



**The ALSO Foundation**

ACN 006 130 650 ABN 18 006 130 650

18 April 2007

**By email: [civil.law@justice.vic.gov.au](mailto:civil.law@justice.vic.gov.au)**

The Exceptions Review  
C/- Department of Justice  
Level 24, 121 Exhibition Street  
Melbourne VIC 3000

Dear Sir/Madam

### **The Exceptions Review**

The ALSO Foundation welcomes the opportunity to provide a submission to the Department of Justice on its review of the exceptions and exemptions (the Exceptions Review) in the Equal Opportunity Act 1995 (Vic) (the Act).

We note that the Exceptions Review's aim is to determine the Act's compatibility with the *Charter of Human Rights and Responsibilities 2006 (Vic)* (the **Charter**).

The ALSO Foundation strongly welcomes this objective. The Charter recognises discrimination as a broad and structural phenomenon and seeks to enshrine the human right to equality. While the Charter does import the definition of discrimination from the Act, the Charter also views discrimination as just one way in which the human right to equality is breached.

### **The ALSO Foundation**

The ALSO Foundation is Victoria's premier Gay, Lesbian, Bi-sexual, Transgender, Intersex & Queer (GLBTIQ) membership organization and boasts over 700 individual, community and commercial members. ALSO produces both the universally recognised and sought after Directory and the ALSORTS Sexuality Guide that will this year be distributed state-wide. As such ALSO offer the first point of contact for numerous individuals and groups.

The Foundation develops and delivers a range of community development and service delivery projects each year. In the last year these have included the Same Sex Domestic Violence project, the Go for Your Life GLBT(IQ) Seniors recreation project, the ALSORTs Youth Transitional Housing project and the Young Women's Sexual Health project.



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The Foundation has a range of strong operational partnerships with organizations such as the AIDS Trust of Australia, VAC and PLWHA, The Victorian Gay and Lesbian Switch Board, Queer Film Festival, The Anti Violence Project, The Victorian Gay and Lesbian Rights Lobby, Matrix and Vintage Men, Rainbow Families Council, the Queer Disability Coalition and Australian Gay Multicultural Council.

In addition the Foundation auspices 'Minus 18' a forum for Same Sex Attracted Young people which regularly attracts over 500 young people to events and has over 100 members on it's data base, the ALSO Rural Network which has representation from across Victoria. We also provide front of house, office and event support to GLOBE the primary GLBTIQ community business network in Melbourne.

### Exceptions

The ALSO Foundation believes most strongly that the Act requires reform both to give best effect to the stated intention and to eliminate opportunity to undermine the scope and rigour of its application.

Since we believe that many of the exceptions in the Act mean that the Act is not consistent with section 8 of the Charter. Section 8 provides:

#### Recognition and equality before the law

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.
- (4) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

In particular, we are concerned that many of the exceptions in the Act mean that subsection 8(3) of the Charter cannot be achieved. That is, the exceptions prevent the right to equal and effective protection against discrimination.

As stated above, the Charter defines discrimination with reference to Act. Thus, for the purpose of the Charter, discrimination is less favourable treatment on the grounds of a 'protected attribute', or the imposition of an unreasonable requirement condition or practice with which people with a particular attribute may have difficulty complying. Protected attributes include sex, marital status, sexual orientation, gender identity and lawful sexual activity.



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Our collective experience indicates that whilst there are unquestionably instances in which there are legitimate claims for exception, at present these opportunities are cast far too widely and allow the possibility of retention of entrenched discriminatory bias in area that significantly impact the day to day lives of individuals. As well as the immediate impact on individuals this has an overall impact on community perception of the strength of the Act generally. Undermining the ongoing effort for systemic change.

For the LGBTIQ community in particular the most notable of these must be that of *religious belief or principle* as identified in sections 75, section 76 and section 77 the provisions of which are simply too broad and clearly contrary to the intention of the Act.

Despite the fact that the law affirms that in a secular society it is simply unacceptable to perpetuate discrimination against those with particular attributes, the historical context means that religiously based discrimination remains a persistent and pervasive view of many religious organisations and groups. Many of these groups adopt practices that suggest that the exceptions are interpreted as a 'license to discriminate'. This has direct and harmful consequences in situations as broad as health care settings, schools, foster and substitute care as well as in access to a range of social welfare services and organisations.

This is particularly problematic as it significantly impacts the young and people in vulnerable circumstances. Young people are often uncertain of the nature and status of their sexuality and or gender identity and may be put at risk therefore of not only unfavourable but shaming, humiliating and intimidatory behaviour - perpetrated by personnel in institutional settings. This has direct mental health and well being consequences exposing future generations to a swath of related health risks.

Of particular concern is the exception for schools which provide for a school to deny employment to LGBTIQ teachers. In addition to the first person impact - this has the added consequence of denying young people as students the role models required to develop healthy self esteem and aspiration. This is a particularly insidious way in which an institutional setting can prosecute discriminatory beliefs and biases.

Further, many individuals and families in need of vital social support opportunities and access to services may be denied because of their sexuality and gender identity. For example access to information relating to health, fertility, pre natal care, family support and parenting skills. Adults may be denied employment and excluded from opportunities to volunteer or contribute to communities within church based organisations despite the fact that these are providing primarily secular services.

It should be noted this is by no means true of all religious communities and organisations however where it does occur it is disgracefully harsh and often perpetrated at times of stress and vulnerability.



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### **Statutory authority exception**

The Also Foundation strongly agrees with the Scrutiny of Acts and Regulations Committee (**SARC**) report which notes that section 69 places the Act “at the base of the legislative hierarchy”. We also agree with the SARC recommendation to abolish the statutory authority exception, and to adopt a three-year sunset process to allow for the evaluation and audit of existing legislation to assess whether it is contrary to the Equal Opportunity Act.

We believe this is vitally important because there is some evidence that the statutory authority exception is being utilised to perpetuate discriminatory practises against attributes clearly within scope of the Act. In particular, against members of the Transgender community, in health, correctional and other settings.

In areas where community attitudes are slow to change then it is particularly important that there be effective leadership in adherence to the law by public authorities, not the contrary.

### **VCAT exemption process**

There are clearly significant flaws in the current exemption process and it is vitally important that there be an elaboration of the process to ensure the individual and systemic impacts be properly canvassed.

### **VGLRL submission**

The ALSO foundation notes that The Victorian Gay & Lesbian Rights Lobby has a stated position that

The VGLRL believes that LGBTI Victorians should be free from discrimination on the grounds of sexual orientation and gender identity. The Victorian Government should modernise the Equal Opportunity Act and ensure that any inappropriate exceptions and exemptions under the Act, including religious exemptions, are eliminated.

In support of which the VGLRL has provided a detailed submission to the **Exceptions Review** The ALSO Foundation as a member of the VGLRL endorse this submission and the included recommendations.

Yours sincerely

**Lyn Morgain**  
CEO The ALSO Foundation