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Ms L Blandthorn MLA  
Chairperson  
Scrutiny of Acts and Regulations Committee  
Parliament of Victoria  
Spring Street  
East Melbourne VIC 3002  
via email: [sarc@parliament.vic.gov.au](mailto:sarc@parliament.vic.gov.au)

Dear Ms Blandthorn

**Re: Equal Opportunity Amendment (Religious Exceptions) Bill 2016**

We understand that the Committee is currently reviewing the abovementioned Bill introduced into the Parliament on 30 August, 2016.

The Terms of Reference of the Committee require consideration of whether a Bill 'trespasses unduly upon rights or freedoms' or 'is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities*'. On behalf of our 23 member schools in Victoria, the nearly 10,000 students therein and their respective families and communities we respectfully insist that this is clearly the case.

In introducing the Bill, the Attorney-General repeated refers to 'reinstating' the so called 'inherent requirements test'. Such a description is misleading as the amendments which would have introduced such a test previously never came into operation before they themselves were subject to amendment. There has never been an 'inherent requirements test' operative in Victorian law and we trust that the Committee will acknowledge that the Bill seeks to impose a limitation which is untested in Victoria and will create considerable uncertainty and potential for litigation. Public comments by the Attorney-General in relation to the Bill have been unhelpful in this regard, oscillating between an inability to describe how the Bill will operate and assertions about its likely impact based on ill-informed stereotypes.

What is clear is that the Bill is **solely** aimed at curtailing the religious freedoms effected through religious bodies and schools. It reflects a clear attempt to 'trespass' upon the rights and freedoms of individuals seeking to express their faith through these entities including the families who seek to provide a faith based education for their children through Christian schools.

In seeking to rely upon the provisions in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) which ascribe human rights to natural persons and not corporate entities in his *Statement of Compatibility* the Attorney-General undermines the objects and clear intentions of the Charter.

Natural persons often seek to exercise fundamental human rights and freedoms through the establishment of entities including corporate entities. It is clear that if a religious body or school was conducted by an unincorporated group of individuals that it would be necessary to consider whether the Bill limits human rights. In this case the Bill would clearly limit the human rights of those families seeking to provide a faith based education for their children, a right recognised both in the Charter and extensively in international law. The legal structure involved in the exercise of a right should not be a relevant consideration in relation to whether those rights are infringed.

The *Statement of Compatibility* goes on to acknowledge the need to 'balance' the rights recognised in section 8 of the Charter, recognition and equality before the law, and section 14, freedom of religion and belief. In considering this balancing the Attorney-General concludes, with little real evidence or analysis, that the proposal in the Bill is the 'least restrictive means available to achieve the objective of striking the appropriate balance'.

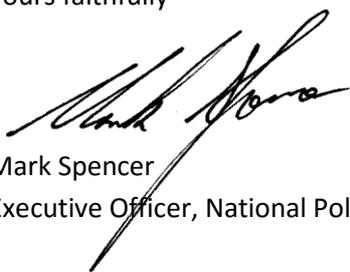
Such a statement stands in stark contrast to the recommendation of this Committee following the *Review of the Exceptions and Exemptions to the Equal Opportunity Act 1995* undertaken in 2009. The Committee considered over 1800 submissions and many hundreds of comments received in petition form. Given the level of public interest evidenced by the written submissions and petitions the Committee also held public hearings on 4 and 5 August 2009. Having undertaken such an extensive Review, the Committee concluded in its Final Report dated November 2009 that (sections 75 and 76 being the equivalent provisions to sections 82 and 83 in the current Act):

***'Having considered all submissions the Committee has decided to recommend that the religious exceptions, concerning sections 75(2) and (3) and section 76, should be retained but should apply for fewer attributes.'***

This clearly demonstrates that the 'least restrictive means' to achieve an appropriate balance is found in the existing provisions unamended. The Bill would not provide such a balance and goes well beyond what is fair.

The Bill trespasses unduly upon rights or freedoms and is incompatible with the human rights set out in the Charter. We urge the Committee to report to the Parliament accordingly.

Yours faithfully



Mark Spencer  
Executive Officer, National Policy