

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 4 August 2009

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Witness

Mr G. Brody, treasurer, ALSO Foundation.

The CHAIR — The next witness will be Gerard Brody from the Alternative Life Styles Organisation Foundation. Thank you for coming to the public hearing today. I invite you now to make a brief statement to the committee on the relevant issues that you consider are important to your organisation concerning the inquiry, and it will be followed up with some questions from the committee.

Mr BRODY — Thank you. Firstly, our organisation prefers to be known these days by its acronym ALSO rather than that entire moniker. The ALSO Foundation is Victoria's oldest gay, lesbian, bisexual, transgender, intersex and queer membership organisation. It was established in 1981. We produce various services and products for the queer community in Victoria, including our well recognised directory — our 'all sorts sexuality guide'.

We are also a contact point for numerous individuals and groups in the community, and have helped to establish a range of organisations in the Victorian community.

I am here appearing on behalf of ALSO. I must apologise for our CEO, Lyn Morgain, and our president, Jason Rostant, who are overseas at the moment. We are supportive of the proposed reforms to the Equal Opportunity Act to ensure that that act gives best effect to its stated intention and to eliminate the opportunity to undermine its scope. We are very supportive of the Charter of Human Rights and Responsibilities, and in particular section 8 of that act which deals with non-discrimination and equality before the law.

We are concerned that many of the exceptions of the act mean that that provision of the charter cannot be achieved — that is, that exceptions prevent the right to equal and effective protection against discrimination. Our experience indicates that there are instances in which there are legitimate claims for exception, and that particularly relates to special measures, but presently the opportunities and exceptions are cast way too widely and allow the possibility of retention of entrenched discrimination, particularly that will impact on the day-to-day life of many individuals.

For the LGBTIQ community, the sections about which we are most concerned relate to the religious belief or principle sections in sections 75, 76 and 77 of the act, which we believe are too broad and clearly contrary to the intention of the act. The law affirms that in a secular society it is simply unacceptable to perpetuate discrimination against those with particular attributes, but the historical context means that religiously-based discrimination remains a problem. Many groups — by no means all, but some — do adopt practices that suggest that exceptions are interpreted as a licence to discriminate.

This has direct and harmful consequences in situations as broad as health-care settings, schools, foster and substitute care, as well as access to a range of social welfare services and organisations, as many of these services are now contracted out to religious organisations.

We see this as particularly problematic as it significantly impacts on young people. They are often uncertain of the nature and status of their sexuality and/or gender identity, and may be put at risk not only in unfavourable, but shaming, humiliating and intimidatory behaviour. This can be perpetuated by institutional settings that allow discrimination.

Of particular concern is the exception to schools which provide for a school to deny employment to eligible LGBTIQ teachers. In addition to the first person impact, this has an added consequence of denying young people as students the role models required to develop healthy self-esteem and aspiration. Many individuals and families are in need of vital social support opportunities, and access to services may be denied from those because of their sexuality or 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 they are providing primarily secular services. I emphasise that it is by no means true of all religious communities and organisations; however, where it does occur, it is often harsh and perpetuated at times of stress and vulnerability.

Just a couple of final points: we were very supportive of this committee's previous report around section 69 of the Equal Opportunity Act and its note that it places that act at the base of the legislative hierarchy in that this act was subject to any other statutory authority exception. We think it is vital that that section be removed, and a new way be developed to address where there might be special measures to promote positive discrimination.

We also think there are some flaws in the current exemption process at VCAT, and it is vitally important that there be elaboration on the processes to ensure that individual and systemic impacts be properly canvassed at those hearings. Thankyou.

The CHAIR — Gerard, thanks for that. Before my colleagues pick it up, I will pick it up first: you talked a bit about the issue of religiously-based discrimination and issues about where it occurs, and particularly its impact on young people. Have you got some examples or case studies, things that you can explain in terms of how it really affects young people or teachers, and just elaborate on that bit.

Mr BRODY — The ALSO Foundation regularly gets telephone calls from people working in educational settings or in other community services, often seeking just a discussion point, often around strategies about how to maintain ‘in the closet’ in their working life because that is what they feel they have to do to maintain their job. They might not be aware of the ins and outs, and discrimination law, but they are aware that there are some sort of exceptions that might apply because they work in a religious-based organisation, and they are often seeking some guidance about how they can deal with that.

When it comes to young people the ALSO Foundation also auspices Minus18 which is a forum for same-sex attracted young people. It regularly attracts over 500 young people to our events. So our experience in that is that, as I explained before, often the young people that are a bit uneasy in their sexuality, they are coming to terms with it and are really looking for positive role models to affirm their feelings and their life choices.

