

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

Melbourne — 5 August 2009

Members

Mr C. Brooks	Mr E. O’Donohue
Mr C. Carli	Mrs I. Peulich
Mr K. Eideh	Ms J. Pulford
Mr K. Jasper	Mr R. Smith
Mr T. Languiller	

Chair: Mr C. Carli  
Deputy Chair: Mr K. Jasper

Staff

Executive Officer: Mr A. Homer  
Business Support Officer: Mr S. Dinsbergs

Witnesses

Mr S. O’Doherty, chief executive officer; and  
Ms J. Woods, state executive officer, Christian Schools Australia.

**The CHAIR** — Thanks 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 invite you now to make a brief statement to the committee on the relevant issues that you consider are important to your organisation, and that will be followed by questions.

**Mr O'DOHERTY** — Thank you for this opportunity. Christian Schools Australia firstly wants to encourage you as legislators. It is a really difficult task, isn't it, to balance human rights in this way; it is a task which is ancient and modern at the same time. We really are very grateful that you give so much attention to such an important issue, which after all goes to the quality of life of every Australian.

I suppose for our context as a group of Christian schools, our belief as Christians is that our human rights come to us by virtue of the God who made us all to be equal, and it is very important for us to state quite plainly from the very beginning that we derive our human rights from our religious faith and that we believe that all the monotheistic religions derive those rights from the same place. You have already heard today from people from other faiths who would agree with us that equality before God, freedom, and respect for each other are all matters which derive from our faiths. Christians follow Jesus Christ, and we believe that he taught us to live out that faith in a very real way, to respect others, to actively work in their interests, to love not just your friends but to love your enemies as in, 'Who is my neighbour? Everybody is my neighbour' — these were the teachings of the one that we follow. For that reason, these are the teachings that we want to express in the life of our schools. We do not want to express them in a tokenistic way, and we do not think that you as legislators want us to express those beliefs in a tokenistic way either. Human rights, from wherever they derive, need to become a part of the way in which you live, otherwise they have no meaning.

For that reason, probably the most important thing we would like to impress upon you today is that the ability to be a community in which those beliefs, the beliefs of the faith, are lived out in the daily expression of the life of the school, is the context in which we want you to understand the operations of Christian schools. There is, in our view, a false dichotomy between the view that says there is a public domain into which fit a range of subjects like maths or SOSE or English, or whatever you care to name, and there is a private domain into which fits religious instruction. As we pointed out in our submission, it was no less than John Stuart Mill who actually drew that dichotomy, and that philosophy has filtered right through the public education movement in Australia. It was part of the debate about the Public Instruction Act in the 1860s, and it remains part of the debate today about the funding of schools. It is for us today, as it was when John Stuart Mill coined it, still a false dichotomy. We do not separate the religious domain from the other domains, whether we are living our lives in our daily walk in the street, whether we are teaching in a school or in the way in which we conduct all other manner of business as a Christian community.

It is open to the committee — and has been suggested by many — to preserve the exceptions only for those things which someone deems to be legitimate religious practice, and then allow for the other practices of the school to be subject to the normal course of the law. If you do that, you have actually asked us to deny a fundamental teaching of our own religion, which is that every aspect of our faith must touch every aspect of our community life together. Just imagine, as one submission to the inquiry suggested, that somebody, perhaps VCAT, determines that there is no religious instruction aspect to maths and so when employing maths teachers, you should not be able to apply a test that asks, 'Are you a practising Christian?'

If you adopted that sort of approach, then that maths teacher would be in a different class to the other teachers in the school, because I presume that VCAT, or the people making that suggestion, would acknowledge that, in order to be in a leadership position in a Christian school — or for that matter any other faith-based school — you should adhere to the provisions of that faith.

The maths teacher who comes in on the non-faith ticket does not have a path for promotion in that particular school. That very simple example makes a nonsense of the idea that there should be two classes of people within religious schools, or that the whole life of the school is not concerned with propagating and living by the tenets of the faith. We believe the public/private dichotomy is false in Christian thought, and we would ask you

not to force us into a false way of living, whereas our faith teaches us to live out our faith in every aspect of our lives and express that in every aspect of the communities in which we live.

Secondly, this should not be about public funding, yet it is. A lot of the media debate has centred on that. It is not surprising. As I say, the public education debate goes back to Henry Parkes, who referred to John Stuart Mill. These issues are alive today. Public education advocates today advocate exactly that position — that is, if you get public funding, you should only employ secular teachers. They are propagating that same false dichotomy.

