human rights is one that we heard again and again during our consultations. Victorians sought not just a new law, but something that could help build a society in which government, Parliament, the courts and the people themselves have an understanding of and respect for our basic rights and responsibilities.⁴

When the Charter was reviewed by the Victorian Parliament's Scrutiny of Acts and Regulations Committee (SARC) in 2012, more than 4,000 submissions were received, with the overwhelming majority supporting the Charter as a legal protection of human rights or calling for it to be strengthened. This was significant public engagement for a State Parliament consultation.

The Commission's own consultations with the community have shown that there are diverse views about the importance of particular rights and the adequacy of their protection in Victoria. For instance, in consultations with people with disabilities in Victoria, the key issues raised involved predominately economic and social rights such as work and employment, education, housing and accommodation, health and transport. Other rights raised included civil and political rights such as participation in public, social and cultural life, respect for privacy, access to justice, freedom from torture, exploitation and abuse.⁵

There are different views about the adequacy of existing protections for some rights even where they are seen as extremely important, particularly economic and social rights.⁶ Some see the lack of protection of economic, social and cultural rights in the Charter as a significant gap in rights protections when those rights address the basic needs to live a good life with dignity, such as health, education and housing.⁷ These fundamental rights less frequently make it onto the national stage, but come up regularly as everyday concerns for people in Victoria.

How does the Charter protect the rights of Victorians?

In Victoria, the Charter builds on a strong tradition of rights protection in Victoria, including common law rights (such as the right to liberty) and statutory laws (including the EO Act and the RRT Act). It also builds on Australia's tradition of respecting international human rights by helping the Australian Government to fulfil its obligations under international human rights treaties.⁸

Fundamentally, the Charter is about the relationship between government and the people it serves – it protects people from government action and encroachment on 20 fundamental rights and freedoms. Through this statutory mechanism, Parliament requires executive government to think about the individual at the centre of its decision-making.

⁴ Ibid ii.

⁵ Victorian Equal Opportunity and Human Rights Commission (2011) *Talking Rights: Consulting with Victorians about the rights of people with disabilities and the Charter*.

⁶ Victorian Equal Opportunity and Human Rights Commission (2011) *Talking Rights Consulting with Victorians about economic, social and cultural rights and the Charter*, 20.

⁷ Victorian Equal Opportunity and Human Rights Commission (2011) *Talking Rights: Consulting with Victorians about the rights of people with disabilities and the Charter*, 27.

⁸ International Convention on the Elimination of all Forms of Racial Discrimination (ratified 30 September 1975); International Covenant on Economic, Social and Cultural Rights (ratified 10 December 1975); International Covenant on Civil and Political Rights (ratified 13 August 1980); Convention on the Elimination of all Forms of Discrimination against Women (ratified 28 July 1983); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified 8 August 1989); Convention on the Rights of the Child (ratified 17 December 1990); and Convention on the Rights of Persons with Disabilities (ratified 17 July 2008).

The Charter contains 20 basic rights that promote and protect the values of freedom, respect, equality and dignity in Victoria. These rights are largely modelled on the rights recognised in the International Covenant of Civil and Political Rights. By setting out the values and human rights of the Victorian community, the Charter does not disturb rights recognised under any other laws.⁹

The Charter includes three key mechanisms to facilitate a human rights dialogue between the three branches of government:

- The Victorian Government and other public bodies have an obligation to act compatibly with the human rights in the Charter;¹⁰
- A statement of compatibility with the Charter must be tabled with all Bills when they are introduced to Parliament;¹¹ and
- All Victorian statutory provisions must be interpreted compatibly with human rights, as far as it is possible to do.¹²

Making sure government respects rights

As part of their obligation to act compatibly with the Charter, many public authorities review their policies and procedures for compliance with human rights. This often leads to better outcomes for the people who are impacted by a particular policy or procedure, and to the improved delivery of key services.

For example, in 2013, VicRoads revised its change of gender policy so that drivers can correctly record their identity, regardless of gender. The revised policy is consistent with the rights protected in the Charter and the EO Act.

