

I wish to begin by paying my respects to the traditional owners of the land, the people of the Kulin Nation, and to acknowledge their sacred connection to the land.

Thank you to the organisers of this event for affording an opportunity for the Commission to share the findings of some of our recent research but also to talk about some amendments to the Act.

In this presentation today, I want to cover three areas:

- The unique context of 2008 in relation to the possibility of change in the conditions that determine how workplaces are organised;
- The findings of the research conducted by the Commission, which has been ironically entitled - *Women, Rights and Equality: What do they want now?*
- Two recent amendments to the *Equal Opportunity Act* and how they provide a demonstration and a transition into changes for the future.

1. Here we are: where are we?

It is a self evident truth that since November 2008, there are many of us who believe that the human rights agenda in Australia has the potential to be radically enhanced. In the area of work. This is never more so the case, as the current Federal Government has been voted in with a clear mandate to change the industrial negotiation framework, which our own state government has been nibbling away at, through the use of instruments such as the *Equal Opportunity Act*. But ironically, like many human rights advances, the driver for its acceptance is most likely to be economically based, where market needs and forces 'discover' that many of the human rights arguments that have been posited in the past now have some resonance. For many of you who today who are running your own businesses or working in public and private sector workplaces, you will think that this is sensible. This is of course sensible, but I want you all to leave today with at least the thought that not only are changes that recognise the human factor in work and community life important, but they value add to what we are as a community.

So where are we now. This is the list that runs through our head on a regular basis:

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1. The Federal Government has foreshadowed a range of reforms in relation to the industrial relations framework, pay equity, maternity leave through the Fair Work Australia agenda, the Productivity Commission and the recently consulted National Employment Standards. This is significant because in the past decade we have moved so radically from the notion of collective protections, let alone collective bargaining to individually focussed negotiations and seeking of remedies. We know from 30 years of *Equal Opportunity* laws in this state that individual remedies are an important means of reform, but that many factors which disadvantage people - be they workers, families, people with characteristics such as disabilities often are not in an equal power situation to negotiate their access to equal opportunities. Systems should be changed to meet the need of people, not people forced to try and change the systems on a case by case basis.
 2. At the Victorian level we operate in an extraordinary context of reform and recognition. The passage of the Charter of Human Rights in 2006, and the imposition of a positive duty on all public authorities to comply with the Charter's civil and political rights means that for the first time, the whole of government has to proactively apply a human rights lens on the full complement of their work - from law making, procurement, service delivery and enforcement. And whilst the Charter has direct impact on public authorities, its impact on the private sector in Victoria in both a legal and a cultural sense should not be underestimated.

There is also a review of the *Equal Opportunity Act* at a state level, with the Reviewers Options paper out for consultation now. It is extraordinary to think that there is currently consideration of the notion of substantive equality as part of this review. This is important because it places the concept of equality into a more affirmative framework:

*"Substantive equality involves achieving equitable outcomes as well equal opportunity. It takes into account the effects of past discrimination. It recognises that rights, entitlements, opportunities and access are not equally distributed throughout society. Substantive equality recognises that equal or same application of rules to unequal groups can have unequal results."*¹

¹ www.equalopportunity.wa.gov.au

3. The third context that is directly relevant to our topic today is of course the economic context, and the fact that we have not only an government recognised skill shortage but also a labour market shortage. It is at times like these that the economic imperatives support and enhance the human rights arguments that have been around for some time - workplaces can benefit from diversity, from people focussed policies and procedures and from seeking to meet the needs of employees rather than the priority on the needs of the organisation.

This context is relevant for our operating environment at the Commission, but it is also relevant to understand how the work/life agenda can be advanced in a manner that achieves significant changes.

2. What women want

In October 2007, the Commission went out into Victoria and asked women what they wanted. The results of this are confirming and disturbing.

Some of the things that these young, older, rural, metropolitan, culturally diverse, working and non working women said are outlined below.²

There was an overriding view that life is challenging, hectic and stressful, all of which is absolutely pertinent to the Work life balance agenda.

One young woman from Forest Hill described it thus:

'You've got to get a job, you've got to move out of home, you've got to have enough money to do stuff, you've got to go shopping, you've got to do everything. Then you've got the whole family aspect and then you've got to make a career.'

