

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

Melbourne — 5 August 2009

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Bishop T. Costelloe, chair, Catholic Education Commission of Victoria; and
Mr S. Elder, director, and
Ms N. Bicchieri, deputy director, Catholic Education Office, Melbourne.

The CHAIR — It is great to have our friends from the Catholic Education Office here today. Thank you for attending this public hearing. The purpose of this hearing is to report to the Parliament on whether any amendments should be made to the exceptions and exemptions to 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 the room is not so protected.

I invite you to make a brief statement to the committee on the relevant issues you consider important to your organisation as far as this inquiry is concerned. We will follow that with questions.

Bishop COSTELLOE — Chair and members of the committee, I am very grateful to you for inviting us to attend this public hearing today. The initial remarks I would like to make refer to the written submission that has been provided to this inquiry on behalf of the Catholic Education Commission of Victoria and the directors of Catholic education in the Archdiocese of Melbourne and the dioceses of Ballarat, Sale and Sandhurst.

I am appearing today on behalf of and as chair of the CECV, the Catholic Education Commission of Victoria, together with Mr Stephen Elder, the director of Catholic education in the Archdiocese of Melbourne, and Ms Nancy Bicchieri, who is the deputy director in Melbourne. I would like to outline a number of key points which highlight the main issues we would like to focus on from the submission we have made.

The first point is simply a historical one, and that is just to point out that since the enactment of the Education Act 1872 the Catholic Church has established and maintained an independent system of Catholic schools in Victoria, so it has a long history of involvement in education in this state and a long history, therefore, of a significant contribution to the progress and the development of our society. I would like to point out that this contribution has been made and continues to be made precisely because our schools are Catholic — that is, they are first-rate educational institutions which operate quite specifically within the framework of the Catholic religion — and it is on that basis that we make a significant contribution to the public life of our State.

The second point is related to that, because it refers to the present day, and that is that our education sector, the Catholic education sector, continues to play a major role in education in Victoria. There are 487 Catholic schools in Victoria, and according to the Census conducted in August last year there are just over 185 000 young people in our Catholic schools, which represents just over 22 per cent of all enrolments in the State at this time.

We would want to point out that parents of these students are deliberately choosing our schools, Catholic education, because those schools are based on the philosophy and values of the Catholic Church, and we have research which indicates that and supports that position.

The third point that our submission makes and which I would highlight is the fact that the exemptions contained in part 4 of the Equal Opportunity Act 1995 are clearly designed to balance the aims of equal opportunity and the elimination of discrimination on the one hand and other competing considerations on the other. I want to refer briefly to the second-reading speech for the EO bill. The Attorney-General at the time made this remark:

This bill attempts to strike a balance between the rights and freedoms of individuals by providing for limited exceptions where discrimination in the circumstances specified in the bill will not be unlawful ...

These exceptions balance the aims of equal opportunity and the elimination of discrimination and a number of competing considerations, such as the desire to infringe as little as possible on private spheres of activity.

The Catholic education system in Victoria supports this notion of a balance of aims as being both relevant and appropriate.

I would also like to refer to the Charter of Human Rights and Responsibilities Act 2006. This Charter seeks to protect and promote human rights. Section 14 of the Charter deals with freedom of thought, conscience, religion and belief, and section 8 deals with recognition and equality before the law. There is a widespread acceptance of the need for some exemptions in relation to equal opportunity legislation, and I think this recognises that human rights may sometimes come into conflict with each other in some situations.

Our submission wants to argue very strongly that although the religious exemptions contained in part 4 of the Equal Opportunity Act may place limits on the equal opportunity of a small number of persons in limited circumstances, the exemptions, we would argue, are necessary to protect and promote the freedom of religion.

That is really a key point of our submission: the exemptions are necessary to protect and promote the freedom of religion.

I would like to expand on that just briefly. We would submit that parental choice is a very critical factor in the freedom of religion and education. It is central to our submission that the right to freedom of religion includes the rights of parents to have their children educated, and the rights of children to be educated, in accordance with their religion.

We would argue that this right falls within the ambit of the freedom to demonstrate a religion in observance, practice or teaching, either individually or as part of a community, in public or in private. Here of course I am referring specifically to section 14(1)(b) of the Charter. Religious schools, including our own, exist to form the whole person through education and to nurture, instil and uphold religious principles and beliefs in and for the benefit of the students, the parents, the teachers and religious communities. Because religious faith is not simply something that we affirm intellectually but is lived out in practice, various values and lifestyle choices are an integral dimension of religious faith.

