

**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 G. S. Gill, chairperson, and  
Mr J. S. Shergill, adviser, Sikh Interfaith Council of Victoria.

**The CHAIR** — Our next witnesses are from the Sikh Interfaith Council of Victoria. I welcome Gurdarshan Singh Gill and Jagdeep Singh Shergill. Thank you for attending these public hearings. 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 concerning the inquiry, and we will follow that up with a few questions.

**Mr GILL** — I thank the honourable members of the committee for the invitation to be here today. Sikhism is one of the major religions in the world. It was founded 540 years ago. Sikhs believe that all religions must be respected and will defend the right of all people to practice their faith. Turban-wearing Sikhs fought alongside the allied forces during the two world wars in Europe. The Sikh people have a strong tradition and culture which shines through in their appearance.

The rights to freedom of religion, practice and adherence to religious observances have been recognised constitutionally, internationally and most importantly by the Victorian Charter of Human Rights and Responsibilities. However, the Charter of Human Rights and Responsibilities has not been adequately ratified into all of Victoria's laws. The Sikh Interfaith Council of Victoria's submission highlights issues with regard to sections 24 and 40 of the Equal Opportunity Act 1995. I will particularly focus on these two sections and elaborate on the background to those issues raised in the submission.

During this short statement I may refer to Sikh articles of faith. For a brief description of these articles please refer to the tendered document entitled 'List of selected Sikh articles of faith'. These articles of faith are mandatory for a Sikh in accordance with their religious code of conduct.

Firstly, I refer the honourable members of the committee to section 24 of the act. Currently the act allows for discrimination by an employer against Sikh employees or prospective employees on the basis of his or her adherence to Sikh religious observances. A Sikh's recognised right to freedom to adhere to religious observances may be seriously hindered.

The current wording of the section may allow for this to occur in the following circumstances: a turban-wearing Sikh being required to wear a helmet for employment in a construction or factory environment; a bearded Sikh being required to shave for employment in a hospitality or factory environment; and a Sikh wearing a Kara being required to remove the Kara for employment in a hospitality or factory environment. Please note that this is not an exhaustive list. Due to the exceptions allowed for under section 24 of the act the full range of employment opportunities is not available to Sikhs who wish to follow their religious observance.

I now refer the honourable members of the committee to section 40 of the act. Currently the act allows for discrimination by a school against a Sikh student, or prospective student, on the basis of his or her adherence to Sikh religious observances. A Sikh's recognised right to freedom to adhere to a religious observance may be seriously hindered. This is due to the current standard for what is reasonable being defined on the basis of the views of the school community.

We respectfully submit to the committee, that the exception allowed for under section 40 of the act should not extend to allowing or sanctioning discrimination on the basis of a person's religion or adherence to a religious observance. All schools, regardless of whether they are state schools or private schools, receive significant funding from public revenue. Public revenue is collected and spent without discrimination as to a person's religion. The standard for what is reasonable should be based on what is accepted by the community as a whole, and that it does not discriminate against the religious beliefs of the individual.

A good indication of what is reasonable and equitable can be found in the Victorian Charter of Human Rights and Responsibilities which recognises a Sikh's right to adhere to a religious observance, which includes the wearing of any Sikh articles of faith. This right is recognised in section 14 of the Charter of Human Rights and Responsibilities Act 2006 of Victoria.

In summary, certain exceptions contained within the Equal Opportunity Act 1995 of Victoria are in need of review. The relevant points have been raised in the Sikh Interfaith Council of Victoria's submission. Further to the submission, issues regarding sections 24 and 40 of the act have been raised.

It is important to remember that the Victorian government has highlighted its support for a multicultural community, which recognises the right of people to believe in and follow their language, religion and culture.

No Sikh or person of any other faith should be placed in a circumstance where they have to choose between their religion and their employment or education. Thank you for your attention. I will be pleased to answer any questions the honourable members of the committee may have. Thank you.

**The CHAIR** — Thank you for your contribution. It is very thoughtful and has opened up a whole area of interest for the committee, which it had not been looking at very closely. The question first off is: has your community had examples of where employers have used section 24 or schools have used section 40 to discriminate against members of your community?

**Mr GILL** — Yes. Section 24 — as I mentioned, there has been the instance of an employee being told, or it was indicated, that he had to have a helmet in a particular area of work in lieu of his turban, and another was told he had to shave to serve in the hospitality industry. Because I wear the kirpan — there are areas the Sikh is not permitted to go in because of security reasons and lose his Sikh article of faith.