The super-women stereotype does not make for a super role model as it places more pressure on women to juggle work and private lives; the same young woman above described it thus:

'My mum is a perfect example; she'll get up really earl, do her exercises come back, have everyone's lunches ready, but she'll get everything done. At the end of the day she'll get home at 6, 7 o'clock and still manage to be

² AusPoll. Qualitative Research. Women, Rights and Equality. VEOHRC. October 2007

able to put dinner on the table and do whatever she needs to do. So, I reckon people like that do exist.'

And a 25-45 year old woman from Carlton said:

'My friends used to call me super woman when I had little kids and I used to do lots of things, but now I've given up half those things. Now, it's real life and the quality of life.'

Women want pay equity but they also want flexibility in the workplace to allow them to balance their multiple roles in life. There were strong responses to the view that workplaces should change in a number of ways.

Greater flexibility of hours was identified as a key factor in enabling women to balance work and home life.

Casualisation was seen as a problem, as women identified the difficulty in finding permanent, full-time employment and felt that casual and part time work was prevalent. This lack of security was identified as a cause of stress on families:

*'I think [jobs are less secure]; I think they are because I think employers have more of an upper hand these days and they will do with it what they will.'*³

The women were asked some specific questions about structural changes that may impact on the work place for women. For example, they were asked if they should have the right to request part time or a change in work hours, as exists in the United Kingdom. Overwhelmingly, women supported the idea of having the right to request, and having levels of flexibility in work demands was seen as a means of taking the pressure off people at often stressful stages in their lives.

As one respondent commented:

*That would be worthwhile to the employer too; wouldn't they have a more loyal workforce?*⁴

³ 25-45 years, Carlton.

⁴ 46 - 64 years, Moorabbin

Unpaid maternity leave was seen as a real problem by many of the women and most indicated that they had not had access to paid maternity leave when they started their families.

I was working at Coles and they told me I'd have to get Centrelink payments while I was on maternity leave because they couldn't pay maternity leave. They wanted me to come back when my daughter was two weeks old full time, but I couldn't afford day care so I said no; I left, I wasn't going back when she was two weeks old.⁵

A universal paid maternity scheme was supported by these women, who felt that it would give a sense of financial and professional security, and would also address their perception that motherhood was undervalued.

It still amazes me that women who choose to stay at home and look after their children, that they're still under valued ... the community as a whole doesn't realise just how important a role of parenting is ... not just for the females but for the males as well.⁶

Not all women were supportive of paid maternity leave as some saw this as an additional burden on the tax system.

3. Changes to the *Equal Opportunity Act*

There are two amendments to the Act that I want to run through today as I believe that they have quite significant implications for all of the contextual descriptors that I outlined at the start of my talk.

