



**VICTORIAN INDEPENDENT
EDUCATION UNION**

SUBMISSION TO

**THE DEPARTMENT OF JUSTICE
REVIEW OF THE EXCEPTIONS AND
EXEMPTIONS IN THE EQUAL
OPPORTUNITY ACT 1995**

APRIL 2008

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...

Article 26, International Covenant on Civil and Political Rights

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1. Background

- 1.1. VIEU is the professional industrial organisation representing principals, teachers, school officers and school service officers across Victoria's 500 Catholic schools, as well as other non-government religious schools and educational institutions. VIEU has 14,500 members with the majority in Catholic schools.
- 1.2. Religious educational institutions and bodies in Victoria, pursuant to sections 75-77 of the Equal Opportunity Act of Victoria ("the Act"), are able to discriminate against job applicants and employees. Discrimination can occur on any of the grounds otherwise prohibited by the Act, including marital status, lawful sexual activity and sexual orientation if such discrimination:
 - conforms with the doctrines of the religion; or
 - is necessary to avoid injury to the religious sensitivities of people of the religion; or
 - is in accordance with the relevant religious beliefs or principles

This religious exception is broad and all encompassing. The power of interpretation of this exception is delegated to the educational institutions and religious bodies themselves, which, it is submitted, is an unacceptable delegation of power in a pluralist and democratic society such as ours.

- 1.3 VIEU seeks the removal of the religious exception as it applies to the employment of staff in non-government educational institutions and bodies in Victoria.
- 1.4 The focus of this submission, in presenting evidence of discrimination in religious educational institutions in Victoria, is largely on the Catholic school sector. There are several reasons why the focus has been narrowly defined in this way. Firstly because a high percentage of VIEU members work in

Catholic schools in Victoria. Secondly because the Catholic school system is administered on a systemic basis. The Catholic Church has a clear policy on how the religious exception is to be applied in Catholic schools in Victoria. School principals in all Catholic schools are expected to comply with the policy. The policy ensures that job applicants and employees who do not conform to the religious doctrines of the Catholic Church in relation to “private lifestyle” choices can be discriminated against. In practice however the policy is applied inconsistently throughout the system depending on a number of factors which will be highlighted in this submission. The majority of calls VIEU receives in relation to the application of the religious exception, are from members employed in the Catholic system.

- 1.5 As noted above, VIEU has for many years been receiving anecdotal evidence from members in Catholic schools, who are either :(i) living in a de facto relationship (ii) identify as same sex attracted or (iii) who are divorced and remarried without an annulment of the first marriage. This anecdotal evidence is conveyed confidentially to the union as members generally fear employment consequences of publicly outing themselves. Unfortunately, due to this culture of self regulation that exists in Catholic schools, it has not been possible to include a great deal of this evidence in our submission. However, we have attempted to inform the review through our observations which are based on the experiences we have gained in responding to members over the years and also have included research which has been conducted to date. Some cases have been included but they have been referred to in such a way as to protect the members from being identified.
- 1.6 Members from schools outside the Catholic school sector have also sought advice from VIEU on the application of the religious exception. There are several highly conservative religious educational institutions in Victoria who adopt a fundamentalist view of religious doctrine and strictly apply the religious exception. The conclusions that can be drawn from the experiences of employees in Catholic schools can, it is submitted, also be applied to these schools.

2. VIEU's Interest

- 2.1 VIEU endorses the desire of the Victorian Government to create a fairer society that reduces disadvantage and respects diversity, as set out in Growing Victoria Together, a vision for Victoria. VIEU considers it vital that Catholic and other religious educational institutions be models of good practice in complying with the various state and Commonwealth legislation relating to equal opportunity and in particular the prohibition on age, sex and disability discrimination. VIEU and its predecessors have been working since the 1980's to try and improve equal opportunity legislation to ensure that job applicants and employees do not experience discrimination in employment in the non-government schools sector. This work has been undertaken, not only to avoid litigation which is harmful to the school and stressful for those involved, but even more importantly because principles of justice and equity, and a genuine commitment to the dignity of persons covered by such legislation, in our view, should characterise the values of Catholic and other religious schools.
- 2.2 In May 1987 the IEUA (Independent Education Union of Australia), on behalf of all state branches including VIEU, wrote to Justice Einfeld seeking an inquiry, by the Human Rights and Equal Opportunity Commission, into certain practices in non-government schools in Australia and into the religious exception contained in Section 38 of the Sex Discrimination Act. The Report, titled "*Discrimination and Religious Conviction*" dealt with a wide range of matters, including the employment conditions of teachers in religiously-based schools. Chapter 7, which dealt with employment, contained a section on religious organisations and the role of religious belief in an educational organisation. The following passages from the Report are worth noting:
- "7.201 We consider that teachers should be able to bring a complaint under the Anti-Discrimination Act for disciplinary action concerned with religion or orthodoxy in religious practice that is irrelevant to their job. It*

is no longer tenable for religious educational institutions to claim that their discriminating on religious grounds can be justified simply because they are religious organisations.....”

