

Introduction

This submission is made on behalf of 20 Australian Association of Christian Schools (AACs) schools in Victoria where 9,600 students attend. AACs schools are almost all low-fee schools with an average SES is 97.40. All Victorian AACs schools operate autonomously and are accountable to their parent and school communities.

Overview

Our basic submission is that the present exceptions in the *Equal Opportunity Act 2010* are necessary and should be retained so that the competing rights in relation to discrimination can be appropriately balanced. Our contention is that the imposition of an 'inherent requirements' test within the *Equal Opportunity (Religious Exemptions) Bill 2016* destabilises a long standing balance and undermines the rights of parental choice and freedom of religion that Victoria has upheld for a very long time.

Our Arguments

1. Do Christian schools need an exemption from equal opportunity legislation?

Yes. This is the mechanism used to protect the right of religious freedom. It allows a sensible way of balancing religious freedom rights with other human rights such as equality and non-discrimination. These rights are the basis of equal opportunity legislation. The exemption recognises that sometimes one right needs to be balanced against another.

Christian schools were established by Christian parents or churches seeking an authentic Christian educational expression for their faith. Being able to employ Christian staff, people who are in step with the religious values and beliefs of the school community, goes to the very heart of why Christian schools exist. To protect religious liberty, churches and religious institutions such as schools need to be able to make a choice in the employment of staff.

The 'Inherent Requirements' amendments would place the onus of responsibility onto the school to make a special case as to why faith is necessary for each position within the school, with little regard for the school's establishment as a faith-based institution. This is a burdensome, overbearing and an unwarranted attempt by the state to make decisions about what are essentially matters of faith.

2. Do Political Parties need an exemption from equal opportunity legislation?

Of course they do. Political parties, are also exempt, and can choose staff who comply with their political beliefs. Imagine saying to the Greens that they would not be allowed to discriminate against a climate change denier when employing a staffer.

The current exemption in section 27 of the *Equal Opportunity Act 2010* (Vic) provides: ‘An employer may discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment.’

Why this inconsistency? Why are political beliefs a higher set of rights than religious beliefs? Why should a Christian school be required to prove that faith is needed to teach in their community when political parties don’t apply a similar ‘beliefs’ test?

3. It’s a false argument that labels ‘disagreement’ as ‘discrimination’

When Christian schools seek to employ staff who are supportive of the Christian faith and understanding (which can include a traditional marriage viewpoint) does that mean they are being unfairly discriminatory? Or to put it another way, if I believe that marriage should be between a man and a woman to the exclusion of all others, does that mean I’m unfairly discriminating against LGBTI people? We don’t believe it does. This is the question that is at the heart of this whole debate.

Do Christian schools discriminate? In one sense, they do, in much the same way that the footy club chooses a footy expert rather than a hockey expert to be the coach. Both discriminate on the basis of giving weight to a particular value. This is a right that everyone/ every organisation should be able to hold. Is this form of discrimination unreasonable or unfair? Christian schools would argue that when the state insists that a religious body needs to uphold a particular moral view that contravenes its very own religious view, the state is over-stepping its authority.

4. Getting the balance right

Christian schools understand that the right to religious freedom needs to be balanced against other rights. We understand that religious freedom rights are not absolute and that they have their limits.

The government says that their amendments strike the right balance between the *right to freedom of religion* and *freedom from discrimination*. They do not. They lean heavily to the latter. When the government’s task of assisting society to protect the vulnerable (i.e. discrimination laws) means that particular interest groups, like Christian schools, can no longer have authority over their own employment policy, the balance has swung too far.

One government spokesperson said that equality is non-negotiable. What a ridiculous generalisation. Does that mean every exemption goes? A more nuanced explanation would say the rights of LGBTI people need to be protected. And Christian schools would agree. We’d agree that treating people fairly, with dignity and respect is a value that should be expected of everyone and all societal institutions.

However, does this then mean that a Christian school, that teaches traditional marriage and asks of its staff to be ‘in-step’ with the school’s ethos and beliefs, is being disrespectful or unfairly discriminating of LGBTI people? If that is what ‘the right to equality’ or ‘protecting LGBTI people’ means then the state would be imposing a particular sexual orthodoxy upon all social institutions. This would be un-balanced and inconsistent with a pluralistic democracy that by its very nature allows for differing religious outlooks and moral views.

The right to equality and the right of religious freedom can both be protected because our society provides a significant measure of choice. Christian schools seek to reflect the values and beliefs of the Christian faith in all that they do. It would be hard to miss the clear expression of their beliefs and values. Some agree with this faith, many don't. Those who disagree can choose another option. They are not required to be a part of a particular faith-based community.

5. Does 'Inherent Requirements' diminish religious freedom?

Some claim that 'inherent requirements' is a compromise that still allows for religious freedom. Christian schools would claim that the Bill actually undermines religious freedom.

This point of difference is best understood by pointing out the differing understandings regarding religion. Some have a dualistic or sacred/ secular divided view of religion. Here, if one's faith only impacts the religious part of life then the claim that faith has nothing to do with Maths teaching or the school gardener is understandable. This is why some religious schools have no difficulty with the proposed legislation.

However if one's religious outlook is holistic, where faith impacts all of life, then the 'Inherent Requirements' test (based on a dualistic understanding of faith) becomes a serious threat. Our Christian schools are committed to a holistic education where staff share the beliefs and values of the school and live out those values and beliefs. The example of staff to students of the Christian life is essential in contributing to the holistic formation of students. Here, Christian schools would frequently say, 'it takes a village to raise a child'.