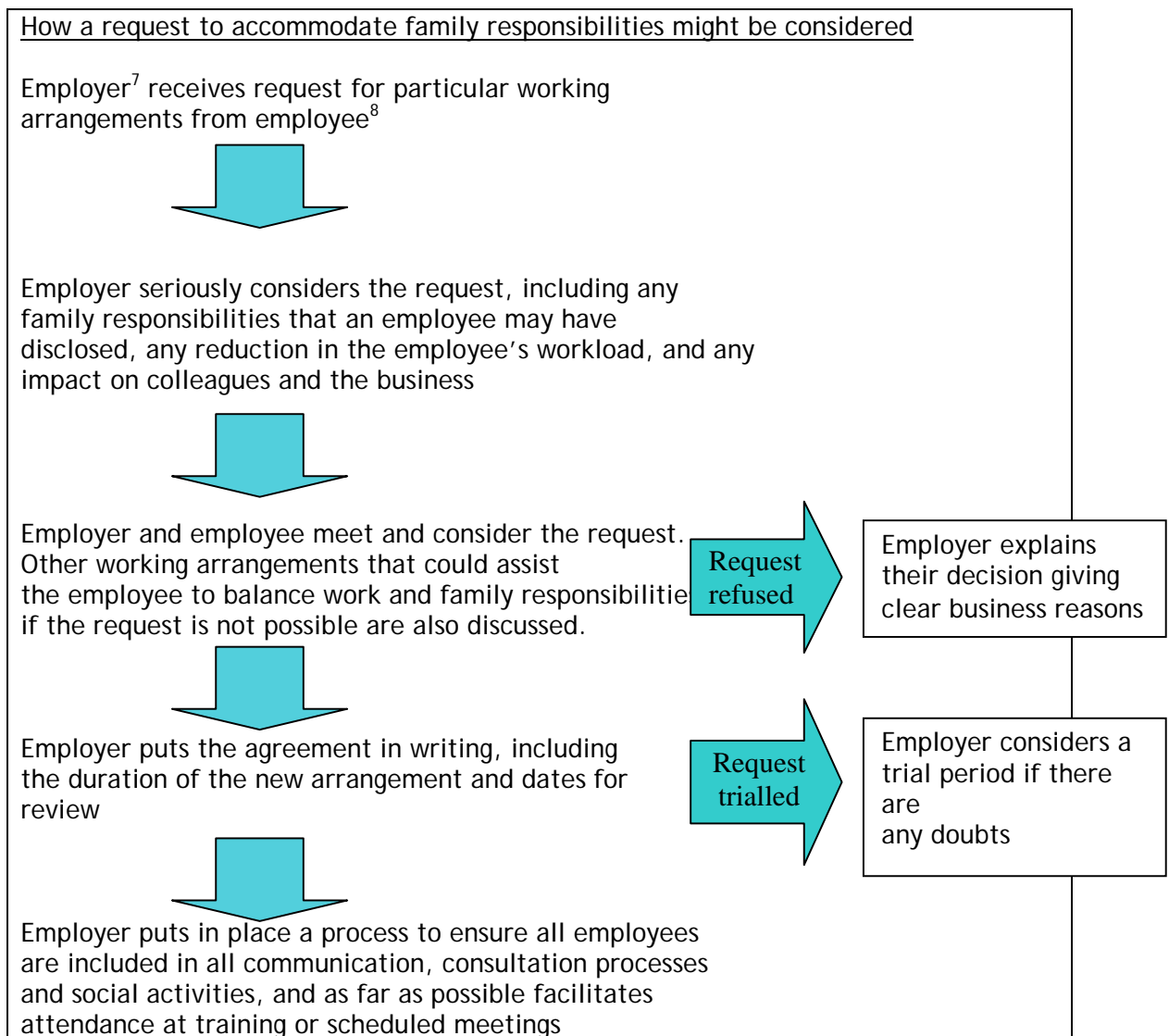
The first relates to the amendment of the Act relating to family responsibilities. This amendment which takes effect from 1 September 2008, requires an employer, a principal or a firm not to unreasonably refuse to accommodate within work arrangements the parental or carer responsibilities of a person. The Commission is collaborating with a range of employee, employer and governmental organisations on the development of guidelines for this amendment. The significance of the amendment is that it places the responsibility on the employer to demonstrate that a request has been reasonably considered and where possible accommodated within work arrangements, and it relates to parental or carer

⁵ 25 - 45 years, Geelong.

⁶ 25 - 64 years, Warrnambool.

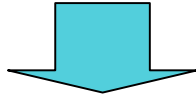
responsibilities in a more general sense. It allows an employee to make a complaint if they feel that their employer has unreasonably refused to accommodate their family or carer responsibilities.

The way that this will work is demonstrated in this flow chart



⁷ Employer includes firms & principals

⁸ Employee includes a person offered a job or partnership, a contract worker, an employee or a partner



Employer informs work colleagues of any changes to working arrangements and develops strategies to deal with any problems



Employer and employee meet regularly to review how the work arrangement is operating for all in the workplace

Here is an example that is taken from the draft guidelines about accommodating family responsibilities:

Model for Requests example

Fatima is the office manager of a city law firm. She works full time five days a week and has responsibility for three other office staff. Her primary school age son was recently diagnosed with a medical condition that requires weekly hospital visits.

Clarify

Fatima's employer receives her request for flexible working and asks her to put the request in writing. Fatima writes down her current responsibilities and the new work arrangements she requires to manage her son's medical condition. His weekly hospital appointments are on a Monday. She will now need to work four days instead of five. Currently, weekly office staff meetings are on a Monday morning followed by a meeting with the firm's partners in the afternoon. In order to attend these meetings Fatima will need to change the meetings to a Tuesday and delegate office management responsibilities to other staff on the day she is not in the office.

