Contents

Chairperson’s message 2
Introduction 3
Highlights of 2011/12 4
About the Commission 6

Compliance 9
Complaints and enquiries 10
Collaboration 10
Understanding community issues 12
Monitoring and advising 14

Connections 17
Informing and equipping 18
Educating and engaging 20
Connecting with communities 24

Advocating 27
Reporting on compliance 28
Influencing case law 31
Defining special measures 34
Input into government policy 35
Providing a strong voice 38

Expertise 39
Working at the Commission 40

Complaints and Enquiry Line figures 43
Enquiries 44
Complaints 44
Case studies 52

Board profiles 54
Organisational chart 56
Financial statements and notes 57
Chairperson’s message

Letter to the Attorney-General

In accordance with the Financial Management Act 1994, I am pleased to provide this report on the operations of the Victorian Equal Opportunity and Human Rights Commission for the year ending 30 June 2012.

Yours sincerely

John Searle
Chairperson
Victorian Equal Opportunity and Human Rights Commission

Chairperson’s message

It is a pleasure to present to you the 2011/12 Annual Report of the Victorian Equal Opportunity and Human Rights Commission, my first since being appointed Chairperson of the Board in August 2011. I commend the report to you and trust you will find it an interesting and useful outline of the role of the Commission and its work in ensuring equal opportunity and human rights are protected and extended to all Victorians.

The Commission’s work in community engagement, education, dispute resolution, research, policy and legal advice is integral to human rights protection in Victoria, and is enriched by the contributions of our many partners, key stakeholders and community members and groups. I thank them for their support. I would like to thank Acting Commissioner Karen Toohey and the staff of the Commission for their outstanding service, dedication and commitment to their work, and the Board members and members of the Audit and Risk Management Committee who perform such an important role.

While I would not ordinarily single out one Board member, I would like to especially acknowledge Michael Gorton, AM, who has completed his final term after many years of valuable and distinguished service to the Commission.

My time as Chairperson has been exciting, challenging and rewarding. I have met a great number of dedicated people both within the Commission and in working with our stakeholders. This has been the most enjoyable aspect of my role and I look forward to continuing as Chairperson and assisting the Commission to realise its vision: a community where every person values, understands and respects human rights and equal opportunity.

Yours sincerely

John Searle
Chairperson
Victorian Equal Opportunity and Human Rights Commission
This year has been one of significant change and achievement for the Commission.

*The Equal Opportunity Act 2010* came into effect on 1 August 2011 and specifically makes the link in its objectives between systemic discrimination and disadvantage.

In March 2012 the Commission welcomed the Victorian Government’s response to the four-year review of the Charter of Human Rights and Responsibilities, which made a strong commitment to human rights in retaining the Charter and in its recognition that legislative protection of these rights provides tangible benefits to Victorians.

While the Commission has always worked with key partners, community organisations and government to advance equality and human rights outcomes in Victoria, we have used this renewed legislative commitment, and our enhanced statutory roles and functions, to address key issues of systemic discrimination.

These have included our work on access for children with a disability to education, experiences of racism in Victoria, barriers facing mature age workers, older people’s rights, rights of regional Victorians, gender and sexual diversity in sport, discrimination in the private rental market and the relinquishment of children with a disability in to state care.

The Commission has also used our statutory role in the courts and tribunals to influence the development of case law; through education and information we have promoted compliance and encouraged community responsibility for the elimination of systemic discrimination in key settings like the workplace, in education, sport, accommodation and in public and private sector service delivery; and provided an informal, accessible means for redress to an increased number of Victorians through our dispute resolution process.

This report demonstrates that the Commission, through the work of its dedicated and expert staff, continues to be a strong and active advocate for human rights and equality in Victoria effectively delivering on our statutory functions and responsibilities.

I want to particularly acknowledge the work of the many people who contributed to this success by participating in key collaborative partnerships, consultative committees, reference groups, forums and research, training and learning activities, as well as those who accessed and used our information and resources to contribute to change and improved human rights outcomes through their own individual and collective advocacy.

Karen Toohey  
Acting Commissioner  
Victorian Equal Opportunity and Human Rights Commission
New equal opportunity law commences


Desperate measures: research into relinquishment released

The Desperate measures report, the result of a major research project, marks the first of its kind to examine the relinquishment of children with disability into state care in Victoria through the eyes of people directly involved. With more than 50 Victorian families affected each year, the Commission will work with agencies to improve practice models and support services.

Equipping employers for compliance

Employment remains the largest area of complaint to the Commission and our Right Smart Employers Toolkits, launched in August 2011, provide a free online self-audit tool and suite of practical toolkits to help small-to-medium employers comply with the Equal Opportunity Act.

Helping young women realise their rights

myworkrights.com.au is an online resource to help young women understand and take action about workplace discrimination and sexual harassment. The online quiz was developed in response to Commission research showing more than a third of Victorian young women had been discriminated against at work or when looking for work, and a third had been sexually harassed.

Increase in demand for training

Community organisations, government agencies and employers showed their commitment to equal opportunity and human rights by participating in our statewide education and consultancy program. We conducted more than 500 education and training events, reaching close to 8,200 participants – a 25 per cent increase on the previous year.

Fair go, sport!

An ongoing partnership between the Australian Sports Commission and the Commission, Fair go, sport! aims to increase awareness of sexual and gender diversity, and create safe and inclusive sporting environments. Following its successful implementation in hockey, Fair go, sport! is now being adapted to a school environment and will be implemented in another sporting code in 2012/13.
Four-year review of the Charter

The Scrutiny of Acts and Regulations Committee conducted the four-year review of the Charter of Human Rights and Responsibilities and reported in September 2011. The Victorian Government responded in March 2012 and said, “it is strongly committed to the principles of human rights and considers that legislative protection for those rights provides a tangible benefit for the community”.

Rights of older people and regional Victorians

The Commission undertook consultation projects to examine the human rights issues faced by two groups of Victorians – older people and people living in regional Victoria. The findings have been published in two reports that also examine community awareness of the Charter and complement the annual report on the operation of the Charter.

Momcilovic v The Queen & Ors

The most significant case in 2011 in relation to the operation of the Charter was Momcilovic v The Queen & Ors, where the High Court considered in detail the operative provisions of the Charter for the first time. The decision confirmed that the Charter is constitutionally valid and that a declaration of inconsistent interpretation by the Supreme Court of Victoria does not usurp the power of Parliament. The Commission was a party to the case as an intervener, playing a leading role in stepping the High Court through the operation of the Charter, particularly how the Charter can be used as an ordinary tool of statutory interpretation to read other laws consistently with human rights as far as possible.

New dispute resolution process introduced

Following the introduction of the Equal Opportunity Act 2010, the Commission implemented a new dispute resolution service, establishing a free, timely and flexible process to effectively resolve complaints about discrimination, sexual harassment, vilification and victimisation. As a result, complaint numbers have increased by 17 per cent on 2010/11 figures, with 85 per cent being finalised within six months of receipt.
About the Commission

Our laws

The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body, which reports to Parliament though the Attorney-General.

The Commission has responsibilities under three laws:

- *Equal Opportunity Act 2010*
- *Racial and Religious Tolerance Act 2001*

The Equal Opportunity Act makes it against the law to discriminate against people on the basis of a number of different personal characteristics or attributes.

The Racial and Religious Tolerance Act makes it against the law to vilify people because of their race or religion.

The Charter of Human Rights and Responsibilities (the Charter) identifies 20 human rights applicable to all Victorians, and requires government and public bodies to consider these rights when making laws and providing services.

These Acts also require the Commission to undertake a range of functions, including:

- promoting and advancing the objectives of these Acts and advocating for these laws
- informing and educating people about their rights and responsibilities under these laws
- helping people resolve disputes about discrimination, sexual harassment, victimisation, and racial and religious vilification
- undertaking voluntary reviews of programs and practices to help people and organisations determine whether they comply with the law
- researching to identify, understand and find solutions to systemic causes of discrimination and human rights breaches
- conducting investigations to identify and eliminate systemic causes of discrimination
- intervening in court or tribunal proceedings that involve equal opportunity and human rights issues
- assisting courts and tribunals in proceedings that may affect the rights protected by these laws
- reporting to government about the operation of the Charter.

Changes to equal opportunity law

The *Equal Opportunity Act 2010* commenced on 1 August 2011.

The new Act replaced the *Equal Opportunity Act 1995*, strengthening discrimination protections in Victoria by changing some key definitions, creating new responsibilities for the Commission, and reinforcing the Commission’s role in helping government, business and the community identify and eliminate discrimination.

The Act aims to encourage the identification and elimination of systemic discrimination, sexual harassment and victimisation and their causes, and to promote and facilitate the progressive realisation of equality.

While the areas of public life and the protected attributes remain the same, the new Act also introduced:

- new definitions of direct discrimination (section 8) and indirect discrimination (section 9) making them easier to understand and use
- a ‘positive duty’ for duty-holders to take all reasonable and proportionate measures to eliminate discrimination as far as possible (section 15)
- a ‘special measures’ provision, which provides that steps taken to promote substantive equality for members of a group with a protected attribute will not be discrimination (section 12)
• a new definition of disability – this included changing the terminology used in the Act from 'impairment' to 'disability', extending the definition of disability to specifically address genetic predisposition and behaviour that is a manifestation of disability, and including assistance dogs (previously limited to guide dogs) (section 4)
• a new definition of employment, which has been extended to include people who work on an unpaid or volunteer basis for the purposes of the prohibition against sexual harassment (Part 6, section 4)
• an explicit obligation to provide access to public premises (section 57)
• an explicit duty to make reasonable adjustments for people with disability in those areas where anti-discrimination laws apply: employment, education and the provision of goods and services (sections 20, 23, 33, 40, 45).

The Act also gives the Commission new functions and responsibilities including:
• a streamlined, flexible and accessible dispute resolution process to provide timely access to conciliation and maximise opportunity for informal resolution of claims of discrimination, vilification, sexual harassment and victimisation
• an enhanced research function (section 157)
• enhanced advocacy functions, including an intervention function (section 159), amicus curiae function (section 160), and an improved own motion investigative function (Part 9)
• the power to issue practice guidelines (Part 10, Division 1)
• the power to conduct voluntary reviews of compliance with the Equal Opportunity Act (Part 10, Division 2)
• the power to set minimum standards for action plans and to maintain a register of action plans (Part 10, Division 3).

Our strategic plan

Our strategic plan identifies four key priorities to ensure we use our statutory functions to fulfil our mission and achieve our vision:

1. Compliance
Using our functions and powers to address individual and systemic discrimination and realise rights by improving access to justice through our dispute resolution service. We use our research and inquiry functions to collaborate with people and organisations to identify and remedy systemic discrimination and breaches of human rights.

2. Connections
Informing, educating and equipping the Victorian community to develop the understanding and skills they need to achieve equality and realise rights, and engaging with people and organisations to develop inclusive and rights-respecting best practice.

3. Advocacy
Advocating for human rights and equality by influencing the development and application of the law, reporting on compliance, engaging in government policy processes, and maintaining a strong public voice on human rights and equal opportunity issues.

4. Expertise
Developing our expertise and capability to achieve our mission by building our evidence base, establishing an effective resource base, implementing good governance policies and processes, and creating a workplace that attracts, fosters and retains good talent.
Our vision
Inspired by the laws we regulate and our statutory functions, our vision is a community where every person values, understands and respects human rights and equal opportunity.

Our mission
To achieve our vision, we work with others to eliminate discrimination and build a community that respects and promotes human rights and equal opportunity.

Our values
At all times, the Commission’s values guide our practice. The Commission strives to be:

• fair
• proactive
• collaborative
• transparent
• effective.

Our services
Commission services include:

• a friendly and accessible Enquiry Line service available by telephone, email or webchat
• a free, fair and timely dispute resolution service
• online and printed information and resources about rights and responsibilities under Victoria’s equal opportunity and human rights laws
• an education, training and consultancy service to equip corporate and community organisations and advocates to comply with human rights and equal opportunity laws, and develop good practice.

