

Chapter 4:

Anti-discrimination Issues



Introduction

It is inevitable, when you prescribe a one-pattern-fits-all, that some people will be helped and some people will be heavily disadvantaged.²⁰⁰

Anti-discrimination law rests on a tension between two understandings of equality: 'as sameness...or as allowing difference'.²⁰¹ The Committee found that this tension is reflected in the various ways in which Victorian schools interpret equality and anti-discrimination issues in their dress codes and school uniform policies. Many schools with compulsory uniforms believe that they are promoting equality by removing or obscuring the differences between students that may otherwise be accentuated by their clothing.²⁰² At the same time, schools without uniforms also argue that they promote equality by permitting everyone to be unique, as summed up by Princes Hill Secondary College: 'Everyone is equal, precisely because everybody is different'.²⁰³ While their interpretations of equality may differ, the promotion of equality and prevention of discrimination are thus important concerns for all Victorian schools.

It is clear to the Committee that discrimination will sometimes be avoided by treating all students equally; and at other times by providing exceptional treatment for certain individuals or groups. Both these alternatives are evident in the following discussion of the legal and political context surrounding anti-discrimination issues, and the subsequent review of the anti-discrimination issues that were raised in evidence to this inquiry.

Legal and Political Context

The key legal instrument for the prevention of discrimination in Victoria is the *Equal Opportunity Act 1995*, which prohibits both direct and indirect discrimination. Direct discrimination occurs when a person is treated less favourably because they have, or are assumed to have, any of a list of particular attributes, called 'protected attributes' for the purposes of the legislation. Indirect discrimination occurs when a condition or requirement is applied to a group of people, some of whom are unable to comply because they have a protected attribute. In such a situation, it must also be demonstrated that the condition or requirement is unreasonable for discrimination to have occurred.

Section 6 of the *Equal Opportunity Act* lists the protected attributes on which discrimination is prohibited in Victoria. Attributes that may be relevant to dress codes and school uniforms include age; race; religious or political belief or activity; sex and gender identity; impairment; physical features; and pregnancy. Section 37 of the Act makes special provisions prohibiting discrimination on these grounds in the area of education, covering virtually all aspects of the relationships and interactions between schools and their students.

²⁰⁰ Mr D. Wilkinson, Transcript of Evidence, Public Hearing, Melbourne, 25 June 2007, p.31.

²⁰¹ B. Gaze 1999, 'The Ambiguity of Affirmative Action in Australia', *Law in Context*, Vol. 15, No. 2, p.145.

²⁰² For example, Ranfurly Primary School Council, Written Submission, May 2007, p.1; Lyndale Secondary College, Written Submission, June 2007, p.1; Carrum Primary School Council, Written Submission, June 2007, p.1.

²⁰³ Princes Hill Secondary College, Written Submission, May 2007, p.8.

'Promoting equality through the school community is vital in minimising discrimination on the basis of clothing and image. The uniform policy at Melbourne Girls' College ensures that students are not defined or judged by the clothes that they wear but are celebrated for their talents and unique personalities.'

Erika Codognotto, Year 11 Student, Melbourne Girls' College

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However, section 40(1) of the Act provides a specific exception relating to school dress codes and uniform policies, as well as rules for student behaviour:

- 1) An educational authority may set and enforce reasonable standards of dress, appearance and behaviour for students.
- 2) In relation to a school, without limiting the generality of what constitutes a reasonable standard of dress, appearance or behaviour, a standard must be taken to be reasonable if the educational authority administering the school has taken into account the views of the school community in setting the standard.

The exception was inserted due to concerns that school students would invoke the legislation against any school rules that they viewed as 'too restrictive or unreasonable'.²⁰⁴ It was noted that schools would regard such rules as 'essential for maintaining school discipline', and that this stance would usually be supported by the school communities. The exception represents an attempt to balance the rights of schools to set rules and standards, against the individual rights of their students.²⁰⁵

In the Committee's view, the exception does not mean that schools do not need to consider anti-discrimination issues in their dress codes and school uniform policies. Dr Helen Szoke, Chief Executive Officer, Victorian Equal Opportunity and Human Rights Commission, explained to the Committee that considerable uncertainty still exists about how the law may be applied in practice:

It will be a challenge for you and it will be a challenge for us if the matter comes before us as a discrimination complaint, but basically the imprecise nature of the terminology in the section 40 provisions around reasonableness is to take into account the views of the school community. How that is applied and the level of detail that applies in that regard has not really been tested, if you like, with any judicial interpretation.²⁰⁶

While the wording of the Act may be imprecise, the Committee believes it is unlikely to extend to policies that are openly discriminatory.

Any policy developed by a 'public authority' in Victoria, including a government school, is also now required to comply with the *Charter of Human Rights and Responsibilities Act 2006* (the *Human Rights Charter*). The *Human Rights Charter* makes a number of provisions relevant to anti-discrimination issues that may be relevant to dress codes and school uniform policies. For instance, Section 8 provides that 'Every person has the right to enjoy his or her human rights without discrimination'. The *Human Rights Charter* also provides for a number of rights relating to freedom of thought, expression, religion and culture.

Nevertheless, section 7 of the *Human Rights Charter* provides that any of these rights may be subject to 'such reasonable limits as can be demonstrably justified in a free and democratic society'. School dress codes and uniform policies may be considered to be among such reasonable limits. The reasonableness of a limit must take account of various factors, such as the importance of the limitation, the nature of the right, and whether any less restrictive measures are available to achieve the same purpose.

In May 2007, the Committee wrote to the Victorian Equal Opportunity and Human Rights Commission and equivalent bodies interstate, seeking information about any enquiries or complaints concerning dress codes or uniform policies in schools. It appears that very few such issues are brought before the various anti-discrimination bodies: New South Wales reported two complaints over the period 2001 to 2007, Western Australia reported one case since 1997 and both Tasmania and the Northern Territory reported there have been no complaints of this nature

²⁰⁴ Hon J. Wade MP, Attorney-General, Victoria, *Second Reading, Equal Opportunity Bill*, Legislative Assembly, Hansard, 4 May 1995, p.1249.

²⁰⁵ *ibid.*

²⁰⁶ Dr H. Szoke, Chief Executive Officer, Victorian Equal Opportunity and Human Rights Commission, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.20.

lodged. The South Australian Commissioner for Equal Opportunity did not quantify complaints but outlined a small number of typical examples of claims of discrimination, while the Victorian Equal Opportunity and Human Rights Commission reported eight enquiries or complaints involving school uniforms for the period 1998 to 2007.

Typical issues brought before the Victorian and interstate bodies include:

- age discrimination (uniform policy applied differently depending on year level);
- gender discrimination (girls being required to wear skirts; more restrictive hair or jewellery requirements for boys);
- religious discrimination (students being asked to remove jewellery or other items with religious significance); and
- physical features discrimination (two cases in Victoria of students being suspended for having visible facial piercings).

While few complaints of discrimination in dress codes and school uniform policies are brought before the various anti-discrimination bodies, the Committee is aware that many similar allegations are dealt with by schools and departmental education officers on a daily basis.²⁰⁷ Periodically, this type of conflict is also raised in the media, often damaging the image of the students, parents or school personnel involved in the dispute.