In a Catholic school we have a rich Catholic tradition which is at the core of the education of the whole person. This tradition and the values, beliefs and practices of the church are made known to the students in what is taught, in what is practised and in what is witnessed to by the entire staff of the school. In other words, the totality of school life needs to be permeated with Christian values and practice.

This is what we might call the culture of the school, and culture is a significant and determining factor in the educative process. In order for the Catholic Church to fulfil its obligations and missions, we would submit there is reason then that Catholic schools must have the freedom to employ staff who support the Catholic faith and who do not undermine the Christian and Catholic ethos within our schools.

I think that the particular and delicate nature of education needs to be acknowledged here. We cannot afford to underestimate the importance of role models. Our submission points out on page 9 that children are vulnerable to the views and role models they are exposed to. Those who educate children and young people do so as much if not more so by their example and their modelling as by the content of their lessons.

For this reason, all those who work in Catholic schools and who thereby interact with the student community, need to be role models who witness to Christian values. In the case of the Catholic religion, we would point out that this is a requirement of the Code of Canon Law which in fact governs all affairs of the Catholic Church. I could quote a whole series of Canons; I will not do that but one in particular is relevant. Canon 803(2) says:

The instruction and education in a Catholic school must be grounded on the principles of Catholic doctrine, teachers are to be outstanding in correct doctrine and integrity of life.

This Canon gives expression to a fundamental dimension of what it means to observe, practise and teach the Catholic faith, and in that sense we would submit that it is directly relevant to section 14(1)(b) of the Charter, to which I referred earlier.

One further point before I quickly summarise is in relation to the suggestion in the options paper that what is called an inherent requirements analysis be applied whenever an exemption is sought. We would submit that the arguments advanced for this cannot be supported. Apart from the impossible demands it would place on those who are deputed to determine which positions in a school meet the inherent requirements test, the Catholic education system does not accept that the inherent requirements of a position can be determined in a vacuum.

The function of a teacher or staff member is more than just teaching or performing administrative opportunities. It involves modelling to students and the community Catholic doctrine and Catholic values in all aspects of the teacher's or other staff member's daily life. In a Catholic school, this is what it means to be a teacher, an educator, a significant member of the educating community.

As a staff member you commit yourself to playing your part in educating the students within the framework of the Catholic religion. This is what I referred to earlier as the culture of a school. We would submit that any consideration of inherent requirements could really only be determined in the context of the employing identity; in our case that would be the Catholic school, which seeks to create a culture in which the beliefs and values of the Catholic religion are properly communicated in every dimension of the school's life.

Just to conclude very briefly, our submission is based on these main points: our historical position since 1872 in the provision of a Catholic education system and the contribution that has made to our society; the recognition of the right to freedom of religion which is found in the Charter, the Equal Opportunity Act and international instruments; and the right of parents to be able to choose the education which they believe is appropriate for their children, a principle which is supported by article 18 of the International Covenant on Civil and Political Rights, which quite specifically recognises the right of parents to educate their children within their religious and moral beliefs — the present reality is that parents of nearly 200 000 children are choosing a Catholic education for their children — understanding that Catholic education seeks to address all aspects of the human person — intellectual, emotional, spiritual — the central importance of role models in the education and development of the student within the Christian tradition; and the contribution that Catholic schools provide to the common good and the life of the broader community.

Certainly as a system, we are committed to these principles and we look to the future where we will hopefully continue to play a vital role in the lives of so many young people in our State. I thank you again for the opportunity to attend and address you, and I will pass over to you to ask any questions.

The CHAIR — Thank you, Bishop. I suppose this is an issue that arose this morning as well. The Catholic education system is a very large system and undoubtedly amongst the teaching staff of the schools in that system there are gay men, lesbian women and people who are living in de facto relationships. I am just wondering how a school deals with that in a practical sense in terms of what you have said about role models and all of that?

Bishop COSTELLOE — I can make some general comments. Steve, who is the director, might be able to help more. It would seem to me that we state the principles very clearly about what we would require, but we are a devolved system in a sense that we enunciate our principles and then rely on the people who are exercising governance of the local school to then take those principles and apply them.