Our structure
The Commission has a Board structure including an independent Chairperson. The Commissioner reports to the Board. The Commissioner is responsible for the day-to-day administration of the affairs of the Commission, delegating management of operational matters to a Chief Executive Officer.

The Commission comprises six units:

Strategic Projects and Policy Unit
Provides policy advice and direction within the Commission and manages key strategic projects that identify and seek to address systemic discrimination and human rights issues.

Dispute Resolution Unit
Manages the Commission’s Enquiry Line, delivers free community information sessions about our services, coordinates our statewide community liaison program and runs our Dispute Resolution Service, resolving complaints of discrimination, sexual harassment, vilification and victimisation through conciliation.

Legal Unit
Undertakes legal research and provides legal and policy advice, oversees our intervention function, conducts public legal education seminars, develops legal resources for community use, and participates in legal forums and committees related to equal opportunity and human rights law.

Community Relations Unit
Delivers the Commission’s human rights and equal opportunity education and training through scheduled courses and tailored workshops, and works extensively with community, corporate and government stakeholders to develop practical approaches to good human rights and equal opportunity practice.

Corporate Services Unit
Shared with the Office of the Public Advocate, this unit underpins the Commission’s success by providing executive support for the Commission’s finance, human resources, information technology and office administration functions.

Communications Unit
Develops and delivers information and resources through a range of targeted publications, community events and online information, supports our research and policy work, develops social media and communication campaigns to increase awareness and build compliance, and maintains a strong public voice on human rights and equality issues.
Compliance

The Commission uses our functions and powers to address individual and systemic discrimination and realise rights by improving access to justice through our dispute resolution service. We use our research and inquiry functions to collaborate with people and organisations to identify and remedy systemic discrimination and breaches of human rights.

Complaints and enquiries

The Commission’s complaint and enquiry figures continued to rise for the third consecutive year. The Commission reviewed and streamlined its processes in preparation for the introduction of the revised dispute resolution process under the Equal Opportunity Act 2010. The triage approach allowed us to quickly assess matters and offer conciliation early in the process, optimising opportunities for the parties to quickly and informally resolve claims of discrimination.

With a revised online complaint form and greater focus on promoting accessibility through email and instant messaging, our email contacts have more than doubled over the last two years. The new instant messaging facilities have contributed to the increased contacts and ensure people are provided with information informally and quickly as they need it.

Complaint files 2011/12

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Collaboration

During 2011/12 we partnered on a broad range of projects – some driven by the Commission and others where we contributed our expertise to organisations.

Consultative committees

The Commission provided equal opportunity and human rights expertise to a range of peak sporting and community bodies through participation on the following reference groups:

- Fair Game: Respect Matters (AFL Victoria) – creating quality environments in community football clubs to prevent violence against women and to promote safe and inclusive environments.
- Play by the Rules – ensuring everyone involved in sport can do so in a way that is inclusive, safe and fair by promoting free online resources and training programs.
- Play by the Rules Partner Forum (Australian Sports Commission)
- Racial and Religious Vilification Working Group (AFL) – providing guidance, advice and analysis on initiatives aimed at better understanding, preventing and responding to vilification across all sectors of the AFL.
Access to education is a critical factor in eliminating disadvantage and providing all children with the best opportunity for success. Our research aims to identify potential solutions and work with the education sector to improve outcomes for students with disability.


- **Our Community Our Rights** project (Women’s Health West) – assisting young South Sudanese women understand their rights in order to advocate for themselves or others. Issues of concern were identified and related to Charter rights. The Commission also delivered tailored training to these young women.

- **Sharing Our Stories** project (Multicultural Centre for Women’s Health) – empowering refugee and migrant women by collecting stories and issues of concern from women’s lives and relating them to the Charter. These stories were used to train peer educators.

- The Commission was also a partner in *Applying human rights in closed environments: a strategic framework for managing compliance*, an Australian Research Council-funded project led by Monash University.

A snapshot of the projects we worked on includes:

- Monash University – care leavers with disability research

- Victorian Aboriginal Legal Service – place-based income management in Shepparton

- Department of Human Services – Supportive Discharge Planning Reference Group

- Victorian Health Promotion Foundation (VicHealth) – reference group for the Localities Embracing and Accepting Diversity (LEAD) project

- Monash University ARC project – Living Down the Past: Criminal Record Checks and Access to Employment for Ex-Offenders

- Victoria Police – Prejudice Motivated Crime Strategy implementation reference group

- Darebin City Council anti-racism strategy and research – advisory group

The Commission has also worked closely with the Department of Justice, the Department of Education and Early Childhood Development and the Department of Human Services in research projects.

We contribute to the broader legal community through membership of the following:

- Law Institute of Victoria Human Rights Committee

- Law Institute of Victoria Anti-Discrimination and Workplace Relations Committee

- Federation of Community Legal Centres’ Human Rights Committee

- Discrimination Law Service Providers Group, including hosting the May 2012 meeting

- Victorian Civil and Administrative Tribunal (VCAT) Equal Opportunity Consultative Committee.
Understanding community issues

The Commission undertook research projects to identify systemic discrimination and determine strategies to eliminate it.

Desperate Measures

The Commission completed a major research project in 2012 examining the relinquishment of children with disability into state care in Victoria. This was the first research of its kind to look through the eyes of people directly affected at how children enter state care. This research was published in Desperate measures: The relinquishment of children with disability into state care in Victoria.

A reference group supported the research, which included representatives of the Disability Services Commissioner, the Child Safety Commissioner, the Association for Children with Disability, the Youth Disability Advocacy Service and the Commission’s own Disability Reference Group.

The research included case studies from 16 families and carers, while another 17 families completed an online survey. The Commission interviewed 19 key informants, asking what factors drive relinquishment, its impacts and what can be done to end it. We also gathered the views of 41 service providers, advocates and support groups through an online survey. In addition, peak bodies and large agencies made written submissions.

Our research found that 50 or more Victorian families surrender the day-to-day care of their child with disability to the state each year because they cannot access the support they need to continue caring full time.

We found the impacts of relinquishment to be profound – children and families experience trauma, grief, fear and confusion. Children spend weeks, months and sometimes years in inappropriate and unstable accommodation, such as respite centres and transitional houses. Most importantly, they are separated from families who love them and want to continue to care for them if they have the support to do so. This denies the human rights of children and families at both domestic and international law, particularly the rights to the protection of the family and protection of children. It also places an additional, unplanned and preventable burden on the child protection and disability systems – systems that already struggle to meet demand.

The Commission made 28 recommendations in the report, focused on prevention, early intervention and protecting the rights of children with disability and their families. The Commission is now working with government departments, community stakeholders and families to see the recommendations implemented.
Reporting racism

Launched in April 2012, our Reporting Racism: what you say matters survey aims to better understand people’s day-to-day experiences of racism and vilification.

People were invited to tell the Commission about racist or vilifying material they see, experience, hear, are sent or simply come across in their daily lives. This might include flyers and stickers, graffiti, websites, blog material, verbal abuse or other treatment that people experience as racism or vilification because of their race or religion. The project aims to improve people’s understanding of rights and responsibilities under the law and to increase individual and community capacity to identify, report and respond to racism.

The survey findings will inform the development of Commission’s work on developing tools and tips for responding to vilification and hate conduct, and to establishing a third-party reporting system to help people to report incidents of hate conduct in a way that is safe and can better inform our understanding of the nature and prevalence of vilification and discrimination.

Overseen by a reference group that includes representatives from the Ethnic Communities’ Council of Victoria, the Victorian Aboriginal Legal Service, the Jewish Community Council of Victoria, the Islamic Council of Victoria, the Victorian Multicultural Commission and Victoria Police, this project will report in 2012.

Women in the law

With more women entering the law than ever before, the Commission is currently assessing how far the legal profession has come in tackling discrimination in the profession. The Women in the Law project has been developed in response to concerns about the high attrition rates of women from the profession. The project will also complement current work being undertaken by the Victorian Women Lawyers that is examining gender-based attrition in the legal profession.

Launched on International Women’s Day 2012, the research is supported by leaders in the profession including Law Institute of Victoria President Michael Holcroft, immediate past president of the Law Institute of Victoria Caroline Counsel, Michael Gorton, AM, Debbie Mortimer, SC, Associate Professor Beth Gaze and Convenor of Victorian Women Lawyers Patricia Athanasiadis. The report of the research will be published in 2012.

The Women in the Law project documents the experiences of more than 400 women lawyers in Victoria. Focusing on discrimination, sexual harassment and family responsibilities, the Commission heard directly from women working in the law through an online survey. This data was supplemented by interviews with key informants in the legal profession to identify leading practice in gender equity.

Experiences of older drivers

The Victorian Equal Opportunity and Human Rights Commission, in partnership with the Council on the Ageing, is researching older drivers’ experiences in being unfairly treated because of their age.

This issue was identified by participants at the Forum on the Rights of Older People, held by the Commission in October 2011.

Reports suggest some older drivers are reported anonymously each year to VicRoads simply because of their age, and then have to justify keeping their licence by obtaining medical evidence showing they are fit to drive.

More than 400 people have taken part in an online survey exploring how the licensing system deals with older drivers. In addition, the Commission has interviewed experts in the field and is working with VicRoads to explore driver safety and the rights of older people to participate in community life without discrimination.
Locked out

The Commission conducted a survey of people’s experiences in seeking private rental accommodation to find out the extent to which discrimination is a factor preventing some people from accessing the private rental market in Victoria. The survey ran from November 2011 – March 2012 with the assistance of a range of organisations, including the Tenants Union of Victoria, the Homeless Persons’ Legal Clinic, and the Council to Homeless Persons.

The Commission received 165 responses to the survey and most people said they had experienced discrimination when applying for rental properties. Some said this was clear from direct comments or behaviour, while others said they believed they were unlawfully discriminated against even if this was not obvious.

The highest number of respondents indicated that their parental status was a factor preventing them from accessing private rental, followed by age, marital status, race and disability.

The Commission published Locked out: Discrimination in Victoria’s private rental market in August 2012, a report on the findings of the research, which will inform our future work to address this issue.

Monitoring and advising

We work to ensure the public and private sectors comply with equal opportunity and human rights laws by monitoring and advising where improvements can be made.

Experiences of students with disability in Victorian schools

Education is essential to economic and social wellbeing and the key to a good life. Yet feedback from the Commission’s Disability Reference Group, parents and advocates suggests that many students with disability do not fare well in Victoria’s education system. In addition, the Commission continues to receive complaints in the area of education about disability discrimination.

In response, the Commission has undertaken a significant research project to examine the experiences of students with disability in Victorian schools, aiming to learn how schools are meeting students’ needs, as well as understanding where practice might be improved.

More than 1,800 people and organisations took part in this research. Of these, more than 1,500 completed an online survey of students, parents and educators, which included space for people to tell their stories in their own words. This provided qualitative information about how individuals interpret and make sense of their experiences of discrimination.

We also heard people’s stories through a phone-in day and by email, as well as receiving written submissions from disability, legal and education organisations.

Recognising that rural and regional Victorian’s face particular barriers, we held 15 ‘Have a say days’ across Victoria and more than 180 people took part. Sessions were available for educators, parents and students, and were held in Ballarat, Bendigo, Geelong, Shepparton and Traralgon, as well as a session at Rumbalara Aboriginal Cooperative in Shepparton.

One session for families of children with intellectual disabilities was held at the Commission’s office in Carlton and a session for deaf secondary students was held at Deaf Children Australia, Melbourne. We also met with a school council of a special school in Melbourne and briefed the Principals’ Association of Specialist Schools.

Mindful of the unique experiences of students with disability from culturally and linguistically diverse (CALD) communities and refugee backgrounds, and working in partnership with the Ethnic Communities’ Council of Victoria, the Commission met with representatives of CALD organisations to test our initial findings and explore the commonalities and differences for CALD and refugee school students. A similar critical friends group from the Victorian Aboriginal Disability Network provided input on the specific experience of Indigenous students with disability.
Interviews were conducted with the Department of Education and Early Childhood Education, the Catholic Education Commission of Victoria, Independent Schools Victoria, the Office of the Senior Practitioner, the Department of Human Services and the Disability Services Commissioner. The findings of the research will be released in September 2012.