“VicRoads is obliged to record a person’s gender when they are issued with a driver’s licence. Previously, VicRoads required a person wanting to change the record of their gender to supply a birth certificate. This policy meant that people who were transgender but had not undergone sex reassignment surgery could not register a change of gender with VicRoads due to barriers in obtaining a new birth certificate.

Transgender Victoria raised concerns with the Commission that the policy was unnecessarily onerous, did not reflect recent legal and policy developments regarding change of sex or gender on official documents and was discriminatory. The policy also engaged Charter rights to non-discrimination and privacy.

The Commission worked with VicRoads to review its policy. Under the revised policy, a person may provide a number of different forms of documentation, including a letter from a registered medical practitioner or psychologist, stating that they are receiving appropriate clinical treatment for the gender transition, that they are intersex, or of indeterminate or unspecified sex.”¹³

⁹ Charter of Human Rights and Responsibilities Act 2006 s 5.

¹⁰ Charter of Human Rights and Responsibilities Act 2006 s 38.

¹¹ Charter of Human Rights and Responsibilities Act 2006 s 28.

¹² Charter of Human Rights and Responsibilities Act 2006 s 32.

¹³ Victorian Equal Opportunity and Human Rights Commission, 2013 report on the operation of the Charter of Human Rights and Responsibilities, 28.

A framework to ensure Parliament takes human rights into account

The Charter requires human rights to be considered in the development of every new Bill in Victoria. It preserves parliamentary supremacy and does not prevent the Victorian Parliament from lawfully passing laws that restrict rights. But the Charter ensures that politicians, as the people's representatives, consider human rights as part of the process. The Scrutiny of Acts and Regulations Committee (SARC) must consider whether all Bills introduced into Parliament are compatible with the human rights under the Charter.

Summary Offences and Sentencing Amendment Bill

The Victorian Parliament recently passed laws that increased police powers to manage protests in Victoria.¹⁴ In particular, the Bill expanded the grounds on which police members and protective services officers may direct a person to move on from a public place if they suspect on reasonable grounds that a person:

- has committed an offence there;
- is causing a reasonable apprehension of violence to another person;
- is causing, or is likely to cause, an unreasonable obstruction to others;
- is present for the purpose of procuring or supplying drugs; or
- is impeding, or attempting to impede, another person from lawfully entering or leaving premises or part of premises.

The Commission was concerned that the new powers had the ability to significantly impact on people's rights (including the right to freedom of expression, freedom of assembly, freedom of movement and privacy).¹⁵ The Commission was one of ten organisations that made a submission to SARC raising concerns about the consequences of the Bill on the right to peaceful protest.¹⁶

The Commission considered that there should be a stronger focus on the limitation on rights being the least rights restrictive option to meet the Bill's public policy aim. Although SARC assessed the Bill as compatible with human rights and the Victorian Parliament ultimately passed the Bill, the submissions to SARC were an important part of significant public debate about the Bill.¹⁷

Mental Health Bill

As part of significant reforms to mental health laws in Victoria, the Victorian Parliament passed a new Mental Health Act in 2014.

The Commission made a submission to SARC about the Mental Health Bill 2014. The Commission welcomed the Bill as a significant improvement in the protection of human rights under mental health laws in Victoria and the first to be developed using a human rights framework. However, the Commission noted a number of concerns, including grave concerns about the use of electroconvulsive therapy (ECT) on children. The Commission noted that section 17(2) of the Charter makes the

¹⁴ See *Summary Offences and Sentencing Amendment Bill 2013* (Vic) and *Summary Offences and Sentencing Amendment Act 2014* (Vic).

¹⁵ Victorian Equal Opportunity and Human Rights Commission, Submission on the *Summary Offences and Sentencing Amendment Bill 2013* (January 2014).

¹⁶ Submissions are available on the Scrutiny of Acts and Regulations Committee website at <http://www.parliament.vic.gov.au/sarc/article/916>.