The Department of Education and Early Childhood Development makes a general reference to the relevant anti-discrimination legislation in its guidelines on student dress codes, and lists some of the grounds on which it may apply:

The implications of equal opportunity legislation are such that schools may be required to publicly demonstrate that their [uniform] policy is not discriminatory. With regard to a dress code, schools cannot discriminate, either directly or indirectly, against students on the basis of their sex, race, ethnic group, nationality, religious beliefs, marital status, colour or disability.²⁰⁸

The document goes on to address the different approaches schools will need to adopt to prevent both direct and indirect discrimination.²⁰⁹ Direct discrimination, for the Department, is avoided by making rules that 'apply consistently to all students'. Indirect discrimination, or 'the unequal impact of apparently neutral rules on students of different backgrounds', is to be avoided through the use of individual exemptions.

The guidelines go on to identify specific circumstances in which 'legal requirements necessitate that grounds of exemption must be provided'.²¹⁰ These are: religious belief; ethnic or cultural background; disability; health condition; and the demonstration of 'particular economic hardship'. The Committee notes that the Department's list differs from the list of protected attributes named in the *Equal Opportunity Act 1995*. The Committee also notes that the departmental guidelines require updating to include advice about the implications for government schools of the introduction of the *Charter of Human Rights and Responsibilities Act 2006*.

The Committee also heard that anti-discrimination law is promoted in the non-government education sector. The Catholic Education Commission of Victoria noted in its written submission that the Melbourne Archdiocese provides advice to schools upon request regarding compliance with the *Equal Opportunity Act 1995*.²¹¹ Similarly, Mr Andrew Smith, Deputy Chief Executive, Association of Independent Schools of Victoria, told the Committee that the Association will 'quite often'

²⁰⁷ Information supplied by the regional offices of the Department of Education and Early Childhood Development, in response to a request from the Education and Training Committee for data on the number and type of cases and complaints associated with dress codes and school uniforms over the period January 2005 to June 2007.

²⁰⁸ Department of Education and Early Childhood Development 2007, 'Student dress code', section 4.8 (updated May 2006), *Victorian Government Schools Reference Guide*, DEECD, Melbourne.

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ Catholic Education Commission of Victoria, Written Submission, May 2007, p.1.

respond to queries relating to what is appropriate policy under equal opportunity legislation.²¹²

The Committee concurs that schools should seek to ensure that their dress codes and school uniform policies are non-discriminatory. Schools should do so both to mitigate legal risk, and to reflect and promote values of equality and respect in their communities. The following discussion outlines some of the major anti-discrimination issues that have arisen in submissions to this inquiry, which schools may need to address in their dress codes and uniform policies.

Recommendation 4.1: That the Department of Education and Early Childhood Development, in partnership with the Victorian Equal Opportunity and Human Rights Commission, publish guidelines to clarify schools' legal obligations under the *Equal Opportunity Act 1995* and the *Charter of Human Rights and Responsibilities Act 2006*. Such guidelines should include:

- detailed advice on legal requirements and how these are best implemented in practice;
- greater clarity regarding the legal rights and responsibilities of all members of the school community with respect to dress codes and school uniform policies; and
- specific examples of relevant case law to support general legal advice.

Gender and Gender Identity

The Victorian Department of Education and Early Childhood Development recognises gender differences in dress codes and school uniform policies as an area of risk with respect to discrimination. The Department's guidelines state that:

School councils are... advised to formulate, as far as practicable, dress code requirements that are similar for both sexes. In general, where options are to be available, they should be available to both boys and girls.²¹³

The Committee recognises that school uniforms with gender-specific options would not necessarily be discriminatory. Discrimination issues only arise where differences in gendered uniforms advantage one group over another. The Committee found several examples in evidence to the inquiry where this may be the case.

As Dr Helen Szoke, Chief Executive Officer, Victorian Equal Opportunity and Human Rights Commission, told the Committee, school uniforms that involve a significant price differential between items for boys and girls items may constitute direct sex discrimination.²¹⁴ In its review of Victorian school uniform price lists, the Committee noted some examples where girls are required to wear a 'dress hat' costing \$50 or more, while boys at the same school are able to wear an inexpensive legionnaire style hat.²¹⁵ The Committee also found that items such as woollen tunics and kilts are frequently far more costly than the items required for male students at the same schools (refer Chapter 6 for further information on costs of school uniforms in Victorian schools). While the Committee recognises that the durability of these garments may offset the purchasing cost, schools are advised to seek to minimise the impact of gender-specific items on the overall cost of school uniforms.

²¹² Mr A. Smith, Deputy Chief Executive, Association of Independent Schools of Victoria, Transcript of Evidence, Public Hearing, Melbourne, 14 May 2007, p.33.

²¹³ Department of Education and Early Childhood Development 2007, 'Student dress code', section 4.8 (updated May 2006), *Victorian Government Schools Reference Guide*, DEECD, Melbourne.

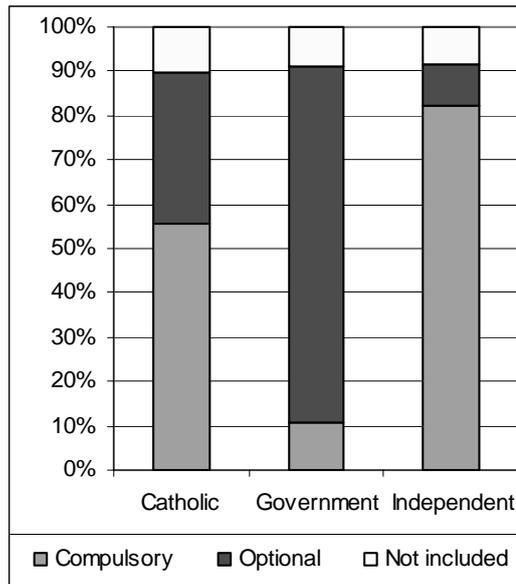
²¹⁴ Dr H. Szoke, Chief Executive Officer, Victorian Equal Opportunity and Human Rights Commission, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, pp.19-20.

²¹⁵ Education and Training Committee analysis of 60 school uniform policies and price lists, October 2007.

The Committee also heard concerns that a requirement for girls to wear skirts or dresses may constitute a form of gender discrimination.²¹⁶ The Committee's survey found that 39.5 per cent of Victorian schools require girls to wear skirts or dresses in summer, and 31.0 per cent require girls to wear skirts or dresses in winter.²¹⁷ Figures 4.1 and 4.2 show that these requirements differ significantly across education sectors.

