

Thursday, 9th July, 2009



Carlo Carli MP,

Chairperson,

Scrutiny of Acts and Regulations Committee

Parliament of Victoria, Melbourne VIC 3000

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And post

Dear Hon Carlo Carli MP,

**INQUIRY INTO EXCEPTIONS AND EXEMPTION TO THE EQUAL
OPPORTUNITY ACT 1995**

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria.

The Tenants Union has made previous submissions to the Gardiner review but unfortunately due to staff shortages did not get the chance to make a submission to the Department of Justice' review on the Exceptions and Exemptions to the *Equal Opportunity Act 1995 (Vic) [EOA]*.

We wish to make comment now as we believe it is an important opportunity for us to highlight real life issues where the exceptions and exemptions in the EOA have created negative experiences for renters.

continued...

1. All exceptions of the *Equal Opportunity Act 1995* (VIC)

On a general note, we believe that all sections of the EOA should have a 'reasonable adjustment' or 'unjustifiable hardship' as per Commonwealth anti-discrimination laws - for example the *Disability Discrimination Act 1992* (Cth) - provision written into it, rather than an automatic exception that does not have a requirement to justify.

2. Rationales and criteria for reviewing the exceptions and exemptions

The TUV agrees with all six points in the Options paper as to the rationales and criteria for reviewing the exceptions and exemptions. In relation to the point made regarding the *Charter of Human Rights and Responsibilities Act 2006* (Vic) [COHARA], we support the alignment of the EOA with the COHARA and believe that the exceptions in the EOA are un-necessary as section 7(2) of the COHARA appropriately deals with limitations on rights - including the EOA. Section 8 of the COHARA does not sit comfortably with the exceptions and exemptions in the EOA and needs to. Section 8(3) becomes farcical as equal and effective protection can not be met if there are automatic exceptions. We support the submissions of the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) as well as the Human Rights Law Resource Centre and PILCH's arguments in relation to the 'reasonable limitations' tests of the COHARA.

Whereas the TUV primarily deals with the *Residential Tenancies Act 1997* (Vic) [RTA], we submit that housing is more than a roof over ones' head but intersects with a myriad of human rights that the EOA deals with as well.

According to the United Nations Committee on Economic, Social and Cultural Rights at a minimum, housing must be affordable, accessible to disadvantaged groups, habitable, culturally appropriate, provide occupants with security of tenure and afford access to appropriate services, materials, facilities and infrastructure, including employment, health care, schools and other social facilities.¹

¹ CESCR, General Comment 4: The Right to Adequate Housing, UN Doc HRI/GEN/1/Rev.5 (2001) 22

This is extremely relevant under the EOA as automatic exceptions and exemptions can prohibit a person from enjoying equal opportunity in the area of housing.

3. Exceptions under Discrimination in providing accommodation.

Section 53. Exception - accommodation unsuitable for children

The SARC Options paper has a quote from the VEOHRC as to:

‘it appears the underlying purpose of this provision is to protect the health, welfare and safety of children in the area of accommodation.... This may be an acceptable limitation in that it is aimed at safety of children...’ (note - partial quote used here)

The TUV does not support the VEOHRC’s reasoning as the Options paper accurately points out:

‘the section permits age discrimination, and could potentially impede access to rental accommodation for families with children or young people seeking their own accommodation.’

This is absolutely correct. The TUV is aware of situations where parents with children have been treated less favourably because they have children, and landlords have attempted to evict them or refuse to let accommodation for no other reason but because they have a family. Real estate agents have told our clients that they can refuse an application from families and not provide any reasons under the EOA.

The RTA does not deal with discriminatory behaviour but for section 30 where tenants with children could be treated differently². This section states that you can not discriminate against tenants with children without making out one of the prescribed requirements to do so which would then be viewed as lawful under the RTA. However, we have had matters in the Residential Tenancies List at the

² S30 http://www.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s30.html

Victorian Civil and Administrative Tribunal (Tribunal) where a Member accepted the landlord could control the amount of people that stayed in the property, irrespective of the rights of the family.

