

## SA Equal Opportunity laws - before and after

**This document identifies some of the changes to SA equal opportunity laws if the Equal Opportunity (Miscellaneous) Amendment Bill 2006 were to pass both houses of the SA parliament.**

**Abbreviations:** EO Act = Equal Opportunity Act 1984 (ie current law)  
EO Bill = Equal Opportunity (Miscellaneous) Amendment Bill 2006 (ie new bill)

### Some key issues

#### 1. Victimisation

**Before:** Under the EO Act (current law), sections 86(1) - (3) say that it is unlawful to commit an act of "victimisation" - which means treating a person less favourably because he or she has made a complaint of discrimination under the EO Act.

**After:** Under clause 61 of the EO Bill (new legislation), sections 86(1) - (3) would remain, but a new section 86(4) would add an extra meaning of "victimisation" - ie engaging in a public act inciting hatred, serious contempt or severe ridicule for a person or group of persons on the ground of their race, sex, sexuality, marital status, chosen gender (= transsexuality), pregnancy or potential pregnancy, disability, chosen legal profession, age etc - ie any prohibited ground of discrimination under the proposed new SA equal opportunity laws. The EO Bill increases the number of prohibited grounds of discrimination. Clause 61 defines a "public act" as any form of communication with the public or conduct in a public place.

**In effect, the EO Bill broadens the definition of "victimisation" to include "vilification", and uses the same wording as the Victorian Racial and Religious Tolerance Act for vilification.**

Clause 61 of the EO Bill provides exemptions for vilifying acts if they are a fair report or done reasonably and in good faith for academic, artistic, scientific, research or other purposes in the public interest.

However there is no exemption for truth, or for acts done for religious purposes. Comedians could use the "artistic purpose" exemption to severely ridicule a person on the ground of their sex or sexuality, but a priest who explains chapter one of Paul's Letter to the Romans could face legal action.

Moreover there is no objective test for demonstrating that a particular act has "incited hatred" etc. People whose feelings are hurt by a public statement may claim that hatred or contempt or ridicule has been incited against them, even if no one has been harmed, or incited to do harm, or threatened with harm.

The SA Defamation Act 2005 (section 23) says: "It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true."

However neither truth nor substantial truth is a defence against complaints of victimisation under the EO Bill. As the saying goes, "truth hurts" - and under the EO Bill, it would appear that causing hurt by telling the truth is an offence, if the truth relates to a person's or group's sex, marital status, sexuality, pregnancy, chosen gender, etc.

Clause 61 of the EO Bill also requires secondary schools to have a written anti-victimisation policy including procedures to resolve complaints, available to all students. Since "victimisation" also means "vilification", any public comments in Christian secondary schools relating to biblical teaching on marital status (eg condemning unwed cohabitation) or homosexual behaviour could lead to victimisation complaints by students.

#### 2. Discrimination by religious bodies

**Before:** Section 50(1) of the EO Act says religious bodies may discriminate in relation to ordination or appointment of priests, ministers of religion or members of religious orders or their training. Bodies established for religious purposes which conform with the precepts of that religion may also discriminate where necessary to avoid injury to the beliefs of its adherents.

Section 50(2) says that educational or other institutions (eg hospitals or childcare centres) administered according to religious precepts may discriminate on the ground of sexuality.

Thus the current law provides a reasonably broad exemption from anti-discrimination laws for religious bodies and a more restricted exemption for religious schools, hospitals and other institutions.

**After:** Section 50(1) would be unchanged by the EO Bill, so religious bodies could continue to discriminate in relation to the training, ordination or appointment of clergy. However clause 24 of the EO Bill would repeal section 50(2) of the EO Act - so that religious hospitals, childcare centres etc would no longer be allowed to discriminate on the ground of sexuality, even if such discrimination is required by the beliefs of the religion.

Clause 17 of the EO Bill would allow religious schools to discriminate in employing staff only on the grounds of sexuality and chosen gender (transsexuality) - and only if such a policy is advertised to all current and prospective employees, parents and students and lodged with the Commissioner for Equal Opportunity, who may publish it. Religious schools would not be allowed to discriminate against students on any of the prohibited grounds including sexuality.

### **3. Partnerships**

**Before:** Section 33(2) of the EO Act allows discrimination on the ground of sexuality in relation to the promotion or formation of a firm, or the determination of who may be offered a position of partner in a firm if the partnership has fewer than six members.

**After:** Clause 16 of the EO Bill repeals section 33(2) of the EO Act, and clause 60 creates a new section 85Y banning any discrimination in the forming or offering the position of partner in any firm of any size.

### **4. Procedure and powers**

**Before:** Section 93(1) of the EO Act says a complaint may be made by an aggrieved person, an aggrieved person on behalf of himself or any other aggrieved person, or a person approved by the Commissioner as a suitable representative on behalf of a person with an intellectual impairment.

Section 93A(1) of the EO Act says the Equal Opportunity Tribunal may, on application from the Equal Opportunity Commissioner and with the approval of the Minister, refer a matter for investigation by the Commissioner where no complaint has been lodged.

**After:** Clause 66(2) of the EO Bill would add an extra part to section 93(1) - a person who is, in the opinion of the Commissioner for Equal Opportunity, a suitable representative of the aggrieved person or persons. In other words, the Commissioner could choose someone who has not personally been aggrieved on any of the grounds under the Act to make a complaint on behalf of others.

Clause 67 of the EO Bill would allow the Equal Opportunity Commissioner to investigate matters where no complaint has been lodged, without requiring prior approval by the Tribunal and the Attorney-General.

These changes would allow the Commissioner for Equal Opportunity to investigate (say) a church sermon on marriage even though no one had lodged a complaint, and to appoint a homosexual activist lawyer to act as an aggrieved person in the case. The EO Bill would increase the Commissioner's powers.

### **Possible amendments to improve the EO Bill**

- Delete clause 61 - or at the very least, allow the defence of substantial truth and an exemption for acts done for a religious purpose.
- Delete clauses 16, 24, 60, 66(2) and 67.

### **Key people to contact about the EO Bill**

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  3. Opposition Leader Iain Evans: [davenport@parliament.sa.gov.au](mailto:davenport@parliament.sa.gov.au); *fax* 8370 2626; *phone* 8278 5844.
  4. Shadow A-G Mrs Isobel Redmond: [heysen@parliament.sa.gov.au](mailto:heysen@parliament.sa.gov.au); *fax* 8339 6817; *phone* 8339 5077.
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  8. Other members of the Legislative Council - see page 33, Adelaide White Pages phone book.
- Speak to or leave a message for any SA MP via the Parliament House phone number: **8237 9100**.

**For more information, contact Festival of Light Australia research officer Mrs Roslyn Phillips ([rhp@fol.org.au](mailto:rhp@fol.org.au); phone 8223 6383; 4th Floor, 68 Grenfell Street, Adelaide SA 5000).**