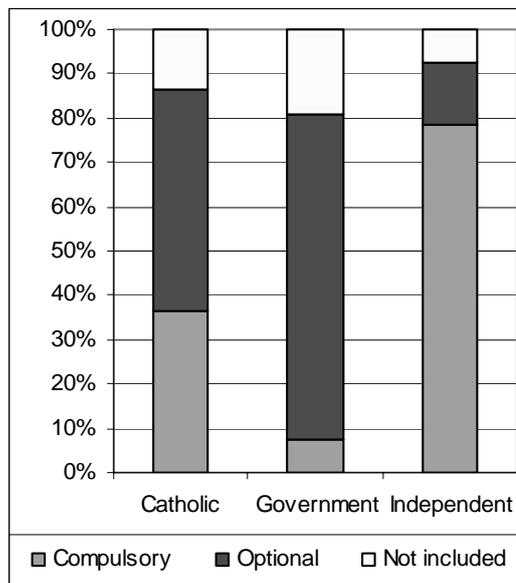
Girls are most likely to be required to wear skirts or dresses in both summer and winter at independent schools, and least likely to have such requirements in the government sector. This may reflect the tendency for independent schools to adopt more traditional uniform designs, and for government schools to choose less traditional and more practical garments. Girls are slightly more likely to be required to wear skirts or dresses in summer than in winter in all sectors. Another finding of note is that all of the single-sex girls schools that participated in the survey require their students to wear skirts or dresses in summer, and only a small proportion provides other options in their winter uniform. Most of these schools are in the independent or Catholic sectors.²¹⁸

Figure 4.1: Policies on skirts or dresses for girls in summer in Victorian schools, by sector (%) (2007)



Source: Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

Figure 4.2: Policies on skirts or dresses for girls in winter in Victorian schools, by sector (%) (2007)



Source: Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²¹⁶ For example, Ms Trudy Little, Parent, Written Submission, March 2007, p.1; Grey Street Primary School, Written Submission, May 2007, p.1; Ms L. Forrest, Year 11 Student, University High School, Transcript of Evidence, Public Hearing, Legislative Assembly Chamber, Melbourne, 6 September 2007, p.9.

²¹⁷ Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²¹⁸ *ibid.*

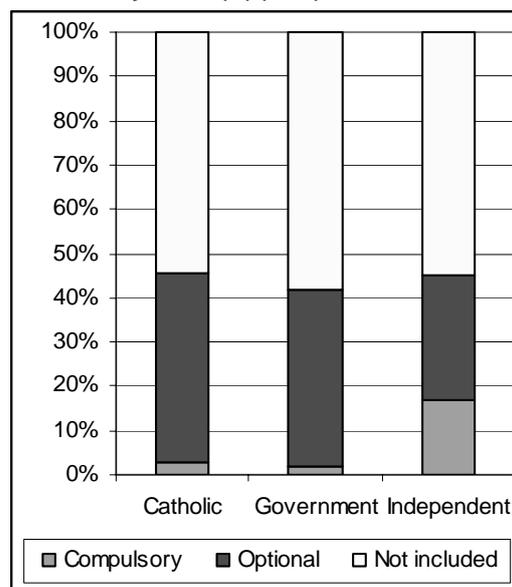
'What type of world do we live in where girls sometimes are not even allowed to wear pants? Do you realise how cold it gets on public transport at 7.30 a.m. when you are only wearing tights? What is it with boys not being allowed to have their hair longer than the collar? That is not only sexist, it is archaic.'

Lizzie Forrest, Year 11 Student, University High School

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The Committee heard concerns that being required to wear a dress or skirt may constrain girls' participation in some school activities, especially physical education.²¹⁹ Figure 4.3 shows that significantly fewer schools require girls to wear skirts or dresses for PE classes than for normal school activities, indicating that most girls are being given opportunities to change into more suitable clothing.²²⁰ However, as noted in the previous chapter, children may also engage in unscheduled physical activity during the school day, through active play or active transport. The Committee therefore encourages schools to consider whether the requirement for girls to wear skirts or dresses may compromise their participation in activities such as cycling to and from school, lunchtime sports and other physical activities in the playground.

Figure 4.3: Policies on skirts or dresses for girls during PE classes in Victorian schools, by sector (%) (2007)



Source: Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

A number of measures are available to schools to address this potential inequality. Schools with compulsory skirts or dresses could permit female students to wear a sports uniform or other alternative clothing during lunchtime, or on the way to and from school. One school reported that it permits girls to wear the school sports shorts underneath their tunics,²²¹ while another includes a 'skort' in its girls uniform (shorts that have a front covering to resemble a skirt).²²² The Committee notes that many schools, particularly in the government sector, give girls the option to either wear skirts or dresses, or shorts or trousers similar to those worn by boys. The Committee agrees that choice may be the most important factor in equality for female students, as it should not be assumed that all girls have the same preferences. Girls may feel equally strongly about wearing a skirt or a dress to express their femininity, as they do about wearing shorts or trousers to facilitate their participation in physical activity.

The issue was also raised with the Committee as to whether boys should be given the choice to wear the same items available to girls. Although no submissions to the inquiry reported incidents of male students dressing in girls uniforms, one school noted in its written submission that this 'could conceivably be a problem one day'.²²³ The Committee believes that such a scenario goes beyond considerations of equality between the sexes, and raises more complex issues around student sexual orientation or gender identity; also both protected attributes under the *Equal Opportunity Act 1995*. Mr Matthew Carroll, Manager, Human Rights Unit, Victorian Equal Opportunity and Human Rights Commission, explained to the Committee that any such situations would require delicate handling:

The fundamental obligation under the Equal Opportunity Act to students who are transgender or intersex is to provide a safe and supportive schooling environment.

²¹⁹ For example, Hawkesdale P-12 College School Council, Written Submission, May 2007, p.1.

²²⁰ Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²²¹ Ms S. Porzig, Acting Principal, Swan Marsh Primary School, Written Submission, May 2007, p.1.

²²² Respondent, Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²²³ Trafalgar Primary School, Written Submission, May 2007, p.1.

There will be a number of issues to work through there of which uniform will be one of the most visibly pressing but needing to be managed within the context of a range of other issues as well.²²⁴

As this area is yet to be tested, the Committee advises that such situations be left to the sensitivity and discretion of individual schools, students and families. The Committee does not feel that such complex issues need to be specifically addressed in schools' dress codes or uniform policies at this point in time.

The Committee is also aware that dress codes and school uniform policies may include other standards for student appearance that may be perceived as discriminatory on the basis of gender. In 1995, the Victorian Anti-Discrimination Tribunal (now the Victorian Equal Opportunity and Human Rights Commission) heard a case from a male student who had been suspended from school for refusing to cut his hair to the length specified for boys: 'collar length at a maximum'. The case for the student argued that the school did not restrict hair length for girls, and the policy was therefore discriminatory. The school argued that the policy was aimed at fostering neatness in the school, and although it differentiated between the sexes, it did not treat them unequally.²²⁵

While acknowledging that the school may have had 'the best of motives' for its student appearance policy, the Tribunal found in favour of the student.²²⁶ The case shows that equality between the sexes is far from straightforward, and that even a well-intentioned school uniform policy may be inadvertently discriminatory. The Committee therefore advises schools to take special care to consider gender equality in standards relating to student dress and appearance.

Recommendation 4.2: That the Department of Education and Early Childhood Development publish detailed guidelines relating to the prevention of gender discrimination in dress codes and school uniform policies, including guidelines for student appearance, and clothing choices for female students.

