Review of the
Charter of Human Rights and Responsibilities Act 2006

Submission by
Christian Schools Australia Ltd

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1. **Introduction**

Christian Schools Australia (CSA) is a peak group representing 130 member schools Australia wide with approx 46,000 students and more than 2,000 teaching staff. CSA provides leadership in policy, services and resources for its members, and generally works to advance the cause of Christian schooling. Within Victoria we have 20 member schools educating over 7,000 students.

CSA member schools are geographically, culturally and educationally diverse, while serving predominantly middle to lower socio-economic communities. They operate as locally governed, community-based, not for profit religious organisations.

CSA member schools are closely aligned with one or more Christian churches in their communities. As faith-based schools, our members are overt and particular about the beliefs and values that underpin the schools’ culture and practice.

As a direct expression of Christian faith, our member schools have a strong culture of mission and service both at home and overseas. They educate students to be locally and globally active citizens, concerned about the welfare of others and about using their gifts to serve.

CSA member schools have attracted very strong community support as evidenced by their enrolment growth, which has averaged almost 10 percent over the past decade.

Many CSA members were commenced by and remain affiliated with a local church, and draw their enrolments from church families. Others are associated with and supported by members from a number of churches in their local area. In addition, most CSA schools also attract significant enrolments from families who, while not currently attending a Christian church, nonetheless deliberately choose the school because they desire for their children an education that is based upon Christian beliefs and values. This can be expected when the position is accepted that every parent has an inalienable right to choose the type of education they desire for their children.

We have set out below our initial submission to the Committee’s Review of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). In doing so we reserve the right to provide further analysis and comment either in response to other submissions or more generally. In particular we may wish to make a response to any proposed legislative change which may be recommended following the consultation.

2. **The nature of Christian Schools**

Christian schools were established out of a desire by parents and others to see young people grow up in a Christian teaching/learning environment where they could be nurtured in their faith.

The Christian faith is the foundation upon which all aspects of a Christian school are based. Structures and practices, both formal and informal, work together to provide a faith-based community within which learning takes place. In our schools religion is not simply taught as a stand-alone subject, it permeates all that takes place and is lived out in the daily lives of the community of the school.

Parents make a deliberate choice to place their children in a school which teaches, supports, nurtures and seeks to live out a value and belief system consistent with Christian faith of their home environment. Such an environment is a community in which faith is not only taught, but 'caught'; where the informal curriculum of lived values is as important as the formal teaching of the various beliefs and tenets of the faith.

The conduct and character of individuals, and the nature of their relationships with others in the school community, are key concerns in establishing such a Christian learning community. This includes all manner of conduct - the use of appropriate language, the conduct of relationships, attitudes, values and expression of matters of sexuality, and many other aspects of conduct within the community in general.

Staff members, including both administrative and teaching staff, are role models and exemplars for the students whose educational, social and spiritual development is the school's purpose. Their work is to do with teaching - by modelling and instruction - the doctrines and values of the faith. In this respect they are similar to a pastor or minister in a church setting.

Like other religious workers teachers in our schools are also called upon to be mentor to the students in their care. Likewise administrative staff are often called upon to pastorally care for school families in their many dealings with them. Parents have chosen Christian schools precisely for this reason - that the staff are known to have a pastoral concern from a distinctly Christian point of view.

Essential to the operation of such schools is therefore that they can make a deliberate determination that all staff members both adhere to and live by the beliefs and values of the Christian faith: in other words are practicing Christians. (The definition of Christian is that commonly used in legislation, including in the current legislation, as being that which would normally be recognised by the mainstream Christian denominations.)

Schools commonly require that staff are able to attest to a statement of faith, can demonstrate they are active and participating members of the Christian community (usually demonstrated through membership of a church) and can bring evidence of their commitment to live according to the doctrines and teachings of their faith (often through a reference from a pastor or other senior member of a recognised church).

3. Human Rights and Christian Schools

The Terms of Reference for the Review reaffirm the Victorian Government's commitment to the promotion of human rights and the basis of this commitment in the belief in the fundamental equality of all persons.

Consistent with the teaching of Christ, that both men and women are created 'Imago Dei' (in the image of God), Christian schools actively seek to model a community where the value of all people is upheld, and their rights respected and supported. This is reflected both in the practices of the schools and through the formal curriculum.

Christian schools share the hope articulated in the preamble to the Universal Declaration of Human Rights 1948 namely:

'...the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people'

Preamble to Universal Declaration on Human Rights

Freedom of speech and belief and freedom from fear and want are certainly freedoms at the very heart of the Christian message and the beliefs upon which Christian schools are founded. The means by which this aspiration is best achieved is, however, a matter on which there is far less agreement both within Christian schools and the wider community.

It is must be acknowledged, for example, that attempts to codify the value and nature of the human person within a series of rights including corresponding responsibilities
is at best an imprecise if not impossible task. Indeed there would be many who would suggest that such an approach is intrinsically flawed.

4. The Role of the Charter

The Terms of Reference require the Committee to seek responses not only on whether additional rights should be protected but also the overall benefits and costs of the Charter and options for the reform or improvement of the regime for protecting and upholding rights and responsibilities.

On balance CSA and its member schools are generally satisfied with the current protections afforded to these rights and responsibilities taking into account the changes incorporated in the Equal Opportunity Amendment Bill 2011. Our democratic systems and institutions and the underlying Australian belief in 'a fair go' have served our nation well over many years. Indeed the existence of such a large number of faith-based schools both in Victoria and across Australia more broadly is a powerful testimony to the effectiveness of the current mechanisms for the protection of human rights in this country.

