



Our Ref: 02/88/0195
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Dear Ms Eldridge

REVIEW OF EXCEPTIONS AND EXEMPTIONS IN THE EQUAL OPPORTUNITY ACT 1995

Thank you for your letter dated 29 February 2008, inviting me to make a submission to the Department's review of the exception and exemptions in the *Equal Opportunity Act 1995*.

I am pleased to see that the introduction of the Charter of Rights and Responsibilities in Victoria is prompting reviews such as yours. It is one of the benefits of having human rights principles formally recognised. It remains to be seen whether or not Western Australia supports and adopts a similar charter or equivalent instrument.

I have read through the Consultation Paper and wish only to comment in relation to some of the exceptions, in the context of the existing exceptions in the *WA Equal Opportunity Act 1984* ("the WA Act"). My responses below correspond to the particular section discussed.

EXCEPTIONS IN EMPLOYMENT-RELATED AREAS

Section 21 – small business

Sections 30, 31 – discrimination by firms of more than five partners

A similar exception exists in the WA Act across all grounds in relationship to partnerships of less than six partners, but not small businesses.

My view is that no employer or partnership should be excused from the operation of discrimination laws solely on the basis of the number of employees or partners. The cost to small business of compliance with discrimination laws is a factor to be considered but should not outweigh the wider beneficial purpose behind such laws.

EXCEPTIONS TO DISCRIMINATION IN EDUCATION

Section 40 – standards of dress and behaviour

Whilst I do not see any difficulty with educational authorities setting reasonable standards of dress and behaviour, sub-section (2) of this exception appears to surrender the setting of such standards in schools to the views of the school community.

If the views of the school community are in themselves unreasonable and discriminatory, and the school administration in turn adopts those views, there would appear to be little that can be done about it.

I do not consider this to be a balanced approach that is consistent with the Charter.

EXCEPTIONS TO DISCRIMINATION IN THE PROVISION OF GOODS & SERVICES

Section 43 – insurance

The wording of this section is similar to equivalent exceptions in equal opportunity legislation in other jurisdictions. The WA Act, however, does not provide an exception for insurance on the grounds of race, family responsibility, family status, political or religious conviction, or sexual orientation.

Whilst section 43 may not be inconsistent with the Charter, due to the requirement to provide reasonable data and other information, it is unlikely that the exception could ever reasonably be raised in respect to grounds such as a person's political conviction, industrial activity, or religious belief. In my view, this exception should be reviewed.

Section 44 – credit providers

The WA Act provides no exceptions to credit providers or banks. Although credit transactions are usually subject to Commonwealth law in any event, I do not support the inclusion of this exception in equal opportunity legislation.

GENERAL EXCEPTIONS

Section 72 & 73 – superannuation funds

The WA Act confines exceptions in relation to superannuation funds to the grounds of gender history, impairment, and age. The exception that previously applied to the ground of sex has been repealed. My comments in relation to section 43, above, are apposite.

Section 76 – religious schools

Section 77 – religious beliefs or principles

The WA Act contains an equivalent exception to section 76, in relation to education or training provided by religious schools, however, it does not extend to the grounds of race, impairment, or age. It is difficult to see how discrimination by a religious school against persons with those attributes could, or should, be justified on religious grounds. In my view, this exception should be reviewed.

Further, it has been recommended in the recent review of the WA Act, released in May 2007, that the exception in relation to employment of staff at religious education institutions be confined to those employees or contract workers with teaching or pastoral responsibilities only.


There is no equivalent to section 77 in the WA Act. It appears to be a very broad exception, the only qualification being that the discriminator's religious beliefs or principles must be genuine. My comments in relation to section 76 are as relevant to section 77.

STATUTORY AUTHORITY EXCEPTION

I agree with the Victorian Government's proposal to repeal this exception, in line with the recommendation of the Scrutiny of Acts and Regulations Committee. I would add, however, that the equivalent provision in the WA Act was repealed after a sunset period of two years, not three.

I consider a two-year sunset period to be adequate and desirable for this purpose.

Yours sincerely



Yvonne Henderson
COMMISSIONER FOR EQUAL OPPORTUNITY

28 APR 2008