In the best interests of the child?

In response to feedback from international students and student advocacy bodies, the Commission carried out research into the experiences of international students and other visa holders who have to pay fees for their children to attend government primary school in Victoria. This research has been published in the report, In the best interests of the child? Costs of primary education for dependents of international students and other visa holders in Victoria.

The Convention on the Rights of the Child obliges countries that have ratified the Convention, including Australia, to provide free primary school education to all children. The Commission considered the practice raised an issue to be considered under the Charter, and was inconsistent with, but not unlawful under, the Equal Opportunity Act 2010, as the practice could constitute discrimination on the basis of nationality – a protected attribute under the Equal Opportunity Act.

The Commission released an issues paper in July 2011 and ran an online survey to gather experiences from students, organisations and advocates who work with international students. A number of respondents commented that they had studied overseas in Europe and America and had not had to pay school fees for their children. It was clear from the research that the school fees policy contributes to the decision of students not to come to, or remain in, Australia.

The report noted that because of the costs, some students had considered, or had been advised to, send their children overseas while they remained here to complete their studies.

The report made a number of recommendations toward reducing the discrimination faced by international students in Victoria. It found that the provision under the Education and Training Reform Act 2006 to charge school fees for dependents of some international students could be inconsistent with the positive duty to eliminate discrimination under the Equal Opportunity Act, and with obligations under the Charter, and that it could also be inconsistent with Australia’s obligations under Article 28(1)(a) of the Convention on the Rights of the Child. The Commission notes, however, that anything done in accordance with a state law is not unlawful discrimination under the Equal Opportunity Act.
Volunteers and the Equal Opportunity Act

Volunteers make an enormous contribution to the Victorian community. Every year, thousands of people give their time and energy on a voluntary basis to organisations in the not-for-profit, public and private sectors.

With the charges to the Equal Opportunity Act 2010, volunteers now have the same protection against sexual harassment as paid employees. In some circumstances, volunteers also have rights, and organisations have responsibilities, under the Act’s discrimination provisions.

The Commission conducted a survey of the experiences of volunteers and organisations working with volunteers in 2011. The Commission found that organisations that use volunteers may not all be aware they have responsibilities under Victorian equal opportunity laws when providing opportunities for volunteers. Likewise, many volunteers did not know they were protected by the Equal Opportunity Act.

The Commission released an issues paper to consider the range of issues volunteers experience that could be covered by the Act. In response to the feedback we received, the Commission developed a set of resources to help organisations working with volunteers to understand and meet their obligations under the Act.

Disability Reference Group

The Disability Reference Group (DRG) was established in 2004 to help the Commission hear directly from people with disability about the systemic discrimination and human rights issues they experience. Key issues discussed by the DRG in 2011/12, which have contributed to the Commission’s strategic work, include the relinquishment of children with disability into care, education of students with disability, transport accessibility including taxis, and how Victoria Police respond to people with disability if they are victims of crime.

This year saw the election of a new DRG for the next two years. From more than 80 nominations the following people were selected for the new term: Trevor Carroll, Peter Adams, Denise Allen, Christian Astourian, Thomas Banks, Andrew Barrett, Rachel Carling-Jenkins, Sophie Cole, Tyrell Heathcote, Frank Hall-Bentick, Pradeep Hewavitharana, Suzanne Lau-Gooey, Kate Lawson, Kathleen Murray, Jody Saxton-Barney, Susan Stork-Finlay and Henrique van Dunem.

The Commission would like to thank outgoing DRG members Garry Hammer, Tricia Malowney, David Webb and Jen Hargrave.
Connections
Connections

The Commission informs, educates and equips the Victorian community to develop the understanding and skills they need to achieve equality and realise rights, engaging with people and organisations to develop inclusive and rights-respecting best practice.

Informing and equipping

The Commission produces a range of publications and provides information online, including in accessible formats, to help people and organisations understand their rights and responsibilities.

Online tools

The Commission’s website, humanrightscommission.vic.gov.au, continues to be a highly-accessed resource, providing information and tools to equip employers and service providers with the knowledge to achieve compliance and develop good practice. It also helps community members and advocates understand their rights and how they can resolve their concerns or advocate for improved services and equal participation in community life.

Total visits to the website for 2011/12 were 262,299, an increase of almost 20 per cent on the previous year, (219,295).

Popular online resources include the Right Smart Employers Toolkits and information on discrimination.

The website also provides downloadable versions of all Commission publications in accessible formats, including videos of information on discrimination in Auslan.

To accommodate the growing demand for online information and increasing user needs, the Commission has commenced a major redesign of the website. The new-look site will provide improved information architecture and functionality to ensure visitors can quickly locate and download the information they need.

Web traffic 2005/06 – 2011/12

Note: 2010/11 saw a slight decline in figures due to change of web application platform and counting method.
Using the Right Smart Employers Toolkits makes good business sense – reducing risk and helping to protect the company’s bottom line.

CPA Australia’s General Manager Victoria, Jon Aloni, pictured left, at the launch of the Commission’s Right Smart Employers Toolkit.

Right Smart – working with employers

The Equal Opportunity Act gives employers, service providers and community organisations a ‘positive duty’ to prevent inequality and discrimination, rather than simply managing it as it arises.

Our Right Smart Employers Toolkits, launched with the support of CPA Australia in 2011, provide small-to-medium employers with practical tools, checklists and templates that clearly explain their obligations and make compliance readily achievable. It includes a free online self-audit tool and suite of toolkits covering sexual harassment, disability and work, returning to work after injury or illness, mature-age workers, and pregnancy and work.

This suite will be expanded in 2012/13 with information on parents and carers’ rights at work, and cultural diversity in the workplace.

Protecting us all

Consultation with communities identified the need to build awareness of key aspects of the Charter and its role in protecting rights, in particular:

- how individuals and advocates can use the Charter to improve access to services
- how the Charter can be used in the courts
- how the Charter informs the development of legislation
- how the Victorian Parliament interacts with the Charter.

In response, the Commission developed a range of resources to make the charter more accessible to all Victorians.

Our new Protecting us all website, humanrights.vic.gov.au, uses case studies to outline the 20 fundamental rights protected by the Charter and explain how they are relevant to all Victorians.

The website was launched at the Human Rights Arts and Film Festival in May 2012, and had received almost 1200 hits as at 31 July 2012.

It is supported by a suite of fact sheets that clearly explain how the Charter operates, outlining the 20 rights protected in the Charter, as well as topics such as the role of the Charter in the Parliamentary process, in the courts and in the work of government and the community. These are available at humanrightscommission.vic.gov.au/charterfactsheets.

My work rights – young women in the workplace

Low awareness rates among young women about discrimination are being tackled with an interactive online tool – myworkrights.com.au – launched by the Commission in August 2011.

The tool was developed in response to Commission research showing that more than a third of Victorian young women had been discriminated against at work or when looking for work – and a third had been sexually harassed.
My work rights is an online quiz to help young women better understand and take action about workplace discrimination and sexual harassment. It can be accessed on smart phones and tablets, and illustrates what sexual harassment, discrimination and victimisation can look like.

My work rights also offers instant messaging access to the Commission’s Enquiry Line, where users can receive free and confidential help about their situation.

**Everyday People, Everyday Rights toolkit**

Following the success of the *Everyday People, Everyday Rights* pilot project in the City of Hume in 2009 (funded by the Legal Services Board) and the City of Yarra in 2010 (funded by the Neighbourhood Justice Centre), the Commission has commenced developing of an Everyday People, Everyday Rights toolkit.

To be launched at our local government forum in November 2012, the toolkit aims to equip local councils to engage with their communities on human rights through *Everyday People, Everyday Rights*-type projects. The kit, which will be available online and in hard copy, will provide tools and information on:

- identifying human rights issues and concerns
- conducting human rights education and engagement sessions
- conducting human rights communication campaigns.

**Publications**

The Commission also provides a wide range of clear and straightforward publications outlining rights and responsibilities, including practice guidelines, fact sheets, quick guides and brochures. Popular resources include:

- **Practice guidelines** – for preventing discrimination in recruitment, to prevent sexual harassment and for employers to understand mental health
- **‘Know your rights’ fact sheets and booklets** for mature-age workers, Indigenous Victorians, international students, people seeking private rental, students with disability in schools and women in the law
- **Quick guides on the Equal Opportunity Act 2010 and the new positive duty, and information on discrimination in easy English**
- **Brochures on discrimination and protected attributes.**

All are available online and in hard copy by request.

We also produce a range of eye-catching posters, postcards and other materials that aim to encourage people to think about human rights and aspects of equal opportunity, and lead them to further information on the Commission’s website.

Our monthly ebulletin, providing information on our strategic projects and new resources, is sent to more than 2,600 subscribers.

**Educating and engaging**

The Commission educates and engages with people and organisations to develop inclusive and rights-respecting best practice.

**Building knowledge and skills**

All employers and service providers have obligations under the Equal Opportunity Act, and government agencies and public authorities also have obligations under the Charter.

Our education, training and consultancy services are designed to help organisations understand their equal opportunity and human rights obligations and move towards best practice.

Well-versed in the practical and business implications of human rights and equal opportunity laws, our education consultants work with individuals and organisations across the public, private and community sectors, building their knowledge and skills to increase compliance.

We offer a range of services including:

- free briefings and cost-effective training workshops in metropolitan and regional Victoria
- tailored workshops delivered on site
- whole-of-organisation consultancy and coaching to support good policy and practice.

All our workshops use real case studies and scenarios to help participants understand how the laws apply to them, and discuss practical steps they can implement to ensure they meet their positive duty.

Our 2011/12 calendar program comprised more than 25 workshops and almost 100 sessions, delivered in regional and metropolitan centres as well as at our training venue in Carlton. Another 400 tailored sessions were conducted in workplaces across the state.
Connections 21

Clients welcomed these opportunities to learn about Victoria’s equal opportunity and human rights laws, with feedback overwhelmingly positive and reflecting the following views:

‘An exceptional workshop – very professional, well targeted for our needs and extremely helpful.’

‘We will be including similar training in our induction package and I think this probably says it all in terms of the perceived benefit of the training on the part of recipients.’

‘The session was a great success. We were very happy with the impact of the training … It’s exactly what we were looking for in these managers’ sessions.’

Key statistics for 2011/12 show:

We delivered:

- 521 education and training events, comprising 99 calendar sessions and 422 tailored client workshops
- More than 1,450 training hours, reaching close to 8,200 participants
- Tailored client hours increased by more than 20 per cent on hours delivered in 2010/11
- Participant numbers also increased by more than 25 per cent on 2010/11
- Participant satisfaction remained high, with 85 per cent of participants very or completely satisfied
- Equal opportunity and human rights workplace training sessions were spread evenly between the following sectors:
  - Public – 35 per cent
  - Private – 36 per cent
  - Community – 29 per cent.

Regional venues included:
- Bairnsdale
- Ballarat
- Bendigo
- Geelong
- Horsham
- Mildura
- Portland
- Swan Hill
- Traralgon
- Wangarratta
- Warrnambool.

Suburban venues included:
- Brimbank
- Darebin
- Frankston
- Greater Dandenong
- Hume
- Whitehorse
- Wyndham.

Training participants in 2011/12

Training participant demographic in 2011/12

![Chart showing the distribution of training participants by sector: Public 35%, Private 36%, Community 29%.]
Creating inclusive sporting clubs

An ongoing partnership between the Australian Sports Commission and the Commission, *Fair go, sport!* aims to increase awareness of sexual and gender diversity, promote safe and inclusive sporting environments, and develop a flexible model of engagement that can be adapted for other sporting codes and their governing bodies.

Phase 1 commenced in August 2010 and concluded in December 2011. During this period the project focused on hockey, with Hockey Australia and Hockey Victoria becoming major project partners. The project was managed by the Commission, advised by a representative steering committee (including representatives from Sport and Recreation Victoria, VicHealth, Gay and Lesbian Health Victoria, Transgender Victoria, Victoria University, project partners and representatives from the hockey community), and was evaluated by La Trobe University.