Age

Many schools include items in their uniforms that differ in style or price depending on age group. The Committee found that in most cases, such differences do not constitute discrimination. Different clothing options for different year levels can be a source of pride for students, as markers of progress towards maturity and seniority in the school. Growing students will also inevitably require larger clothing sizes over the course of their schooling, and it may reasonably be expected that this will result in an increase in the price of a school uniform.

The Committee did, however, hear concerns regarding age discrimination, where one student group was thought to be unfairly disadvantaged. The Committee received a series of written submissions from parents of students at one secondary college, outlining concerns about the school's decision to introduce a compulsory blazer for year 7 students.²²⁷ Although the school indicated that the blazer is to be phased in for other year levels over time, the parents are concerned that the high cost of the blazer unfairly penalises year 7 students and their families. Furthermore, they argue that the school's strict enforcement of the blazer policy constitutes discriminatory treatment of year 7 students in the school.

²²⁴ Mr M. Carroll, Manager, Human Rights Unit, Victorian Equal Opportunity and Human Rights Commission, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.25.

²²⁵ *Cope v Girton Grammar School Limited* [1995] VADT 2.

²²⁶ *ibid.*

²²⁷ Ms M. Reith, Parent, Written Submission, April 2007; Ms C. Mann, Parent, Written Submission, April 2007; Ms L. McCurdy, Parent, Written Submission, April 2007; Ms B. Johns, Parent, Written Submission, May 2007; Ms K. Clarke & Mr L. Challis, Parents, Written Submission, June 2007; Ms K. Rolands, Parent, Written Submission, June 2007.

The parents took their complaint to the Victorian Equal Opportunity and Human Rights Commission in 2007, but the case was declined as 'misconceived'.²²⁸ In supplementary material provided to the Committee, the Commission explained the meaning of the term:

...while conduct has occurred that would otherwise be discriminatory, an exception in the legislation renders the conduct lawful.²²⁹

As noted earlier in this chapter, section 40(1) of the *Equal Opportunity Act 1995* provides an exception for schools' standards of student dress and appearance, providing such standards are 'reasonable' and based on community consultation. In the above case, the parents are engaged in ongoing communication with the Department of Education and Early Childhood Development over whether there was sufficient consultation during development of the school's blazer policy.²³⁰

Mature age students may also have special needs with respect to school uniform policies. Although the Committee did not receive any submissions from adult students in the course of this inquiry, a 1991 research paper suggests that adult students returning to school may have mixed feelings about wearing a school uniform. Some adult students reported that being dressed similarly to other students 'greatly assisted them in feeling "comfortable" and "part of" the school culture'.²³¹ Other adult students resisted uniforms strongly:

...some noted their prior experiences as adult students in schools where uniform was worn by senior pupils and their feelings of 'exclusion' – not being part of the school pupil group nor the staff. Such was this concern, that some stated that had uniform been in force...they would not have returned to school.²³²

South Australia is the only jurisdiction in Australia to provide specific advice regarding adult students in its policy statement on dress codes and school uniforms:

Councils may need to address the issue of the increasing number of students of post-compulsory age in schools. Canvassing opinion and careful consultation will be necessary in determining the most appropriate dress code for this group.²³³

The Committee encourages Victorian schools to consider the needs of mature age students when developing and reviewing their dress codes or school uniform policies.

Physical Attributes

The Department of Education and Early Childhood Development lists student disabilities and any special health conditions among the grounds on which schools must provide exemptions to their dress codes and school uniform policies.²³⁴ The *Equal Opportunity Act 1995* lists a number of physical attributes as prohibited grounds for discrimination, including impairment, physical features and pregnancy. For the purposes of this inquiry, the Committee has chosen to address these issues collectively, because of their relatively uncontroversial nature with respect to dress codes and uniform policies in schools. Nevertheless, the Committee recognises that the term 'physical attributes' may encompass a wide range of

²²⁸ Ms B. Johns, Parent, Supplementary Submission, October 2007, p.5.

²²⁹ Supplementary Material provided to the Committee by Victorian Equal Opportunity and Human Rights Commission, June 2007, p.2.

²³⁰ Ms B. Johns, Parent, Supplementary Submission, October 2007.

²³¹ B. Cocklin 1991, 'Adult Re-entry to Secondary School: the experience and implications', paper presented at the Annual Conference of the Australian Association for Research in Education, Gold Coast, 26–30 November 1991.

²³² *ibid.*

²³³ Department of Education and Children's Services (South Australia) 2007, *Administrative Instructions and Guidelines*, May 2007, DECS, Adelaide, p.108.

²³⁴ Department of Education and Early Childhood Development 2007, 'Student dress code', section 4.8 (updated May 2006), *Victorian Government Schools Reference Guide*, DEECD, Melbourne.

permanent and temporary physical features and conditions, and that each one will give rise to unique needs relating to student clothing.

The Committee found that over three-quarters of Victorian schools would permit a full or partial exemption to their dress code or uniform policy for students with special needs arising from an injury, health condition or physical disability.²³⁵ However, 16.0 per cent indicated that they would not permit an exemption for a physical disability and 10.1 per cent would not exempt students for injuries and health conditions. Body shape was even less likely to be seen as valid grounds for an exemption, with only 37.7 per cent of schools stating that exemptions would be permitted and 58.2 per cent stating that they would not.²³⁶

The number of schools that do not permit exemptions based on physical attributes may appear high, but comments from schools suggest that this may not reflect a lack of accommodation of students' needs. Ten schools commented that their uniform had been purposefully selected to cater for a range of body shapes, sizes or physical attributes. In addition, eight schools made the point that their uniform could be modified or custom-made to accommodate special physical needs.²³⁷ It therefore appears that many schools are accommodating physical attributes in their dress codes or school uniforms at the design phase, rather than through their exemptions policies. The Committee commends such approaches, which seek to provide equal access to the school uniform for a diverse range of students.

The Committee heard concerns regarding the allergies that many students have to certain textiles. Parents Victoria reported that many students are allergic to synthetic fabrics and, that as uniforms are rarely available in 100 per cent natural fibres, the special needs of these students need to be addressed in school uniform policies.²³⁸ The Committee also heard examples of students being allergic to wool, and noted that some schools supply alternative garments in such cases.²³⁹ The Committee also notes that this issue is readily addressed by some schools, particularly in the government sector, by the inclusion of a wide choice of garments within the school uniform. For example, some schools allow students the choice of a woollen jumper or school windcheater and/or the choice of skirts and trousers made in different fabrics.²⁴⁰

Religion, Ethnicity and Culture

The Victorian Department of Education and Early Childhood Development's guidelines state that exemptions to dress codes and school uniform policies must be provided where a student's religious, ethnic or cultural background may be compromised:

Legal requirements necessitate that grounds of exemption must be provided where:

- An aspect of the code offends a religious belief held by the student/parents/guardians
- An aspect of the code prevents the student from complying with a requirement of their ethnic or cultural background.²⁴¹

The Committee did not find that culture or ethnicity in themselves present any current concerns for dress codes or uniform policies in Victorian schools, distinct from those discussed with respect to religion. For example, Dr Mark Rose, Committee of Management, Victorian Aboriginal Education Association Inc,

²³⁵ Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ Parents Victoria, Written Submission, June 2007, p.3.

