

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

Melbourne — 5 August 2009

Members

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Witnesses

Mr M. Hanscamp, principal, and  
Dr G. Beimers, administration manager, Mount Evelyn Christian School.

**The CHAIR** — Thanks for attending today. 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 important to your organisation, and we will follow that up with questions.

**Mr HANSCAMP** — Thank you for the invitation. I am not quite sure why we did get an invitation, but we are very pleased to be able to give a local story response, if you like. Chair, I would like to draw your attention to the fact that in the audience here are a number of year 12 students from my legal studies class at Mount Evelyn Christian School. Earlier in the year, all Victorian legal studies students studied the area of human rights, the work of this committee, the Victorian charter and whether Australia should have a bill of rights. Therefore I have invited those who could spare the time to come along and see democracy in action, and they are sitting down the back there.

**The CHAIR** — They are most welcome, and I hope they get something out of today.

**Mr HANSCAMP** — I am going to make some opening generalist comments and then I will hand over to my colleague Dr Beimers to make more specific comments. On a broad summary of our view, we would assert that the right to employ Christian staff goes to the very foundation of why Mount Evelyn Christian School was established. It was the desire to determine who teaches, what is taught and what the type of community mix is that has led to the sacrifice and efforts of establishing and growing our Christian school.

We would put it to you in a context where there has been a long-established tradition of parents being given the freedom to choose a Christian education for their children, something that was as recently as two years ago affirmed in the new Education and Training Reform Act; in a context where MECS has been allowed to operate in accordance with its foundational beliefs and therefore in a goodly measure of accountable independence; in a context where 345 taxpaying families contribute 40 per cent towards the running of a school at a considerable saving to the government, which would need to find 600 new places for students in the outer east if we did not exist; in a context when many thousands of parents, and not just from the MECS community, have sacrificed and scraped and saved — we are a low-fee, low SES school — for over 36 years in choosing to send their children to our distinctive form of education, that it is hardly fair that the very freedoms that have led to the formation of our school are now deemed to be too discriminatory by some.

To take away the exemptions is not only shifting the goalposts but actually changing the very game or the heart of what we have been doing, which is developing Christian education. We feel that this review of legislation needs to keep the balance between allowing faith-based schools to retain their distinctiveness, and at the same time ensure that schools like MECS play an accountable and responsible role in an inclusive and yet diverse society. With that, I will now hand over to Dr Beimers.

**Dr BEIMERS** — Given that we are a religious organisation involved in education, clearly our focus is on the intersection between non-discrimination and religious freedom, and we recognise that this is a complex area. Our initial submission to the Department of Justice review last year noted the relevant international treaties that support the rights to both religious freedom and equality, and I am sure the committee is well aware of those.

It does not take long to realise that there are issues of tension between these different rights, and their reconciliation is not an easy matter. It is unlikely that anyone would suggest that the Equal Opportunity Act as it stands is perfect; however, whatever the weaknesses in it might be, I suggest that it has been serving the community as a whole to effectively balance competing rights in our domain of interest. I am not speaking of other particular domains. If exemptions for religious bodies were removed or reformed to the extent that we were no longer able to make choices regarding employees and students, it is inevitable that the religious ethos and character of our school would be undermined. Such an impact would inevitably result in damage to the communal, social, philosophical and financial wellbeing of the school, and the social cost would also be that parental choice in education would be diminished.

The exemptions enable schools like ours to make operational decisions that are in conformity with our religious principles. Removal of these could result in circumstances in which our school is coerced by law to make decisions such that we would be unable to ensure the education of our children in conformity with our

convictions. The removal of exemptions grounded in religious belief would result in a situation in which it is no longer possible for the state to protect the right of Christian parents and religious bodies. This is a difficulty that the state cannot ignore, since the 2006 charter says, “a person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.” And the Education and Training Reform Act says, “parents have the right to choose an appropriate education for their child.”

Further to this it seems reasonable to say that all Australian citizens can expect that their government will make provision in terms of funding for the education of their children. I thankfully acknowledge that it is true that our particular approach to education is facilitated by the exemptions in the Equal Opportunity Act. Does this mean we should have funding denied, as some have proposed? I suggest that to deny our school public funding, when government policy supports choice in education and when all taxpayers can expect funding for their child’s education, this denial would be to restrain our parents’ religious freedom and their choice of education. In fact I would argue that Christian families in our school do now have their religious freedom restrained, because a child in our school only receives the equivalent of approximately two-thirds of the funding that a child in a state school receives. There is in fact already a cost for our religious freedom that proponents of the removal of exemptions do not readily acknowledge.