The project piloted a ‘ground-up, asset-based, action-research approach’ that equipped and empowered advocates within local clubs to identify areas of need and build cultural change. This is in contrast to the more customary compliance approach used in sport that imposes policies and practices in return for funding or accreditation.

An integral part of the project was the work with four community hockey clubs – Camberwell, Baw Baw, Werribee and Old Carey – which were supported to develop club-specific strategies to promote inclusion and drive change. This ensured the project was about real people, in real clubs, doing real things, and sowed the seeds for a sustainable approach to cultural change at club level to build genuine momentum for an inclusive approach across the sport.

Highlights included:

- Hockey Australia developing *What You Say Matters*, a resource to be linked to accreditation for hockey coaches across Australia to help address the way language can contribute to stigma, discrimination and participation in sport
- re-launching and promoting Hockey Victoria’s *Code of Conduct*
- pilot clubs committing to presenting annual *Fair go, sport! cups*
- Hockey Victoria naming a 2012 state league round as the ‘*Fair go, sport! Round*’
- two clubs (one pilot club, one other club) requesting formal permission to wear the rainbow *Fair go, sport!* socks, developed for wear during pilot club special events, as part of their uniform
- revising the registration day information and players’ handbook to promote *Fair go, sport!* making ‘Value the wellbeing and diversity of our people’ top priority (pilot club, Werribee)
- developing an official code of conduct that explicitly rejects harassment or discrimination related to sexual orientation or gender identity (pilot club, Old Carey)
• commencing the Fair go, sport! program in the Australian Capital Territory, in partnership with the Australian Sports Commission.

Following the success of Phase 1, Phase 2 of Fair go, sport! commenced in April 2012 with funding from the Department of Planning and Community Development (Sport and Recreation Victoria), VicHealth and the Commission.

This phase will enable the Commission to build sustainability within hockey to generate lasting cultural change, extend the project’s reach into another sporting code and advance the flexible engagement model.

Creating inclusive schools

With schools a key site for homophobia and associated unsafe behaviours, the Commission has also commenced work on a school-based Fair go, sport! project at Reservoir High School (students involved are pictured on page 22).

In consultation with key staff and students, the Commission is adapting the asset based, action-learning approach successfully piloted in hockey to build a safe and inclusive school community for gay, lesbian, bisexual, transgender and intersex (GLBTI) young people and develop a model of practice and starter kit that can be adapted by other schools.

Increasing participation in sport

In partnership with VicHealth, the Commission is providing human resource support for state sporting associations involved in VicHealth’s State Sporting Association Participation Program.

The 30 state sporting associations funded under this program in 2011/12 are working to increase the participation of Indigenous people, people with disability, people from CALD communities, and women and girls over a three-year period (2012–14).

To support this work, the Commission has provided a series of workshops covering key human resource and equal opportunity policies and practices. Topics included:

• equal employment opportunity principles, practices and issues, and the laws that apply in Victoria
• creating inclusive, flexible workplaces
• good practice in selection and recruitment
• rewards, recognition, retention and motivation
• policy review and development advice.

In 2012/13, the Commission will provide further consultancy support to individual state sporting associations as they progress their programs.

Helping clubs to Play by the Rules

Play by the Rules is a unique program that has evolved over the last 10 years to provide free information, resources, online training and promotional campaigns aimed at ensuring everyone involved in sport can do so in a way that is inclusive, safe and fair, and free from discrimination, harassment and bullying.

The Commission was an original partner in this national program and, in the last year, continued to sit on the management committee and national reference group.

Play by the Rules facilitates and builds networks at a national level and in Victoria. Over the past year, the Commission has worked in partnership with Sport and Recreation Victoria and other key sporting bodies to promote our messages and programs to sports through:

• education sessions
• referrals and support for sport
• distributing fact sheets and merchandise
• promoting community service announcements and other Play by the Rules resources.

One of the most popular components of the Play by the Rules website is the free, interactive, online training courses that address discrimination, harassment and child protection in sport. In 2011/12, 30,000 Victorians visited the Play by the Rules website and 2,234 completed online training programs.

During 2011/12 the Commission also offered half-day Play by the Rules training programs regionally and as part of its annual training calendar. This training program linked to and was recognised as a core component of the Australian Sports Commission’s Member Protection Information Officer course for Victoria.
Connecting with communities

Working with Indigenous Victorians

Recognising that discrimination is an unwelcome reality for many members of Victoria’s Indigenous community, the Commission has worked with a range of organisations to help connect Indigenous Victorians to our services and develop projects to eliminate systemic discrimination.

A significant initiative has been the development of our ‘warm referral service’ with the Victorian Aboriginal Legal Service (VALS). This service enables the Commission to directly contact VALS clients who may be experiencing discrimination after referral from the VALS solicitor.

The Commission has also provided an outreach service on site at VALS, to enable community members to discuss their concerns with the Commission in a familiar environment.

Additionally, the Commission has engaged in a range of activities and projects with the Indigenous community, including:

- sponsoring a public lecture by Dr Megan Davis in celebration of the Koori Women Mean Business and Victorian Women’s Trust’s 20-year partnership
- participating in the Long Walk from Federation Square to the MCG led by Michael Long (pictured above on right), for the annual Dreamtime at the ‘G match between Richmond and Essendon
- developing ‘Tackling race-based discrimination for the Victorian Aboriginal community’, a free community-specific information session about the Commission’s dispute resolution service
- participating in community forums on the introduction of place-based income management in Shepparton
- producing a new fact sheet for Aboriginal workers to know their rights at work
- producing a range of resources to make it easy for VALS and other organisations to refer people to the Commission’s services
- sponsoring Kinaway, the Victorian Aboriginal Chamber of Commerce, auspiced by the Victorian Employers’ Chamber of Commerce and Industry
- re-launching Rights Yarn Up, our quarterly Indigenous community newsletter
- participating in the Aboriginal Justice Forum
- ensuring Aboriginal community participation in key projects, including relinquishment of children with disability and the experiences of students with disability in Victorian schools.
Our engagement with Aboriginal communities is monitored by our internal Indigenous working group, which meets quarterly to assess our progress and identify opportunities for advancing this work.

Community events
The Commission also connects with the wider Victorian community at many events. In 2011/12 these included:

- the annual Midsumma Festival, where we held an information stall, hosted a seminar on Fair Go, sport!, and led a range of sporting associations and clubs in the Pride March
- International Day Against Homophobia and Transphobia (IDAHO) – this year Acting Commissioner Karen Toohey participated in the Brimbank City Council celebrations with Hockey Victoria CEO Ben Hartung
- the Victorian Seniors Festival – our information stall was well attended and many senior Victorians completed out survey about their human rights needs
- Mildura Council during Human Rights Week – our discrimination posters were displayed throughout Mildura and community members had their say about rights issues at our Rights in the Region forum
- Cultural Diversity Week – as an ongoing sponsor, we hosted an information stall at the Viva Victoria festival to raise awareness about Victoria’s strong focus on human rights to multicultural communities
- Human Rights Arts and Film Festival – we sponsored the festival and launched our Charter of Human Rights and Responsibilities website, humanrights.vic.gov.au at the closing ceremony.

Empowering communities to combat racism
In collaboration with community leaders, the Commission is conducting ongoing research into the lived experiences of racism and racial and religious vilification in Victoria with our Reporting racism: what you say matters research project.

Our online survey has collected a wide range of personal experiences, and our photo journalism project is now documenting examples of environmental racism reported to us – including web material, media comment, flyers, graffiti, emails and Facebook pages – to foster a greater understand of the many ways racism is expressed and experienced.

We are also developing a social marketing campaign to provide people with tools and ideas to combat racism and other types of discrimination. The campaign will be launched in late 2012 and includes a website with a function for reporting experiences of racism, a forum for sharing experiences and social media interaction.

Related to this project is our work with the City of Yarra, Venues against racism, which was developed in response to a number of formal and informal complaints made to the Commission about discrimination by nightclubs in inner Melbourne. Stickers and flyers promoting support for diversity were distributed to bars and clubs in the City of Yarra, raising awareness of the law and encouraging nightclub owners to actively demonstrate their compliance by becoming a ‘venue against racism’. This campaign will be expanded to other key metropolitan and regional areas and industries in 2012/13.

Embracing diversity in local councils
The Localities Embracing and Accepting Diversity (LEAD) project is a VicHealth pilot project aiming to reduce race-based discrimination and promote diversity, using coordinated, evidence-based actions with individuals, communities and organisations.

As well as supporting the project and its social marketing campaign, the Commission developed (in consultation with the Whittlesea and Shepparton councils, VicHealth and the University of Melbourne) and delivered workplace training in a range of sites across the localities.

The LEAD training focused on primary prevention, at the individual level, of race-based discrimination in the workplace, in the provision of services and in public life in the community. It also provided space and context for initial discussions on actions to be taken at the organisational level.

Based on the best available evidence on training content and mechanisms that reduce unconscious bias and build internal motivation to change behaviour, the training effectively breaks the silence on racism, envisions an alternative world and begins to build community capacity.
Between August 2011 and May 2012 the Commission delivered LEAD training to almost 750 people in organisations in local government, business, manufacturing and education. Participant response to the training has been overwhelmingly positive, with many making clear statements of intent about changing their behaviour and attitudes.

For example, when asked to identify one thing they would do differently as a result of participating in one of the sessions, participants offered the following:

• ‘Talk about diversity with others in my life.’
• ‘Try to understand people’s beliefs that underpin their attitudes.’
• ‘Be more understanding and accepting of others and put myself in their shoes to see why they may behave and react the way they do.’

The Commission will be offering this training to organisations as part of our suite of workshops in 2012/13.

Identifying the business benefits of diversity

In partnership with Deloitte, the Commission has commenced a groundbreaking research project on the business benefits of diversity.

The research aims to demonstrate a strong connection between diversity, inclusive organisational culture and business outcomes by applying a quantitative approach to the benefits of a diverse workplace in an Australian context.

This study looks beyond visible diversity to examine diversity of life experience and perspective and demonstrate that:

• diversity of thought enhances business outcomes
• demographic diversity is a visible lead indicator of diversity of thought
• diversity of thought needs an inclusive culture to thrive and improve business outcomes.

The participation process is designed to encourage individual organisations to test the genuine utility of diversity and examine the actual experience of diversity within their organisations. Three organisations (one each in retail, manufacturing and health) will participate in the research. Outcomes from the research will be available in 2012/13.

Creating healthy workplaces: reducing race-based discrimination in workplaces

The Commission successfully tendered to be the lead agency in Creating Healthy Workplaces, VicHealth’s research program to reduce race-based discrimination and support cultural diversity.

The three-year program aims to test and expand the current evidence base on workplace health interventions while reducing workplace race-based discrimination by changing organisational working conditions, culture and the behaviour of the workforce.

Creating Healthy Workplaces will:

• identify the physical, social, organisational and systemic factors that contribute to race-based discrimination within the participating organisations
• use high-involvement, collaborative processes to prioritise key sources of race-based discrimination to formulate a whole-of-organisation action plan, including intervention goals, and develop strategies to achieve these
• implement strategies and associated action plans in two workplaces
• undertake a comprehensive project evaluation that assesses processes and outcomes
• contribute to developing best practice models, tools and resources to support Victorian workplaces.
Advocating

The Commission advocates for human rights and equality by influencing the development and application of the law, reporting on compliance, engaging in government policy processes, and maintaining a strong public voice on human rights and equal opportunity issues.

The Commission has a statutory role to advocate for equality and human rights under the Equal Opportunity Act 2010 and the Charter of Human Rights and Responsibilities Act 2006 (the Charter). We advocate for the full realisation of the Acts we administer, which involves providing our expertise, skill and knowledge through submissions and appearing at parliamentary inquiries. We also contribute through our project and policy research, and by assisting the development of the law, including through interventions and our amicus curiae role in the courts and tribunals.

