



SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

56th Parliament

Exceptions and Exemptions to the Equal
Opportunity Act 1995
Options Paper

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Scrutiny of Acts and Regulations Committee
Exceptions and Exemptions to the Equal
Opportunity Act 1995
Options Paper
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Functions of the Committee

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 17 of the Parliamentary Committees Act 2003 are —

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly—
 - (i) trespasses unduly upon rights or freedoms;
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
 - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
 - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000;
 - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the Health Records Act 2001;
 - (vi) inappropriately delegates legislative power;
 - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
 - (viii) is incompatible with the human rights set out in the *Charter* of Human Rights and Responsibilities;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
 - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the Constitution Act 1975, or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) if a Bill repeals, alters or varies section 85 of the Constitution Act 1975, whether this is in all the circumstances appropriate and desirable;
 - (iii) if a Bill does not repeal, alter or vary section 85 of the Constitution Act 1975, but where an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent —whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs; (d) the functions conferred on the Committee by the Subordinate Legislation Act 1994;
- (e) the functions conferred on the Committee by the Environment Protection Act 1970;
- (f) the functions conferred on the Committee by the Co-operative Schemes (Administrative Actions) Act 2001;
- (fa) the functions conferred on the Committee by the *Charter* of Human Rights and Responsibilities;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

Terms of Reference

INQUIRY INTO THE EXCEPTIONS AND EXEMPTIONS IN THE EQUAL OPPORTUNITY ACT 1995

- a) The Governor, with the advice of the Executive Council, under section 33 of the Parliamentary Committees Act 2003 requests that the Scrutiny of Acts and Regulations Committee of Parliament (the Committee) inquire into, consider, and report to Parliament on whether any amendments should be made to the exceptions and exemptions in the *Equal Opportunity Act 1995*.
- b) The Committee is requested to provide its final report to Parliament by 30 April 2009.

Victorian Government Gazette, G51, 18 December 2008

Abbreviations

In this paper the following abbreviations are used:

<i>ADA (Cth)</i>	<i>Age Discrimination Act 2004 (Cth)</i>
<i>ADA (NSW)</i>	<i>Anti-Discrimination Act 1977 (NSW)</i>
<i>ADA (NT)</i>	<i>Anti-Discrimination Act 1992 (NT)</i>
<i>ADA (Qld)</i>	<i>Anti-Discrimination Act 1991 (Qld)</i>
<i>ADA (Tas)</i>	<i>Anti-Discrimination Act 1998 (Tas)</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
<i>DA (ACT)</i>	<i>Discrimination Act 1991 (ACT)</i>
<i>DDA (Cth)</i>	<i>Disability Discrimination Act 1992 (Cth)</i>
DOJ	Department of Justice
<i>EO Act (SA)</i>	<i>Equal Opportunity Act 1984 (SA)</i>
<i>EO Act (WA)</i>	<i>Equal Opportunity Act 1984 (WA)</i>
<i>EO Act</i>	<i>Equal Opportunity Act 1995 (Vic)</i>
HRLRC	Human Rights Law Resource Centre
ILO	International Labour Organisation
LIV	Law Institute of Victoria
PILCH	Public Interest Law Clearing House
<i>RDA (Cth)</i>	<i>Racial Discrimination Act 1975 (Cth)</i>
<i>SDA (Cth)</i>	<i>Sex Discrimination Act 1984 (Cth)</i>
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service
VEOHRC	Victorian Equal Opportunity and Human rights Commission

How to make a submission

This Options Paper is published by the Committee to assist persons wishing to make a submission to consider the relevant issues and options and then to make a written submission to the Committee concerning these issues.

If you have made a previous submission to the Department of Justice on these matters, that submission will be considered by the Committee as though it were a submission made directly to the Committee. However, you may make a further submission if you wish.

The Inquiry concerns the provisions in the *Equal Opportunity Act 1995* (the 'Act') providing for exemptions and exceptions to conduct or activity that may otherwise be considered to be prohibited discrimination under the Act. The Committee is asked to make recommendation to government whether any amendments should be made to these provisions.

An electronic version of this paper is also available on the Committee's website. Click on "Recent Updates" on the homepage at – www.parliament.vic.gov.au/sarc

Making a Submission

The Committee invites submissions that are relevant to the terms of reference as outlined and discussed in the paper.

Anyone may make a submission. It is not necessary to have legal or other special qualifications. The Inquiry raises issues of importance to all Victorians and it would be helpful to the Committee in its review of the relevant provisions of the Act to receive the submissions of individuals and organisations.

There is no set format for submissions. Your contribution can take the form of a letter, a short briefing paper or a longer research document that provides details of the relevant issues under review. A person with a disability or impairment may make a submission by audio tape recording or other approved method or through a friend or advocate.

All submissions are treated as public documents unless confidentiality is requested at the time the submission is given to the Committee.

The deadline for submissions is 5.00 pm on Friday 10 July 2009.

The Inquiry Timetable

After written submissions close the Committee will hold public hearings in August to take further evidence. It is anticipated that the Committee will table a Final Report in October or early November 2009.

Address for Comments and Submissions

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Submissions may be mailed to: Carlo Carli MP,
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Chair's Foreword

The Scrutiny of Acts and Regulations Committee is conducting an inquiry into the exceptions and exemptions provisions in the *Equal Opportunity Act 1995* (the 'Act'). The Committee is asked to report to the Parliament as to whether any amendments should be made to this legislation.

The Act provides that direct and indirect discrimination is unlawful if the discrimination is on the basis of one of the attributes provided in section 6 of the Act, including amongst others, discrimination on the basis of age, religious belief or activity, sex, race, sexual orientation, political belief, impairment and marital status.

In Parts 3 and 4 of the Act provision is made for exceptions and exemptions to permit discrimination on the basis of one or more of those attributes.

Exceptions and exemptions in the Act include such matters as –

- Single sex clubs (eg. men's clubs, women-only gymnasiums)
- Religious institutions
- Religious organisations (eg. schools, counselling services)
- Schools for particular groups
- Sporting competition (eg. age range or single sex)
- Employment exceptions (genuine occupational qualification, requirement to make reasonable adjustments for impaired employees, small businesses)

The Options / Discussion paper explains the current provisions and provides examples or options how the law may be reformed by amendments to the Act.

The Committee welcomes submissions in respect to these provisions and hopes the Discussion / Options paper will be of assistance to persons and organisations in formulating these to benefit the inquiry and the recommendations that the Committee will make later in the year.

The Committee wishes to express its gratitude to the inquiry consultant Associate Professor Beth Gaze for her remarkable contribution in preparing comprehensive legal and background advice for the Committee's consideration and to Simon Dinsbergs for his considerable and timely support in the production of this paper.

Carlo Carli MP
Chairperson

May 2009