²³⁹ Respondents, *Education and Training Committee, Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²⁴⁰ Education and Training Committee analysis of 60 school uniform policies and price lists, October 2007.

²⁴¹ Department of Education and Early Childhood Development 2007, 'Student dress code', section 4.8 (updated May 2006), *Victorian Government Schools Reference Guide*, DEECD, Melbourne.

'The wearing of significant and reasonable religious or cultural attire can be of the utmost importance to the self-identity of students from diverse religious and cultural backgrounds.'

Ethnic Communities' Council of Victoria

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indicated that there are no particular issues around dress codes or school uniforms in terms of Australian indigenous culture:

...if I was the kid, if I had to come up with an excuse, I would probably throw that one on the table. We cannot see [a uniform issue] that would be a cultural barrier. An economic barrier, yes; because of cultural imperatives, maybe, but no.²⁴²

Written submissions from the Ethnic Communities' Council of Victoria and the Victorian Multicultural Commission also focused on the wearing of items with religious significance, as well as school uniform costs, as the most significant considerations for culturally diverse communities in Victoria.²⁴³

Victoria is home to people of many religions, many of whom are required by their faith to wear particular garments or other items. The Committee found that 6.1 per cent of schools currently have students exempted from their uniform policy on the basis of religion or culture and that 49.2 per cent would allow such an exemption if requested.²⁴⁴ From the comments provided in the survey, it appears to the Committee that many more have simply not been confronted with the issue of exemptions based on religious grounds and would be likely to negotiate such requests case-by-case. The Committee nevertheless heard of some examples where items with religious significance were not permitted and some where such items have become the subject of disputes.²⁴⁵ As Victoria's multicultural population increases, an increasing number of schools are likely to be faced with the need to incorporate garments with religious significance into their dress codes and school uniform policies. The discussion below addresses the two items that were mentioned most frequently in submissions to this inquiry: the hijab (Islamic headscarf) and the kirpan (Sikh ceremonial sword).

The Hijab and other Islamic Clothing

The case of the hijab in France demonstrates the power of school dress codes to reflect or challenge community values. In 2004, the French Government passed a law forbidding the wearing of signs or behaviours by which students openly express a religious affiliation.²⁴⁶ While the law covers all kinds of items with religious significance including yarmulke (skullcaps) and crucifixes, it is widely thought to be targeted at Islamic apparel, especially the hijab.²⁴⁷

Proponents of the controversial law typically regard the wearing of Islamic clothing as a barrier to the integration of Muslim populations into European societies. Other arguments in favour of the law describe it as an assertion of secularity in French schools and society, and of France's commitment to equality between the sexes. Critics of the policy have accused the government of fostering anti-Muslim sentiment, restricting personal freedom and forcing Muslim girls to choose between

²⁴² Dr M. Rose, Committee of Management, Victorian Aboriginal Education Association Inc, Transcript of Evidence, Public Hearing, Melbourne, 14 May 2007, p.27.

²⁴³ Ethnic Communities' Council of Victoria, Written Submission, May 2007; Victorian Multicultural Commission, Written Submission, May 2007.

²⁴⁴ Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²⁴⁵ Islamic Women's Welfare Council of Victoria, Written Submission, August 2007, p.2; Ms S. Hassan, Executive Secretary, Islamic Council of Victoria, Transcript of Evidence, Public Hearing, Melbourne, 4 June 2007, p.37; K. Healey, 'Crucifix banned by school', *Herald Sun*, 20 August 2006.

²⁴⁶ République Française, *Loi 2004-228 15 Mars 2004*, Legifrance website, <<http://www.legifrance.gouv.fr/WAspad/Visu?cid=233283&indice=1&table=LEGI&ligneDeb=1>>, accessed on 25 September 2007.

²⁴⁷ N. Choudry 2007, 'From the Stasi Commission to the European Court of Human Rights: l'affaire du foulard and the challenge of protecting the rights of Muslim girls', *Columbia Journal of Gender and Law*, 16.1, Winter 2007, p.199.

their education and their faith.²⁴⁸ For some commentators, any kind of government intervention in the matter of headscarves is problematic:

It is more than time that French...officials hold up their own practices to the same critical scrutiny they use to examine and judge foreign cultures. For no matter what one thinks about the veil, forcing women to take it off is no better than forcing them to wear it; both ways are discriminatory and undemocratic.²⁴⁹

Whatever its justification, the law has created bitter rifts both within and between Muslim and non-Muslim communities in France.

The Committee received a number of submissions arguing against a similar ban in Victorian schools. Many of these came from organisations representing culturally and linguistically diverse communities. These included the Victorian Multicultural Commission, Islamic Women's Welfare Council of Victoria, Ethnic Communities' Council of Victoria and representation at a public hearing from the Centre for Multicultural Youth Issues.

Several schools also addressed the issue of Islamic clothing. The Committee found that a number of schools make provisions for Muslim girls to wear hijabs through a simple statement in their uniform policy that they must be in school uniform colours.²⁵⁰ The Committee notes that such compromises may also occur informally as a gesture of goodwill, as demonstrated by the following comment from a written submission provided by the Victorian Association of State Secondary Principals:

We do not stress the colour of hijab that is acceptable, but most girls choose school colours anyway, thus demonstrating their willingness to be a part of our school culture.²⁵¹

The Committee notes that other schools also provide additional options to meet Muslim students' preferences for modesty in dress, by including longer skirts or shirts with longer sleeves in their uniforms. The Committee observes that these choices might also help to accommodate the preferences of non-Muslim students.

The Committee notes that participation in sport can present particular difficulties for Muslim girls. The Islamic Women's Welfare Council of Victoria recommends that schools accommodate Islamic dress requirements in PE classes, including headscarves and loose-fitting clothing, so that Muslim girls may participate with confidence:

Young women should be offered a range of options to facilitate their participation in as many school activities as possible. For some young women, school will be their only opportunity to access many of the resources Australian society provides.²⁵²

This view was supported in public hearings by representatives of the Centre for Multicultural Youth Issues and the Islamic Council of Victoria.²⁵³ Ms Sherene Hassan, Executive Secretary, Islamic Council of Victoria, noted that many designers are now making sports clothing and swimwear that complies with Islamic requirements for modesty.²⁵⁴ Just as headscarves have been successfully

²⁴⁸ For example, 'French law on secularity and conspicuous religious symbols in schools', All Experts website, <http://en.allexperts.com/e/fr/fr/french_law_on_secularity_and_conspicuous_religious_symbols_in_schools.htm>, accessed on 30 March 2007.

²⁴⁹ Ms R. El Habti, KARAMAH: Muslim Women Lawyers for Human Rights, cited in N. Choudry 2007, 'From the Stasi Commission to the European Court of Human Rights: l'affaire du foulard and the challenge of protecting the rights of Muslim girls', *Columbia Journal of Gender and Law*, 16.1, Winter 2007, p.199.

²⁵⁰ For example, Respondents, Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007; Whittlesea Secondary College, Written Submission, July 2007, p.2; Shepparton High School, *Uniform Policy*, Shepparton High School website, <http://shs.vic.edu.au/parent_information/policies/uniform/uniform.htm>.