I want to suggest to you a taxonomy of why these rights are important to us — a formulation, if you like, of how we derive our current exemptions under the act. Firstly, freedom of religion is a basic human right; that is something upon which everybody agrees. Secondly, education is a basic human right. Again, that is something upon which everybody agrees. In fact the charter itself says that to deny a person their religious right is a great wrong.

The human rights conventions of the United Nations also say that parents have the first responsibility and right to choose the education of their children — to make a choice about the education of their children. They call that the prior responsibility — before the state expresses a view, the parent expresses a view about their child. That is another fundamental, internationally recognised human right.

In Australia we have expressed that by saying the state will provide some funding. You can argue about the quantum, but we say the state provides some funding to enable parents to exercise that choice. A parent from a low socioeconomic background has the ability, because the state provides some funding, to make the choice of a religious school.

If you, as legislators, said that choice can only be exercised for those people who can afford to fully pay for the private fees of their education, you would limit the basic human right of parents from low socioeconomic communities to choose a school for their children based on their own religious observance, and of course you would be doing a wrong.

I want to suggest to you that this is not a stalking horse argument for the public funding debate, and those people who want to make it such need to find a different canvas on which to paint their particular picture. This is about human rights. For us it is about essential religious freedoms and about the holistic nature of Christian schools.

The final point that I make in this opening submission is to ask the question that undoubtedly arises: are there any people who, within the context of a Christian school environment, should not be subject to a faith test in employment? The answer is no, absolutely not. Think about your own schooling.

It was sometimes the discussion that you had with the person at the front desk that was critically important to you at a time when you were in need, or it might have been the person who was clearing the rubbish bins who you got to know over the years who was there and noticed that you were in strife and was able to make some sort of helpful intervention in your life. Christians believe that everybody in the community of that school is involved in the pastoral care of their students.

In that regard, although they are not formally ordained by a recognised church as such, although some of them are, we regard every person who works in our schools as having pastoral — that is, minister-like — responsibilities. That is a context I would encourage you to consider as you consider going down the path of a genuine occupational requirement test.

We think that is dangerous, because in the end that means some tribunal will have to say, ‘Should the cleaner be a Christian?’. We would say, ‘No, the question should not arise’. Are they engaged by a religiously constituted school in order to be a part of a community which teaches kids from a holistic point of view how to live as Christians? Yes. If so, they are exempt.

Leave the questions about religion to religion, whereas the state has lots of ways of regulating schools. We are happy to comply with all of those — curriculum, funding, accountability, registration of teachers. We comply with all of those things, but when it comes to religion the state has always said, ‘We will leave that to people who adhere to that faith’, and for that reason we think the current formulation in the law is exactly right. It

provides a broad exemption. It allows for people to conduct a sort of reasonableness test, and we think that there is no argument for change. Thank you, Chair.

**The CHAIR** — In your paper you suggest that the current exemptions would satisfy a reasonable limitation test. I suppose that begs the question: why would not a process where you would seek those exemptions from VCAT not be an appropriate way of going?

**Mr O'DOHERTY** — I guess the question is, 'Do you see VCAT as the competent authority to judge matters of theology?'

**Mrs PEULICH** — Is this a rhetorical question?

**Mr O'DOHERTY** — You can take that any way you like.

**The CHAIR** — That is a good answer.

**Mr O'DOHERTY** — Thank you.

**The CHAIR** — There is one other question I wanted to ask. Previous witnesses have suggested that the attributes in the act are very broad and that most possibly the exemption would not need to apply to all attributes. Is that your view as well? Do you still want to maintain all the attributes that are in act: everything from race to age et cetera?

**Mr O'DOHERTY** — It is interesting. In our submission we do point out that in fact in some cultures, although not mainstream historic Australian Christianity but in many cultures in Australia, the issue of race and religion go very closely together. We also point out in our submission that some of our schools in other states are expressly constituted for Aboriginal education. You just would not want to create any unintended anomalies. We do not discriminate on the basis of race, I can say that quite plainly to you. That is not the way we live.

However, it is one of those areas where sometimes when you codify something in the law, you create difficulties down the track. That, I suppose, is a general objection to trying to write down human rights at all, and that is the debate Australia is going through at the moment.

**Ms WOODS** — Perhaps I could just add to that briefly, it is about the central thing which affects the very existence of Christian schools. While the options that are being considered are quite wide, our main concern and I can see that you would understand it is the one that would affect our very existence.

There would almost be no reason for the Christian schools sector to have schools if we were not able to maintain the distinctive that we are defending and explaining and hoping you will understand. It is the foundation on which these schools are built. It is not something peripheral. So the other options, the other exemptions, are all related to it but the central one for us is the one that allows our schools to actually exist.