We endorse the Federation of Community legal Centres submission on section 53 EOA, with the insertion of tenancy laws to be applied.

The TUV submits that s 53 EOA should be repealed. It contradicts tenancy law and does not comply with the COHARA. A fair system is one where a limitation is made out and justified, not one where a blanket exception allows discriminatory treatment.

Option 5 with an insertion to refer to tenancy (or appropriate) legislation.

Section 54. Exception - shared accommodation.

We endorse the points on this section made by the Homeless Persons Legal Clinic in relation to a private landlord being able to discriminate against people seeking accommodation.

A rooming house is defined in the Residential Tenancies Act 1997 (VIC) as:³

a building in which there is one or more rooms available for occupancy on payment of rent-

(a) in which the total number of people who may occupy those rooms is not less than 4;

The operator could be living in the property, start to rent out rooms and then be able to discriminate without any prohibition. However, as running a rooming house is a commercial enterprise, it should not have an automatic EOA exception. Considering that rooming house residents are generally people who struggle to find private rental, they may have been blacklisted by largely unregulated tenant databases and may have a host of issues e.g. substance, mental health, low income

³ S3 http://www.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html

earners – this exception is and can be used to prevent much needed housing in a market which is in crisis.

Option 4 – a TUV addition – as shared accommodation can and does include boarding and rooming houses under the definition of the EOA, it should not get a blanket exception.

Section 55. Exception - welfare measures

The TUV is concerned about this exception. This section is open to abuse in its broad application and we are concerned about the effect on accommodation providers. The case of Hanover Welfare Services Ltd (Anti Discrimination Exemption) 2007⁴ is an example of confusion over the gender identity attribute in the EOA and as the Options paper points out, needs ‘greater clarity’. We are aware that unscrupulous landlords can use this section to refuse accommodation.

Section 56. Exception - accommodation for students

We support the Options Paper reasoning that the section is too broad and can result in discriminatory treatment by the service provider to its own students.

Section 57 – Exception – accommodation for commercial sexual services

As lawful sexual activity is permitted under the EOA, it could be a breach of COHARA rights for this exception to remain. We also submit that commercial sexual activity is regulated so this exception is anomalous with other laws that exist. The use of the word ‘or’ creates an issue in the wording of the section as well. The Options Paper states that no changes to the legislation is proposed so no option is suggested by the TUV, but as invited, we submit these comments.

4. Exemptions at the Victorian Civil and Administrative Tribunal (Tribunal)

The Tribunal exemption process should be made more transparent and accessible. The Australian Human Rights Commission (AHRC) has a system for the granting of exemptions to first make the application for an exemption public on their

⁴ Hanover Welfare Services Ltd (Anti Discrimination Exemption) 2007 at <http://www.austlii.edu.au/au/cases/vic/VCAT/2007/640.html>

website for individuals to comment and the AHRC can and does write to key stakeholders to invite direct comment. This consultative process allows the AHRC to promote community engagement before it makes a decision to grant or reject the application. In contrast the Tribunal process is not as open and transparent and sometimes stakeholders find out about the exemption after the application has been granted, rather than before, so as to invite dialogue.

The Residential Tenancies List is the largest list at the Tribunal with over 60,000⁵ applications each year but only a handful of the Members are trained in anti-discrimination law or aware of the EOA when hearing a matter. There is a great need for better training and awareness for Tribunal Members.

5. Section 69 EOA?

In light of the COHARA, s69 should be repealed and a minimal lead time (12 months) be introduced.

If you wish to meet with us or discuss this letter, please contact the writer on 9411-1444 should you require further information.

Yours sincerely,

A handwritten signature in black ink that reads "Alyena M." with a long horizontal stroke underneath.

Alyena Mohummadally

Policy Solicitor

Tenants Union of Victoria

⁵ 2007/2008 Victorian Civil and Administrative Tribunal Annual Report, Civil Divisions: Residential Tenancies List, 22 at [http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/annual_report_vcat/\\$file/2007-08_complete_annual_report.pdf](http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/annual_report_vcat/$file/2007-08_complete_annual_report.pdf) accessed 09 July 2009