¹⁷ See for example, Asher Wolf, 'Victoria's new anti-protest bill is a threat to our freedom of assembly', *The Guardian* (online), 29 January 2014; Jane Lee, 'New law to expand police powers to "move on" protestors', *The Age* (online), 12 December 2013.

protection of the best interests of the child a primary consideration in all matters relating to young people under 18 years. A number of community groups and individuals also expressed concerns about this issue.¹⁸

The SARC process, as required by the Charter, supported significant public debate about these important reforms to Victoria's mental health laws. The new *Mental Health Act 2014* was subsequently passed with a number of important amendments, including additional safeguards for the use of electroconvulsive therapy on children. In particular, the Bill was amended to require the Chief Psychiatrist to report to the Minister on the use of ECT on young people and the clinical outcomes for those young persons resulting from the use of ECT. The Bill was also amended to define a "young person" as any person under the age of 18 years (rather than 16 years).

Limitations on rights

Human rights come with responsibilities and must be exercised in a way that respects the human rights of others.¹⁹ Through this national consultation, the Australian Human Rights Commission will be hearing from a range of people in the community about what concerns them and where they see that the balance should lie between different rights and responsibilities.

In Victoria, the Charter provides a mechanism for balancing different rights and interests and it can help to find a principled way through difficult policy issues. It does this by recognising that most rights are not absolute and may be subject under law to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.²⁰

Ensuring that limitations on rights are reasonable and justified²¹

The Charter prompts government departments and agencies to consider whether any proposed limitations on rights is the least restrictive way of achieving the purpose that the limitation seeks to achieve. This is an important mechanism to ensure that limitations on rights by government only go as far as necessary to achieve a legitimate aim.

In September 2012, the Commission released a report on the experiences of students with disabilities in Victorian schools. Part of the report examined the use of physical restraint in Victorian schools to manage challenging behaviour.

The use of restraint in schools engages, and can at times limit the following Charter rights: the right to equality; protection from torture and cruel, inhuman or degrading treatment; freedom of movement; protection of families and children; and the right to liberty and security of person. The use of restraint also poses a significant health and safety risk not only to the students who are subject to these practices, but also to the staff who administer them.

Using a human rights lens to consider options for managing challenging behaviour can prompt schools to consider all of the risks involved (including the risks to the

¹⁸ Victoria, Parliamentary Debate, Legislative Council, 25 March 2014, 47.

¹⁹ Preamble to the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

²⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

²¹ Case study adapted from *Victorian Equal Opportunity and Human Rights Commission, Rights and Risk – How human rights can influence and support risk management for public authorities in Victoria* (2014), 10.

student who is subject to the restraint and the person who administers it) and how those risks can be managed in the least restrictive way.

The Department of Education and Early Childhood Development has recently developed a range of new resources to support schools to manage challenging behaviour. A key part of the guidance is implementing preventative and early intervention strategies to support positive behaviours. Many schools now use positive behaviour support to help to address the triggers that lead to the use of restraint. This human rights approach to managing challenging behaviour in schools helps to ensure that any limitations on a child's rights is reasonable and justified.

Many of the rights recognised in the Charter also include limitations on their operation which reflects that rights are not absolute. For example, the Charter makes it clear that special duties and responsibilities are attached to the right of freedom of expression, including that the right may be reasonably limited to respect the rights and reputation of other persons, or to protect national security, public order, public health or public morality.²²

Another example of a statutory mechanism for balancing rights is the exception under the RRT Act for certain public conduct engaged in reasonably and in good faith.²³ The exception is designed to strike a balance between freedom of speech and freedom from racial and religious vilification. The preamble to the RRT Act recognises that freedom of expression is an essential component of a democratic society that should only be limited to the extent justified by an open and democratic society. This recognises that the right of all citizens to participate equally in society is important.