**Ms PULFORD** — Thank you very much for joining us today and assisting in our deliberations. Does the Sikh community run its own schools or other social services? Could you provide some detail about that?

**Mr GILL** — The Sikh community is a small community. For the last three decades it has been basically trying to build its resources and be able, first of all, to provide quiet places of worship. In terms of secular education, we have not been able to set up our own schools. We send our children to either state schools, private schools or church schools through other communities. We are currently in that position. It will be a long time in the future before we are able to provide our own schools.

**Mr SHERGILL** — If I have permission to speak through the Chair?

**The CHAIR** — Sure.

**Mr SHERGILL** — I know I am here in an advisory capacity to Mr Gill, but I have a few words to say on that note anyway. The Sikh community and the Punjabi community are very close. The Punjab is a state in India; it is an ethnicity, it is a language. The number of Punjabis in Australia and in Victoria has grown quite quickly in the last five or so years, especially with a lot of international students coming into particularly Melbourne city.

We understand that a lot of them are Sikh and are of Sikh background, as well as being Punjabi. A lot of them are Hindu also; some of them are Muslim, but most of them are Sikh. Before this explosion of migrants coming to Australia the infrastructure of our community was enough to manage the size of the community. Now there is a lot more, and I understand we have been pushed to go further and represent, especially when it comes to advocacy, a bigger community, and for that reason our infrastructure is probably not where it should be as a community. Hopefully we will get there.

A school is something we do not yet have. We do have Punjabi schools, as in Sunday schools that run out of other schools, but again that is sort of different to Sikhism in a way.

**Mrs PEULICH** — They are language based, are they?

**Mr SHERGILL** — Yes. It is a recognised language.

**Mr LANGUILLER** — Thank you, gentlemen, for your submissions. I will share with you an anecdote I shared with the committee yesterday. It is interesting that you mentioned the service industry. A restaurateur in town put to me that he preferred to employ men and women of his background and language because it value added to the brand name of his restaurant. May I say that it is a very successful restaurant. For the record I think it is important that I note there are equally successful restaurants that do not employ necessarily people of the same background; they have done well for themselves as well.

In your experience what practical examples can you submit to the committee of discrimination based on your background and your religious background. I thank you for providing to us this list of Sikh articles of faith. I might confess that I was aware of only two, so you have certainly value added to my knowledge, and I do

appreciate that. What examples are there? Do you appreciate the other argument of that particular restaurateur, which is an example of somebody saying, 'Look, I need to discriminate because of the following reasons.'?

**Mr GILL** — There are restaurants which are managed by Sikhs, but Sikhs are quite non-discriminating; they have employed people from various backgrounds. There has never been a Sikh who employs only a Sikh employee; I would like to say that first of all. When we meet young people who are coming to us, they tend to say they are seeking jobs. Some of them have shaved or cut their hair. They have indicated to us that they have done that so they can get employment in the public sector. That is basically the first matter.

**Mr LANGUILLER** — In the public sector?

**Mr GILL** — I am sorry, in restaurants or in the service industry.

**Mrs PEULICH** — In the private sector?

**Mr LANGUILLER** — The private sector?

**Mr GILL** — In the private sector, yes.

**Mrs PEULICH** — Does that happen in the public sector as well?

**Mr GILL** — I wish to correct that. I meant to say in the restaurants and the private sector.

**Mr SHERGILL** — Can I add to that again, through the chair? I have personally seen, coming from India, that as I travel — I was born here, so when I go there it is interesting; I look very Indian but I have a very Australian accent — what I get is a lot of people who are new arrivals, it is their first time coming to Australia, say, 'So you are wearing a turban. Are you allowed to wear a turban in Australia? I heard you cannot get a job if you are wearing a turban or if you have got your hair'.

A lot of them even come to the point — because the word has got around of, 'Look, you're not going to get a job if you are following your faith' — of choosing between that and cutting their hair, even before they come here. A lot of people who come here want a job on day 1 because it is something they have been told they are going to get, et cetera. It is that pressure. It comes down to that question again: why should anyone be put into the circumstance of having to choose between their religion and their employment, or their religion and their education?

**Mrs PEULICH** — Essentially I do not think many of us disagree. But is that a question of education to strengthen their multicultural understanding, or is it a question of legislative or statutory change? You mentioned earlier that you do not have a Sikh school?