²⁵¹ Principal, Victorian Association of State Secondary Principals, Written Submission, April 2007, p.5.

²⁵² Islamic Women's Welfare Council of Victoria, Written Submission, August 2007, p.1.

²⁵³ Ms N. Mohamed, Project Officer, Centre for Multicultural Youth Issues, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.29; Ms S. Hassan, Executive Secretary, Islamic Council of Victoria, Transcript of Evidence, Public Hearing, Melbourne, 4 June 2007, p.38.

²⁵⁴ *ibid.*

'Muslim girls are able to wear a hijab and long dress in school colours as part of our uniform. This inclusion has allowed these students to feel part of the school community and we have not experienced problems with other students regarding these additions.'

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School Council

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incorporated into many school uniforms, the Committee is optimistic that schools will be able to make the necessary accommodations in their sports uniforms to further meet the needs of Muslim students.

Ms Leanne McGaw, Coordinator, Youth Participation Programs, Centre for Multicultural Youth Issues, observed, however, that acceptance of the hijab in a school uniform policy is not in itself sufficient to create an environment of religious tolerance in the school:

I guess anecdotes we have heard from young people in schools are that they do get teased about...the colour of the hijab or for wearing it, which causes them considerable distress and also pressure for them then to feel like they have to conform into the mainstream community...or the opposite can happen where they will absolutely not conform, and then therefore they become more hostile and defensive and isolated.²⁵⁵

Nor are negative attitudes to Islamic clothing necessarily confined to students. Ms Sherene Hassan, Executive Secretary, Islamic Council of Victoria, noted that Islamic values may conflict with the values or principles of those who teach Muslim students:

...it might be that a school's policy...embraces or accepts the hijab as part of its uniform, but members of staff might have concerns about the hijab and perceive it to be a symbol of oppression. Those members of staff might make disparaging comments towards the female students who choose to wear the headscarf. That might be an issue if the sentiment is not consistent with the school policy.²⁵⁶

This perspective reflects certain arguments in support of the French legislation, which have described Muslim headscarves as a 'symbol of oppression' and an enforced 'act of submission'.²⁵⁷ Proponents of these arguments in France have contended that the ban has helped emancipate some Muslim women.²⁵⁸

Ms Nadia Mohamed, Project Officer, Centre for Multicultural Youth Issues, made the observation that not all Muslims in Victoria approach the hijab in the same way:

I used to take off my scarf when I was playing my softball or basketball...whereas there are some families that would be like, 'No, you definitely wear it.' There has to be recognition by the staff of how different, diverse it is within the Muslim community, how diverse they are.²⁵⁹

As with all items of religious significance, consideration of the wearing of the hijab and other Islamic clothing in schools must be accompanied by an understanding of the broader issues that accompany them. A written submission from the Islamic Women's Welfare Council of Victoria indicated that wearing the hijab presents many complex challenges for Muslim women in Victorian communities:

...the wearing of the hijab accompanies many associated issues that schools must be cognisant of. Within the broader community, young women who wear the hijab are more vulnerable to racial violence and taunts. Within the Muslim community, the cultural and political dynamics and pressures on Muslim women who don't wear the hijab is definitely a developing trend that needs to be monitored. In both cases, young women bear the brunt of issues in the broader community.²⁶⁰

The Committee encourages schools to work with Muslim students and their communities to understand the issues surrounding the hijab and other Islamic attire, and determine the best ways to accommodate the needs of Muslim students within their dress codes and school uniform policies.

²⁵⁵ Ms L. McGaw, Coordinator of Youth Participation Programs, Centre for Multicultural Youth Issues, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.29.

²⁵⁶ Ms S. Hassan, Executive Secretary, Islamic Council of Victoria, Transcript of Evidence, Public Hearing, Melbourne, 4 June 2007, p.37.

²⁵⁷ N. Choudry 2007, 'From the Stasi Commission to the European Court of Human Rights: l'affaire du foulard and the challenge of protecting the rights of Muslim girls', *Columbia Journal of Gender and Law*, 16.1, Winter 2007, p.200.

²⁵⁸ E. Bryant, 'Europe draws battle lines on head scarves', *San Francisco Chronicle*, 22 October 2006, p.A17.

²⁵⁹ Ms N. Mohamed, Project Officer, Centre for Multicultural Youth Issues, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.31.

²⁶⁰ Islamic Women's Welfare Council of Victoria, Written Submission, August 2007, p.2.

The Kirpan

The kirpan—a small, curved, ornamental sword—attracted some controversy in this inquiry. The kirpan is one of five articles of faith that initiated Sikh males are required to carry on their person at all times. Its purpose is solely the demonstration of faith, and the religion dictates that it is not to be used in aggression as a weapon. The kirpan is carried in a sheath, worn on a strap over the shoulder under the wearer's garments and out of sight.²⁶¹

The Committee received written submissions from the Victorian Multicultural Commission and Sikh Interfaith Council of Victoria supporting the wearing of all items with religious significance in schools, including the kirpan for initiated Sikhs.²⁶² The Sikh Interfaith Council noted that only a small number of Sikhs (especially at school age) are initiated, but that once initiated, Sikhs must carry their kirpan at all times and are required to 'make atonement' if they do not.²⁶³ The Council also reported that there is no evidence to suggest that the kirpan has ever been used for any criminal purpose or to commit violence, even in the United Kingdom where there is a much larger Sikh community than in Australia.²⁶⁴

The Committee notes that most Australian states have a Control of Weapons Act or similar legislation, which provides exemptions to allow Sikhs to carry the kirpan. As noted by the Sikh Interfaith Council of Victoria, New South Wales has gone even further, providing a statutory defence for the wearing of the kirpan in schools.²⁶⁵ Similarly, the law on weapons in the United Kingdom was strengthened and extended to schools and, since 1996, British students have been allowed to carry the kirpan in schools.²⁶⁶

The Victorian Multicultural Commission reported that there are currently two exemptions to Victorian weapons control legislation that allow initiated Sikhs to carry the kirpan: the ceremonial dress exemption, made under the *Firearms and Other Weapons Act* 1958, which remains in force by virtue of the *Control of Weapons Act* 1990; and the 2004 general exemption allowing members of a religion whose practices involve swords to possess swords, provided they comply with requirements regarding transport, security and storage of those weapons.²⁶⁷ The Commission's written submission sought a similar exemption for initiated Sikhs in the wearing of the kirpan with a government school uniform.²⁶⁸

However, submissions supporting the wearing of the kirpan in Victorian schools sparked resistance from some quarters. Objections to the kirpan were typically based on the threat that it is seen to pose to student safety. Mr Brian Burgess, President, Victorian Association of State Secondary Principals, was quoted in the media as saying that it is 'not appropriate that something that can be used as a weapon is brought into a school'.²⁶⁹ His view was supported in the same article by Ms Mary Bluett, President, Australian Education Union (Victorian Branch).²⁷⁰ An online forum on the issue obtained a number of further comments from members of the public opposed to the wearing of the kirpan in schools.²⁷¹ The Committee also

²⁶¹ Sikh Interfaith Council of Victoria Inc, Supplementary Submission, July 2007, p.2.