These mechanisms for balancing rights are particularly important in light of the significant harm that can be imposed by acts such as hate speech. Research shows that the consequences of racism can be profound.²⁴ Racism can undermine an individual's sense of self-worth, leave them feeling vulnerable and isolated, and affect their physical and mental health. Members of communities targeted by racism can feel anxious, unwelcome and less confident to participate in public life and debate.²⁵

Balancing free speech and freedom from hate speech

The Commission recently made a submission on the Exposure Draft for the Attorney-General's proposed amendments to the *Racial Discrimination Act 1975* (Cth).²⁶ In its submission, the Commission recognised the challenges of ensuring an appropriate balance is struck between freedom of speech and protection from hate conduct. It also noted that racial hatred can be a form of harassment that limits some people's right to freedom of expression and participation in public life. As noted by the Committee on the Elimination of Racial Discrimination in 2013:

²² *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15(3).

²³ *Racial and Religious Tolerance Act 2001* (Vic) s 11.

²⁴ See, for example, Victorian Equal Opportunity and Human Rights Commission, *Reporting Racism: What you say matters* (2013) and Victorian Health Promotion Foundation, *Mental health impacts of racial discrimination in Victorian Aboriginal Communities – Experiences of racism survey: a summary* (2012).

²⁵ Victorian Equal Opportunity and Human Rights Commission, *Reporting Racism: What you say matters* (2013), 4.

²⁶ Victorian Equal Opportunity and Human Rights Commission, *Submission on the Freedom of Speech (Repeal of s 18C) Bill 2014 – Exposure Draft* (April 2014).

The protection of persons from racist hate speech is not simply one of opposition between the right to freedom of expression and its restriction for the benefit of protected groups; the persons and groups entitled to the protection of the Convention also enjoy the right to freedom of expression and freedom from racial discrimination in the exercise of that right. Racist hate speech potentially silences the free speech of its victims.²⁷

The same principle applies to equal opportunity laws, which can give people who are subject to discrimination the opportunity to enjoy other rights (including freedom of expression) on an equal basis. Without these laws, the rights of one group can limit the exercise of another group's rights.

The law in practice

In the Commission's experience, the legislative frameworks for protecting rights in Victoria have acted as a catalyst for change and encouraged the development of a positive human rights culture, particularly within government and for the community. The laws have influenced the development of rights-compatible policies and procedures, and have filtered down to the practical consideration and application of rights 'on the ground'.

Through its work, the Commission has identified the significant impact that laws – such as the Charter and the EO Act – can have on protecting the rights of everyday people in Victoria. For example, in Victoria, the Charter, EO Act and RRT Act have:

- contributed to best practice and building a positive human rights culture;
- improved service provision to the community;
- increased community participation in decision-making;
- made the protection of rights part of day-to-day business;
- prompted organisations to review their current practices, policies and procedures to ensure that they are rights-compatible; and
- helped organisations to identify and address systemic issues.

While Charter rights are raised in courts and tribunals, an audit of Victorian courts and tribunal decisions from 2006 to 2012 observed that the Charter is raised in less than 1% of cases in Victoria.²⁸ In our experience, the most significant use of the Charter has been its adoption by government and community as a practical tool to shape day-to-day interactions, and its use as a platform to drive cultural change.

The Commission's annual reports on the operation of the Charter highlight many positive examples of government using human rights to make a real difference to the community. The reports also show that the community uses the Charter as an advocacy tool to protect and promote rights. You can access the reports on the Commission's website.

²⁷ Committee on the Elimination of Racial Discrimination, *General Recommendation No 35 – Combating racist hate speech* (CERD/C/GC/35), September 2013, paragraphs 26-28.

²⁸ Law Institute of Victoria, *LIV Charter Case Audit 2013*, available at <http://www.liv.asn.au/PDF/For-Lawyers/Practice-Sections/Admin/LIVCharterCaseAudit2013.aspx>

Supporting safety and equality in the community: Fair go, sport!

Legal protections can lead to cultural change. One example of this in Victoria is in the sporting arena. Research shows sport is a significant site of homophobic harassment, discrimination and exclusion.²⁹ Sport is also a significant cultural influence in our state.