**Mr BROOKS** — This question does not relate to the substance of your submission or the issues. However, it does relate to Christian schools. The Uniting Church of Australia has made a submission to the committee in which at the very start of its submission it outlines its concerns with the behaviour of some members of this committee or members of Parliament. In particular, they go on to set out a circumstance where it appears members have been baiting at least one Christian school and they cite an example.

Notwithstanding the genuine concerns of Christian schools, I just seek your opinion as to whether you feel that there has been a level of political involvement. As members of the committee, we receive a high volume of emails and submissions from people associated with Christian schools who are quite genuinely concerned about what they see as the changes that are being proposed.

But there also seems to be a disconnect with the perception of this process in what they are sending through to us in communications. I wonder whether you want to comment on some of the communication you might have received from members of Parliament, and whether you think people in Christian schools are being baited into this process?

**Mr O'DOHERTY** — That would not be our position. I cannot speak for the Uniting Church. It is not our position that this is anything other than what I said at the beginning: a genuine and very important attempt by legislators charged with this responsibility to formulate laws that help preserve the balance between human rights.

**Mr JASPER** — Stephen, clearly you are opposed to any changes that may be proposed to the Equal Opportunity Act. If there were to be any changes, have you considered what protection might be provided to you with the Charter of Human Rights and Responsibilities which we have not had a look at but should consider now?

**Mr O'DOHERTY** — Stop me if this does not go to your question: I suppose one of the things that concerns us a little bit about the charter is that it tends to imply a hierarchy of rights. It tends to say that equality is more important than the right to religious freedom and that if you had to apply a 1-to-10 test, you would go with the 1s first and down the line; religious freedom would come somewhere down the middle of the list and equality would come up the top. So if equality overrides religious freedom, you do equality. That is just not a context that fits with our world view at all.

As I said from the very beginning, equality is assumed and given to us by virtue of our religious faith. To express our religion is to believe in the equality of all people, and that is why we argue for the exception approach rather than the charter.

**Mr JASPER** — So you see your rights as being better protected under the act as it is now?

**Mr O'DOHERTY** — Yes, we do. We think the act is exactly right.

**Mrs PEULICH** — I have nothing to add except to say thank you very much for the presentation. It reinforces most of the submissions of members of the various faith communities who have asserted that it was a very narrow understanding of religion if one looked upon it as just a relationship between an individual and his or her god rather than implications for a whole lifestyle. Obviously you do a very good job.

There are a huge number of people who take advantage and exercise their choice, which is their right to do so under the current regime. Certainly it is the view of those of us who are signatories to a minority report that that would be diminished if indeed those exemptions were removed. Also we have concerns about a secular tribunal making determinations on the issues of religious belief and principle. Thank you very much.

I am not sure whether the honourable member was referring to baiting or informing but I certainly have taken my responsibilities as a member of Parliament very seriously and informed those who otherwise would not have known of this process. Thank you for taking the time today.

**Mr O'DOHERTY** — I am sure you have and I appreciate it. Something that your remarks remind me of, through you, Chair, is that the churches and the faiths and the communities of those faiths in this country have made our multifaith society work better than any other multifaith society in the world.

**Mrs PEULICH** — Anywhere else in the world?

**Mr O'DOHERTY** — Why would you play around with that? There is a view, and the position paper actually expresses this view and we take exception to it, that the existence of faith-based schools and the growth of those schools contributes to what they call a 'Balkanisation' of the Australian community; that we are creating division.

Rather we would say since the very beginnings of human occupation of this country, different people groups have lived together harmoniously and we have done it very successfully. From our point of view, we believe the Christian church has contributed massively towards that. We share similar political ideals in terms of human rights to the group you had before lunch — the Islamic schools. With the Islamic school and Jewish school movements we actually held a summit on those very issues two or three years ago, where we all agreed that in respect for each other we will stand up to preserve the rights of the others in exactly the way in which we are doing it today, and to which you refer, Mrs Peulich.

**Ms WOODS** — Part of our argument is predicated on this definition of what is a religious body. I guess there is perhaps an understanding or perception out there that those are churches and that schools are schools.

We would be arguing that in many cases our schools are extensions of particular churches but in other cases they have been started by independent bodies of people who belong to churches but nevertheless they have a religious purpose in the way they were established. Perhaps we are looking for a more generous understanding of what a religious body is, not specifically a denomination or a church.

**Mr SMITH** — I would certainly say that the values upheld by the religious schools are one reason why people are leaving state schools in droves and going to those faith-based schools.

