



14 January 2008

Mr Julian Garner
Equal Opportunity Review
Department of Justice
24/121 Exhibition St
MELBOURNE VIC 3000
equalopportunityreview@justice.vic.gov.au

51 Walker Street,
North Sydney NSW 2060
Australia

ABN 76 369 958 788

Tel: 02 9466 5566
Fax: 02 9466 5599

Dear Mr Gardner

Response to Equal Opportunity Review Discussion Paper

I refer to the Department of Justice's recent correspondence inviting the Australian Industry Group (Ai Group) to comment on the Equal Opportunity Review Discussion Paper.

Ai Group welcomes the opportunity to comment on the Discussion Paper. We support the view set out in the paper that all individuals should be able to participate in workplaces free from discrimination, harassment and victimisation.

Ai Group

Ai Group is one of the largest national industry bodies in Australia, representing employers in the manufacturing, construction, automotive, information technology, telecommunications, transport, labour hire and other industries.

Is there a case for reforming the law?

Overlapping federal and state laws

As noted in the Discussion Paper, there are equal opportunity laws at the federal level and in each state and territory. The current complex web of equal opportunity laws and regulations creates an obstacle to a better understanding of the rights and responsibilities from both sides. It is almost

impossible for businesses to know fully what is required of them and what processes must be followed in responding to claims.

Harmonisation of federal and state equal opportunity laws and regulations should be given a high priority. Wherever possible, there should be no overlap or duplication between obligations set by federal or state legislation. At the present time, the structure of Australia's equal opportunity laws promotes "forum shopping" by employees.

Amendments to the Act proposed in the Discussion Paper

Apart from appropriate amendments relating to harmonisation of laws, the Act provides sufficient and adequate prevention of discrimination, victimisation and sexual harassment.

Ai Group does not propose any changes to the Equal Opportunity Act ("the Act"), or other laws, that add to the complexity of the system. Further regulation would increase compliance costs and other costs for business which, in turn, may have negative employment effects. Ai Group does not support legislative amendments being made which would increase the already substantial regulatory burden upon employers. It is imperative that employers retain the ability to efficiently manage their businesses.

Education, Guidance Notes and Codes of Practice

Appropriate education programs are far more responsive to the needs of employers and employees than prescriptive rules. Improved outcomes could be achieved through greater resources being devoted by VEOHRC to education and awareness-raising. Ai Group would be supportive of VEOHRC developing, in consultation with industry, information tools to assist organisations to review their current processes to ensure that their workplace is free from discrimination, victimisation and sexual harassment. Ai Group does not object to the development of guidance notes or codes of practice for employers provided non-compliance with a guidance note or code of practice does not give rise to criminal or civil proceedings. We agree that the ability for business to use compliance with a code of practice as part of a defence to a complaint may reduce compliance costs for business.

Ai Group is committed to work with VEOHRC to educate companies about their responsibilities. Joint publications, fact sheets and seminars would be worthwhile. Ai Group maintains close links with its members, and companies rely on Ai Group for advice and leadership. Targeted education and awareness programs which are channelled through respected industry bodies, such as Ai Group, are likely to be more effective than "broad-brush" approaches.

Complaints Process

We recognise that there may be considerable difficulties and costs for individuals in making complaints under the Act. However, circumstances arise where employers are required to expend significant time and money to respond to complaints which have no substance. As a consequence, many respondents make a commercial decision to settle complaints even where a complaint has little or no chance of success.

It would assist the parties if the Commission took a more active role in assisting parties to reach agreement within the conciliation process. Whilst we agree that it is not appropriate for the Commission to provide advice to unrepresented complainants, the Commission could be more active in providing guidance to such persons during the negotiation of a settlement outcome. It would also assist the parties if the conciliator at the conclusion of the conciliation process:

- Indicated to the parties, his or her assessment of the merits of the application;
- Where appropriate, recommended that the applicant not pursue a ground or grounds of the application; and
- Advised the parties whether he or she considers that the application has no reasonable prospect of success.

The above process applies to the conciliation of unfair dismissal matters under the *Workplace Relations Act 1996* (Cth) and has proved to be beneficial, particularly where complainants have unrealistic expectations about the outcome of their case.

Should you have any queries about Ai Group's position, please contact Craig Taylor, Senior Workplace Adviser of Ai Group on 03 9867 0242 or myself.

Yours sincerely



Heather Ridout
CHIEF EXECUTIVE