²⁶² Victorian Multicultural Commission, Written Submission, May 2007, pp.1-2; Sikh Interfaith Council of Victoria Inc, Written Submission, June 2007, p.1.

²⁶³ Sikh Interfaith Council of Victoria Inc, Supplementary Submission, July 2007, p.2.

²⁶⁴ House of Commons, *Hansard Debates*, 5 December 2006, cited in Sikh Interfaith Council of Victoria Inc, Supplementary Submission, July 2007, pp.1 & 4.

²⁶⁵ Sikh Interfaith Council of Victoria Inc, Supplementary Submission, July 2007, pp.2-3.

²⁶⁶ *ibid.*, p.2.

²⁶⁷ Victorian Multicultural Commission, Written Submission, May 2007, p.2.

²⁶⁸ *ibid.*

²⁶⁹ M. Papadakis, 'Is it OK to take this to school?', *Sunday Herald Sun*, 10 June 2007, p.14.

²⁷⁰ *ibid.*

²⁷¹ Readers Comments, 'OK to take to school?', 10 June 2007 – 6 July 2007, Herald Sun website, <<http://www.news.com.au/heraldsun/comments/0,22023,21878958-2862,00.htm>>, accessed on 10 July 2007.

received a written submission from the Secular Party of Australia, arguing against permitting the kirpan.²⁷²

The Committee notes that some schools overseas have tried to agree a compromise between permitting the kirpan to be worn and assuaging concerns about student safety. In some Californian schools, kirpans must be blunted and riveted into a sheath to negate their potential to be used as weapons.²⁷³ In a 2006 court case involving the wearing of a kirpan in a Canadian school, the school initially proposed a requirement that the student simply ensure the kirpan was wrapped safely and remained concealed. However, this solution was subsequently deemed insufficient by the school district administrators.²⁷⁴

In a recent media interview, a spokesperson from the Department of Education and Early Childhood Development suggested that the kirpan could be replaced with a small replica or pendant.²⁷⁵ Such a suggestion, however, is not supported by the Sikh Interfaith Council of Victoria:

To suggest the using of a replica or any form of material is to belittle the religion. A replica or pendant is not acceptable. The kirpan cannot be of any material other than steel.²⁷⁶

The Committee therefore notes that any such compromises are likely to require significant negotiation between schools and their Sikh students and communities.

The Committee recognises the significance of the kirpan as an article of religious faith. It also acknowledges fears among some members of society that the kirpan could be dangerous if misappropriated or misused. The Committee therefore recommends that schools work with Sikh students and their communities to negotiate appropriate standards for the kirpan, as part of their general consultation around the wearing of items with religious significance. The Committee also recommends that the Department of Education and Early Childhood Development investigate how the needs of Sikh students can best be met within the duty of care that schools owe to their students, and provide schools with further guidelines or advice if necessary.

General Issues Around Items with Religious Significance

As noted above, the prevailing view in evidence to the inquiry is that dress codes and school uniform policies in Victorian schools should accommodate clothing and other items with religious significance. The Committee nonetheless acknowledges arguments against the wearing of clothing and other items of religious significance received in the course of the inquiry. The Secular Party of Australia put forward the view that prohibiting such attire *protects* students' rights: it advocates the rights of children to not have a religion 'imposed on them' by their parents and argued that schools must teach students to 'make rational and informed decisions about their own lives'.²⁷⁷ In another written submission, the Atheist Foundation of Australia argued that dress codes and school uniforms in Victorian schools should reflect the secular nature of Australian society:

...dress codes and uniforms must not include religious, commercial or political symbolism, by way of logos, jewellery or attached paraphernalia...Australia is a secular nation and its laws and regulations must be a reflection of that.²⁷⁸

The Committee notes that the Victorian Government recently asserted its commitment to secularism in public schools by passing the *Education and Training Reform Act 2006*, which includes the provision under section 2.2.10 that 'education

²⁷² The Secular Party of Australia, Written Submission, June 2007, p.2.

²⁷³ M. Hamilton 2005, *God vs. the Gavel*, Cambridge University Press, Cambridge, p.116.

²⁷⁴ *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6, p.3.

²⁷⁵ Cited in M. Papadakis, 'Is it OK to take this to school?', *Sunday Herald Sun*, 10 June 2007, p.14.

²⁷⁶ Sikh Interfaith Council of Victoria Inc, Supplementary Submission, July 2007, p.2.

²⁷⁷ The Secular Party of Australia, Written Submission, June 2007, p.2.

²⁷⁸ Atheist Foundation of Australia Inc, Written Submission, June 2007, p.1.

in government schools must be secular and not promote any particular religious practice, denomination or sect'. The Committee notes that for some people, secularity is thought to include the prohibition of all demonstrations of religious affiliation in schools.

Although some may argue that the non-government sector can respond to the needs of students seeking a non-secular school environment, the Committee does not believe that non-government schools should be the only options available to students from diverse religious and cultural backgrounds. One student from Stockdale Road Primary School emphasised this point to the Committee in her statement on uniform exemptions:

Religious people should still get to wear their religious clothing, and religious people should be allowed to go to any government school that they or their families choose. My family goes to church and at the moment my family cannot afford a private school, and I know that I am not the only one around who is like that.²⁷⁹

The Victorian Multicultural Commission also argued in its written submission that students from diverse religious and cultural backgrounds have a right to be accommodated in government schools:

It is imperative for appropriate exemption criteria and processes to be included within the findings of your Inquiry to recognise the cultural and religious rights of Victorians within government schools.²⁸⁰

The Committee supports the view that all Victorian students have the right to attend a government school, irrespective of their culture or religion. It therefore believes that prohibitions on the wearing of items with religious significance should not be used as grounds for excluding students from diverse religious and cultural backgrounds from Victorian government schools.

The Committee therefore supports the Department of Education and Early Childhood Development's current advice to schools, that exemptions to dress codes and school uniform policies on the grounds of religion should be permitted. The Committee recommends that this advice be supplemented by more detailed guidance and examples of best practice where appropriate. The Committee also recognises that these issues may be faced by schools across all education sectors; for example, the Catholic Education Commission of Victoria identified a need for 'clear guidance' on 'culturally important attire'.²⁸¹ The Committee therefore encourages all relevant education authorities to provide similar advice and support to schools, to help them develop policies on the wearing of clothing and other items with religious significance.

Recommendation 4.3: That the Department of Education and Early Childhood Development require all Victorian schools to accommodate clothing and other items with religious significance where appropriate, within a framework developed by the Department.

Philosophical or Conscientious Objections

For some students and parents, a dress code or school uniform policy may conflict with genuine personal values or beliefs, and give rise to a philosophical or conscientious objection. The Committee emphasises that such objections extend far beyond a simple preference not to wear a school uniform, or a dislike for a particular school's dress code or uniform policy. The Committee also recognises that such cases are relatively rare, but that they may be particularly challenging for schools where they do arise.

²⁷⁹ Ms A. Shaw, Year 6 Student, Stockdale Road Primary School (Traralgon), Transcript of Evidence, Public Hearing, Legislative Council Chamber, Melbourne, 6 September 2007, p.15.