The Commission, together with the Australian Sports Commission, developed the *Fair go, sport!* (FGS) project to increase awareness of sexual and gender diversity, promote safe and inclusive environments and develop a model of engagement for all sports. The FGS pilot program worked with peak hockey organisations (state and national) and a range of community hockey clubs.

The protections against discrimination in Victorian law underpin the FGS project. After being made aware of the 'problems' faced by gay, lesbian, bisexual, transgender and intersex people in sport, as well as the relevant legal protections, the clubs and organisations involved are supported to develop their own project activities to ensure that the rights of all people to participate in sport were protected.³⁰ Project activities include hosting special events to promote inclusion, amending or developing organisation policies, raising awareness in the community and forming strategic partnerships to help achieve their aims.

Individuals, clubs and organisations who participated in the pilot program have reported having greater confidence being able to express their identity and contribute to inclusiveness and diversity.

The FGS program also works to support sexual and gender diversity through sport in Victorian schools.³¹

Reservoir High School was the pilot school. The school, working with a representative group of staff and students, planned a range of practical strategies and activities to encourage diversity. For example, in 2014 Reservoir High held its first FGS whole-school athletics day.

The FGS theme sent a strong message that Reservoir High supports sexual and gender diversity. The overwhelming majority of Reservoir High staff and students voluntarily wore FGS rainbow socks, tattoos, badges and wristbands to show their support. Staff and students embraced the rainbow-dress competition and FGS Champions accepted medals for demonstrating respect and encouragement.

FGS started many students talking about the importance of creating safe and inclusive environments for same-sex attracted and sex and gender diverse students. As one student stated, the FGS athletics day "let people know that if they are gender diverse or same sex attracted they are supported around the school" ... "You can just be who you are."

"The atmosphere was hugely positive and infectious", according to a staff member. Many students and staff continued to wear their FGS badges and wristbands after

²⁹ See Gillian Fletcher, Lizzie Smith and Sue Dyson (2010) *Fair go, sport! Promoting sexual and gender diversity in hockey – A literature review*, at <http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Lit_reviewpdf.pdf>

³⁰ Gillian Fletcher (2013) *Fair Go Sport! A Work in Progress*, at [http://www.humanrightscommission.vic.gov.au/media/k2/attachments/FGS_Evaluation_Report_web_v](http://www.humanrightscommission.vic.gov.au/media/k2/attachments/FGS_Evaluation_Report_web_version.pdf)
[ersion.pdf](http://www.humanrightscommission.vic.gov.au/media/k2/attachments/FGS_Evaluation_Report_web_version.pdf).

³¹ See the Commission's website for the Fair Go Sport! Project at: <http://www.humanrightscommission.vic.gov.au/index.php/fair-go-sport-home>

the event to show their continued support for sexual and gender diversity. The FGS athletics day has become an annual event on the Reservoir High School calendar.

The Charter, EO Act and RRT Act contribute to better outcomes for the Victorian community. For example, they:

- empower the Victorian community to speak up about unlawful behaviour;
- contribute to the community conversation about human rights;
- support people to exercise *all* of their fundamental rights;
- help to prevent the harm that can result from discrimination, vilification or the breach of a person's rights;³² and
- help to give vulnerable members of the community a voice.

Improving outcomes for the community

Human rights laws have been used by the community to advocate for the protection of freedom of expression. The law provides an important framework and benchmark for community actions.

“the Human Rights Law Centre was approached by two public housing residents who wanted advice on new public housing policies that expressly banned residents from holding political rallies of any kind on housing estates and also banned residents from placing political information on notice boards. The policies also prohibited politicians and candidates from booking community facilities and door knocking.

We thought it was clear that the policies breached freedom of expression and peaceful assembly rights under the Charter as there were far less restrictive means to achieve any legitimate aims that may have underpinned the policies.

We wrote to the Victorian Government and the policy was changed to remove the offensive provisions.”³³

Complaints and remedies

The laws under which the Commission operate also provide an example of the community outcomes that can be achieved when there is a practical mechanism to make a complaint and seek a remedy if rights are breached and damage is caused.

