

# **THE EXCEPTIONS REVIEW- A REVIEW OF THE EXCEPTIONS TO AND EXEMPTIONS FROM THE *EQUAL OPPORTUNITY ACT 1995 (VIC)***

## **SUBMISSION BY THE SIKH INTERFAITH COUNCIL OF VICTORIA INC.**

### **INTRODUCTION**

As Sikhs we have concerns of some exemptions included in the *Equal Opportunity Act 1995 (Vic)* (“the Act”). These concerns are mainly from the aspect of religious discrimination focused on the Sikh identity.

### **ABOUT US**

The Sikh Interfaith Council of Victoria Inc. (“SICV”) is an incorporated organization with a vision to create greater awareness and understanding of Sikhs and Sikhism in Victoria. SICV promotes and works for dialogue, respect and understanding among all religions. Its objectives include:

1. sharing information about the Sikh faith with the wider Victorian community;
2. making representations on matters affecting the Sikh faith.;
3. contributing Sikh perspectives to issues of common human concern; and
4. promoting a culture of peace and harmony within multicultural Victoria.

## **GENERAL QUESTIONS**

### **DO THE EXCEPTIONS NEED TO BE REFORMED TO IMPROVE EQUALITY OF OPPORTUNITY AND THE ELIMINATION OF DISCRIMINATION IN VICTORIA?**

Yes.

Sikhs are law abiding citizens and residents. Their identity is very important to them. They should have the freedom to practice their faith without any hindrance

To Sikhs, discrimination in any form is not acceptable. Sikhism does not recognize racial, class, or other earthly distinctions. Sikhism recognizes complete equality between women and men in all spheres of life. Sikhs also recognize that the disadvantaged must be cared for and not be discriminated against to enable their participation in all aspects of life. In achieving this ideal, we acknowledge that laws may be made and that in some cases exceptions and exemptions are necessary for the good of all.

We are however of the opinion that reforming the exceptions in the Act can be of benefit in providing tolerance and understanding and create harmonious community relations and social cohesion.

We agree with the statement of Commission Chief Executive Officer Dr. Helen Szoke that “creating equal opportunity does not mean providing identical treatment for every person and every group but that they [sometimes] be treated differently in order to generate an equal and just outcome.”

### **WHAT ARE THE SOCIAL AND ECONOMIC COSTS AND BENEFITS INVOLVED IN REFORMING THE EXCEPTIONS IN THE ACT TO ELIMINATE DISCRIMINATION TO THE GREATEST POSSIBLE EXTENT?**

The main benefits of reforming the exceptions include:

1. greater tolerance of others;
2. greater understanding of others (including by encouraging dialogue and increasing education).

We do not believe there are significant costs in reforming the exceptions. There may be some costs involved in changing our current practices, but we believe the benefits far outweigh any costs.

## **EXCEPTIONS AND EXEMPTIONS**

### **ARE THE EXCEPTIONS REASONABLE LIMITATIONS ON THE RIGHT TO EQUALITY? IF SO, HOW CAN THEY BE JUSTIFIED?**

No. The exceptions are too broad and provide many with a scapegoat to justify their discrimination. We do acknowledge that sometimes exceptions are necessary, but these should give greater consideration to:

1. alternative ways of avoiding a problem;
2. the question of whether any other person will be offended or violated if the discrimination is prohibited; and
3. generally be assessed on a case by case basis.

### **SHOULD ANY EXCEPTIONS BE REPEALED? IF SO, WHICH EXCEPTIONS AND WHY?**

We believe it is better to amend rather than repeal exceptions, because there may still be some circumstances where the exceptions are necessary or appropriate.

### **SHOULD ANY EXCEPTIONS BE AMENDED? IF SO, WHICH EXCEPTIONS AND WHY?**

#### **SECTION 24**

We agree that employers should be entitled to set reasonable standards of dress, appearance and behaviour for their employees. However any review of section 24, should consider the particular requirements of the Sikh community.

For example, Sikh men may have long hair and beards and to manage that neatly they may wear a turban or a Patka. In addition a Sikh may wear a 'kara' a steel bangle and the initiated person will wear a kirpan (a small sheathed sword tucked under the clothing). These should be permitted while they can still comply with the other dress requirements of the organization, provided the person remains neat and tidy.

Other examples we have encountered include:

1. a Sikh employee was asked to sign a statement under duress that she will not wear her kirpan to work. She was threatened that if seen again with the kirpan she would be dismissed from her job immediately. Her kirpan was neatly tucked away under her clothing and posed no genuine threat to the safety or welfare of any other person;
2. during the Commonwealth Games 2006 Victoria Police relied on the Major Events (Crowd Management) Act 2003 and barred initiated Sikhs from entry into the games venues for wearing the kirpan and also the Sikh religious chaplain was not permitted to enter the Games Village to provide chaplaincy services for the same reason.

## SECTION 40

We accept that a school authority may set reasonable standards of dress, appearance and behaviour for its students. We define reasonable standards as taking into account the views of the wider school community.

One aspect that specifically impacts on Sikh's is that of dress standards.