There are several additional aspects that we could comment on further should the committee be interested in hearing our views. First, throughout the options paper there is evidence of a dualistic philosophy that continually appears as a sacred and secular divide. We have been hearing some illustrations of that through the morning. Our world view rejects this dualistic divide as being invalid. Second, we could comment on potential difficulties associated with the notion of an inherent analysis requirement for employment positions and activities. Third, there is a claim in the paper that exemptions are used as a pretence by some schools to exclude certain people. Fourth, the definition of ‘religious body’ is of interest to us. If the committee is interested in hearing further about those matters, I would be happy to speak to those. Thank you.

**The CHAIR** — As your students no doubt are aware, the Victorian charter, as do international human rights instruments, obviously recognises and sees the freedom of religion as being a very important, significant, major human right. I suppose it is a question of when other rights get limited in that context. At the moment the exemption on employment is a blanket exemption and applies to teachers as much as to cleaners. I suppose the question I have is: does it need to apply that broadly in your school in a really practical sense and do we need all the attributes that are currently in the act?

**Dr BEIMERS** — I think this comes back to this question of dualism — whether there is actually a sacred and secular divide. Our world view would see that there is not. It is important to us that the whole enterprise of our Christian school is done under the lordship of Jesus Christ. Because of that commitment, that submission under Christ’s lordship, it is important to us that the accounts clerk that we are advertising for at the moment for our school is a person of faith as well. We cannot chop up life — we cannot slice and dice it — into parts that are religious and parts that are not. All of life has a religious orientation.

Relating this to the inherent requirements notion, anthropologists look at culture in terms of what is called etic and emic categories. Etic categories are those that are imposed from outside; emic categories are those from within. It is quite likely that an external body would look at our school and say, ‘You need to meet a certain set of categories for a particular position’, but they would be etic categories. They would be outsider categories. If the act was changed; we would want to be able to say that the requirements for any particular position are defined by insiders, not outsiders.

**Mr O’DONOHUE** — Thank you for your submission. Yesterday some of the people who gave evidence talked about the issue of religious schools using religion as a pretext for discrimination, in effect. That was one of the areas you offered to expand on. I would appreciate it if you could expand from your perspective on that issue.

**Dr BEIMERS** — Sure. The options paper often speaks about individuals and organisations but rarely about communities. I think in this case I would argue that very few communities actually behave in pretence. We understand, as leaders within our community, what the shared values and expectations of our particular school community are, and that guide us as a leadership group in making choices concerning employment and so on for our community. It may well be that our community’s values are slightly out of sync with mainstream

Australian community values. But given that we have a multicultural, liberal, democratic society, that should be okay, and I think we would all accept that.

It is grossly unfair then to label perhaps what our community might make in terms of a choice, as a pretence in the use of an exemption, and there is probably no evidence in the media or otherwise — we have maybe heard some testament to that this morning — that abuse of the exemptions has occurred. I do not think the exemptions would mean that our community would abuse people's rights.

**Mr SMITH** — I just want to pick up on something in your submission that we have not actually spoken about at these hearings so far, and that is your opposition to changes to perhaps increase the powers of the Victorian Equal Opportunity and Human Rights Commission. I ask you to expand on your concerns should those powers of investigation without complaint be given to the commission.

**Mr HANSCAMP** — We probably do not have a lot to say on that other than that is a very sweeping power that would be given. That is our biggest concern: when you hand some of this authority to tribunals or to lawyers, it cannot be defined within the legislation. You are heading down a pathway that is very difficult to manage and oftentimes causes all the bodies affected, where it becomes a major change to the standard way in which they have been operating, unnecessary alarm. It has been a broad principle across a lot of management of normal governance that the courts, the tribunals and even Parliament tend to respond to the squeaky wheel rather than take a very proactive approach. It is a danger sign. We do not know a lot about how it would operate, so we do not have a lot of specific commentary there.

**Mrs PEULICH** — My question is possibly a little bit more esoteric, and so I will direct it to Dr Beimers. A comment was made this morning — and I cannot recall in whose evidence — that the act portrays people who operate within a religious institution or organisation or a community and adhere to a set of values as therefore discriminating against others under the act. They are portrayed as discriminators, and therefore the exemptions and exceptions are basically a process of labelling. How do you feel about that?

