

Submission in response to

Consultation paper

**Review of exceptions to and exemptions from the
Equal Opportunity Act 1995 (Vic)**

The Exceptions Review
C/- Department of Justice
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Submission lodged by:

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Summary

This submission invites the Exceptions Review Panel of the Department of Justice to conclude **the existing exceptions contained in sections 75,76 and 77 of the Equal Opportunity Act 1995 (Victoria) be retained without amendment to their present form.**

Section (1):

This submission is made by The Council for Christian Education in Schools (ACN 59 004 240 779), a public company limited by guarantee, incorporated 2nd October 1945. It is the religious body set up by 12 mainstream denominational churches to provide Christian education in schools on their behalf. This includes special religious instruction and chaplaincy

Section (2):

The Constitution of The Council for Christian Education in Schools dated 17th May 2006 enables (at article 4.2) the following corporate and unincorporated bodies to nominate persons as members of the Company, viz.:

- (a) The Anglican Church of Australia, Province of Victoria
- (b) The Uniting Church in Australia, Synod of Victoria and Tasmania
- (c) Presbyterian Church of Victoria
- (d) Baptist Union of Victoria
- (e) The Conference of Churches of Christ in Victoria and Tasmania
- (f) Lutheran Church of Australia, Victorian District (including Tasmania)
- (g) The Salvation Army, Property Trust of Victoria
- (h) The Christian Reformed Churches of Australia
- (i) Assemblies of God Victoria (now Australian Christian Churches)
- (j) CRC Churches International
- (k) Wesleyan Methodist Church of Australia
- (l) Christian Brethren Assemblies
- (m) Such other corporate and unincorporate bodies as may be approved from time to time for the purposes of this Article by resolution of the members of the Company ...

Section (3):

The Council for Christian Education in Schools (CCES), now trading as **ACCESS ministries**, is the body authorized by the **Education Act 2006, Section 2.2.11 (Appendix 1)** and the **Department Education and Early Development Government Schools Reference Guide – June 2007. 3.22 and 3.22.1 (Appendix 2)** to undertake religious instruction in Government schools.

The Victorian Education and Training Reform Act 2006 Act No. 24/2006

affirms under section 2.2.10 that education in government schools is to be secular except as provided in section 2.2.11 and it also provides for the provision of general religious education in state schools. Section 2.2.11 describes how special religious instruction may be given in Government schools.

Under the Department of Education and Early Training Government Schools Reference Guide –June 2007 guidelines are given on accreditation, instruction, syllabi and how to operate to administer the program.

Significant in the legislation is that

- it respects the right of all faith groups
- it is voluntary – parents have the right to withdraw their children from religious instruction
- it is based on an approved syllabus and instructors are accredited and approved by the Minister of Education

The provision of **Chaplaincy** in Victorian State government schools by the Council for Christian Education (Access ministries) commenced in 1955 and again provides pastoral care and support to students in Victoria. The provision of chaplaincy services through ACCESS ministries in Victorian government schools is through a service agreement with the Department of Education and Early Training which requires half-yearly reports and monitoring.

The National Schools Chaplaincy Program was introduced in 2007.

The National School Chaplaincy Programme (Appendix 3 - Guidelines) administered by the Department of Education, Employment and Workplace Relations set out the arrangements for the administration, and the requirements for the delivery of the Programme. The Guidelines form part of the funding agreement and must be adhered to by all parties involved in school chaplaincy projects. Under this program ACCESS ministries receives funding for the provision of chaplaincy in Victorian schools.

Significant in the guidelines is that

- it is a voluntary program - students are not obliged to participate.
- chaplains are expected to provide general religious and personal advice, comfort and support to **all students and staff, regardless of their religious denomination, irrespective of their religious beliefs.**
- the choice of chaplaincy services, including the religious affiliation, is a decision for the local school community, following broad consultation.

Section (3):

ACCESS ministries and obligations regarding religious freedom

The Consultation Paper for the Review established the intent of the Act as being promoting equality in Victoria. The specific focus of the Review is to identify whether any of the exceptions and exemptions in the Act limit the enjoyment of human rights protected and promoted by the Charter.

Religious freedom under the human rights charter is provided for in section 14 of the Charter:

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.

