

17 April 2008

Josie Parkinson
Legal Policy Officer
The Exceptions Review
C/- Department of Justice
Level 24, 121 Exhibition Street
Melbourne VIC 3000

Via email: civil.law@justice.vic.gov.au

Dear Josie,

Re: Submission to Department of Justice on The Exceptions Review

I, Lynda Slavinskis, a business lawyer specialising in the SME market, together with my colleagues named below, make the following submission in response to the February 2008 Consultation Paper named "The Exceptions Review", a review of the exceptions to and exemptions from the Equal Opportunity Act 1995 (Vic) ("the Act") prepared by the Department of Justice.

As small business owners who also work with other small businesses, we are particularly interested in and concerned about the impact any changes to the Act will have on small business.

We are supportive of the Act, the spirit and intention behind it.

In relation to the exceptions and exemptions review, we believe strongly that the family employment exception in Section 20 and the small business exception in Section 21 should be retained.

The general reasons for our position are as follows:

- Small businesses already struggle with regulatory compliance requirements in all other areas of their business without adding an extra burden;
- The cost of compliance would be great, requiring reviews of occupational health and safety processes within the workforce and added cost to make workplaces suitable for employment of those with a disability for example. For some small businesses, especially in the trades area, it would be highly inappropriate for example to hire without discrimination of some sort particularly in relation to gender or physical strength;
- The cost to the small business would be increased in other ways eg: ensuring that recruitment processes were suitable to ensure compliance with the Act, training other staff to deal with an employee with a disability, time spent on creating new work processes or improving facilities to accommodate for employees with a disability;
- It is arguable that an added duty of care would apply to an employer should the small business exception not exist, and therefore greater potential liability if the employer fails to follow up on problems an employee may have. For example, a colleague running a small business in a regional area reports that in employing a number of staff with mental health issues such as depression, her role has shifted from employer to counsellor and at times she feels ill equipped to deal with the employee's problems as she is not trained in mental health. However, she is aware that providing a safe workplace is a



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crucial regulatory compliance issue and if she were to ignore the problems being suffered by her employees, she could be held accountable;

- In a small business it is crucial that every individual pull their own weight, so the employer has to be very selective about whom they employ. One out of five employees is one fifth (1/5) of the workforce if that person is unable to perform at 100% due to a disability, his/her gender or his/her physical ability;
- In a small and often family based environment, where tensions can get high, it is crucial that employers have the freedom to choose employees on the basis of whom they feel comfortable with and not just due to someone being skilled for the job.

Michelle Michie, Managing Director of Nicholson Media Group reported the following anecdote regarding employment of a person with a disability in her small business.

"I have been an employer of people with disabilities, including a profoundly deaf graphic designer who worked here for several years. Incorporating her into our business successfully DID require additional work by other staff to facilitate communications (eg. Extra typing of design briefs which could have been verbal and instantaneous). We always tried to be a role model business and went out of our way to "make it work" for her. She actually moved on from us eventually into a higher paying job in a large design company.

We all learnt a lot from the experience, but it was quicker and more efficient to operate the design studio with a hearing designer.

If the exceptions are changed a very small business of less than five people could be sued because they didn't hire a profoundly deaf graphic designer, who was suitably qualified and experienced. The reality in the workplace is that it can be additional work for a very small team to manage. Here, hiring a disabled person would be judged on a case by case basis, and we would feel free to make an honest assessment of the situation, and the adaptations the team would have to make, without fear of being sued and having our (good) reputation damaged if we chose not to hire such a person because of the workload."

In relation to some of the other exceptions, we have some feedback in relation to Section 22 Special Services or Facilities and Section 24 Standards of Dress and Behaviour.

In relation to Section 22, we submit that this exception should remain. This exception is highly relevant to small business, especially in the hospitality industry. For example, a small café with 5 or less employees may not be able to accommodate an employee with mobility problems due to the confined space.

In relation to Section 24, one of my colleagues who has much involvement in multi cultural sectors has suggested that this section be reviewed, limiting the exception so that consideration is given to those employees required to wear certain attire for religious reasons, provided that these are worn in such a way which does not pose a danger either to themselves or their fellow workers, e.g: a sari, or head scarves for Muslim women.

We hope that the Department of Justice will take into account the above submission when considering the impact of abolishing the small business exception. We believe that to abolish the small business exception and the other exceptions detailed in this submission, would cause significant detriment to small business, one of the strongest sectors in our economy.

Yours faithfully,

Lynda Slavinskis Lawyers & Consultants



Per: Lynda Slavinskis - Solicitor (B.A(Hons)/LLB)



Joined by:

Marion Lau (OAM, JP) Director, Management Consultants and Technology Services Pty Ltd.

Paul Shelley, Director, PSE Communication & Electrical.

Michelle M Michie, Managing Director, Nicholson Media Group Pty Ltd.



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