**Mr SHERGILL** — No, we do not.

**Mrs PEULICH** — You would obviously like one, and good on you. If you were running a Sikh school, would you want to be able to — one of the submitters earlier said that by living true to their own religion they are painted by this piece of legislation as discriminators, when in actual fact they do not want to see themselves as discriminators. But in order to protect and promote the basic religious principles of your religion, you would want to be able to choose educators who uphold and understand and can be positive role models for your students.

I would like to elicit from Mr Gill a bit more comment about: do you see that religious organisations and schools are in the act of discriminating? Or do you think that it is something that can be dealt with through education?

**Mr GILL** — In terms of education we are doing all of our best to educate the public, or even various organisations, of Sikhs in general. Education alone is not enough. Because we are a tiny community we cannot reach everybody. So some legislation is required to protect our observances of articles of faith.

In terms of the second thing, we are all for religious schools. In fact, we send our children to faith-based schools of other communities. That is where I come from here on section 40, that sometimes a school, in terms of school policy, says up-front, or later on, subsequently, 'This child will comply with this dress code'. We have

no problem with that. We accept the dress code. Sikh children dress neatly and tidily and will comply with the dress code.

But then they say that when the child is of the age when his beard grows, he has to shave — that is when the problem comes — or he has to remove the turban. We are saying, ‘Okay, we need that protection in the law to say, “Yes, you can have faith-based schools that are non-discriminating and that teach everything”, but that allows the child to observe his own beliefs and observances’. That is all we are asking for.

**Mr JASPER** — Largely I think you have responded to the question I was going to ask. But you referred to sections 24, 40, and 80 of the Equal Opportunity Act. Obviously you would like to see in our report some recommendation for changes, particularly to sections 24 and 40 of the act to comply with what you see as being able to effectively live in Australia?

**Mr GILL** — Yes.

**Mr JASPER** — And protect your religion et cetera?

**Mr GILL** — Yes, thank you. Because we believe, as a previous speaker said before, in the fundamental belief of freedom of religion. We believe that everybody should be able to practise their religion. We all believe in the same, one God, and also in humanity. But because we follow a path, allow us to follow that path. We do not want to discriminate with anybody. We believe in the equality of mankind as well. So we need some legislative protection to say, ‘Okay, Sikhs should be able to keep their faith intact in terms of observances’.

**Mr JASPER** — On a supplementary question, do you see that sections 24 and 40 in particular have been used against you being able to maintain your religion and activities within Australia?

**Mr SHERGILL** — Definitely, yes — and if you look at the wording of the act especially. You can take section 24 first:

... having regard to the nature and circumstance of the employment.

It is quite easy for an employer to argue, ‘You are serving food, you have a long beard — shave’, whereas they could have just said, ‘Tie up your beard. Have a net’. That would be totally acceptable to a Sikh, whereas saying, ‘Shave’, would be quite offensive.

Can I address your attention to section 40(1):

... reasonable standards of dress, appearance and behaviour —

where ‘reasonable’ is defined as against the views of the school community. Why not the views of the general community — if you look at Victoria as a state that very openly accepts diversity, especially when it comes to multicultural and religious diversity?

**Mrs PEULICH** — If I can just comment on that, we are trying to find ways we can accommodate what obviously is an issue to the Sikh community. But if we changed it in the way that you suggest, then we could ostensibly take the right of schools to demand, for example, that children do not wear a single piercing on their face but they could wear multiple, or whatever. Naturally we would like to see ways that your interests and rights should be protected — but without throwing to the wall the rights of other communities, and schools, to impose standards that are a reflection of their school communities’ values. The broader community is not necessarily reflected in the code and the values of a specific school community.

In the same way, just like your school will not be if and when you have an opportunity to set it up, so how can we accommodate your needs without throwing to the wolves the rights of other independent schools or religious schools to impose reasonable restraints?

**Mr GILL** — Our religious beliefs have gone on for the last six centuries. It is a well-established religion, and we have always been accepted throughout the world.

**Mrs PEULICH** — And you should be.

**Mr GILL** — And all we are asking for is basically to respect both these observances — nothing beyond that.

**Mrs PEULICH** — That is right.

**Mr GILL** — And that is why we think that action would be useful.

**The CHAIR** — There is a clue there. You have contributed to this debate. You have actually made a complex area of work even more complex, but I am also familiar, both in Canada and UK, that similar issues have arisen in terms of discrimination against very large Sikh communities, so it is obviously something in terms of human rights that we are familiar with, and obviously it is something we will consider in our deliberations, so thank you very much for your participation today.

**Mrs PEULICH** — I did not know about the five Ks until a couple of weeks ago, so more education is required.

**Mr GILL** — Thank you so much.

**Witnesses withdrew.**