

### Equal Opportunity Act, Review of Exceptions and Exemptions

- Conducted by the Scrutiny of Acts and Regulations Committee (SARC) of the Victorian Parliament
- An 'Options Paper' produced at the end of April 2009
- Many submissions received, including from churches and Christian groups
- Further responses to the Options Paper due Friday July 10, 2009
- A further process of consultations and consideration will follow, leading to final recommendations.

### Why 'exceptions and exemptions'

- Equal Opportunity Legislation exists to protect people from unfair treatment based on an attribute: age, race, disability, religion, politics, sex, or sexual orientation
- Key areas are provision of services or benefits, and access to employment
- Everyone agrees some exceptions are needed, to allow the intention of the law to be achieved.
- The Victorian Act contains dozens of exceptions.

### Why 'exceptions and exemptions'

- To protect **privacy**: e.g. when employing someone in your home, or renting out a room in your home.
- To address **disadvantage**: e.g. an organization for the disabled can prefer to employ disabled people.
- To assist **business**: e.g. smaller/family businesses can discriminate.
- To balance **competing rights**: e.g. political parties can discriminate in employing staff, as can religious groups.

### Background to the Review

- Victorian Human Rights Charter 2006 – provides criteria for balancing rights
- International trend in Western countries to 'balance' i.e. reduce religious rights in favour of equality rights
- A view that community attitudes have changed, and religious exceptions were 'transitional' in their breadth – this goes along with the view that religion is a key driver of inequality
- Other Australian reviews underway:
  - Freedom of Religion and Belief
  - Frank Brennan Human Rights Review

### More Specific Exemptions

- Discrimination can be allowed for:
  - Selection of students (§38)
  - Provision of accommodation by a religious body (§55)
  - Provision of accommodation for Students (§56)
- Exemptions also permitted for privacy and business considerations:
  - Domestic or personal services in the home (§16)
  - Genuine occupational requirements (§17)
  - Small Business (§21)
  - Shared accommodation (in your home) (§54)

### The Main Issues

- **Section 75(1)** – selection of religious personnel by religious groups, and of those who play a role in religious observances or practices (e.g. pastor, organist)
- **Proposal**: maintain.
- **Section 75(2)** – a general right to discriminate where this 'conforms with the doctrines of the religion or is necessary to avoid injury to the religious sensitivities of people of the religion'. E.g. non-worship oriented staff. Includes para church groups, and social justice and mission groups.
- **Proposal**: Tighten up.
- **Implications**: e.g. counselor, playgroup coordinator, youth worker, maintenance worker, cleaner, hiring out property, codes of conduct for staff. Religious belief and activity and ethical conduct, sexual orientation.

### The Main Issues

- **Section 75(3)** – previous point extended to religious educational institutions under the control of a religious body. E.g. a parish school employing a pre-school teacher.
- **Proposal:** tighten up.
- **Implication:** in a parish school, an RE teacher or Chaplain could be required to be a Christian (Section 17 – occupational requirements) but not a literacy teacher, Maths teacher or receptionist, and perhaps not the principal.

### The Main Issues

- **Section 76** – religious educational institutions (need not be under a religious body). E.g. a teacher in a Christian school.
- **Proposal:** tighten up.
- **Implication:** as for 75(3). Also could affect hire of facilities.

### The Main Issues

- **Section 77** – individuals may discriminate to comply with their 'genuine religious beliefs or principles'.
- **Proposal:** eliminate
- **Implication:** Muslim taxi drivers who refuse to take blind passengers with seeing-eye dogs; a Christian celebrant who is unwilling to register gay unions; a Christian counselor who is unwilling to provide gay sexual counseling.
- Theresa Davies, UK Registrar (suspended because she would not celebrate gay unions): "The law does not require that I should be punished for my Christian faith, but that is the position of Islington Borough Council."

### Key Points

- At present church groups can discriminate based upon age, race, disability etc etc. E.g. a church school can sack someone who loses an arm in an accident, or a woman whose husband divorces her.
- Overseas and local experience indicates that gay and lesbian people will enforce any reduction in religious rights.
- Also based on experience, pagan / Wiccan groups could seek to access church facilities if exemptions are reduced.
- Flow-on implications for 'harassment' and affirmative action legislation (UK).

### Human Rights Charter

- The role of the Human Rights Charter, Section 7:
- 'A Human Right may be subject under law to such reasonable limits as can be demonstrable justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all the relevant factors, including ... (e) any **less restrictive means reasonably available** to achieve the purpose that the limitation seeks to achieve.'
- These 'balancing' principles imply that exceptions/exemptions should be as narrow as possible (i.e. 'less restrictive').

### 'Reasonableness'

- Section 7(e) introduces the test of 'reasonably availability' – this is putting pressure on those who want the benefit of the protection of religious purposes, to justify how their doctrines / practices **reasonably** require the exemptions.
- Christian organisations could be required to spell out their need for exemptions, and have this tested in VCAT.
- This could have the effect of reducing religious diversity, and acceptance of differences **within** religious organizations.

### Public Money

- The pressure will be greatest upon groups which receive public money. First and foremost 'public authorities' (defined in the Human Rights Chapter) including church charities which receive government grants, and ultimately also schools.
- Changes to the exemptions will make it harder for Christian groups to accept government grants and still retain their Christian ethos.

### 'Core' vs 'External' functions

- The Options paper suggests that full religious freedom only applies to 'core' functions (basically ritual, worship and teaching). Outside this core, the need for religious freedom is claimed to be less. Section 7 of the Human Rights Charter means that if this is accepted, equality rights would trump religious freedom in the public domain.
- Could affect all Christian agencies which offer services such as care for the poor, counseling, adoption, fostering etc.
- This criterion, if adopted, will enforce the secularization of all 'public' functions of religious organizations.

### The political reality

- The Labour party holds the power to do what it likes with religious freedom in Victoria.
- The Greens hold the balance of power in the Legislative Council, and will support any reduction in the exemptions, no matter how radical.
- Influential lobby groups support radical reduction in religious rights vis a vis equality rights.
- Individuals are encouraged to visit their local Labour Party Member (both lower and upper houses).