I think it is also important to add — and I do not know that people will understand this — that we are not so concerned with what people are, for want of a better expression, but with what they do. It is a question of what modelling these people provide to children, because in the end, education is first and foremost about the children, the young people. How it is dealt with in an individual case is up to the school to decide, but the principles which are around the kinds of things I have been talking about — modelling Christian values, being in harmony with the Catholic understanding of life — these are very clear for us.

The CHAIR — The other issue is that sections 75 and 76 have exemptions using very broad attributes, and we have heard this morning from a number of churches that there is a possibility of reducing those attributes down to ones that actually potentially conflict with religious freedoms rather than age and race and disability and all of those. What is your thinking around that?

Bishop COSTELLOE — I think I can speak for the Catholic education system in saying that we would acknowledge that some of those very broad exemptions are exemptions that we do not feel particularly wedded to, if I can put it that way. We would certainly find that discrimination on the basis of age, certainly race and disability would not be in harmony with our Christian principles anyway, so we would never seek to use those, and would be not unhappy to see them removed.

Mr LANGUILLER — Thank you for your submission. As I was listening to your submission I was reminded of the privilege I had many years ago of meeting John Paul II in the Vatican, where he talked to members of Parliament of various backgrounds. Interestingly, his talk was about the role of laymen and laywomen and how similar they are to Christians and Catholics in particular. In fact he called upon people of his background to model on the work they do, and he was particularly referring to some of the work that is done in Latin America. He talked about culture and religion.

The principal concern would be that of a value system — would it not? — one which is compatible with Christianity more than a question of faith? Is that fair?

Bishop COSTELLOE — We would not want to draw a distinction there. By ‘faith’ I suspect you might mean things like doctrines and those kinds of things. We would not want to be drawing a distinction between doctrines on the one hand and perhaps values or lifestyles on the other as somehow or other not about being

connected as integral parts of our understanding of the Christian and Catholic faith. I am not sure if that answers the question.

Mrs PEULICH — So Catholic Lite does not appeal? On a serious note, to clarify, you would reject the proposal in the options paper that there are core and non-core positions within the Catholic education system from which these exemptions could be removed, because it is a holistic approach?

Bishop COSTELLOE — Yes.

Mrs PEULICH — I just wanted to get that on the record. Secondly, you would reject the proposal that a secular tribunal would be in a position to make determinations should all of those exemptions be removed on issues of faith and doctrine as a way of granting an exception, because it would be presumably a secular tribunal making decisions that are not based on precedent?

Bishop COSTELLOE — Yes, absolutely. I cannot imagine either the church or the state wanting to go down the path of having a tribunal determine matters of religious faith or religious doctrine. It is almost an issue of separation of church and state in one sense.

Mrs PEULICH — Thank you.

Mr SMITH — I have a question we have already asked some other witnesses. Broadly, should the exemptions be removed, what would be the consequences as far as the education office is concerned? We have had others say that there would not be such a commitment to establishing or continuing to have educational bodies such as schools. Would that be a position that you would take or not?

Bishop COSTELLOE — It is hard to talk in the hypothetical but, as I indicated, the kinds of positions I have outlined are determinative for us in terms of our understanding of who we are as a church and what is required of us. As I said, we have a whole system of canon law, which outlines for us what some of the essential requirements are. We would be placed in a difficult situation. Steve, I do not know if you want to add anything to that?

Mr ELDER — There needs to be a distinction made here. We do not have a monopoly on values education — if you spoke to state education officials they would say that their system of education is also values based — but there is a much higher distinction; that is, we are a faith-based community, and much of our faith underpins the values that exist within our schools. For us to be referred off to VCAT, equal opportunity, industrial relations or whatever every time we had to seek an exemption would give rise to operational difficulties in the day to day running of our schools.

Might I say that you may ask some of the other witnesses who are coming in here how often they have met us in any of these tribunals; I suspect in the 10 years that I have been there it is virtually never. Nevertheless, it may, because what would happen is people would be wanting to test the legislation. It may involve us in court costs and compliance costs which fundamentally may be used by a disaffected staff member in order to push us to a point whereby if we were going to any of these tribunals, they would be looking to get a payout, because we would be determining our position based on whether it would be cheaper to pay them out or not. It may well be that you get a whole lot of people who are in a position to test it in order to extract money, rather than having a true commitment to any legislation.

Mr SMITH — Thank you for that. The evidence we have seen is that there has been very little evidence of people lining up — —

Mr ELDER — I know of none in my 10 years.

