

## **VICTORIAN INDEPENDENT EDUCATION UNION ANTI-RACISM POLICY GUIDELINES**

(Endorsed by Conference November 1997)

### **1.0 Preamble**

Staff and students of all racial and ethnic groups have a right to equality of opportunity and to work in an atmosphere based on mutual respect and the dignity of each individual. The VIEU considers racially based discrimination, harassment or vilification to be totally unacceptable and contrary to the espoused values of most educational institutions. Racial discrimination is unlawful under both Commonwealth and Victorian anti-discrimination and equal opportunity laws and there are no exemptions for non-government education providers.

Workplaces which tolerate racial discrimination, vilification and harassment can become stressful and non-productive. Ignoring the issue can result in low morale, a lack of enthusiasm and commitment, poor student performance and high staff turnover. It is therefore particularly important for employers, staff, students, parents and the union to co-operate with goodwill in adopting and implementing measures for preventing discrimination and enhancing equality.

Teachers and education staff have traditionally played a leadership role in educating against racism and in educating for a socially just and tolerant society. It is hoped that this policy will provide a framework to assist dioceses, schools and other non-government education institutions to review their existing anti-racism policies or to develop policies and procedures for the first time. Such policies and procedures should be an important part of the induction of all new staff, as well as provide ongoing education for continuing employees, students and parents.

### **2.0 Legislative Provisions**

#### **2.1 Commonwealth Racial Discrimination Act (1975)**

The Racial Discrimination Act 1975 (Cth) ("RDA") was the first anti-discrimination legislation passed by the Commonwealth Parliament. In the last twenty years, all states and territories, including Victoria, have enacted comprehensive anti-discrimination legislation which, among other things, makes racial discrimination unlawful.

The RDA makes it unlawful to discriminate against a person, directly or indirectly, in the areas of employment and education. Victimisation and acts of racial hatred (such as racial harassment and vilification) are also unlawful under its provisions.

Parts II and IIA of the RDA contain the substantive prohibitions on racial discrimination, harassment and vilification. These parts closely follow the

wording of the International Convention on the Elimination of All Forms of Racial Discrimination.

The central proscription in section 9(1) of the RDA makes it unlawful for a person to:

*“do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.”*

In addition, the RDA makes unlawful any public offensive and abusive behaviour based on race.

### **2.1.1 Definitions and Practical Examples**

The RDA and its interpretation by the Human Rights Commission provide some practical definitions and examples of unacceptable racial discrimination.

Racial discrimination involves treating a person of a particular race, colour, descent, national or ethnic origin less favourably than another person.

**Direct discrimination** occurs when a person is disadvantaged or treated less favourably than someone else because of their race, colour, descent or national or ethnic origin. Direct discrimination can occur regardless of the perpetrator’s motive and whether or not he or she is aware of the discrimination or considers the treatment less favourable. If one of the reasons for the less favourable treatment involves considerations of race or ethnic origin, the action will be unlawful discrimination even if that reason was not the dominant or substantial reason for doing the act.

For example:

- Refusing to employ a person or enrol a student because they are of a particular ethnic background is unlawful direct discrimination.

**Indirect discrimination** occurs when a practice or policy appears to be fair because it treats everyone in the same way, but in effect it disadvantages a higher proportion of people from one racial or ethnic group and is not reasonable in the circumstances.

For example:

- Advertising a job for a person above a specific height would disadvantage people from some racial or ethnic groups. Unless height was an essential requirement or the job could not be adapted to suit shorter people, this would be unlawful indirect discrimination.

An act of **racial hatred** is a public act which is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate and which is done because of the race, colour or national or ethnic origin of the person. Acts of racial hatred can also be described as racial vilification or racial harassment.

Some examples of racial hatred are:

- One employee subjecting another employee to racist abuse is unlawful

racial hatred (harassment/vilification).

- Jokes about cultural practices, dress or ethnic stereotypes which are insulting and offensive are unlawful racial hatred (harassment/vilification).
- Racist graffiti, posters or other written material displayed or distributed in the workplace is unlawful racial hatred (harassment/vilification).

**Victimisation** happens if a person is subjected to less favourable treatment because it is suspected or known that he or she: has made or proposed to make a complaint under the RDA; has furnished any information or documents; or has attended a conference in relation to a complaint.

For example:

- Denying a person a promotion or subjecting them to any other detriment because the person has made a complaint of racial discrimination is unlawful victimisation.

## **2.2 Victorian Equal Opportunity Act 1995**

The Victorian Equal opportunity Act makes discrimination on the basis of race unlawful in employment, education, access to goods and services and a range of other areas.

“Race” is defined as including colour, descent or ancestry, nationality or national origin, ethnicity or ethnic origin.

The Victorian Act also refers to the prohibition of both direct and indirect forms of discrimination, and specifies that in determining whether or not a person discriminates, the person’s motive is irrelevant. The Act also specifies a prohibition on victimisation of persons taking action under the provisions of the Act.

The Act makes provision for the vicarious liability of employers and school principals, stating that if a person in the course of employment or while acting as an agent contravenes provisions of the Act, both the person and the employer or principal are taken to have contravened the provision, and a complaint may be lodged against either or both of them.

The exception to vicarious liability operates only if the employer or principal proves, on balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening the Act.

## **3.0 Policy and Procedures**

To meet their obligations under both federal and state legislation, all employers, including schools, should establish policy and procedures clearly setting out what is expected of both staff and students in terms of appropriate behaviour and what steps will be taken if a complaint of racial discrimination is made.

VIEU recommends that all education institutions develop or revise an anti-racism policy along the following lines:

- (Name of school/organisation) is totally opposed to racial discrimination,

harassment or vilification;

- (Name of school/organisation) operates education programs to address racism within the organisation and ensure that staff and students understand and fulfil their responsibilities. Staff and students are able to achieve their full potential only in a supportive, non-hostile environment. To this end, awareness of the organisation's anti-racism policy be part of the induction process for all new employees, and ongoing education for staff, including those holding positions of responsibility.
- (Name of school/organisation) operates a complaints procedure to provide a mechanism for investigation and redress at every level within the organisation. Disciplinary action will be taken against those found to have engaged in racial discrimination, harassment or vilification.
- (Name of school/organisation) provides adequate financial and staff resources to achieve these commitments.
- (Name of school/organisation) undertakes to review all organisational policies and practices to ensure consistency with this policy.

More detailed policy and procedures may be developed at each college, school or early childhood centre.

#### **4.0 Other Legal Remedies**

If a racial discrimination complaint cannot be resolved at workplace level, other options include:

- Victorian Equal Opportunity Commission or Federal Human Rights Commission;
- Australian Industrial Relations Commission where the person being discriminated against has been forced to resign because of the harassment;
- Occupational Health and Safety laws which provide that it is the employer's responsibility to ensure that all employees work in a safe environment;
- The criminal law, if the harassment amounts to an assault;
- Defamation or other laws as private civil action.

It is hoped that this policy framework will assist employers and staff in non-government educational institutions to develop and implement policies and procedures to foster safe workplaces which are free of discrimination and harassment. Please contact the VIEU for further information or assistance.