We are concerned that some institutional settings that, in essence, silence who they are, has had negative impacts on their wellbeing.

Mr SMITH — Can I expand on that: you say the absence of a homosexual teacher would have a negative impact on a young child because they would not see the role model. There would be many state schools that would not have a homosexual teacher. Are you saying that those students at those schools are also being denied? I get the impression that you are almost saying there should be a homosexual teacher in every school in order to give a good role model.

Mr BRODY — With respect, I do not think that is what I am saying. I am saying that we should encourage educational settings that have a diverse range of people employed so that young people are able to benefit from a diverse range of experience and as long as people are respecting and promote the student’s wellbeing and dignity, then it really does not matter what their sexuality or religious belief is.

Mrs PEULICH — If it is directly contrary to the teachings of that particular organisation?

Mr BRODY — I guess we think that education is, in essence, a fundamental right — that people should get an education and that that contributes to our diverse secular society. We do not think that organisations should be able to discriminate on the basis of religion just because that is their educational basis.

The CHAIR — I have a question, because we are dealing with religious schools and it is a level of commitment that a GLBTI teacher can make to the school, so where they are in a situation where they are asked to observe religious principles and requirements in their job, how compatible do you think that is with the idea of getting rid of the exemption altogether? I suppose it is trying to deal with the issue of the teaching sphere.

Mr BRODY — I guess that we do not see that as a need to get rid of the exemption altogether. What we are saying is that the discrimination should be, if there is a requirement that that aspect of the person’s work has to be conducted in accordance to the tenets, beliefs, teachings of a particular religious organisation, that should really be the onus of the educational institution to explain that, and see that this particular employee cannot abide by those beliefs. I think just on the basis of their sexuality is too widely cast.

Mrs PEULICH — But it is not just on the basis of sexuality, though. For example, say an Islamic college may have great difficulty in hiring people who did not uphold perhaps their particular religious beliefs, so it is not really a discrimination against any single group in society: it is about the freedom of religion provided that it complies with the broad laws of the state, and I would have also held the view that people are free to choose their own lives and how they live them.

I would have thought the least amount of intrusion of government that is possible. I do not want governments to be looking into other people's bedrooms, nor mine, but as a former schoolteacher, let me say there were very few — I could not think of any — occasions where I would be talking about my private life, whether it was sexual, irrespective of the gender.

Mr BRODY — I really agree with you on that point, that we do not see that someone's sexuality is relevant to their work in an educational setting, so why should that even be inquired into.

The concern about the way the exception is drafted currently is that it allows that to be perhaps found out by accident and then that person is targeted.

Mrs PEULICH — But it is the reversing of the onus of proof and the requirement for organisations such as religious and faith schools to justify their positions, rather than the other way round.

I would have thought, for me, having lived and having been born in a Communist regime, that a broad framework in which we can all live, exist, with the least amount of intrusion of the state, especially in things to do with religion, would be an effective way for a pluralist democracy to coexist or to exist. It does not mean that all organisations need to be a replica of each other, but the pluralism is still there.

Mr BRODY — I do not see those two things as opposite. If we had that onus being on the educational institution to justify its practice, then if that sits with the broader practice of having a plural democratic society, then I just do not see those two things in opposition.

Mrs PEULICH — But you want them struck out and for people to have to justify where or where not those decisions which have been hitherto their purview, to do so to a tribunal that is not governed by precedent or some sort of less democratic, open, transparent mechanism?

Mr BRODY — At the moment I guess that decision has been given solely to the private institution. You can have ramifications on that individual employee's life. I think there should be fair practices and procedures to enable that person to have a complaint around discrimination if they believe that is happening.

Mrs PEULICH — What I am saying is just say they were working in an Islamic college and these exemptions were removed, or just say in a mosque, or maybe they are a cleaner on the grounds. I might choose to enter that mosque while exposing my limbs. Whilst that might accommodate my needs, because it might be a damned hot day, it is really not being observant of their practices. So why should there be this intrusion of the state on things that have really been the legitimate purview of those organisations and the basis of our religious freedoms?

Mr BRODY — I guess I would say that those organisations are allowed to seek guidance as to how they expect their teachers to operate. I am not suggesting any sort of staff to perform their job. That is not what I am suggesting they should not be able to do. What I am suggesting is that they should not be able to discriminate just because someone is of a particular sexual orientation or gender identity.