The Commission intervenes in court and tribunal proceedings that raise questions of law related to equal opportunity laws or the Charter. We also make recommendations to government bodies, agencies and inquiries about how to better protect human rights and achieve equality.

Our annual report on the operation of the Charter gives us a statutory role in reviewing and reporting on human rights in Victoria each year.

Reporting on compliance

Four-year review of the Charter

The Scrutiny of Acts and Regulations Committee (SARC) conducted the four-year review of the Charter in 2011. This provided an opportunity for a broad range of people and organisations to give their views on how the Charter is working and the impact it is having on the lives of individuals.

The Commission made a substantial submission to the four-year review and gave evidence before SARC, covering the operation of the Charter since its introduction and making recommendations for its improvement.

SARC received more than 4,000 submissions, the overwhelming majority of which supported the Charter or advocated for it to be strengthened.

SARC reported to Parliament on 14 September 2011. This report, and many of the submissions made to the Committee, indicated that the Charter had delivered benefits to Victoria, however, there were different views about how the Charter should be shaped in the future.

The Victorian Government responded to SARC’s report on 14 March 2012. The Government reaffirmed its commitment to the principles of human rights, stating that it considers the legislative protection of human rights provides a tangible benefit to Victorians. The Government has made clear that it will retain the Charter and introduce legislative amendments to clarify the parliamentary scrutiny process. It is also seeking legal advice on the operation of the Charter in the courts and tribunals, the obligations of public authorities, and the coverage of rights in the International Covenant on Civil and Political Rights that are not currently addressed in the Charter.

The Victorian Government is also looking at ways to improve human rights complaint handling by public authorities and ways to better understand the benefits of the Charter to the community.
Advocating 29

In many cases where I have dealt with public authorities, the mere mention of their obligations under the Charter has caused them to pause, pay attention, and focus their attentions on their duties to the disadvantaged client.

The Commission will work with public authorities on developing human rights complaint handling processes in 2012/13.

**Annual report on the operation of the Charter**


The 2011 report follows the Victorian Government’s first four-year review of the Charter, which generated significant contributions from the community and public authorities about how the Charter is working in practice. The submissions provided a rich source of information – much of which had not been documented previously.

The 2011 Charter report focused on the impact of the Charter on frontline service delivery, and found that the Charter is increasingly being used by individuals and their representatives to advocate for positive change and hold government to account. Equally, government and other public bodies are taking seriously their obligations to respect human rights by developing laws, polices and procedures to ensure rights are considered at all levels of government.

**Local government and the Charter**


Local government continues to tell us that the Charter is having a positive impact on the quality, accountability and responsiveness of many services. Although progress towards implementing human rights slowed somewhat in 2011 while the Charter was under review, councils remain committed to human rights leadership and many see a close synergy between human rights and the strong local community focus of local government.

The Commission has committed to working with councils to support their efforts to implement the Charter, including by establishing a community of practice for local government and holding a forum for all local government stakeholders.

During 2011, the Commission also undertook consultation projects to examine the human rights issues faced by two groups of Victorians – older people and people living in regional communities. The findings of these consultations have been included in two occasional papers, which also examine community awareness of the Charter and complement the 2011 Charter report.
Rights of older Victorians

In examining the rights of older people, the Commission was keen to understand the specific human rights issues older Victorians face. The Commission wanted to hear firsthand the experiences and perspectives of older Victorians, as well as those organisations that work with them.

During this process, the Commission was advised by an older people’s reference group consisting of representatives from various state and local government bodies and community organisations with experience in issues relevant to older people, including advocacy, providing services, and promoting and protecting rights.

The Forum on the Rights of Older People, held in October 2011, was attended by more than 100 people. The feedback received was used by the Commission to prepare Rights in focus: Report on the rights of older Victorians. The report suggests a number of strategies to promote the rights of older Victorians.

The Commission has responded to the issues raised during this process and has developed a resource for mature-age workers, conducted research into the experiences of older drivers and is involved in a number of reference groups on issues related to older people arising out of this consultation process.

Rights of regional Victorians

To gather information on the issues affecting regional Victorians, the Commission held face-to-face consultations in Traralgon, Wangaratta, Warrnambool and Mildura, and invited all regional Victorians to share their experiences by completing an online survey.

Rights in focus: Report on the rights of regional Victorians reflects this feedback and discusses actions or ideas to address the issues raised, and identify any innovative human rights-based approaches that have been taken in particular areas.

As well as considering community-based solutions to these issues, the report discussed government policies and activities being undertaken by the Commission.

Regional Victorians identified key human rights issues affecting them to be matters associated with health, education, transport, housing and homelessness, sexual assault and family violence, transport, work and employment, access to justice and the impact of local media.

The report also found that direct and indirect discrimination was a problem in rural and regional areas, and that different issues impact on a wide range of groups with protected attributes, including race, disability, age, sex, sexual orientation and gender identity.

The report includes observations from the Commission on how the rights of regional Victorians can be strengthened.

This engagement with regional Victoria is influencing work the Commission is undertaking in 2012/13, including consultation on a range of other projects, increased focus on delivering training in regional areas and working with other agencies and service providers on issues specific to regional Victoria raised during these consultations.
Influencing case law

Each year, hundreds of thousands of cases are put before Victoria’s courts. Less than one per cent of those cases raises the Charter. When it is raised, the Commission has a statutory right to intervene in the proceedings (section 40 of the Charter). Parties are required to notify the Commission and the Attorney-General of matters that raise the Charter in the Supreme Court and the County Court.

The Charter in the courts

The Commission exercises its intervention function strategically, focusing on questions of law, policy and issues of broad public interest, rather than being involved in arguments about the facts of the case. In this way, the Commission helps contribute to practical ‘downstream’ effects, such as changes to government policy or understanding of how the Charter works.

Our role is to assist the court in its understanding and application of the Charter, not to represent any of the parties to the proceedings. The Commission uses a detailed set of publicly available guidelines to help determine cases in which we will intervene. These are available at humanrightscommission.vic.gov.au/charterinterventions.

In 2011/12, the Commission was notified of 31 cases and intervened in five.

Table: Interventions and Charter notifications per financial year

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<td>5</td>
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1 Interventions are counted in the year they commenced. Three of the interventions discussed here were commenced in the 2010/11 financial year, but remain active in 2011/12.

Slaveski v The Queen (Court of Appeal)

An appeal against a decision of the Supreme Court that found Mr Slaveski guilty of contempt of court for threatening and insulting the trial judge. The case considered whether the right to a fair trial required the court to grant an adjournment in order to allow Mr Slaveski further time to seek legal representation. It also considered whether the court was a public authority when making adjournment decisions. The court decided that courts are not public authorities under the Charter when making adjournment decisions because this is a judicial, not an administrative, function. Further, the court decided that the right to a fair trial did not require the granting of an adjournment in the circumstances.

Harkaway Public Hall Committee Exemption Application (VCAT)

An application for an exemption from the Equal Opportunity Act 2010 to allow the Committee to refuse applications by people under 18 to use the hall. An earlier exemption had been granted under the previous Act on the basis of various safety and public amenity concerns raised by the Committee. The Commission made submissions highlighting the requirement that exemptions under the new Act must be ‘reasonable limits’ on the equality right under the Charter. On this basis, the Commission argued that the exemption sought should not be granted in the wide terms originally sought. After hearing the Commission’s concerns about the reasonableness of the exemption sought, the Tribunal granted an exemption on narrower terms, which allowed the Committee to impose additional requirements on young people before hiring the hall to them. These additional requirements dealt with the safety and amenity concerns of the Committee and were less discriminatory than the exemption originally sought.
Aitken v Department of Education and Early Childhood Development (VCAT)

A group of parents challenged a Department of Education policy allowing special religious instruction to be taught during normal school hours on an ‘opt-out’ basis. The complainants argued that the department's Special Religious Instruction Policy discriminated against their children because the segregation and lack of alternative instruction led to the children feeling excluded from their peers, bored, self-conscious and, at times, upset. The Commission intervened under the Charter to make submissions on the application of the Charter and the interpretation of the Equal Opportunity Act. The Commission submitted that it was possible to interpret the Education and Training Reform Act 2006 in a manner compatible with human rights so as not to require government schools to teach special religious instruction during ordinary school hours or, alternatively, so as not to prohibit other students from receiving alternative instruction during that time. The case was heard by VCAT in March 2012. His Honour Judge Ginnane reserved his decision.

Christian Youth Camps v Cobaw Community Health Service (Court of Appeal)

An appeal against a VCAT decision that found Christian Youth Camps (CYC) had unlawfully discriminated against a group of same-sex attracted young people by denying them use of a CYC-owned and operated adventure resort for a camp to explore issues related to combating homophobia. In 2010, Judge Hampel in VCAT upheld the complaint that CYC unlawfully discriminated against a group of same-sex attracted youth by denying them use of CYC’s Philip Island Youth Camp. VCAT held that the religious exemptions under the Equal Opportunity Act 1995 did not apply. CYC is appealing the decision. The Commission intervened in the VCAT proceeding under the Charter and is therefore a party to the appeal. The Commission will make submissions on the proper interpretation of the religious exceptions in the Equal Opportunity Act compatibility with the human rights to equality (s 8) and freedom of religion (s 14) in the Charter, namely that the Charter requires a narrow interpretation of the religious exceptions. A hearing date is yet to be set by the Court of Appeal but it is likely to be heard in late 2012.

Momcilovic v The Queen & Ors

The most significant case of 2011 in relation to the operation of the Charter was Momcilovic v The Queen & Ors, where the High Court considered in detail the operative provisions of the Charter for the first time. While the High Court allowed the appeal on grounds other than the Charter, the Court did make some significant findings about how the Charter operates.

The decision confirmed that the Charter is constitutionally valid and that a declaration of inconsistent interpretation by the Supreme Court of Victoria does not usurp the power of Parliament. Importantly, the High Court also recognised that a declaration does not affect the validity of any laws but is intended to draw Parliament’s attention to the fact that a Victorian law is not compatible with the rights set out in the Charter. The High Court judgement also confirmed that section 32 (interpreting laws consistently with human rights) is an ordinary, rather than a special, rule of interpretation. However, the six separate judgements from the Court mean that some uncertainty remains about the way the Charter should be applied in practice.

The Commission intervened in the case when it was before the Victorian Court of Appeal so was therefore named as a respondent to the High Court appeal and continued its involvement as a party to the proceedings. The Commission’s submissions focused on the application of the Charter, specifically how the interpretive obligation in section 32 operates and its constitutional validity, and the operation and validity of the power to make declarations of inconsistent interpretation in section 36 of the Charter.

Zakaria Taha v Broadmeadows Magistrates’ Court

The Commission intervened in this application for judicial review of a decision of the Magistrates’ Court to sentence Mr Taha to 84 days’ imprisonment in lieu of 30 outstanding fines. Mr Taha has an intellectual disability. The Commission drew the court’s attention to the relevance of a number of Charter rights relating to equality and freedom from discrimination, including the right to a fair trial and the right to liberty and security of the person, and freedom from arbitrary detention. The Commission also made submissions about the Magistrate’s obligations under the Charter, in determining the procedure to be followed in relation to Mr Taha under section 160 of the Infringements Act 2006.
The Supreme Court concluded that the Charter, in combination with other principles of interpretation, required section 160 of the Act to be construed so as to ensure that the plaintiff’s disability or illness was considered before imprisonment orders were made. It noted that because of the nature of the conditions for which subsection 160(2) sought to cater, the court may be required to actively elicit the relevant information from the infringement offender. The judgement also commented on the ‘highly automated’ nature of the infringements regime; however, it was found unnecessary to decide the question of whether it involves the exercise of administrative or judicial power. The court also found it unnecessary to use the Charter to resolve the question of whether the Magistrates’ Court had acted unlawfully by failing to act compatibly with the right to a fair hearing by reason of section 6(2) (b) or section 38 of the Charter. The court found that the rules of procedural fairness were the same as the requirements of a fair hearing in this case and made its decision on that basis.