6. What's changed since the last SARC Review?

After the exhaustive reviews of the Department of Justice (Feb 2008) and the 2009 SARC Review, the Committee recommended that in relation to the employment of staff in religious schools that the *"exception in section 76 should be retained but should not apply to allow discrimination on the basis of the attributes of race, impairment, physical features or age"* (Rec 49, p.64). They determined that the appropriate balance should not involve any change to the existing exemption. However, Rob Hulls the Attorney General at the time, chose to ignore those recommendations and introduce the 'inherent requirements' legislation. We'd ask, why ignore the recommendations of an exhaustive SARC review process, outside of having a separate political agenda?

7. Paying heed to other jurisdictions

Throughout Australia religious freedoms are currently protected by way of exceptions and exemptions in equal opportunity or anti-discrimination legislation. The form of religious protection currently used in the *Victorian Equal Opportunity Act 2010* is largely consistent with what has been used across all States/Territories (except Qld) and the Commonwealth for over thirty years.

The introduction of an 'inherent requirement' test would put Victoria out of step with other jurisdictions and provide potential conflict with the requirements under Commonwealth legislation such as the *Fair Work Act 2009*. This Commonwealth exemption is a very similar form to the existing Victorian exemption.

There might well be further legislative conflict between Commonwealth and State law (s 109 – The Australian Constitution). The Commonwealth *Sex Discrimination Act* 1984, under s 38 allows for ‘discrimination’ where it says, “in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed”.

We acknowledge that this is untested territory. However we can confidently point out that the passing of the *Equal Opportunity (Religious Exemptions) Bill 2016* will open up many questions of conflicting and inconsistent legislation.

8. Protected Rights

The rights of parental choice and religious freedom are a vital part of Australian democracy. Human rights’ covenants, that Australia is a signatory to, protect the right of parents to choose their child’s school and they uphold the right to religious freedom. The implications of the proposed changes are a significant challenge to both of these rights.

Christian schools were established by Christian parents or churches seeking an authentic Christian educational expression for their faith. Being able to employ Christian staff, people who are in step with the religious values and beliefs of the school community, goes to the very heart of why Christian schools exist and to our understanding of religious freedom.

Christian schools will be different to other schools because they seek to reflect their stated faith and charter. Parental choice is made on the basis of such difference. When a parliament takes away a major ‘point of difference’ parental choice is diminished. The right of parents to send their children to a Christian school is a freedom we expect in a democratic, tolerant and pluralistic society.

We submit that the qualifying of exceptions grounded in religious belief, observance, practice and teaching would result in a situation in which it is no longer possible for the State to protect the rights of Christian parents and religious bodies as expressed in:

- The *Charter of Human Rights and Responsibilities Act* 2006, Section 14, part 1b, and Section 38, part 4.
- The *International Covenant on Civil and Political Rights*, Article 18, part 4;
- *UN Universal Declaration of Human Rights* - Article 26.3
- The *Education and Training Reform Act* 2006, Section 1.2.1;

The SARC Committee should note the significance of the following statements of rights:

The Victorian Charter of Human Rights & Responsibilities

Section 14 provides for ‘freedom of thought, conscience, religion and belief’ as a protected right.

Section 38 (4) Subsection (1) states [it] “does not require a public authority to act in a way, or make a decision, that has the effect of impeding or preventing a religious body ... from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.”

How could the qualifications that would be included in the ‘inherent requirements test’ not impede?

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was ratified by Australia in 1980, and is included here as the Charter protects many human rights that are derived from this Covenant.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

We note that (3) within Article 18 is the ‘balancing’ clause which seeks to balance freedom of religion with the rights and freedoms of others.

The UN Universal Declaration of Human Rights

Australia was one of the inaugural signatories to the Declaration in December 1948. Article 26.3 says, “Parents have a prior right to choose the kind of education that shall be given to their children.”

The Education and Training Reform Act 2006

In the section outlining the principles underlying the enactment of this Act, Section 1.2.1 states “(d) parents have the right to choose an appropriate education for their child.”

9. Conclusion

We submit that the exceptions should be protected so as to facilitate the rights of Christian parents to educate their children in conformity with their own convictions. Christian schools not being allowed to advertise for Christian staff is an inappropriate over-reach by the state and would result in the religious ethos and character of our schools being undermined. This proposed legislation will have the effect of eroding parental choice and the fair expression of religious freedom. Christian schools appeal to the SARC to note the negative consequences of the Bill and to therefore find that the Bill is inconsistent with other rights and responsibilities that the state is obligated to uphold.

Yours sincerely,

Martin Hanscamp,
AACS Executive Officer.

September 12th, 2016

On behalf of AACS in Victoria:
Bayside Christian College – Langwarrin South

Chairo Christian School – Drouin, Drouin East, Leongatha, Pakenham
Covenant College – Geelong
Donvale Christian College - Donvale
Heathdale Christian College – Werribee, Melton South
Kings College - Warrnambool
Maranatha Christian School - Cardinia, Doveton, Endeavour Hills
Melton Christian College – Melton
Mt Evelyn Christian Schools – Mt Evelyn
Mountain District Christian School – Monbulk
Olivet Christian College – Castlemaine
Oxley Christian College – Chirnside Park
Plenty Valley Christian College – Doreen
Ranges TEC – Lilydale
Son Centre Christian School – Swan Hill