

Introduction

This submission is on behalf of twelve Christian Parent Controlled Schools (CPCS) in Victoria. It is our understanding that the purpose of the Exceptions Review of the *Equal Opportunity Act 1995* (the Act) is to identify whether the exceptions are compatible with the right to equal and effective protection against discrimination as promoted by the *Charter of Rights and Responsibilities Act 2006* (the Charter).

We realise that one of the aims of the Act is to remove discrimination 'as far as possible'. Our submission will show that some of the exceptions are necessary and should be retained so as to address cases where competing rights in relation to discrimination need to be appropriately balanced.

Our submission will respond to the following questions posed by the Exceptions Review:

- Do the exceptions need to be reformed to improve equality of opportunity and the elimination of discrimination in Victoria?
- What are the social and economic costs and benefits involved in reforming the exceptions in the Act to eliminate discrimination to the greatest possible extent?
- Are the exceptions reasonable limitations on the right to equality? If so, how can they be justified?

Background

Christian Parent Controlled Schools Ltd. in Victoria is an association of twelve school associations that are governed by communities of Christian parents and other supportive Christian individuals. In Victoria there are 17 school campuses with over 5500 students and more than 400 full-time teachers (nationally there are 86 schools with over 23,000 students). The member associations of CPCS seek to serve each other and the wider community by:

- Helping each association fulfill its own mission;
- Assisting each association to provide quality education from a biblical perspective;
- Promoting the cause of Christian education;
- Assisting parents to establish and operate Christian Schools;
- Supporting parents to fulfill their mandate to educate their children in Christ;
- Helping teachers to teach from a biblical point of view and in accordance with their association's policies and priorities.

The nature of the CPCS school associations is illustrated with an example from one member association. For instance, the Association for Christian Education of Mount Evelyn Inc. which operates Mount Evelyn Christian School (a P – 12 Christian school), has the following statement in one of their charter documents:

The purposes for which the Association is established are:

- (1) To establish and maintain a school or schools to provide daily Christian education for children based upon God's Word and in accordance with the principles enunciated in this Statement of Purposes and in compliance with any law or statute

in force in the State relating to the conduct and running of schools for the education of children.

- (2) To employ teachers and other staff (called "the employees") and to remunerate (subject to Clause 4 hereof) them in return for services rendered and to provide for them facilities for the carrying out of their work.
- (3) To organise and conduct Christian religious and public services and meetings.

Given our identity as a collaborative group of associations established for biblically based Christian education, we note the great significance of the following statements of rights:

International Covenant on Civil and Political Rights¹

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.

Charter of Rights and Responsibilities Act 2006

Section 14 Freedom of thought, conscience, religion and belief

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
 - (a) the freedom to have or to adopt a religion or belief of his or her choice; and
 - (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Section 38 Conduct of public authorities

- (1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.
- (2) Subsection (1) does not apply if, as a result of a statutory provision or a provision made by or under an Act of the Commonwealth or otherwise under law, the

¹ The ICCPR was ratified by Australia in 1980, and is explicitly included here since the Charter protects human rights derived from this Covenant.

public authority could not reasonably have acted differently or made a different decision.

- (3) This section does not apply to an act or decision of a private nature.
- (4) Subsection (1) 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 (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.
- (5) In this section *religious body* means—
 - (a) a body established for a religious purpose; or
 - (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

Education and Training Reform Act 2006

Section 1.2.1 Principles underlying the enactment of this Act

...

- (d) parents have the right to choose an appropriate education for their child;

Exceptions of interest to this submission

The following exceptions are of interest in our submission:

Section 27B – Exception – gender identity

Section 38 – Exception – educational institutions for particular groups

Section 75 – Religious bodies

Section 76 – Religious schools

Section 77 – Religious beliefs or principles

In responding to the review questions we intend these five exceptions in particular.

Responses to questions

Do the exceptions need to be reformed to improve equality of opportunity and the elimination of discrimination in Victoria?

We submit that the exceptions of concern to CPCS are effective in balancing competing rights in our domain of interest. Since they are effective we propose that they do not need to be reformed or removed. We recognise though that there may be other mechanisms available to facilitate a balance between competing rights. We submit that should such alternate mechanisms be proposed, they must be effective and they must be available for public comment and scrutiny before the Act is amended to incorporate any such alternate mechanism.

What are the social and economic costs and benefits involved in reforming the exceptions in the Act to eliminate discrimination to the greatest possible extent?

We submit that if the exceptions of concern to CPCS in Victoria were reformed to the extent that we were no longer able to make the choices enabled under the exceptions, then one social cost may be that the religious ethos and character of our schools could be undermined. Such a loss of religious ethos and character would inevitably result in the withdrawal of students from member schools and so damage the social cohesion and the financial wellbeing of these schools. Socially, parental choice in education would be diminished. This is an unacceptable cost from our point of view.

Are the exceptions reasonable limitations on the right to equality? If so, how can they be justified?

We submit that exceptions grounded in religious belief, observance, practice and teaching are essential limitations on the right to equality. This is justified since it is the exceptions that enable our member associations to make operational decisions that are in conformity with their religious doctrines, beliefs and principles. Removal of these exceptions may result in circumstances in which our member associations are coerced by law to make decisions such that they are unable to ensure the religious and moral education of their children in conformity with their convictions.

More generally, we submit that the removal 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 International Covenant on Civil and Political Rights, Article 18, part 4;

The Education and Training Reform Act 2006, Section 1.2.1;

and

The Charter of Rights and Responsibilities Act 2006, Section 14, part 1b, and Section 38, part 4.

Conclusion

In summary, we submit that the exceptions in Section 27B, Section 38, Section 75, Section 76, and Section 77 should be protected so as to facilitate the rights of Christian parents and guardians to educate their children in conformity with their own convictions.

Thank you for the opportunity to make this submission the Exceptions Review. We confirm that our submission may be made available to the public.

Submitted by
Gerry Beimers

On behalf of Christian Parent Controlled Schools Ltd. in Victoria: Bayside Christian College, Benalla Christian College, Bethel Christian College, Chairo Christian School, Covenant College, Donvale Christian College, Mountain District Christian School, Mt Evelyn Christian School, Plenty Valley Christian College, Son Centre Christian School, and South Coast Christian College.