Ms BICCHIERI — The other thing is that it would be administratively unworkable for us to have to go to VCAT every time. I know VCAT is already backlogged with thousands of cases, and we have nearly 500 schools, so the administrative burden would be unworkable in that context.

Mrs PEULICH — Yesterday there was evidence tendered to the committee which was not substantiated — nonetheless it was a claim — that faith-based schools were enclaves which often engendered a culture of bullying and in being selective about employment or recruitment denied students the opportunity of having a

broader appreciation of life and lifestyles. Do you have any comments to make about that? What are your policies in relation to bullying?

Mr ELDER — Let me say to you that none of the research reflects that. In fact the Catholic sector, through the education that we provide, is overrepresented in all areas of community service, whether it be nurses, teachers, or judges, so we actually think that the education we provide gives a very broad perspective and that the students who leave our schools go on and make significant contributions to the wider world, particularly in the area of service to others. Therefore, I would reject that proposal.

Bishop COSTELLOE — I would also add that Catholic schools operate within the context of our society and our culture, and so it is not as if we are cocooning these children or young people in a world that means they are completely unaware of what is going on around them. But we would be providing them with a basis upon which to evaluate these other approaches to life.

Mr ELDER — We also believe in the role of parents as the first educators of the child, which is a norm consistent with the way our society operates, and we are a mirrored image, effectively, of the broader community; so I do not know what evidence was tendered to support that case.

Mrs PEULICH — It was more a claim rather than anything substantiated; but I just wanted you to tell us how the Catholic education system measured up, and you have re-affirmed what I thought.

Mr ELDER — We are like any other system in that we have in place systems, and in fact much of the work we do on student wellbeing is at the cutting edge. The research that is being conducted by the Victorian Health Promotion Foundation in looking at the state of wellbeing within our schools certainly shows that students feel secure, content, happy, we reach out to the broader community, and all this is documented; these are not claims.

So what I am saying to you is that there is a whole lot of research to support the position that Catholic education is doing a great job in our community; and our enrolments this year grew by 2200, whereas State schools dropped by 5000.

Out there, there is choice. Parents make a choice as to whether or not they want a Catholic education for their child and whether or not they come to our schools, and parents, overwhelmingly, are making a strong choice to attend Catholic schools because of the faith-based component of it, and the quality of education and sense of wellbeing that goes with being a student within our particular schools.

The CHAIR — We had the Sikh community approach us earlier today; their submission was about their dress code and wearing turbans, and when males have the opportunity to grow a beard and their preference for faith-based schools basically for similar issues to those outlined by Stephen. I am just wondering on issues such as where you get that variation on school dress, have you dealt with it, and what are your thoughts around that?

Mr ELDER — We have pastoral care issues like any other school system, and that is determined at a local level. Fundamentally our schools operate and are run at a local level. I would say to you that the reason they are so successful is that we are not a centrally administered system of schools. We believe in the role of the local parish priest and local community in making decisions about schools and how they operate and what the dress codes are, and we actually give guidelines to them in respect of pastoral care in respect of a whole number of issues in any school.

But at the end of the day those decisions are made by those local communities in consultation with parents, and that is why we think, rather than being a centralised bureaucracy, that this devolved system of schools works and operates much better because it is closest to the community and that is where those decisions are made.

The CHAIR — And there is no appeal to the Catholic Education Office? I will give you a local example: there are a lot of Muslim girls who go to Catholic primary schools in my area and some do wear a hijab; but if there was a complaint that they were not allowed to wear a hijab, would that be an issue that your office would follow up? Or would it be dealt with at the school?

Mr ELDER — You should actually come over to my office now, because I actually have someone who wears that in my office.

The CHAIR — And the school is very tolerant of that, but if they find a school where it is not as tolerant —

Ms BICCHIERI — We have students who sometimes wear the traditional attire in our schools.

The CHAIR — But the decision is purely local, though? It does not contradict any of your doctrines?

Mr ELDER — No.

BISHOP COSTELLOE — Issues of dress would not come under the doctrine and morals, I do not think.

The CHAIR — No, I am just interested because the Sikh community says that in some schools that is actually a problem but they did not say whether it was the Catholic schools or not.

Thank you very much for your contribution. It has been a very enlightening and valuable contribution today. Obviously it has been a very long day for us but it has been very interesting. Thank you.

Witnesses withdrew.