

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

Melbourne — 4 August 2009

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Ms S. Goldner, spokesperson, TransGender Victoria.

The CHAIR — Thanks for attending the public hearing. The purpose of these hearings is to report to the Parliament on whether any amendments should be made to the exceptions and exemptions in the Equal Opportunity Act 1995. Anything you say or publish before the committee today is protected by parliamentary privilege. However, once you leave the hearing anything you say or publish outside this room is not so protected. I invite you now to make a brief statement to the committee on the relevant issues that you consider important to your organisation concerning this inquiry. We will subsequently ask a few questions.

Ms GOLDNER — Thank you for the opportunity to speak. I have distributed a further paper to our original submission which expands on some of the points raised. As per the instructions I will obviously not read through it but would ask that if people can quickly digest those points; I would obviously submit that and then take questions as required.

The CHAIR — Sport is a good one to start with. Our paper states that we have not been very well equipped to deal with it because it throws up a whole lot of questions in a series of different sports. One of the issues we are trying to grapple with is the issue of transgender persons and how they would participate in the different sports. Maybe if you could just give us a bit of a feel for that issue. Any concrete examples would be really useful.

Ms GOLDNER — The current difficulty is that, to use the term I have just presented, the gender binary can limit transgender people's participation in sport. That can be even regardless of their birth certificate status because of the inaccurate perceptions that a male-to-female transgender, also known as transwoman, would be tall and muscular and powerful and vice versa. I think the best example of the vice versa of female-to-male transsexual or transgender man is the story quoted there of Will, who wants to play Victorian country league football.

It was, I think, a very helpful thing — and a very courageous thing, I would add — that he put his picture in the paper. It shows that he is not — I am sorry; my football knowledge is out of date — Justin or Simon Madden. He is someone who is relatively short and slight and he is needing to bulk up, yet he just wants to play football. If he does not, he misses out on something he wants to do and he misses out on the benefits of exercise and sport. In that sense, it is very necessary that he is able to play on his merits.

I think that we can start looking at issues like this now. There has been progress. We have ways, surely, of measuring people's bulk and their ability to play sport — their ability to, say, hit a golf ball on their merits. I think it would be far better to have that exception removed so that people can be treated on their merits in every case.

Mr BROOKS — The paper that you have presented today sets out the circumstances if people feel persecuted and suffer oppression and unemployment created by prejudice — sorry, I am paraphrasing here. They need to turn to agencies like job networks, and if they are founded on religious beliefs, they may suffer discrimination again. I was just wondering if you can cite any examples or give us an indication in terms of how much that might be happening, in your perception.

Ms GOLDNER — A 1998 survey of Australian transgender people, a *Transgender Needs Assessment* by Roberta Perkins, found that 20 per cent of transgender people had experienced discrimination from religious ministers or congregations alone. That gives a fair indication of the prevalence, I would think, of discrimination by religious bodies. Given the high prevalence of transgender discrimination, it still means that a significant percentage of our community are suffering that with no advantage really to anyone in the community — the transgender people, society as a whole or the economy.

Mr BROOKS — In terms of not so much ministers of religion or congregations but more the agencies that might have a religious foundation — job networks, welfare organisations?

Ms GOLDNER — We unfortunately do not have specific evidence as to that, so we can only draw reasonably logical conclusions from what we have.

Mr LANGUILLER — I am interested in employment issues, if I may. I think you cite a success story that I would be interested in hearing about, if you care to comment?

Ms GOLDNER — Yes, the examples that I have given there — the situation of Sharon Warfe, whose situation was publicised on Channel 9 news and in one of the women’s magazines was exceptional. To our knowledge Sharon had only very little assistance from transgender organisations. I believe there was one consultant who assisted, and on the way the Metropolitan Fire Brigade handled it, we could only from our honest perspective use the word ‘textbook’.

They communicated well with staff, and this is the critical issue, that once they knew it was going to happen they worked through critical groups of people, said what was going to happen, made sure there were contact points to ask if people had questions.

The other situation that was listed there of the person in the factory in inner Melbourne was very similar. They had groups the week before the person was due to come back as their affirmed gender — with senior management, union delegates, close co-workers, female workers — and it was handled very smoothly. Communication and leadership from the top of an organisation are the critical issues in dealing with those.

It was with a measure of satisfaction when last year I heard of the *Harvard Business Review* article. For a prestigious magazine like that to follow much the same template in their article was just outstanding, because it had been a terrible situation for a long time prior to the addition of the gender identity attribute in 2000. We had situations where people were being raped and being on the receiving end of murder attempts in workplaces just for trying to go to work, so to see this sort of turnaround from where it was almost becoming like you had, I would honestly use the term, ‘one arm behind your back and your eyes shut’ dealing with this was obviously a very welcome move.