I have a different view of pluralism; in a multicultural, pluralist society or a liberal democratic society all organisations are not a carbon copy of each other with the same ethos and the exact same social mores and so forth. There is a degree of diversification and uniqueness about many of them, but within the broader scheme of things, generally speaking, human rights are observed. What is your view about being portrayed as a discriminator, given clearly that in your sentiments and in what you are trying to do, you are not?

**Dr BEIMERS** — I think that was the Anglican Archbishop's portrayal.

**Mrs PEULICH** — It may have been.

**Dr BEIMERS** — The term 'discriminator' of course is loaded with connotations; it is undesirable to be a discriminator. You would not want to be labelled as such, but the reality is we do make discriminatory choices when we employ people. I invite people who might like to label us that way to come along to our community, meet the people who belong to our community and see that, although we might discriminate on particular matters of faith in relation to employment or who we involve in our school, we have an enrolment policy that is partially open. So there are non-Christians and people of other faiths in our school.

I think if you were to come and meet our community, you would find that we do not look any more discriminatory than the average Australian person.

**Mr HANSCAMP** — In terms of what Gerry was saying, can I just add that we all make discriminatory choices. Just as with your staff; if you are a Liberal politician, you are hardly going to employ on your staff a member of the Labor Party.

**Mrs PEULICH** — Correct. Absolutely.

**Mr SMITH** — You made exactly that point yesterday.

**Mr HANSCAMP** — It goes to the heart of your identity. If we want a broad wash that says everyone has to be the same, then you go down this pathway. If you want to recognise that the identity of our Christian school has certain features, then you will employ people who are passionate about that and are on about what you are on about — just like you do with your staff.

**The CHAIR** — I just want to pick up one issue, which is the issue about having a court or a tribunal decide what is essentially religious doctrine. We can accept that religious freedom in certain situations may mean a limitation on the right of equality. The question is: who makes that choice? You were very clear that it should not be a tribunal. Can you just elaborate on that for the committee? I think Dr Beimers made the comment.

**Dr BEIMERS** — It would be very difficult for a tribunal as an outside group to fully appreciate our philosophical approach and so on. If the tribunal gave us the right to put the case and say, ‘This is consistent with who we are in terms of our values, what we have spoken about publicly about ourselves’, that is possibly a workable situation. But I can imagine that lots of time and effort gets burnt up by us having to go to a tribunal, having to be involved again and again to get the exception or exemption that we need to operate, and that would divert resources, both human and financial, from our key focus, which is doing education.

**Mr HANSCAMP** — Can I add that I teach my students that one of the basics is, as we open up legal studies and look at the Australian constitutional democracy, Parliament is the supreme law-maker — and we would say under God’s authority. But in terms of the syllabus, in the really tricky areas I do not think Parliament should shirk its responsibility to outline the law in a way that does not leave it up to the lawyers to have a field day of trying to be the moral custodians of society in terms of setting the law and that. It is Parliament’s responsibility.

**Mr JASPER** — In the submission that you sent in, I do not think you indicate how many students you have at the school.

**Mr HANSCAMP** — There are 556.

**Mr JASPER** — In the third dot point you indicate that you think there is some ambiguity in section 75 in determining a religious organisation. Have you got any idea as to what amendments you would seek to section 75?

**Dr BEIMERS** — I think that the definition of a religious body that is in the charter is something that we are happy with. I think it is broader than the one in the act. What is in the charter is quite effective, from our point of view. The difficulty lies in that we are not an organised religion as such. I think we included in our submission our educational creed, which shows that we are definitely a religious body or religious organisation but not an organised religion. I think the definition in the charter covers that.

**Mr JASPER** — It seems to me that you would require or look to have some amendment to section 75.

**Dr BEIMERS** — Some clarity, that a religious body is bigger than just organised religion.

**The CHAIR** — Thanks a lot for your contribution today. It is very useful, particularly since it has come from people on the ground in a school. We have heard a lot from people representing the organisations, and it is really important that we hear about the nuts and bolts as they affect people in the field in a school. Thanks for making an effort to come here and for the work done for the submission. It is very much appreciated.

**Witnesses withdrew.**