- 2.3 In 1993 the Staff Association of Catholic Secondary Schools (“SACCS” – one of the predecessor bodies to VIEU) participated in the review of the Equal Opportunity Act 1977 (Vic). SACCS, in its submission, presented evidence from members of the discrimination they were experiencing in Catholic schools because of the “private lifestyles” they were adopting, which were considered not to conform to the religious doctrines of the Catholic Church. However, instead of reforming the Act to protect these employees, the then Kennett Government broadened the exception even further to the point where the religious exception in Victoria is now all encompassing and broad.
- 2.4 As part of its commitment to human rights, VIEU was an active participant in the consultation process on the Charter of Human Rights & Responsibilities Bill. It should be noted that VIEU is strongly concerned about the current exclusion of non-government educational bodies from the obligations of the charter.
- 2.5 All of this work has been very significant for VIEU and for the members we represent, not only in relation to the particular rights of a member or group of members we have been seeking to represent but also because such action provides an opportunity to educate our community about the vitally important work of the Equal Opportunity Commission of Victoria. It has served to inform teachers and students about their human rights as workers, as children, as women, as gay, lesbian and transgender members of the community, as Indigenous, as disabled, and as older citizens.

3. Executive Summary

- 3.1 The scope of this submission is limited to the operation of sections 75-77 of the Equal Opportunity Act (1995) Vic (“The Act”). It is submitted that these sections should be amended to outlaw discrimination against job applicants and employees in religious schools on religious grounds. The religious exception as it currently stands, needs to be reformed to improve equality of opportunity and elimination of discrimination for staff working in these schools.
- 3.2 A major focus of the exceptions review, as outlined in the consultation paper, is to review the exceptions in the Act to determine their compatibility with the Charter of Rights and Responsibilities Act (Vic) 2006. After careful legal consideration VIEU submits that the religious exception contained in the Act, as it relates to job applicants and employees in religious educational institutions, is incompatible with the Charter and should be amended accordingly. This view is supported by written legal opinion prepared by Kristen Walker, barrister and lecturer in law at the University of Melbourne.

[refer **Appendix A**: Memorandum of Advice. Kristen Walker, Melbourne Chambers, 16 April 2008]

- 3.3 VIEU submits that section 25 of the Act should be amended to ensure that the religious criteria contained in sections 75-77 of the Act are not applied to section 25. The application of religious criteria to section 25 would deem this section incompatible with the Charter. Further it is submitted section 25 is based on flawed logic and the limitation contained in the section is significantly disproportionate to its purpose – namely the protection of children. VIEU relies on the legal opinion provided by Kristen Walker to support this submission.

[refer **Appendix A** paras 36 - 46].

- 3.4 Family relationships and relationships in general have changed since the Act was first introduced in 1977. Since the Family Law Act of 1975 was introduced the so called societal norm of civil heterosexual marriage has been challenged. Divorce rates have increased and the number of people living in de facto relationships is also increasing every year. Diversity is becoming more accepted as the social demographics of the population have been changing. Anti discrimination legislation has had and still has an important role to play in ensuring that diversity is accepted and tolerated.
- 3.5 More significantly, for the purposes of this submission, it is submitted that those members of the population who identify as belonging to the Catholic Church are also a part of this societal trend which respects diversity. There are a significant number of Catholics who now live in a de facto relationship, who have divorced and remarried or who identify as same sex attracted. These same Catholics are sending their children to Catholic schools and do not necessarily expect that their children will be taught that discrimination is acceptable on religious grounds.
- 3.6 The parent group as a homogenous, heterosexual body is therefore a myth. This myth is often relied upon by religious institutions to justify the religious exception and its coverage of employees in schools, in particular teachers who, it is argued, function in "*loco parentis*".
- 3.7 VIEU respects the right of religious educational institutions to teach students the doctrines, tenets, beliefs or teachings of the particular religion or creed at the school level. Religious schools often serve to connect common values of social justice to the wider community through the education of its students. However it is submitted that this right should not be undercut by rigid employment policies that have as their goal or consequence the exclusion and repression of people who do not conform to the religious doctrine.
- 3.8 VIEU notes that there are principals, teachers and also ex- religious and religious staff working in and with schools to support staff and students who

identify as same sex attracted, against the religious doctrines of the Catholic Church. This work is undertaken in a social justice, pastoral care context and is legitimised in this way. However defining the work in this way leaves the staff member in an untenable position if the Catholic Church were to rely on the religious exception which it can do.

- 3.9 More generally, religious institutions and bodies should not be entitled to legitimately seek exception from the requirements of human rights law beyond that which is necessary to uphold the doctrines, tenets, beliefs or teachings of the particular religion or creed. By allowing religious schools to discriminate against job applicants and employees, the Victorian Government is sending a clear message to these schools and to the community in general that discrimination is tolerated in some sections of society but not in others.
- 3.10 It is further submitted that there are many social and economic benefits to be gained by removing discrimination against staff in non-government religious schools.