Mr BROOKS — Just one final question: in relation to section 27B of the act, which is specifically related to gender identity, do you see any other options for dealing with that particular section of the act rather than repeal of the section?

Ms GOLDNER — The only other possible option, but we would be reluctant to endorse it, is to somehow — to use plain language, and I am not sure how it would be put into legal language, for a person who wants to stay at the same employer and affirm their gender. The way it is written now, it covers the whole, I will say, spectrum of people experiencing gender identity issues, not just those affirming their gender identity in the one workplace, and in that sense that is our reluctance. We just think it might make it even more complex if you start trying to put complexity on complexity for something that really is now beyond its use-by date.

The CHAIR — We have been asking everyone about the issue of private clubs. Has your organisation got any view in terms of the exemption for private clubs?

Ms GOLDNER — We would take the overall view that we would prefer not to have exemptions — sorry, we would prefer people not to try to get an exemption at VCAT. But if it is necessary, it should be proven that it is to protect people from disadvantage, and I would like to use some of the examples that have been cited throughout the media in the last two weeks on this issue on a case-by-case basis.

The situation of Pinkalicious, the club that has gained an exemption from men entering, it would appear according to their reasoning, is to protect people from harassment and violence; therefore that is protecting people from potential disadvantage. That is reasonable. I would also agree that in the way Pinkalicious dealt with it, they were very transparent.

They went to their website and said, ‘Look, we are going to VCAT for an exemption, whereas other organisations such as an organisation called Lesfest in 2003 and the Peel Hotel, from memory, in 2007 did not do that. The situation with Pinkalicious is that they have respected the needs of transgender women and been transparent, and it has saved a lot of fuss.

To give another example which has since been rectified, Hanover Welfare Services for their women-only accommodation went to VCAT. Originally their situation excluded transgender and transsexual women, and we then had to go back to VCAT and mediate and conciliate with them so that the original exemption was changed. One thing we would ask for in all cases is that there must be a way of alerting groups as soon as an exemption on a particular attribute is lodged at VCAT that groups who have an interest can come, because it might save everyone a lot of time and trouble and be far more conciliatory.

There are some other issues, though. We have a problem with the Peel Hotel in that nowhere in its submission does it say that transgender, transsexual, or intersex people — the terms commonly used for people covered by the gender identity attribute — caused any problems. To have an exception granted that limits people without any reason whatsoever or trouble is problematic.

This all contrasts with a situation like with the Melbourne Club. I am not aware of people suffering disadvantage in that situation. A situation where it can be transparent, conciliatory and where there is a proven case of disadvantage to the organisation seeking the exemption for its primary members is our consideration. It would be better to come down to a case-by-case example rather than have blanket rules. It is something that we have given a lot of thought to, and I just do not believe there is a black or white simplistic answer, in contrast to some of the media sensationalism on the issue in the last two weeks.

The CHAIR — I am curious about the Hanover House application for an exemption. Do you have any more details about that?

Ms GOLDNER — Yes. For its East St Kilda women-only service Hanover went to VCAT and got an exemption and did not cover transgender women. Its background was that it was saying it did not want, I will have to use a jargonistic term, cisgender men — ‘cisgender’ meaning those people whose gender identity matches their body at birth; for lack of a better way to put it, it is a way of saying not transgender — applying to that facility, and that is obviously reasonable. It would protect those needing the facility from disadvantage. The situation, though, was that it ignored the gender identity attribute, and its policy was therefore deemed to be detrimental to transgender people who, apart from one service called the ALSORTS housing service, which is for 18-to-25-year-olds, have no specific housing services whatsoever — particularly those transgender women who are yet to or are not having surgery and cannot change their birth certificates.

By meeting with Hanover, through the Victorian Equal Opportunity and Human Rights Commission, we came up with a much better solution. I would also add that since developing policies we are now continually doing presentations with them and have come up with a much more equitable situation. Again, that sort of situation is very much one where we believe an alerting system, so we know where we could submit, would be really helpful and far more positive.

The CHAIR — In terms of the services that are available to transgender women, CASAs, for example, provide relief for assaulted women. Is there any discrimination towards transgender women in those services?

Ms GOLDNER — We are not aware of it. By the same token, we are not aware of what their policy and understanding of the issues is. That is always the concern. If someone rings our service or one of the social and support groups in Victoria, we are reluctant to recommend a service unless we are sure they have that understanding. I honestly do not know what the CASAs services are. That is the honest answer to that question.

The CHAIR — Any other questions? Sally, that was great. Thanks for coming along and for doing the work and making the presentation; it has been really useful. It has obviously been a long day for us, so we are petering out a bit. I would really like to thank you and the other people who have submitted today and who are still here.

Ms GOLDNER — Thank you very much.

The CHAIR — We will close for the day. Thank you to Hansard for all their work today, and to the committee members for being present.

Committee adjourned.