

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

Melbourne — 5 August 2009

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Witnesses

Mr N. Bushnell, member, and
Mr J. Hannagan, member, Melbourne Savage Club.

The CHAIR — The next witnesses are Noel Bushnell and John Hannagan from the Melbourne Savage Club. Thank you for attending this public hearing. The purpose of these hearings is to report to the Parliament 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 would now like to invite you to make a brief statement to the committee on the relevant issues that you consider important to your organisation regarding this inquiry, and that will be followed by a series of questions. Thank you.

Mr BUSHNELL — Thank You, Mr Carli. I have made copies of our initial statement for the members of the committee. I would like to say that our president tenders his greetings but is unable to represent our club here today because he has been seriously ill and is still recovering.

Members of the committee and Chair, it is a serious matter when government seeks to curtail the human rights of citizens. In a democracy government is required to justify why propositions such as those set out in the committee's options paper for this review are indeed necessary. Rightly so. The Parliament of Victoria recognised this moral imperative in enacting section 7 of the Charter of Human Rights and Responsibilities. Limitations on human rights need to be, in the words of the charter, 'demonstrably justified' according to five tests. Furthermore, no entity has the right to impose such limits or to destroy rights.

Parliament's intention is clear: the entity seeking to limit human rights is the one that must demonstrably justify the proposal. Yet here, in reviewing the exceptions to the Equal Opportunity Act granted to private clubs in section 78 of the act, it is proposed to remove private clubs' right to freedom of association, as stated in section 16 of the charter, or alternatively to restrict that right and require the clubs to justify their existence. This violates section 7 of the charter. It is up to those who propose to curtail the private clubs' right to freedom of association to show why this is necessary. It is they who should be called to make such justification before a court or tribunal. The onus is not on the clubs. This is the law.

It is astonishing that people who take not only a moral stand on the law but also on the primacy of human rights should advocate the contrary. The Melbourne Savage Club, along with the other clubs I might add, asserts its right to freedom of association under section 16 of the Victorian charter and as a matter of fundamental human rights. The club opposes any proposal to require private clubs to justify their existence before a court or tribunal. The club sees no reason to change the existing section 78 of the Equal Opportunity Act. The club recognises, however, it may be beneficial to seek greater harmony of similar laws around Australia by aligning section 78 with the Commonwealth Sex Discrimination Act. The Melbourne Savage Club's submission to the committee addresses those issues in detail, and you have our submission.

The CHAIR — Thank you. I would like to know a little more about how the club works, its membership and the importance of the right of association, because the counter argument has essentially been around the issue of the rights of equality by other individuals. It would be useful to have a bit of a sense of your membership, how people join and under what basis, and the importance that your members place on their right of association, which you are right to point out is both in the charter and in international covenants.

Mr HANNAGAN — A few questions. We have about 500 members, and they are a very broad cross-section of the community. Every single walk of life that I can think of that exists in the Victorian community is represented within the membership of our club. I am a relatively new member. I think I have only been there 16 or maybe a few more years — not terribly long. In terms of being asked or invited to join, I knew a few people that were journalists who went to the club, and they invited me. After going there I think more often than I should have as their guest they suggested it would be better if I joined as a member so that I could occasionally return the hospitality.

The qualification for membership was more friendship, discussion and a general opportunity to meet with other members of the community. There are certainly no restrictions that I am aware of in our membership and no criteria other than being like-minded individuals in terms of having an interest in the arts, sport or literature or in general discussion. There are no specific criteria that either exclude or channel membership into the club. It is a very broadbased club, as I say, and membership is really open to all.

The CHAIR — To follow that up, does the membership have the opportunity to change the rules or the criteria if they see fit, over time?

Mr HANNAGAN — Yes, the members have the opportunity, through general meetings or extraordinary general meetings, to look at and amend the constitution of the club — the rules of the club — if they so desire. They have that opportunity. At this stage we do not see any need to change any rules. Certainly, any rules governing admission as a member are not even being considered because they are simply so broad that contemplating changing would in fact destroy the intent of having this very broad basis for membership.