Nassir Bare v Rai Small & Ors

The Commission intervened in this application for judicial review of a decision by the Office of Police Integrity (OPI) to refer a complaint of police violence against Mr Bare to Victoria Police for investigation rather than investigating it itself. Among other things, Mr Bare complained to OPI that he was capsicum sprayed by police while handcuffed, had his teeth chipped on the gutter during his arrest and was racially abused by officers.

This matter was heard in the Supreme Court in May 2012 and raised significant issues about the effectiveness of Victoria Police to investigate complaints against its officers. The Commission made submissions about the content of the Charter right not to be treated or punished in a cruel, inhuman or degrading way, arguing that it requires allegations of such treatment to be independently investigated. The Commission also raised the right to equality, in the context of a possible racial motivation for Mr Bare’s mistreatment.

The Commission made submissions about what obligations section 38 of the Charter imposes on OPI when considering complaints that police have breached human rights, and about how section 32 of the Charter should influence the interpretation of the Police Integrity Act 2008. The Commission argued that section 32 of the Charter requires the court to consider human rights when interpreting the phrase ‘public interest’ in that Act.

The Court has not yet handed down its decision in this matter.

Influencing equal opportunity case law

Under sections 159 and 160 of the Equal Opportunity Act, the Commission may seek leave to intervene or appear before VCAT or a court as amicus curiae in cases that raise issues of equality, discrimination, sexual harassment or victimisation. This function is an integral part of the Commission’s role to advocate for the purposes and objectives of the Equal Opportunity Act and to be of assistance to the court or tribunal.

In 2011/12, the Commission was notified of 73 cases and intervened in 10. Nine of these involved matters where exemptions were sought under the Equal Opportunity Act. This year saw VCAT working through the impact of changes in the new Act and the application of the new special measures provisions, exceptions and exemption applications.

Examples of exemptions include:

- Gunditjimara Aboriginal Co-operative – Exemption application (VCAT). The Gunditjimara Aboriginal Co-operative sought an exemption to enable it to discriminate on the basis of sex by advertising for a female mental health worker as part of the Social and Emotional Wellbeing Program. The Commission made brief oral submissions about the interpretation and application of special measures, and exceptions for welfare services and special needs under the Equal Opportunity Act. The Tribunal struck out the exemption application on the basis that the action proposed was a special measure and therefore did not constitute unlawful discrimination.

- BAE Systems Australia – Exemption application (VCAT). BAE sought a renewal of an exemption to enable it to discriminate on the basis of race (nationality) in offering employment to comply with US security requirements. The Commission intervened to provide guidance on the scope of the new exemption test in section 90 of the Equal Opportunity Act. The Tribunal considered the impact on the right to equality and granted the exemption sought.
Defining special measures

While the Equal Opportunity Act 2010 makes it against the law to discriminate against a person because of specific personal characteristics, the Act also recognises that discrimination may be justified in certain circumstances.

People can also take positive steps to help disadvantaged groups using special measures, which is not discrimination under the law.

If organisations would like to offer a service, hire someone or create a practice or requirement that discriminates against people with an attribute under the Equal Opportunity Act 2010, they must make an application for an exemption to VCAT.

In 2011/12 the Commission intervened in several exemption applications before VCAT to provide assistance in determining when a measure was a ‘special measure’ under section 12 of the Equal Opportunity Act, with emphasis on the criteria that needs to be satisfied.

This criteria includes that the measure be:

• taken in good faith
• for a remedial purpose of promoting or realising substantive equality for members of a group with a protected attribute under the Act
• be a proportionate means of achieving that remedial purpose
• be justified because of the needs of the identified group.

The Commission also responded to questions from VCAT about the type of evidence that might be relied on to satisfy these criteria.

In each of the cases discussed below, VCAT found that the conduct in would constitute a special measure, so there was no discrimination and no need for an exemption from the Act, and the applications were dismissed.


Darebin City Council Youth Services sought an exemption from the Act so that it could host two women-only events, targeted towards young women within the Darebin community who, due to cultural and religious reasons, would not otherwise have the opportunity to attend mixed-gender events. The council also sought an exemption to employ women only for the duration of the two events.

VCAT found that the proposed conduct amounted to a special measure for the purposes of section 12 of the Act and the conduct therefore was not discrimination. VCAT dismissed the application for an exemption as it was not necessary. In addition, VCAT made a declaration that the council’s conduct was a special measure.

Parks Victoria (exemption application) [2011] VCAT 2238

Parks Victoria wanted to advertise for and employ Indigenous people to care for Wurundjeri country. VCAT found that the purpose of the activity was to provide employment opportunities to Indigenous people, to increase the number of Indigenous people employed by Parks Victoria, to provide opportunities for connection and care for the Wurundjeri country by its traditional owners, and also for the maintenance of the culture associated with the country. VCAT was satisfied that the measure was proportionate because, at the time the application was made, only 7.6 per cent of Parks Victoria’s workforce were Indigenous.
**Cummeragunja Housing and Development Aboriginal Corporation [2011] VCAT 2237**

Cummeragunja Housing and Development Aboriginal Corporation wanted to advertise for and employ Indigenous people in the positions of mental health worker, Aboriginal health worker, trainee Aboriginal health worker and administration trainee. VCAT found that the purpose of the activity was to provide employment opportunities for Indigenous applicants, as well as to provide health services to local Indigenous people in a manner that is culturally appropriate. At the time of making the application, there were almost equal numbers of Indigenous and non-Indigenous staff employed at Cummeragunja, while 95 per cent of people using the services were Indigenous. These statistics satisfied VCAT that the measures were proportionate.

**Ian Potter Museum of Art [2011] VCAT 2236**

The Ian Potter Museum of Art wanted to advertise for and employ an Indigenous person in the role of Vizard Foundation assistant curator. VCAT found that the purpose of the activity was to increase the number of Indigenous people employed by the museum. VCAT held that the measure was proportionate, as the number of Indigenous staff was dramatically lower than the number of Indigenous people in the wider population.

**Input into government policy**

The Commission interacts with government authorities to improve human rights and equal opportunity outcomes in government activities and public life. We do this by meeting with a range of stakeholders at all levels of government and by making submissions to reviews and inquiries.

**Submissions**

In 2011/12, the Commission made submissions into the following:

- Victorian Parliament’s Law Reform Committee’s Inquiry into Sexting – June 2012
- Senate Legal and Constitutional Affairs Committee Inquiry into the Detention of Indonesian Minors – June 2012
- Consultation framework for an action plan to address violence against women and their children – March 2012
- Australian Human Rights Commission Inquiry into Age Assessment in People Smuggling Cases – February 2012
- Australian Government Attorney-General’s Department Discrimination Law Consolidation project – February 2012
- Victorian Government consultation on proposed supported residential services regulations – January 2012
- Family and Community Development Committee Inquiry into Workforce Participation by People with a Mental Illness – December 2011
- Australian Government consultation on constitutional recognition of Indigenous Australians – October 2011
- Australian Government consultation on national human rights action plan baseline study – September 2011
- ‘Failure to protect’ laws – September 2011
- Parliamentary Family and Community Development Committee Inquiry on Opportunities for Participation of Victorian Seniors – September 2011
- Victorian Parliament’s Law Reform Committee Inquiry into Access by Donor-Conceived People to Information about Donors – August 2011
Submissions

Submission to Rights of Donor-Conceived People Inquiry

In August 2011, the Commission made a submission to the Inquiry into access by donor-conceived people to information about donors by the Victorian Parliament’s Law Reform Committee. The key issue for the Inquiry was whether all donor-conceived people should have access to information about their donor parent, irrespective of whether the donor consented to release that information. Drawing from our experience with the Charter, the Commission’s submission:

- provided a human rights analysis of donor-conception issues with specific reference to the Charter, including the right to privacy and the best interests of the child
- examined options for reform and principles for a more rights-consistent approach to donor-conception practice and policy.

The Commission followed up its submission by giving evidence before the Committee in October 2011.

The Committee’s report was tabled in Parliament on 28 March 2012. Consistent with recommendations made by the Commission, the Committee’s report recommended that the Victorian Government introduce legislation to allow all donor-conceived people to obtain identifying information about their donors, subject to certain safeguards. This is an important step in recognising the best interests of the children involved.

The Victorian Government is required to table a response to the report within six months.

Submission to ‘Failure to protect’ laws

In September 2011, the Commission made a submission in response to the Department of Justice discussion paper on ‘Failure to protect’ laws.

The Victorian Government intended to create new criminal offences for adults who do not take action when they know or believe that their child (or a child who lives with them) is suffering sexual abuse or abuse that may result in serious injury or death, otherwise known as ‘failure to protect’ laws.

Our submission considered the human rights implications of creating these offences – in particular where these may have a discriminatory effect on women experiencing family violence. We pointed out that non-abusive parents may themselves be the victims of family violence and may be unable to act protectively towards their children, yet could be caught by the proposed laws. We then made recommendations to deliver a more rights-consistent approach to meet the aim of ensuring parental responsibility to protect children.

Our submission was referred to in the report of the Protecting Victoria’s Vulnerable Children Inquiry led by Justice Phillip Cummins. Noting the points raised in our submission, the Inquiry panel stated that they had concerns regarding the proposal. They then recommended that if a ‘failure to protect’ law is enacted, it should provide that the prosecution is required to prove, as an element of the offence and beyond reasonable doubt, that the accused was not the subject of, or exposed to, family violence.
Submission to Taxi Industry Inquiry
In July 2011, the Commission made a submission to the Taxi Industry Inquiry.
In June 2012, the Inquiry released its draft report, which contained 145 industry-wide recommendations. It aims to improve the taxi service industry to make it safer, more reliable, more competitive and responsive to the needs of customers, including people with a disability.
The Inquiry’s draft recommendations include improving the qualifications and training of taxi drivers, providing better accountability for all service providers for taxi service performance, improving the reliability, safety and quality of service for people with disabilities, reducing costs, removing competition restraints in the industry and making the future Taxi Services Commission a better regulator.
The report dedicates a whole chapter to issues of accessibility and references the Commission’s past surveys, reports and our submission.
The report also refers to the Commission’s 2010 survey, Quality of Taxi Services for Passengers with Disabilities. Findings of the Commission’s 2010 report, Time to Respond, which reports on the accessibility of taxi services, were also noted by the Inquiry. These included poor driver communication and service quality, unacceptably long wait times for wheelchair accessible taxis and recommendations on the content of driver training. The Inquiry also considered the Commission’s advice to taxi service providers on the positive duty to take steps to prevent discrimination under the Equal Opportunity Act 2010.
The final report of the Inquiry is due in December 2012 and the Commission continues to make representations to ensure the rights of people with disability are protected.

Submission into the project to consolidate Commonwealth anti-discrimination laws
On 22 September 2011, the Australian Attorney-General and the Minister for Finance and Deregulation launched a public discussion paper to seek community views on consolidating Commonwealth anti-discrimination laws.
The Commission, as a member of the Australian Council of Human Rights Agencies (ACHRA), was involved in preparing ACHRA’s submission to the consolidation project.
Some of the key points made in the ACHRA submission were:
• that a focus of Commonwealth anti-discrimination law should be to identify and eliminate systemic discrimination, and be based on clear objectives that target the causes and manifestations of discrimination and take into account international human rights obligations
• that the ongoing focus of anti-discrimination and human rights legislation should be to realise substantive equality through providing a regulatory framework that enables equal opportunity laws to be enforced as a process of last resort where voluntary compliance does not occur.
The next steps for this project are under consideration by the Australian Government.
Providing a strong voice

Our deep knowledge of human rights and equal opportunity issues means the Commission is seen as an authoritative source of information for the community. By providing public comment and encouraging debate, our work helps improve understanding of rights and responsibilities for all Victorians.

Human rights oration

Each year the Commission presents the Human Rights Oration. A flagship event and an annual highlight on the human rights calendar in Victoria, it provides a key platform for the discussion of human rights as they apply to everyday Victorians. The event marks International Human Rights Day, which celebrates the anniversary of the United Nations General Assembly’s adoption of the Universal Declaration of Human Rights in 1948.