Consult

Fatima requests a meeting with her manager, a senior partner of the firm. She advises her manager of the need to attend a medical appointment with her son every Monday. Her manager recognizes that this will affect the weekly office meetings. Fatima discusses her proposal to work four days instead of five and to change the weekly office meetings to Tuesdays. She also informs her manager that she has confidence in her staff's ability to manage the office in her absence on Mondays.

Consider

Fatima's manager considers the impact of Fatima delegating office management responsibilities to her staff and the effect on them and the firm's partners of changing the weekly office meetings to Tuesday. Fatima's manager consults the office staff about their willingness to accept office management responsibilities. The manager also discusses the proposed changes with the firm's partners, taking into account their meeting schedules and administrative support requirements. Following these consultations, and recognizing Fatima's skills and experience in managing the office, the manager agrees to Fatima's proposal subject to reviewing the new working arrangement after one month.

Conclude

Fatima and her manager meet again to discuss the outcome of Fatima's request and mutually agree to review the new working arrangements after one month. The new work arrangements are also put in writing.

What is clear is that the intent of these amendments is to move away from placing the onus on the employee to bring about changes, and to try to make it a level playing field in terms of how basic rights such as accommodating family responsibilities can be accommodated. Given that parental status and carer status have been features of the *Equal Opportunity Act* for some time, this focus on working arrangements rather than simply promotion or recruitment are an important move in the direction towards substantive equality.

The second amendment that I will not spend too much time on but which is also quite different from other attributes under the Act is the employment activity amendment.

Since March 31 2008 it has been against the law for employers to discriminate against an employee for requesting information or expressing concern about their employment entitlements such as rates of pay, overtime or annual leave.

The Victorian Equal Opportunity and Human Rights Commission has released guidelines for employers and employees explaining the change to the Equal Opportunity Act.

The amendment to the Act does not compel employers to provide the information requested, however they should not penalise or treat unfairly an employee who asks for such information.

As an example, if an employee enquires about maternity leave entitlements and is subsequently given fewer rostered shifts, this may be considered unfair treatment, and lead to a complaint of discrimination by the employee against the employer.

This amendment supports Victorian workers' right to seek information about their entitlements without creating an additional burden on employers.

A workplace where employees feel comfortable raising issues of entitlements and expressing concerns and that fosters principles of respect and fairness, is good for workplace relations and beneficial to business and the workforce.

If an employee makes a realistic request for information at a practical time the employer should consider it.

The reason that I raise this here is not because it is specifically linked to the issues of balancing work and life, but because it goes to the issues about the role of individuals trying to feel empowered within their own work places to make decisions about all aspects of their work and life and about redressing the erosion of this capacity over the past decade.

To conclude:

There is a particular context in Victoria which means that the attempt to develop a balanced view of how we organise our work and our outside work life. However, there must be a note of concern about this. In many ways, Victoria is leading the way in terms of law reform around human rights and equality, all of which impinges on the work life balances.

As the national reforms roll out, what will be critical is that they don't compromise what is an important process of reform in Victoria. The National Employment Standards for example are now subject to consultation. These standards deal with:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/carer leave and compassionate leave
- Community service leave

- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair work information statements.

The standards set out a right to request flexible working arrangements, but the exposure draft advises that the question of whether or not there are reasonable business grounds for refusing a request will not be subject to a review by an independent third party, and the Fair Work Australia will not be empowered to impose the requested working arrangements on an employer. This means that an employee will not have an avenue to seek redress if they believe that their employer has unreasonably refused a request and this contrasts with the enforceability with the Family Responsibilities amendment and also to the provisions in the *Sex Discrimination Act*. It is not clear if this could give rise to a Constitutional invalidity argument particularly if the National Employment Standards are intended to cover the field.

Finally, the most compelling message is that in many ways the window of opportunity to realise substantial changes has never been more open. What we know in a public policy context is that the opening is not indefinite, and it is important to have statutory and education reforms instituted to ensure that we progress the quest for equality, and that we ensure that we continue to build on human rights considerations more generally.

We know these challenges are not new, but we know that we have to be vigilant in continuing our own development. The concept of balance has been a struggle for centuries one way or the other. To confirm this let us in closing share Euripides reflections, bearing in mind that this was made in the 5th century:

The best and safest thing is to keep a balance in your life, acknowledge the great powers around us and in us. If you can do that, and live that way, you are really a wise person (man).⁹

Thank you.

⁹ [Euripides](#) (484 BC - 406 BC)