²⁸⁰ Victorian Multicultural Commission, Written Submission, May 2007, p.1.

²⁸¹ Catholic Education Commission of Victoria Ltd, Written Submission, May 2007, p.2.

'I have never personally worn a school uniform... [My mother] decided that school uniform was not good enough for her daughter, so she did not let me wear one. She decided that it would not help my education and was morally unethical.'

Sinead Mildenhall, Year 9 Student, Footscray City College

Inquiry into Dress Codes and School Uniforms in Victorian Schools

The Department of Education and Early Childhood Development's policy statement on school dress codes does not currently provide schools with explicit guidance regarding philosophical objections. However, they are addressed in guidelines provided by some other education departments in Australia. The NSW Department of Education and Training's policy statement on school uniforms states that schools must respect objections to uniforms on principle, but should also initiate dialogue with parents to ascertain the real reasons behind the objection:

Principals may be faced with conscientious or 'principled' objections by individual parents to their child's wearing of a school uniform, or of individual items specified within school uniform requirements...These objections must be respected. However non-confrontational approaches should be used to engage parents in clarifying the reasons for their objection.²⁸²

The Queensland Department of Education, Training and the Arts also requires that in resolving matters of conflict about a school uniform, principals should consider conscientious objections, along with objections raised on any reasonable religious or cultural grounds.²⁸³ The Law Institute of Victoria's written submission suggests that the Department of Education and Early Childhood Development should consider providing similar guidelines to assist Victorian schools.²⁸⁴

The Committee notes that freedom of expression is one of the rights protected by the new Victorian *Human Rights Charter*, albeit subject to 'reasonable' limitations. Mr Matthew Carroll, Manager, Human Rights Unit, Victorian Equal Opportunity and Human Rights Commission, explained that the Charter may affect the way in which 'conscientious objections' to school uniforms are treated by the law:

A simple complaint of, 'I am opposed to uniform policies. I don't wish to comply,' in the absence of a link to a protected attribute would mean that it could not come to the commission as a discrimination complaint. If a student or their parent were alleging broader issues around freedom of expression, the only avenue that we could identify at this point would be the possibility of a complaint to the Ombudsman, on the basis that the policy being auspiced by the Department of Education and enforced by the school might be in conflict with the Charter of Human Rights and Responsibilities.²⁸⁵

As the *Human Rights Charter* only came into effect in 2007, this legal process has yet to be tested in Victoria. However, the Committee found evidence to suggest that any legal responsibilities Victorian schools may have to consider conscientious or philosophical objections to wearing a school uniform are not widely reflected in practice. The Committee's survey found that only 17.8 per cent of Victorian schools would consider requests for exemptions to their dress codes or uniform policies on philosophical grounds.²⁸⁶ However, the Committee notes that at the time of the inquiry, 2.7 per cent of schools (mostly in the government sector) had students exempted on such grounds.²⁸⁷

Mr Brian Burgess, President, Victorian Association of State Secondary Principals, told the Committee that philosophical disputes between parents and schools over uniform policies are currently a 'particularly difficult' process to work through.²⁸⁸ He described a 'very bruising battle' between one school and a student's father, which ended with the student being exempted from the uniform policy. Although the situation was eventually resolved, the Committee is concerned about the impact of

²⁸² Department of Education and Training (New South Wales) 2004, *School Uniforms in New South Wales Government Schools*, DET, Sydney, p.10.

²⁸³ Department of Education, Training and the Arts (Queensland), 'Responsibilities', *SMS-PR-022: Student Dress Code*, November 2007, DETA, Brisbane.

²⁸⁴ Law Institute of Victoria, Written Submission, June 2007, p.6.

²⁸⁵ Mr M. Carroll, Manager, Human Rights Unit, Victorian Equal Opportunity and Human Rights Commission, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.21.

²⁸⁶ The Committee's survey found that 28.6% of schools in the government sector, 8.2% in the Catholic sector and 3.1% in the independent sector would consider exemptions from the dress code or school uniform policy on the basis of philosophical objections.

²⁸⁷ Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

²⁸⁸ Mr B. Burgess, President, Victorian Association of State Secondary Principals, Transcript of Evidence, Public Hearing, Melbourne, 30 April 2007, p.4.

the dispute on the student and his family's relationship with the school, and on the credibility of the school's uniform policy among other students and families.

The Committee believes that appropriate processes for negotiating conscientious objections to dress codes and school uniform policies are likely to involve balancing the rights and responsibilities of the school, and those of the student or family. Schools have a right to impose limits on individual freedom of expression, but a responsibility to ensure that the limitation is reasonable, as set out in the *Human Rights Charter*. Students and families have a right to express their beliefs and opinions, but may also be seen as having a responsibility to ensure that their claims to these rights are reasonable. For example, one school told the Committee that it 'would consider *genuine* cases' of conscientious objection to its uniform policy.²⁸⁹ The Committee notes the difficulties involved in differentiating between a genuine and unsubstantiated philosophical objection, but believes that schools should undertake to understand objections as fully as possible in order to determine an appropriate response.

In essence, the Committee recognises the rights of students and their families to pursue genuine philosophical objections to a dress code or school uniform policy. The Committee believes, however, that parents need to be cognisant of the potential negative impacts on their children's learning and social standing within the school, when pursuing exemptions from a school uniform policy based on a philosophical objection. The Committee also believes that clearer departmental guidance and more formal dispute resolution processes (as outlined in Chapter 8) may help to minimise the negative effects for parties involved in such disputes in the future.

Recommendation 4.4: That the Department of Education and Early Childhood Development publish guidelines to assist schools with appropriate responses to conscientious or philosophical objections to their dress code or school uniform policy raised by members of their school community.

Conclusion

The Committee is pleased to note that most Victorian schools recognise the importance of equality and anti-discrimination issues in their dress codes and school uniform policies. The Committee found that most schools develop policies that apply to all students in consultation with their communities, and then work with individuals and families to negotiate exemptions on a case-by-case basis where necessary. Nevertheless, the Committee has found that some difficulties have arisen around discrimination with respect to dress codes and school uniform policies in Victorian schools, as evidenced by various complaints received by relevant education and legal authorities.

As this chapter has shown, the issue of anti-discrimination rests on a complex legal and political framework. Evidence to this inquiry has revealed some areas in which greater clarity may be desirable at a legislative and policy level. The Committee notes that disputes over discrimination with respect to dress codes and school uniforms can become serious, for students, schools and their communities. The Committee therefore believes that clearer policy and guidelines in this area from the Department of Education and Early Childhood Development would go some way towards smoothing the resolution of any future issues. In addition, departmental guidelines must keep pace with changes in the relevant legislation and how it is applied. The Committee therefore also encourages the Department to monitor instances where the *Equal Opportunity Act 1995*, *Charter of Human Rights and Responsibilities Act 2006* or other relevant legal instruments have been

²⁸⁹ Respondent, Education and Training Committee, *Dress Codes and School Uniforms in Victorian Schools Survey*, August – September 2007.

applied to dress codes and school uniform policies, and disseminate further advice to schools where appropriate.