The role of the Charter itself in the protection of these human rights is far more problematic. A Charter based approach, it is widely acknowledged, can result in a significant shift in power from parliamentarians to the judiciary. Consequently our robust, representative and relatively accessible democratic processes tend to play a lesser role in the development of public policy in the area of human rights as the judiciary's role increases. Once again this change has been widely acknowledged in an analysis of overseas jurisdictions that have taken such an approach. While the sovereignty of Parliament may have been technically preserved in practice the Courts play a far greater role.

Christian schools and the important role that they play within Australian society is well recognised and understood by the vast majority of parliamentarians across the country. Any change to the framework for the protection of human rights that reduced their role would be a matter of significant concern. Our view is that specific legislative responses, such as the Equal Opportunity Act 2010, to matters of concern to the community in this area have a far more important and effective role to play than a broadly framed Charter.

5. Balancing of Rights in the Charter

The drafting of the Charter and the other Australian example of similar legislation also give rise to concerns to many in the community. The concerns that are the focus of this submission relate to the impact of such legislation upon the ability of Christian and other faith-based schools to continue to operate freely in accordance with our underlying values and beliefs. In particular the problem arises in relation to the limitations that may be placed upon the freedom of religion that lies at the heart of the operation of Christian schools.

In both cases the legislation provides a positive acknowledgement of and protection for religious freedom. The potential limitations that may be placed upon this right are, however, drafted in a broad and expansive manner allowing for any 'demonstrably justified' and 'reasonable' limitation to be placed upon any human right, including the right to religious freedom. This results in far less protection that is provided for in international law which provides that

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1 Human Rights Act 2004 (ACT)
'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.'

*International Covenant on Civil and Political Rights Article 18(3)*

Clearly the text of the Covenant itself provides a much narrower scope for limitation of religious freedom. This is further reinforced by the Siracusa Principles\(^2\) relating to the conditions and grounds for permissible limitations and derogations enunciated in the International Covenant. Together the Covenant and the Siracusa Principles, provide a high level of protection for these rights and far beyond that contained in the Australian legislation.

In looking to improve the regime for protecting and upholding rights and responsibilities we would encourage the Committee to amend the Charter, if it is retained, to ensure that it incorporates not only protections for religious freedom but also restrictions on the limitation of that freedom consistent with international law.

6. **The overall benefits and costs of the Charter**

In considering the means by which human rights are most effectively protected the inherent limitations of the law must be recognised. While the law may be able to regulate behaviour to some degree we believe that it is impotent to effectively change attitudes and beliefs. The achievement of the aspirations outlined in the preamble to the *Universal Declaration of Human Rights* will not eventuate as a result of the implementation of the Charter but rather as the result of changes to social attitudes and values.

We have some fundamental concerns that the emphasis on a very individualistic, rights based Charter may lead to greater levels of intolerance in the longer term rather than reductions. We are concerned that excessive emphasis on individual rights will be at the expense of genuine care and concern for the rights of others. The methodology of the Charter is also extremely legalistic in its nature and often leads to an adversarial and confrontation approach that merely entrenches division and misunderstanding.

The Committee’s consideration of the overall benefits and costs of the Charter is welcomed and we trust that these concerns will be addressed in that process. Christian schools have not experienced a greater level of protection and upholding of rights and responsibilities in Victoria than in other jurisdictions where there is not a similar Charter. As noted above we are of the view that specific legislative responses are more effective in achieving the outcomes that the Government and community is seeking.

We anticipate, however, that there will be calls to expand the scope and operation of the Charter. We would urge great caution in doing so, particularly so early in the history of the Charter. Certainly it would seem incumbent on those who may propose changes to the current approaches to clearly demonstrate the benefits that would flow from such changes and how those benefits outweigh the likely costs

7. Concluding remarks

Christian schools are a legitimate and important expression of a faith community in Australia. They have played an important role historically, in creating and promoting well being and cohesion within the Australian nation.

The right to operate such schools, and other ministry outworkings of mainstream churches, must be preserved in any future arrangements. In short, the Charter must not act in a way that limits the legitimate expression of faith through Christian schools and other activities. Nor should it be used to give comfort to those who would argue against such legitimate expressions of faith.

In our submission we have acknowledged the difficult balances inherent in the human rights debate, such as the balance of rights and responsibilities; the balance of individual freedom versus the freedom to exercise religious faith, and the balance required in deciding whether and when the state should act to regulate human activity.

We have demonstrated that in international covenants to which Australia is a signatory, the right of the state to act in a way that limits or impedes religious expression is itself severely constrained. This is as it should be.

The concern of our members is, however, that the human rights argument is sometimes a counterfeit for something quite different – an anti-religious agenda that would promote radical secularism at the expense of the legitimate right for religion to be actively expressed and indeed carry out functions in the ‘public square’.

In assessing the impact of the Charter, a question foremost in our mind is whether it has created more protections for faith-based schools and the rights of those who select them, operate them and teach in them. As mentioned above our judgement is that there is no greater sense of protection in Victoria than in jurisdictions without a Charter. Arguably there is, currently, a feeling that religious freedoms are more under challenge in Victoria than elsewhere.

We respectfully submit to the Committee that this is less than desirable, and that it may feel appropriate to recommend that the benefits of the Charter in protecting religious freedom – and the freedom of religious institutions in a democracy - should receive greater attention in the future, particularly in the educational role of the Commission.