We encourage significant diversity, not only in the make-up of the club but also in its membership so that we have a very broad range of interests and views that are then shared. I think it is a great place where people frequently come away knowing a little more about not only humanity and the way people behave but about other areas of interest that they may not otherwise have been exposed to. It is a very good basis for both friendship and learning.

Mr SMITH — Thanks for coming in. I just want to read a part of your submission to put my question in context, if I may. You have written:

QUOTE NOT SUPPLIED IN TIME FOR VERIFICATION.

Inevitably in a free democratic society viewpoints change and languages alter so that over time law requires a rethink and a realignment. Clearly SARC and the framers of the review believe that such a time has come with s78. The debate for them now is not whether s78 requires change but what changes should be made. Therefore, while the Melbourne Savage Club would prefer option 1 — no change — this is not really an option at all in the eyes of SARC.

I just want to put on the record, and for your comfort, that as a member of SARC, I for one am quite open to your argument about freedom of association. I not sure the same can be said for the Attorney-General, though, in terms of his comments in the media and the comments that he has made that he will make changes to the Equal Opportunity Act regardless of what recommendations SARC makes to him. Is there an argument that could be made that you feel discriminated against and persecuted by his comments?

Mr BUSHNELL — I do not think I would use the word ‘persecuted’ — after all, the Attorney-General is merely performing his duty as he sees it — but certainly discriminated against. I think our right to freedom of association is under attack. I do not quite understand why, given that we are a private club. We very rarely engage in any public discourse at all; I think the last time might have been before World War II when there was a bit of a kerfuffle about an arts foundation.

I suppose there might be some influence in the community through the work of some of our members. The club was founded by artists for promotion of the arts, and we have a very high degree of activity in that area with art displays and contests and poetry readings and stuff like that. Why we and the other clubs who have different activities but nevertheless are equally private should be looked at — I do not want to say ‘attacked’ because that is too strong — in the way we are being looked at and quite unjustifiably, I find difficult to fathom. There must be more important issues to focus on in this world than the doings of a few gents over lunch.

Mr SMITH — Thank you. Perhaps you should lodge a complaint.

Ms PULFORD — My question segues nicely with ‘the doings of a few gents over lunch’. Are women able to attend the Savage Club as guests; and if so, are they able to access all areas of the club?

Mr BUSHNELL — Certainly. After 4.30 p.m. every day members are invited to bring women guests into the club. Many functions that we have in the evening, including club dinners and other sorts of private functions, are mixed; it depends on the function. We had a function at the club last night. I happened to be there for another purpose, and there seemed to be a goodly display of women; I was surprised to walk into one of our bars and find a woman there feeding a baby. I do not say that is a frequent occurrence at the Melbourne Savage Club, but it is not something that we should be surprised by.

Ms PULFORD — So entry is time-limited rather than room or area-limited?

Mr BUSHNELL — Absolutely.

Mr HANNAGAN — There are no limits on access to the club in terms of the rooms; none whatsoever.

Mr BUSHNELL — There is no line drawn on the floor.

Ms PULFORD — Can I ask a further question, and it was a question that was asked of the previous witnesses representing the Lyceum Club. If you were required to go and make a submission before VCAT once every few years about the need for your club to retain its status, would you be reasonably confident about being able to do so?

Mr HANNAGAN — I am struggling to find a basis on which we would be required to do that. I really do not understand what it is that is being contemplated, because I think the general assumption would be somehow that we were creating harm of some sort by maintaining our existing structure and membership process and base. It is very difficult to understand why we would be required, and we would need to be very convinced that there was a genuine requirement or that we were acting outside any of the normal circumstances of society that would require us to be essentially licensed to mix with like-minded people. I find that an extraordinary proposition.

Ms PULFORD — It is less a proposition than a question. If you were required, you would be confident in your ability to make the case about why you should continue to be exempt?

Mr BUSHNELL — If you go to page 9 of our submission you will find some comments on that matter. We should not be required to do so. As I said, it is up to those who seek to curtail our right to make the case. We do not have to make the case for our existence, and we should not have to. We have 115 years of existence behind us, and those who founded the club had no such call to do so, but times change.

Ms PULFORD — Times have changed.