More than 500 people attended the 2011 oration to hear Bernard Salt, acclaimed demographer and social commentator, deliver a thought-provoking presentation on human rights, social equity and the rise of modern Melbourne.

The Commission in the media

This year the Commission gained media coverage to raise awareness and advocate on many issues related to human rights and equal opportunity. The Commission has provided media comment for television, radio, online and print media and continues to build its reputation for offering informed and timely responses.

Some of the issues on which we have commented include the community benefits of the Charter, Indigenous rights and discrimination in the workplace. We have also had significant publicity around our work, for example our reports on children with disability who are relinquished into state care, discrimination in the private rental market, discrimination against older drivers and women in the legal profession.

Media releases and public comment are available at humanrightscommission.vic.gov.au/media.

Rights here, rights now legal seminars

The Commission held three Rights here, rights now legal seminars in 2011/12. These seminars are designed to enhance the legal profession’s understanding of equal opportunity and human rights laws, and recent developments in case law.

The seminars examined the High Court’s decision in Momcilovic v The Queen & Ors and the rights implications of the review of the Guardianship and Administration Act 1986. The Commission also co-hosted a seminar with the Law Institute of Victoria on the four-year review of the Charter.
Expertise

The Commission continually identifies areas in which we can strengthen the skills, knowledge and expertise of our staff, and improve their ability to anticipate, respond to and reflect on changes in the legal or societal framework that impact upon our work.

Working at the Commission

The Commission is committed to providing a flexible, family- and lifestyle-friendly workplace. Flexible workplace arrangements are in place to allow staff to meet their professional obligations as well as accommodate personal and family needs.

The Commission has a diverse workforce and seeks to support staff with active participation in activities including Midsumma, NAIDOC and Ramadan. The Commission also supports staff participation in community groups, committees and boards.

Staff training and development

During 2011/12 the Commission supported staff development in a variety of ways. This included providing regular internal training programs to develop skills in the law, leadership and conciliation, as well as supporting staff attendance at external training courses, seminars, conferences and study as part of their ongoing professional development.

The LINK leadership program was offered to all VPS 5 officers to strengthen their skills base and an investment was made to develop key staff members’ leadership, management and strategic abilities. In order to give these leaders practical, applicable and enjoyable learning experiences that can transform into positive behaviour change in the workplace, Passages Consulting developed a leadership development program tailored to suit the Commission. The program focused on providing skills for leadership within and as the leader of a team, project or initiative.

To build staff understanding of complex legal issues:

- regular training and case law updates on the Charter were provided during 2011/12
- a series of specific training courses designed to familiarise all staff with features of Equal Opportunity Act 2010 were delivered between July and November 2011
- staff attended the National Human Rights Conciliators, Legal Officers and Educators Conference and presented a number of sessions.
The session was a great success. We were very happy with the impact of the training … It’s exactly what we were looking for in these managers’ sessions.

—Participant at the Commission’s ‘Equal opportunity for managers’ training workshop.

Staff also attended a range of skill development courses including:

- training in key aspects of privacy legislation
- conciliation skill update sessions
- Australian Bureau of Statistics training on developing and analysing surveys
- the Implementing Human Rights in Closed Environments conference

Ensuring our policies, programs and services are accessible

The Commission is committed to implementing best practice in relation to the provision and improvement of access to its services for people with disability.

Our building is accessible and we make sure people of all abilities can access our resources and events.

Some of the work we have done to ensure accessibility includes:

- all publications are available in PDF and Word document online
- the Commission’s website has a AAA rating
- our dispute resolution procedure caters to hearing impaired clients through the National Relay Service and TTY, and translation services are also available
- a hearing loop system is installed in our training room and a portable hearing loop system is also available
- Auslan interpreters attend all relevant events and information is provided in Auslan in videos on the website
- easy English versions of key information are also available.
Providing performance feedback

A new web-based performance development and planning system to assist in managing learning, performance and career progression was introduced for all staff during 2011/12. The system operates on a 12-month cycle where staff members identify and agree their performance goals and measures with their manager or supervisor, meet with them regularly to review their progress and undertake formal mid-year and end-of-year performance assessments. Participation in learning and professional development opportunities are also booked and recorded through the system.

Environmentally sustainable workplace

The Commission is committed to minimising its environmental impact, and requires all staff to use office landfill and recycle bins, turn off lights when meetings are finished, turn off desktop computers and monitors at the end of the day, use recycled paper and use the option of double-sided printing wherever possible.

A Green Team was established in 2012 to ensure we contribute to the environmental sustainability of the Commission. With the support of the Department of Justice Environment Team, the Green Team identifies issues and implements procedures to improve the sustainability of the Commission.

Wellbeing group

A wellbeing group was established by staff in 2010 and continues to offer employees a variety of health, recreational and social activities to enhance the experience of working at the Commission. Some of these activities in 2011/12 included weekly yoga classes, multicultural lunches, and morning and afternoon teas.
Complaints and Enquiry Line figures
Complaints and Enquiry Line figures

The Commission’s complaint and enquiry figures continued to rise for the third consecutive year. The Commission reviewed and streamlined its processes in preparation for the introduction of the revised dispute resolution process under the Equal Opportunity Act.

Enquiries

In 2011/12, the Commission received a total of 9,550 enquiries from 7,940 people – a 26 per cent increase in the number of people contacting the Commission compared with the previous year.

In the past three years, the Commission received:
- 2009/10 – 7,474 enquiries from 5,972 contacts
- 2010/11 – 7,589 enquiries from 6,318 contacts
- 2011/12 – 9,550 enquiries from 7,940 contacts.

Disability was the largest attribute of enquiry followed by race, sexual harassment, age and sex discrimination.

How enquiries were received in 2011/12

<table>
<thead>
<tr>
<th>Contact mode by individuals</th>
<th>09/10</th>
<th>10/11</th>
<th>11/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>No.</td>
<td>No.</td>
<td></td>
</tr>
<tr>
<td>Consultancy</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Email</td>
<td>472</td>
<td>400</td>
<td>995</td>
</tr>
<tr>
<td>Fax</td>
<td>9</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>Letter/written</td>
<td>94</td>
<td>76</td>
<td>178</td>
</tr>
<tr>
<td>Instant message</td>
<td>0</td>
<td>0</td>
<td>194</td>
</tr>
<tr>
<td>Telephone</td>
<td>5,326</td>
<td>5,745</td>
<td>6,454</td>
</tr>
<tr>
<td>Visit to office</td>
<td>71</td>
<td>84</td>
<td>97</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>5,972</td>
<td>6,318</td>
<td>7,940</td>
</tr>
</tbody>
</table>

Complaints

The Commission’s new dispute resolution service gives parties the opportunity to resolve a complaint through a timely, free and informal process. The aim of this service is to prevent a complaint from escalating to a more formal, time-consuming, costly and complex legal dispute.

Dispute resolution allows for flexible outcomes and is responsive and tailored to the individual needs of the parties. It allows the parties to decide the terms upon which they agree to resolve a complaint and no outcome is imposed on them.

Conciliation conferences are conducted in metropolitan and regional areas.

The Commission accepted 1,174 complaints for 2011/12 – a 17 per cent increase on 2010/11 figures. These complaints raised 3,391 issues under the Equal Opportunity Act and Racial and Religious Tolerance Act – an increase of 3.4 per cent on the previous year. The complexity of a complaint is reflected in the increasing number of issues identified by complainants when they make their complaint.²

² A complaint file may include a number of issues, for example discrimination on the basis of both disability and age in employment, against both an employer and an individual.
Feedback shows that people find our process fair, informal and easy to understand. It also helps them to better understand their rights and responsibilities and come up with good solutions.


The Commission received the following number of complaint files in the last three years:
- 2009/10 – 900 files raising 2,437 issues
- 2010/11 – 1000 files raising 3,280 issues
- 2011/12 – 1174 files raising 3,391 issues.

Disability discrimination in all areas was the highest attribute of complaint.

Race discrimination was the next highest, followed by sexual harassment and discrimination on the basis of employment activity, sex, age and physical features.

Employment activity saw the largest percentage rise in complaints compared to last year with a 50 per cent increase, followed by age with an increase of 24 per cent and disability with an increase of 17 per cent.

Employment is the highest area of complaint, increasing by six per cent compared with 2010/11.

Complaints in the area of goods and services have increased by 32 per cent, with significant increases relating to disability and age discrimination.

**Complaints finalised**

The Commission finalised 1,082 complaint files in 2011/12 – a 17 per cent increase on 2010/11 (926 files), and 35 per cent above our annual target (800 complaint files).

We finalised 85 per cent of complaint files within six months of receipt. Of all complaint files finalised, 34 per cent were resolved.

Where conciliation was attempted, 58 per cent of files were resolved.

**VCAT applications**

The Equal Opportunity Act 2010 changed the Commission’s complaint handling procedures to a new streamlined dispute resolution model.

Where a matter is not able to be resolved by the Commission, a person may make an application to VCAT to have their matter heard and determined. From 1 August 2011, a person may now make an application direct to VCAT in respect to an alleged contravention of the Act, whether or not the person has brought the dispute to the Commission.

The Commission has estimated 178 applications were made to VCAT in 2011/12. Of this, we estimate 91 applications were made to VCAT where a dispute had not been brought to the Commission for dispute resolution.
### Enquiries received by issue for 2010/11 and 2011/12

<table>
<thead>
<tr>
<th>Issue</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>329</td>
<td>384</td>
</tr>
<tr>
<td>Authorising or assisting discrimination</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Breastfeeding</td>
<td>17</td>
<td>31</td>
</tr>
<tr>
<td>Carer status</td>
<td>234</td>
<td>274</td>
</tr>
<tr>
<td>Charter of Human Rights</td>
<td>123</td>
<td>103</td>
</tr>
<tr>
<td>Disability</td>
<td>1,356</td>
<td>1,830</td>
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<tr>
<td>Discriminatory advertisement</td>
<td>19</td>
<td>8</td>
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<tr>
<td>Discriminatory information request</td>
<td>66</td>
<td>54</td>
</tr>
<tr>
<td>Employment activity</td>
<td>217</td>
<td>310</td>
</tr>
<tr>
<td>Family responsibilities</td>
<td>173</td>
<td>170</td>
</tr>
<tr>
<td>Gender identity</td>
<td>29</td>
<td>40</td>
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<tr>
<td>General information</td>
<td>959</td>
<td>1,423</td>
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<tr>
<td>Industrial activity</td>
<td>35</td>
<td>74</td>
</tr>
<tr>
<td>Lawful sexual activity</td>
<td>36</td>
<td>31</td>
</tr>
<tr>
<td>Marital status</td>
<td>80</td>
<td>73</td>
</tr>
<tr>
<td>Other/no attribute(^1)</td>
<td>1,404</td>
<td>1,865</td>
</tr>
<tr>
<td>Parental status</td>
<td>280</td>
<td>238</td>
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<tr>
<td>Personal association</td>
<td>39</td>
<td>46</td>
</tr>
<tr>
<td>Physical features</td>
<td>146</td>
<td>225</td>
</tr>
<tr>
<td>Political belief or activity</td>
<td>28</td>
<td>21</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>199</td>
<td>209</td>
</tr>
<tr>
<td>Race</td>
<td>557</td>
<td>600</td>
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<tr>
<td>Racial vilification</td>
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<td>28</td>
</tr>
<tr>
<td>Religious belief or activity</td>
<td>131</td>
<td>146</td>
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<tr>
<td>Religious vilification</td>
<td>38</td>
<td>22</td>
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<tr>
<td>Sex</td>
<td>304</td>
<td>378</td>
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<tr>
<td>Sexual harassment</td>
<td>405</td>
<td>403</td>
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<tr>
<td>Sexual orientation</td>
<td>112</td>
<td>227</td>
</tr>
<tr>
<td>Victimisation</td>
<td>220</td>
<td>327</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,589</strong></td>
<td><strong>9,550</strong></td>
</tr>
</tbody>
</table>

\(^1\) ‘Other/no attribute’ refers to calls received on the Enquiry Line that do not relate to our legislation, such as child protection or occupational health and safety issues. Wherever possible, we refer such callers to another agency or organisation for help.