**Ms WOODS** — I think that is true. I have been an educator for 41 years, in Christian education for 22 and a leader for 10, and I have interviewed countless families applying to come to our schools. I can tell you the reason they are coming is almost always looking for the morals and values of Christian faith and conduct, whether or not they come from Christian families. That has just always been reiterated by families who come.

**Mr SMITH** — That is my experience in my electorate, too.

**Mr O'DOHERTY** — Can I add to that that we do not make a judgement in that respect. We certainly would not want to leave you with that impression.

**Mr SMITH** — No, I am making that judgement.

**Mr O'DOHERTY** — Yes. People need to be free to choose, that is the point. It is just an incorrect assumption to say — and this certainly would have been the case 30 years ago — religious schools like those we represent were started by a particular local church and the members of that church went to that school. The context today is very different. Lots of people who have no church attendance but who have either a sympathy for or an adherence to Christian values, morals and/or beliefs, seek to come to our schools and that becomes part of the expression of their religion in their life.

On the idea that you can protect — and this is where we have been for hundreds of years in Australia — the rights of those schools established by a church or a diocese or a denomination, the community has shifted so much that that does not have the same meaning today as it did then. What you want to do is protect the right of individuals who may or may not go to a church to express their own religious beliefs in the choice of schooling for their children and in other ways.

**Ms PULFORD** — Just further to your comments, Ms Woods, about discussion with parents who are thinking about enrolling their children in one of your members' schools, are there many students enrolled in your members' schools who are not from Christian families?

**Ms WOODS** — Vast numbers. I can speak specifically only of the school from which I have just retired, which on my campus had 800 students. Approximately 30 per cent were from church families and the rest, including people from other faiths, were not. Other schools may have a different balance for various reasons, and there is a variety of schools and enrolment policies.

**Mr LANGUILLER** — How does Christianity manifest itself in the teaching of a particular subject, whether it is commerce, maths or geography? Can you give us one or two examples?

**Mr O'DOHERTY** — Jeanette will give one. I will give you some general comments. Clearly it manifests itself very obviously in the humanities, particularly in the discussion of texts, where you move to the way that text forms part of your world view. In a Christian school a teacher is able to reflect their own religious beliefs quite freely, in talking about the world view within which that text is understood. It is more difficult to understand how that might be in a mathematical subject. What Christians would say to that issue is that science, mathematics in particular, is an extraordinary discipline, in which the more you understand the more you see in what perfect balance the universe is held in a way which can be described by numbers.

Think about the number 'pi'. I looked on the internet at it the other day. There are websites that will give you pi to 100 000 places or more, so it just goes on to infinity. In a sense, that number, that constant, pi, describe something which is as fundamental as why the earth orbits the sun and does not go spinning off into outer space. It has to do with radial motion, momentum and so on.

Someone once said to me, ‘God, who made the universe that way, understands the value of pi’. The numbers that stretch out to infinity are our way of trying to describe it, but in a very real sense mathematics is one way — not the way I would choose, by the way — of describing the perfection in which God made the universe.

Having said that, that maths teacher, though, will at lunchtime interact with students in a way that is pastoral. That is the main point, really, about this issue, that it is a community of pastoral care. All the teachers in our schools, whatever subject they teach, take biblical studies as part of their daily teaching load. They are in every real sense teaching the tenets of the religion explicitly but also implicitly in the way that they carry out their lives.

**Ms WOODS** — My brief example is from my own discipline. I was a psychology teacher. The year 12 syllabus included issues such as ‘Consciousness’, ‘Who am I?’, ‘What is memory; is life made up of just what you remember?’ — all those sorts of issues which are deeply philosophical. While I am not going to expand on the way I taught those topics, my point is that the way those things are taught is always based on a world view.

I suppose my final comment would be that I do not accept that Christians are the only ones with a world view. Perhaps we are more up-front with ours — I do not know — but we make no apology for the paradigm from which we teach. I believe that the big questions of life are answered through the Bible and a relationship and that has to affect the way I teach psychology — although I covered all the dot points in the study design. Anyone else teaching that subject, perhaps in a government or other sort of school, is going to come from a paradigm. I do not care whether they acknowledge it or not, everything is going to be based. We cannot be, think or teach without having some presuppositions in our lives.

**The CHAIR** — I will have to end it there. Thank you very much, Jeannette Woods and Stephen O’Doherty. That was really informative. It has come in a very long day for this committee but it is all very valuable for our deliberations.

**Mr O’DOHERTY** — Thank you again for the work you do. Every one of you, of course, is welcome to visit any of our schools to see for yourselves how it fits together.

**The CHAIR** — Thank you.

**Witnesses withdrew.**