Mr BUSHNELL — However, if you go to page 9 of our submission you will see that we have examined the terms of the second part of option 3. That says, that clubs should demonstrate their exclusiveness is justified by a specific purpose and/or interest. We would find that an almost unsurmountable barrier, because we do not have a specific purpose and/or interest. Our purpose is defined in our constitution extremely broadly. We like to be broad. It is not a little closed group that sits around and generally plots the downfall of society. It is an artists' and art-oriented membership area of discussion, and art and the arts generally are libertarian in outlook.

They have a broad outlook. They like to examine life in all its phases and idiosyncrasies. That is what we do. How you actually define that in terms of option 3 here is, I think, a pretty bizarre happening. Our club, and the other clubs, do not exist for the purpose of excluding women. It is not a men-versus-women issue. The issue is freedom of association.

The CHAIR — In some submissions we have had the argument that the harm is in excluding women from professional networks. I am wondering if you could comment on that.

Mr BUSHNELL — There are no professional networks, especially at the Melbourne Savage Club.

The CHAIR — I am putting it from the submissions.

Mrs PEULICH — Mr Bushnell, you should not feel that the Attorney-General is picking on you.

Mr BUSHNELL — Thank you.

Mrs PEULICH — He is not picking on the Lyceum Club, the Savage Club or the Freemasons or anyone. He is picking on a principle, and the principle is one of freedom of association. Let there be no misconceptions, and do not hang all of your defence on the Charter of Human Rights and Responsibilities, because this government and the Attorney-General routinely breach it. They do so with certificates of exemption, and they do so by justifying in very political and narrow terms the various exemptions that are tabled in Parliament. Could I ask you what the fallback plan is should this government, and this Attorney-General in particular, persist with removal of the exemptions and exceptions? What is your backup plan?

Mr BUSHNELL — We do not have one.

Mrs PEULICH — You should have one.

Mr HANNAGAN — If you suggest that the Victorian charter would be ignored, I presume then that we would move to ignore the Universal Declaration of Human Rights.

Mr JASPER — The information on page 9 is very telling. A strong argument is effectively put forward. You mention the people who become members of the Savage Club. You mention the artists and the art world. I have nothing to do with the arts particularly, but give me an overview of the broad membership of the club. I have visited the club a couple of times over the years I have been in the Parliament, and I would be interested to know just how broad the membership is.

Mr HANNAGAN — You mean where it is drawn from in terms of professions and so forth?

Mr JASPER — Yes.

Mr BUSHNELL — Let me say this: at the Melbourne Savage Club, although I do not think we have any at the moment, but from time to time we have had quite a large number of MPs as members of the club. There seem to be an awful lot of lawyers in the club.

Mrs PEULICH — We have got that problem too.

Mr BROOKS — Both sides of politics?

Mr BUSHNELL — Yes indeed; both sides of politics.

Mr JASPER — That is what I am getting at.

Mr HANNAGAN — We have senior union figures. We have got leading and former leading union figures. We have people from manufacturing, small businesses — lots of small business. As Noel says, there is a very broad representation from the legal fraternity, some companies, journalists.

Mr BUSHNELL — Lots of journalists.

Mr HANNAGAN — Stockbrokers, sportspeople — whether it is football — teachers, a lot of artists — we have obviously a category for artists in which we encourage a broader composition of the club by as many artists as possible. The only distinction we make in our membership is to have a much-reduced entry hurdle in terms of the cost of membership for our artist members. That is to encourage more of those than any other, but I think the legal fraternity might be just a bit ahead of them.

Mr BUSHNELL — The other thing to note on that matter is that people who come to lunch or other functions at the Melbourne Savage Club are basically seeking to escape for an hour or two their own working day, so the discussion and what happens does not revolve around their work. Lots of our members who are otherwise distinguished in their fields are to be found at functions and other places — performing in amateur theatricals or concerts. They like to sing. We have a marvellous grand piano in the place that people like to play. Generally this is a very social and broad event. People do not come to discuss their business at the Savage Club. That would be silly.

The CHAIR — I will have to cut it off there, because we have quite a few other submissions today. Noel Bushnell and John Hannagan, that was terrific. Thanks for putting in the effort to put the submission together and for making your time available. It has been very informative for the committee.

Mr HANNAGAN — A pleasure, thank you.

Mr BUSHNELL — Thank you.

Witnesses withdrew.