As a religious body ACCESS ministries operates in its school ministry program on behalf of its nominating churches to provide special religious instruction and chaplaincy services that respects the Charter of Human Rights and Responsibilities Act 2006 and the freedoms it provides for religious freedom, at the same time its programs respects the non-compulsory nature of children and parents not to participate in its programs. This is enforced by present Federal and State legislation and guidelines.

Section (4):

The Consultation Paper by the Ministry of Justice dated February 2008 notes the purposes of sections 75, 76 and 77 as being;

Section 75 – Religious bodies

Section 75 excludes anything done by a body established for religious purposes from the prohibitions on discrimination where the action conforms with the doctrines of the religion or is necessary to avoid injury to the religious sensitivities of people of the religion. This includes actions in relation to an educational institution under the control of a religious body.

Section 76 – Religious schools

Section 76 provides a general exception for religious schools. This exception also applies to the employment of people in the educational institution. This exception does not include schools run by organized religious bodies.

Section 77 – Religious beliefs or principles

Section 77 provides that discrimination is not prohibited where it is necessary for a person to comply with their genuine religious beliefs or principles.

Section (5):

Relative to Sections 75, 76 and 77 of the Equal Opportunity Act 1995 (Victoria) and the Consultative Paper issued by the Department of Justice, this submission addresses the Questions for Consideration as follows:

Question	Answer
Do the exceptions need to be reformed to improve equality of opportunity and the elimination of discrimination in Victoria?	No.
The current provisions of the Act acknowledge and meet the obligation of the State for religious freedom as it is established in – - the preamble to the Universal Declaration on Human Rights (1948) – ‘... 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’.

- articles 18, 20 and 27 of the International Covenant on Civil and Political Rights (ratified by Australia 25 December 1991)
- article 28 of the Convention on the Rights of the Child
- article 5(b) of the Convention against Discrimination in Education
- the Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)
- Sex Discrimination Act 1984 (Commonwealth).

Freedom of religion is a most fundamental human right and has been incorporated in the law of older European nations for centuries.

The protection of this freedom is an essential characteristic of Australia’s free and democratic society.

It is most strongly argued that retention of the current provisions of the Act in sections 75, 76 and 77 be retained.

Question	Answer
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?	Substantial social and economic costs are likely to arise from repeal or amendment of the current provisions. This organization is not in a position to quantify either the social or economic costs.
This submission proposes there be no change to the existing exemptions under sections 75, 76 and 77. Section 75 of the Act relates to religious bodies of which there are a very substantial number in Victoria. Many of those bodies are associated with the provision of welfare services, to the extent where they represent a major contributor to the Victorian welfare sector. Section 76 refers to religious schools of which there are a large number in Victoria accounting for a substantial percentage of all-school enrolments in Victoria.	

Question	Answer
Are the exceptions reasonable limitations on the right to equality? If so, how can they be justified?	Yes.
The exceptions and exemptions currently in place within the legislation are reasonable for the needs of the Victorian community.	

The great bulk of Victorian families have a heritage steeped in the Christian values of truth, justice, tolerance, compassion and morality, and look for those values in their Governments, institutions and communities.

Generations of families have seen those values demonstrated through the welfare agencies and programs and the educational facilities of the Christian churches.

In the case of this agency alone, there are in excess of 3,500 families involved in volunteer Christian religious education in the State schools system and in committee work that sustains the **ACCESS ministries** programs in Schools. Ministry.

Question	Answer
Should any exceptions be repealed? If so, which exceptions and why?	No.
<p>For the practical operation of the church-based welfare agencies, schools, educational support programs and other community support activities it is necessary for the existing exceptions to be maintained.</p> <p>It would place the Church-based agencies and support programs in an untenable position relative to the delivery of their services for the unique Christian based values to be dissipated by removal of the protecting exceptions and crippling to their financial capacities to continue their work if they were subjected to litigation as a result of the repeal of the exemption and exception clauses.</p> <p>A potential outcome of a program of repeal would be the cessation of service delivery which may have substantial negative effects on the Victorian community and place a significantly increased burden on Governments for the delivery of continuing services.</p>	

Question	Answer
Should any exceptions be amended? If so, which exceptions and why?	No.
This submission suggests there be no amendment to the current exceptions and exemptions for the same reasons as indicated in the previous question.	

Question	Answer
Is the VCAT exemption process appropriate? How could it be improved?	Not answered.
This submission is limited to consideration of the exemptions contained in sections 75, 76 and 77.	