Mr SMITH — Even if it is at odds with their beliefs?

Mr BRODY — That is right, if the actual performance of their job is not being impacted by their sexual orientation or gender identity.

Mr SMITH — It could be. But you are saying that if it was, the school would have to justify that?

Mr BRODY — That is right.

Mr SMITH — And you were saying earlier that the school's guidelines or the way they manage the school would have ramifications against the individual. By employing the individual, you would agree that that would have ramifications on the school community?

Mr BRODY — Say that again, sorry.

Mr SMITH — You said that if the school's practices meant that it would prevent a gay man, for instance, from gaining employment, that that would have ramifications against that individual. But you would agree that

by employing that person against that school community's beliefs, that that would have ramifications also? So what you seem to be saying is that we need to put aside the beliefs of a whole range of others for the beliefs of an individual?

Mr BRODY— I do not see how employing a gay man can have ramifications for the school community.

Mr SMITH — If it is against its beliefs, it surely would.

Mr BRODY — But how is that going to impact on the quality of the teaching and the quality of education?

Mr SMITH — Schools clearly think it is going to or they would be allowing it left, right and centre. It is not for me to say, I am just putting it to you that a school community may have a problem with being told by VCAT that it has to employ someone who demonstrates behaviours against its core beliefs. Surely if it is compelled to employ that person against its beliefs, it is going to have some detrimental ramifications to the school community at large.

Mrs PEULICH — The power of the role model I guess is really what we are going to.

Mr BRODY— I guess we would not want to create a system that resulted in disputes between teachers and schools over these sort of things. What we are saying is that if our legislative system sets up for our educational systems to be pluralistic and accepting, that can improve the lives of young people who go to those schools.

The CHAIR — I just wanted to pick up another issue, which is the issue about teachers — gay and lesbian teachers — seeing themselves as being in the closet. I thought that was a really interesting point. It sounds to me that that is what actually happens in practice?

Mr BRODY— Yes.

The CHAIR — And it is only in extreme situations that, I suppose, silence is broken. At that I think you are drawing to our attention that that is actually detrimental to both teachers, the student body and obviously that community. Do you want to just elaborate on that?

Mr BRODY— I think that is right. As I said, our experience is that there are many teachers out there who are seeking assistance and support because they are being aware that they have to be kept in the closet to maintain their position. No other person in that school has to be silent about their experience outside the classroom. We do not see that it is necessarily fair or gives a true representation of our diverse society for them to do so as well.

Mr LANGUILLER — I am trying to reconcile the positions. I am sure that you would appreciate the committee has competing challenges and positions put to us, and I am trying to reconcile the position of the gay and lesbian community. On the one hand, in terms of schools and the experience you put to us the community would have, I asked the question, 'Do you believe there is systemic discrimination?' — I understand your position on that — but on the other hand, when it comes to private clubs, in regard to section 78, I imagine you are asking us that you should be able to have gay and lesbian clubs and be segregated. So I hope you appreciate the challenges for the committee — —

Mr BRODY— Sure.

Mr LANGUILLER — Because we need to discriminate against others in order to give you the right to have your gay and lesbian clubs. On the other hand, when it comes to schools we have got the opposite challenge if you like.

Mr BRODY— I guess we also think that currently section 78 is drafted too broadly. We would prefer that provision to be narrowed so to apply that discrimination is allowed when it is inherently, I guess, linked to the objectives or the purposes of the club, rather than allowing a club to discriminate on any attribute whatsoever. When it comes to something like schools, we see the inherent purposes of schools around education not around some other attribute; therefore the same principle can apply.

Mr SMITH — I think some schools would say that it is not just education but a values base as well.

Mr BRODY— We would agree in that education is a broad concept. We would encourage having broader values in respect of dignity in our education system.

Mrs PEULICH — But parents choose a different alternative. It is a mixed economy of education and parents make often carefully considered choices about where they send their children, because of the values that that particular choice represents. So why should those parents be denied that right just as you have the right to have clubs and gatherings based on your values system? Why should they be denied the right?

Mr BRODY— I think it is a bit simplistic to say that there is free choice in education today.

Mrs PEULICH — There is choice, however.

Mr BRODY — There is choice, but people are often limited by virtue of costs, virtue of location, virtue of a whole range of things that mean that children end up being educated at a particular institution.

The CHAIR — We will have to wind it up there. Gerard, thanks a lot. That was really informative. Thanks for giving up your time and for your organisation's effort in putting together your submission. It is very much appreciated.

Witness withdrew.