Under the EO Act and the RRT Act, parties can attempt to resolve a complaint through conciliation at the Commission. Conciliation is a flexible, informal and voluntary process that assists parties to reach an agreed outcome (such as an apology, reviewed policies or practices, or compensation). It can also identify systemic issues that need addressing and improve service delivery. Conciliation, supported by a legal framework, provides a mechanism to resolve disputes about competing rights.

³² For example, research shows that the consequences of racism can be profound. See, for example, Victorian Equal Opportunity and Human Rights Commission, *Reporting Racism: What you say matters* (2013) and Victorian Health Promotion Foundation, *Mental health impacts of racial discrimination in Victorian Aboriginal Communities – Experiences of racism survey: a summary* (2012).

³³ Hugh de Kretser, ‘Application of the Victorian Human Rights Charter in Legal Practice: Discrimination and Equal Opportunity’ (2014) 2 *Judicial College of Victoria Online Journal* 166 at 167.

Examples of conciliated outcomes at the Commission³⁴

Racial vilification

The complainant is of Indian descent and was involved in a road incident with the respondent. The complainant alleged that when he got out of his vehicle and asked for the respondent's license details, the respondent made threats to harm him because he was black and referred to him as a terrorist.

When contacted by the Commission, the respondent agreed to attempt to resolve the complaint. The complaint was resolved, without admission of liability, for a written apology and an agreement to pay the complainant \$2,000 compensation.

Disability discrimination in accommodation – access to premises

The complainant is blind and stayed at a city hotel. There was no Braille or raised print labels on the outside or inside of the lifts. He alleged that the lack of labelling and audio announcements discriminated against him on the basis of his disability.

When contacted by the Commission, the respondent agreed to attend a conciliation conference. Prior to the conference, the respondent installed Braille plates on the outside and inside of the lifts. At conciliation, the complaint was resolved, with the respondent installing auditory announcements in each of its lifts.

Race discrimination in goods and services

The complainant is Aboriginal and alleges that when she approached a liquor store and asked for a carton of beer, she was told that she was only allowed to buy a dozen. The complainant questioned why there was a restriction and the respondent said this was a new government rule. As the complainant left the store, she saw a non-Aboriginal person leave the store with a carton of beer. She went back inside the store and questioned the staff member further. The staff member suggested they had misunderstood her and sold her a carton. The complainant believes she was initially refused the purchase of a carton of beer because of her race.

When contacted about the complaint the respondent agreed to attend a conciliation conference. At conciliation, the complaint was resolved, without admission of liability, with an agreement to pay the complainant \$750 compensation and provide cultural awareness training for staff.

Disability discrimination in education

The complainant's daughter has an intellectual disability and epilepsy, which is managed with medication. The complainant alleged that her daughter had been discriminated against by her local school. The child had been segregated from other students and excluded from sport, school excursions and after school activities.

When contacted about the complaint the respondent agreed to attend a conciliation conference. At conciliation, the complaint was resolved, without admission of liability, with an agreement to review the health support plan, and review the child's Individual Learning Plan in consultation with medical professionals, the classroom teacher and integration aid. Further, the school would confirm its disability and anti-discrimination policies with staff and provide specific training in relation to the child's disabilities for the integration aid.

³⁴ Victorian Equal Opportunity and Human Rights Commission, Annual Report 2013/2014.

Under the EO Act and RRT Act, the Victorian Civil and Administrative Tribunal also has the power to make any order that will stop unlawful conduct from occurring or continuing, or to address any loss, damage or injury suffered as the result of a breach.³⁵ Remedies are not limited to compensation and can address systemic issues (for example, by requiring an organisation to provide equal opportunity training for its staff³⁶ or to amend a discriminatory policy³⁷).

³⁵ EO Act, s 125 and RRT Act, s 23.

³⁶ See, for example, *Morgan v Dancen Enterprises Pty Ltd* [2006] VCAT 2145.

³⁷ See, for example, *South v RVBA* [2001] VCAT 207.