Question	Answer
Should the statutory authority exception (section 69 of the Equal Opportunity Act 1995) be repealed? If not, why not?	Not answered.
This submission is limited to consideration of the exemptions contained in sections 75, 76 and 77.	

Question	Answer
Are there any examples of Acts and enactments that cannot be reconciled with the Act?	Not answered.
This submission is limited to consideration of the exemptions contained in sections 75, 76 and 77.	

Question	Answer
Is a mechanism to prescribe certain Acts under the Equal Opportunity Act 1995 necessary?	Not answered.
This submission is limited to consideration of the exemptions contained in sections 75, 76 and 77.	

Question	Answer
Is a three year sunset period for the repeal of the statutory exception appropriate? If not, why not?	
This submission is limited to consideration of the exemptions contained in sections 75, 76 and 77.	

Section (6):

Summary

This submission invites the Exceptions Review Panel to conclude **the existing exceptions contained in sections 75,76 and 77 of the Equal Opportunity Act 1995 (Victoria) be retained without amendment to their present form.**

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Appendix 1:

The Victorian Education and Training Reform Act 2006 Act No. 24/2006

2.2.11 Special religious instruction

(1) Special religious instruction may be given in a Government school in accordance with this section.

(2) If special religious instruction is given in a Government school during the hours set apart for the instruction of the students—

(a) the persons providing the special religious instruction must be persons who are accredited representatives of churches or other religious groups and who are approved by the Minister for the purpose;

(b) the special religious instruction must be given on the basis of the normal class organisation of the school except in a school where the Minister authorises some other basis to be observed having regard to—

(i) the particular circumstances of a school or schools; or

(ii) the preparation or conduct of a pageant, special event or celebration of a festival in a school or schools;

(c) **attendance for the special religious instruction is not to be compulsory for any student whose parents desire that he or she be excused from attending.**

(3) The Minister may give an authorisation under sub-section (2) in respect of the preparation or conduct of a particular class of pageant, special event or celebration of a festival generally to all schools, to a class or classes of school or to a specific school.

(4) Nothing in this section prevents any Government school building from being used for any purpose on days other than school days or at hours on school days other than the hours set apart for the instruction of the students.

(5) In this section "**special religious instruction**" means instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.

Appendix 2:

The Victorian Department of Education and Early Training Government Schools Reference Guide –June 2007

Special religious instruction and general religious education

3.22 Special religious instruction in government schools is authorised by Section 2.2.11 of the Education and Training Reform Act 2006. This Act supersedes legislation on Religious instruction contained in Section 23 of the Education Act 1958. A copy of the 2006 Act can be found at:

In section 2.2.10(4) of the Act, general religious education is defined as ‘education about major forms of religious thought and expression characteristic of Australian society and other societies in the world.’

In section 2.2.11(5) of the Act, special religious instruction is defined as ‘instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.’

A school principal should make provision for special religious instruction where an accredited and approved instructor is available.

Attendance at special religious instruction classes is not to be compulsory for any student whose parents desire that he or she be excused from attending as reflected in section 2.2.11(2)(c) of the Act.

3.22.1 Accreditation and approval of instructors

Special religious instruction may only be delivered by accredited instructors who are approved by the Minister for Education. Instructors who deliver the non-denominational agreed Christian syllabus *Religion in Life*® are accredited through ACCESS Ministries and not by the church to which the instructor may belong.

Catholic, Jewish, Greek Orthodox, Islamic, Buddhist, Bahá'í, Hare Krishna and instructors from other recognised religions, should be accredited through the relevant religious authorities, e.g. Catholic Education Office, Catholic Diocese, United Jewish Board, Greek Orthodox Diocese, and the World Conference of Religions for Peace.

In situations where parents request special religious instruction in a particular faith that is not provided at the school, principals should advise parents that such instruction can only be scheduled where the particular religious group provides an accredited instructor who is approved by the Minister for Education.

Appendix 3:

Australian Government, Department of Education, Employment and Workplace Relations, National Schools Chaplaincy Programme Guidelines

1.4 General Principles

The following general principles apply to the Programme.

- Participation by schools and their communities is voluntary.
- It is not compulsory for students to participate. Schools must ensure that students and parents understand the voluntary nature of the Programme and have the option of whether to utilise the services of a school chaplain.
- There must be extensive consultation with, and support from, the broader school community, particularly parents, about the demand for and role of a school chaplain.
- The choice of chaplaincy services, including the religious affiliation, is a decision for the school community.