Initiated Sikhs in particular, who have to abide by their vows of initiation may encounter problems relating to dress standards. Some examples of identity which may be a problem are:

1. Sikhs growing their hair long;
2. males not shaving off their facial hair;
3. wearing the "kara" or steel bangle, which is considered by schools simply to be "jewellery";
4. wearing the "kirpan" or sheathed sword.

Careful consideration should be given to instances where exceptions and exemptions may impact negatively on them.

We submit that Sikhs wearing these items is not inconsistent with what must be a concern of schools, namely that their students appear neat and tidy. Sikhs take pride in their appearance and presentation and the neatness and tidiness of Sikhs wearing these items is generally at least as good as the neatness and tidiness of other students. Further, we cannot see that a Sikh dressing in this way would cause offence to any other person.

Schools should accommodate the religious beliefs of their students and allow for flexibility and permit them to wear where applicable their own religious symbols and religious articles of faith. .

This flexibility has the advantage of enabling the cross-cultural education within the School Community- the students, teachers, parents, and School Councils. It will undoubtedly promote tolerance and understanding and help build a harmonious society.

Here are some examples of circumstances we have been involved in:

1. a Sikh student in a high school had decided that he wanted to strictly adhere to his religious requirements by not cutting his hair and grooming a beard. The School questioned this practice. A Sikh religious authority intervened and provided a letter for the student's beliefs and the matter was resolved;
2. a Sikh student in a primary school wanted to adhere to his religious practice and no longer wanted to cut his hair. The school understood the circumstances but wanted the boy to be accepted by his peers with his new look of growing long hair. The parents arranged a Sikh religious authority to make a presentation to the School on Sikhism and the matter was resolved;
3. a family underwent the Sikh initiation ceremony including their son who was in High school. Since he had a kirpan a discussion between the school principal and the Sikh religious authority resolved the issue and the boy was permitted to wear his kirpan to school;
4. recently in Queensland a Sikh student was enrolled in a Christian school but was informed that he could not wear the turban to school as part of the school uniform.

5. On several occasions Sikh children have been asked to explain why the kara (steel bangle) should be permitted.

The above are examples of cases which have been resolved amicably through discussion. However we are apprehensive, that not all school communities will adopt this approach, and may wish to strictly enforce their requirements regardless of the child's' religious belief. Particularly if there is a large homogenous majority it may impose its views on a minority. Minorities should be protected. Sikhism is a minority religion and students may be adversely affected by the majority view. They may be prevented from complying with their religious beliefs and activity. Standards should be consistent with human rights standards.

## SECTION 80

We have a concern that there is a growing community perception that the practice of Sikhism may pose some type of threat to health and safety.

The Sikh religion was founded in 1469. It is a peaceful religion. Sikh articles of faith have withstood the test of time and these articles do not pose any threat to any individual or community or society at large. The kirpan that is often questioned is never used to harm, threaten, or commit a crime. It is not permitted for any unlawful activity.

Another example we encountered was when a Sikh truck driver was not able to unload the contents of his truck at a construction site because he was wearing a turban and not a helmet. He was not permitted to drive in to the site.

The non-wearing of a helmet, but having a turban does not pose harm to others. In wearing one (helmet) it goes against the fundamental principles of the devout follower of the faith.

## **IS THE VCAT EXEMPTION PROCESS APPROPRIATE? HOW COULD IT BE IMPROVED?**

We have not been involved in the VCAT exemption process and therefore cannot comment on how it works in practice. We do however believe that as we have recommended the current exemptions to be limited or removed, that some form of exemption process be available.

We generally consider the criteria applied by VCAT in granting exemptions fair and reasonable.

## **STATUTORY AUTHORITY EXEMPTION**

### **SHOULD THE STATUTORY AUTHORITY EXCEPTION (SECTION 69 OF THE EQUAL OPPORTUNITY ACT 1995) BE REPEALED? IF NOT, WHY NOT?**

Yes. The current exception is too broad and gives precedence to other statutes over the Act. We believe other laws that result in discrimination should not be relied upon.

**ARE THERE ANY EXAMPLES OF ACTS AND ENACTMENTS THAT CANNOT BE RECONCILED WITH THE ACT?**

Religious rights are enshrined in the Australian Federal Constitution. Section 116 which states: “*The Commonwealth shall not make any law ...for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion...*”

**IS A MECHANISM TO PRESCRIBE CERTAIN ACTS UNDER THE *EQUAL OPPORTUNITY ACT 1995* NECESSARY?**

It is impossible to predict all scenarios in which discrimination may be an issue, so we generally support a system that allows for certain acts to be prescribed provided this is done on a case by case basis and in line with defined objectives and criteria.

**IS A THREE YEAR SUNSET PERIOD FOR THE REPEAL OF THE STATUTORY AUTHORITY EXCEPTION APPROPRIATE? IF NOT, WHY NOT?**

We believe a three year period is too long because of the harm that can still be done to individuals during that time. We suggest instead that a policy be implemented immediately whereby the Act takes precedence over other laws except where absolutely necessary. Government departments can then review current laws, policies and procedures to bring them in line with these changes.