### Largest attribute enquiries received by issue: comparison of 2010/11 and 2011/12

![Bar chart showing the comparison of the three largest attributes (Disability, Race, Sexual Harassment) for 2010/11 and 2011/12.](chart.png)
Note: Where a complaint is not resolved through conciliation, the complainant may make an application to VCAT to have their complaint heard.
### Complaints by area and attribute for 2010/11 and 2011/12

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Accommodation</th>
<th>Clubs</th>
<th>Education</th>
<th>Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10/11</td>
<td>11/12</td>
<td>10/11</td>
<td>11/12</td>
</tr>
<tr>
<td>Age</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Authorising and assisting</td>
<td>7</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breastfeeding</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carer status</td>
<td>1</td>
<td></td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Disability</td>
<td>26</td>
<td>37</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>Discriminatory information request</td>
<td>18</td>
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</tr>
<tr>
<td>Employment activity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gender identity</td>
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<td></td>
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<td>114</td>
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### Complaints by area and attribute: comparision of 2010/11 and 2011/12

- **Age**: Newcomers (2011): 5, 2012: 4
- **Disability**: Newcomers (2011): 26, 2012: 37

![Complaints by area and attribute](chart.png)
<table>
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<th>Goods / Services</th>
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<th>Total</th>
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<td>11/12</td>
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Complaints by gender under Acts by attribute for 2011/12

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Complainant demographics

Complaints by individual complainants 2011/12

<table>
<thead>
<tr>
<th>Attribute</th>
<th>RRTA No.</th>
<th>VIC EOA No.</th>
<th>10/11</th>
<th>11/12</th>
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<tbody>
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<td>Female</td>
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<td>Male</td>
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<tr>
<td>Registered organisation</td>
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<tr>
<td><strong>Total</strong></td>
<td>13</td>
<td>1,165</td>
<td>1,178*</td>
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*Two or more people may jointly bring a dispute to the Commission for dispute resolution. In 2011/12, four complaints were lodged by joint complainants.
Respondent demographics for 2011/12

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<thead>
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<th>Respondent Type</th>
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<th>Total</th>
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<td>Commonwealth government statutory authority</td>
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<tr>
<td>Government business enterprise</td>
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<tr>
<td>Individual female</td>
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<td>Individual male</td>
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<tr>
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**Respondent demographics**

Complaints under the Equal Opportunity Act and Racial and Religious Tolerance Act can be brought against a number of different types of respondents.

In 2011/12 the proportion of complaints against most respondent types was consistent with the previous year. However, complaints against education, private enterprise and state government departments increased.
Case studies

**Sexual harassment in employment**
The complainant was employed as a personal assistant for a manager in a construction company. She alleged that the manager touched her hair, sat close to her, asked her to go driving with him and sought a casual relationship with her.

The complainant’s hours were cut from working most days to no work at all after she told her manager she was not interested in him.

When contacted about the complaint, the respondent agreed to attend a conciliation conference.

The complaint was resolved without admission of liability, with the respondent reinstating the complainant as a casual employee and agreeing to pay the complainant $7,500 compensation.

**Sexual harassment in goods and services**
The complainant undertook driving lessons and alleged that the instructor on a number of occasions held her hand, put his hand on her knee and upper leg, and brushed against her breast.

When contacted about the complaint, the respondent agreed to attend a conciliation conference.

The complaint was resolved with an agreement to pay the complainant $8,500 compensation.

**Carer and parental status in employment**
The complainant was employed as a manager with a retail company. After taking 12 months’ maternity leave, she requested part-time hours on her return to work. Her employer stated that she was required to return to her managerial role on a full-time basis, and offered her casual employment. The complainant agreed to the casual role as her employer advised her to reapply for a management position when she could work fulltime. When she did apply for a management position, reference was made to her parental and carer status and her application was unsuccessful. She resigned from her employment.

The respondent denied discrimination but agreed to attend a conciliation conference.

The complaint resolved without admission of liability, with the respondent agreeing to pay the complainant $5,000 compensation and make a statement of regret.

**Employment activity discrimination in employment**
The complainant is employed in an administrative position by a sales company. She complained to her employer about being bullied by a work colleague. The bullying had a detrimental affect on her entitlement to a safe workplace. After making her complaint, she alleges she was not included in staff discussions and her work performance was unfairly criticised.

When notified of the complaint, the respondent agreed to attend a conciliation conference.

The complaint was resolved, without admission of liability, with an agreement to pay the complainant $4,500 compensation and $5,500 towards legal costs, and provide a statement of service.
Disability discrimination in goods and services

The complainant has autism and has an assistance dog. She alleges she was denied access to a retail store because she was accompanied by her assistance dog.

When contacted about the complaint, the respondent agreed to attend a conciliation conference.

The complaint resolved, without admission of liability, with an agreement to pay the complainant $1,000 compensation and make a public apology in the local paper, as well as a private apology.

Disability discrimination in education

The complainant's son has multiple disabilities including attention deficit disorder. The complainant alleges that her son was denied the right to participate in all aspects of the school curriculum at primary school because he did not have the appropriate adjustments to allow him to fully participate in his education.

When contacted about the complaint, the respondent agreed to review adjustments and agreed to provide additional funding that would permit employment of an integration aide for the complainant's son.

Age discrimination in goods and services

The complainant saw an overseas holiday package advertised on a travel agent's website. The holiday package was only available to couples 30 years and over. The complainant is under 30 years of age and wanted to purchase the holiday but could not, due to his age.

When contacted about the complaint, the respondent agreed to enter into discussions with the complainant to resolve the complaint.

The complaint resolved, without admission of liability, for an agreement to pay the complainant the cost of the advertised holiday package.

Race discrimination in employment

The complainant is a Pacific Islander and was employed by a manufacturing company. He alleges that his supervisor bullied him and made racist comments about him. The comments referred to him being black, a ‘cannibal’, a ‘monkey’ and ‘dinosaur’. All other employees are white and he was told by his supervisor that he would ‘get rid of him’ because it was a workplace for white people only.

When contacted about the complaint, the respondent agreed to attend a conciliation conference.

The complaint resolved, without admission of liability, with an agreement to pay the complainant $10,000 compensation and provide a statement of service and letter of regret.

Race discrimination in goods and services

The complainant is Asian and was denied entry to a city nightclub. The reason given by the door staff for refusing him entry was that the nightclub was full. The complainant claimed he saw a large number of people entering the club who were not Asian.

When contacted about the complaint the respondent agreed to attend a conciliation conference.

The complaint resolved, without admission of liability, for an agreement to pay the complainant $1,500 compensation.
Mr John Searle (Chairperson) 2011–
Barrister

John Searle was the President of the Jewish Community Council of Victoria (JCCV), the peak body of the Victorian Jewish community, and a member of the Executive of the Zionist Council of Victoria from 2008–11. Immediately prior to that, John had served as the Chairman of the B’nai Brith Anti Defamation Commission.

John is currently an Executive Member of the JCCV and the Deputy President of the Executive Council of Australian Jewry.

He has made a significant contribution to the Victorian community through his long-time work in charitable and community organisations, and was recognised by Victoria Police with an award for his community service in 2009.

John holds a Bachelor of Economics and a Bachelor of Laws and has been a practising barrister for 22 years, specialising in civil litigation.

Ms Carolyn Creswell – 2009–12
Company Founder, Carman’s Fine Foods

Carolyn Creswell established Carman’s Fine Foods in 1992, a 100 per cent Australian-owned company producing Australian-made products.

In 2007, she was named the 2007 Ernst & Young ‘Young Entrepreneur of the Year’. She was also a finalist in the 2008 Telstra Business Woman of the Year Awards, the Veuve Clicquot Awards (2008) and the 2009 InStyle Women of Style Awards.

Carolyn is an active board member for Stephanie Alexander’s Kitchen Garden Foundation which works to get children into the garden and the kitchen and is also a member of the Young Presidents Organisation, a business network that connects the world’s most successful young presidents and CEOs.

Ms Joumanah El Matrah – 2009–12
Executive Director of the Australian Muslim Women’s Centre for Human Rights

With a background in psychology, Joumanah El Matrah is active in the community welfare sector, and has contributed to many organisations involved with multicultural, religious and women’s issues.

She has extensive research experience and has published works on Muslim women in Australia.

As a Churchill Fellow, Joumanah researched the impact of the human rights movement on Muslim women internationally, and has been a member of numerous committees and boards.

Mr Brendon Gale – 2009–12
Chief Executive Officer of the Richmond Football Club

Brendon Gale played 244 games of AFL football between 1990 and 2001 with the Richmond Football Club.

On his retirement from professional football, Brendon worked with the commercial law firm Mallesons Stephen Jaques, practicing in the general commercial and banking and finance areas. In 2005 Brendon was appointed as CEO
of the AFL Players Association and represented the collective industrial interests of all AFL players.

In August 2009, Brendon returned to the Richmond Football Club when he was appointed CEO, leading a diverse team of over 120 people.

Dr Paula Gerber – 2009–12
Associate Professor at Monash University and Deputy Director of the Castan Centre for Human Rights Law.

Paula Gerber has excelled in the field of academia and research, specialising in Construction Law and International Human Rights Law.

She is an authority on the use of human rights education as a tool to prevent human rights abuses, and has lectured and published extensively in the area, including a period teaching Human Rights Theory at the University of Pristina in Kosovo.

In addition to her academic career, Paula sits as a sessional member of the Victorian Civil and Administrative Tribunal on the domestic building list.

Mr Michael Gorton AM – 2009–12
Partner with Russell Kennedy Solicitors

Michael Gorton has had a long involvement in charitable and community organisations, with leadership roles with the United Nations Association of Australia, Greening Australia, Vision Australia and Reconciliation Victoria Inc.

He is also a Board Member of Melbourne Health (Royal Melbourne Hospital), the Australian Health Practitioner Regulation Agency and President of the National Ageing Research Institute. Other roles have included President of the Health Services Review Council, Chair of the Infertility Treatment Authority, Chair of the Victorian Biotechnology Ethics Advisory Committee and Ministerial representative to the Monash Institute of Medical Research.

In 2004, Michael was made a Member of the Order of Australia, particularly for his community service in relation to equal opportunity and Aboriginal reconciliation.

Professor Kuruvilla George – 2011–12
Director of Aged Person’s Mental Health and Director of Medical Services at Peter James Centre and Wantirna Health.

Kuruvilla George is also a Clinical Professor at Deakin University, Clinical Associate Professor at Monash University and Adjunct Associate Professor at the University of Notre Dame and is the Deputy Chief Psychiatrist for Victoria.
Organisational chart

Board

Commissioner

Chief Executive Officer

Strategic Projects and Policy Unit
Provides policy advice and direction within the Commission and manages key strategic projects that identify and seek to address systemic discrimination and human rights issues.

Dispute Resolution Unit
Manages the Commission’s Enquiry Line, delivers free community information sessions about our services, coordinates our statewide community liaison program and runs our Dispute Resolution Service, resolving complaints of discrimination, sexual harassment, vilification and victimisation through conciliation.

Legal Unit
Undertakes legal research and provides legal and policy advice, oversees our intervention function, conducts public legal education seminars, develops legal resources for community use, and participates in legal forums and committees related to equal opportunity and human rights law.

Community Relations Unit
Delivers the Commission’s human rights and equal opportunity education and training through scheduled courses and tailored workshops, and works extensively with community, corporate and government stakeholders to develop practical approaches to good human rights and equal opportunity practice.

Corporate Services Unit
Shared with the Office of the Public Advocate, this unit underpins the Commission’s success by providing executive support for the Commission’s finance, human resources, information technology and office administration functions.

Communications Unit
Develops and delivers information and resources through a range of targeted publications, community events and online information, supports our research and policy work, develops social media and communication campaigns to increase awareness and build compliance, and maintains a strong public voice on human rights and equality issues.