4. Societal Trends and the case for removing the religious exception in employment

- 4.1 Anti discrimination legislation and the religious exception can be traced back to 1977 when the first Equal Opportunity Act was passed. Since then society has changed significantly. The most significant reform in family history has been the Family Law Act of 1975 which introduced the concept of no fault divorce. Since that time divorce rates have increased. The number of couples choosing to cohabit in de facto relationships has also increased.
- 4.2 The stance that several religions, including the Catholic Church, adopt in relation to the religious exception is out of step with these societal trends generally and within their own constituencies. It must be noted however that the inconsistency in applying the formal policies, which is explained further on, at the school level, suggests that school employers are struggling to come to terms with how to deal with formal policies that are out of touch and removed from reality on the ground.
- 4.3 The Australia Bureau of Statistics in its 2007 report titled "*Lifestyle Marriage and Divorce trends*"¹ observed that decreases in marriage rates and increases in divorce rates over the past twenty years have resulted in changing family structures within Australia. Increases in the proportions of babies being born outside registered marriages and increases in cohabitation provide evidence that registered marriage as the traditional social institution for family formation is declining. In the same report it was stated that "*data from the 2006 Census indicates there were 1.2 million people aged 15 years or over living in de facto relationships, including 49,400 people in same-sex couples. De facto relationships accounted for 15% of the population who were living in partnered relationships in 2006 (i.e. either in a registered or de facto marriage)*".

¹ Catalogue no. 4102.0

4.4 De facto marriages have risen steadily in the Australian population over the past 15 years. According to the 1991 Census 4.3% of the total population aged 15 years and over were in a de facto marriage. The proportion increased to 5.3% in 1996, 6.4% in 2001, and in 2006, 7.7% of the population aged 15 years and over were in a de facto marriage.²

² ibid

5. Catholic Schools in Victoria

5.1 Employment policies and the religious exception-systemic discrimination

5.1.1 The formal employment policies of the Catholic Education Office³ (“CEO”), outlined below, on how the religious exception will be applied are clearly written down and distributed to all schools in Victoria. In summary the policy provides that if a job applicant or employee does anything to alert his/employer or future employer or do or say anything that might not be in conformity to the religious doctrines of the Catholic Church, he/she will be discriminated against. The CEO’s interpretation of the religious exception is extremely broad and it is submitted an unreasonable exercise of the power of interpretation delegated by parliament.

5.1.2 The CEO provides guidelines to schools on employment covering the entire recruitment process from job advertisements to letter of appointment. The pro forma letter of appointment which is published on the CEO’s website for school employers provides:

“As discussed with you [insert name of school] is a Catholic school and is conducted in accordance with the teachings of the Church as interpreted by the Bishop of the Diocese. A Statement of the Principles regarding Catholic education is attached. As a member of the school community you are subject to these requirements and are expected to follow them willingly. Specifically you are expected to:

- * accept the Catholic educational philosophy of the school;*
- * develop and maintain an adequate understanding of those aspects of the Catholic teaching that touch upon your subject areas and other aspects of your work;*
- * by your teaching and other work and by personal example strive to help students to understand, accept and appreciate Catholic teaching and values;*

³ the CEO is the central administrative and funding body for all Victorian Catholic schools

- * avoid, whether by word, action or public lifestyle, influence upon students that is contrary to the teaching and values of the Catholic Church community in whose name you act;*
- * comply with the accreditation policy of the CECV to teach in a Catholic school and other CECV policies;*
- * be committed to regular on-going professional development;*
- * be registered by the Victorian Institute of Teaching”*

5.1.3 VIEU submits that the CEO policy outlined above, the practical expression of which insists that employees maintain secrecy around their so called “private lifestyles”, places employees in an untenable situation, the consequence being repression, fear and a loss of human dignity. It is not surprising then that VIEU has observed on many occasions the inconsistent application of the formal policies by school employers and even priests who view such a policy as uncaring, harmful, intolerant and in conflict with the social justice teachings of the Catholic Church. Such teachings emphasise that all human beings should be treated equally and with respect and understanding.

5.2 The religious exception – staff perspectives

5.2.1 It has been accepted policy and practice for many years now that employees who adopt private lifestyle choices in opposition to the Catholic Church are employed throughout the Catholic school system in Victoria. However once an employee “comes out” publicly, even if unintentionally, then a school employer may be forced to act depending on the local circumstances which is explained in this submission. Employees working in the system are aware of the Catholic Church’s stance on marital status and sexuality and to avoid confronting the Catholic Church choose to self regulate by maintaining secrecy. However this is not always practically possible which will also be illustrated below.

5.2.2 A careful scrutiny of complaints received by VIEU reveals that the formal policy of the CEO is applied inconsistently. If a school is

confronted with having to apply the religious exception and determine whether the employee has offended the “religious sensitivities of people of the religion” the following factors will influence the final outcome:

- the location of the school;
- the attitudes of some parents;
- the attitudes of the Parish Priest (in the case of Catholic primary schools);
- the popularity of the employee involved;
- the dominant culture of the surrounding community;
- the school demographics e.g. the number of parents living in de facto or same sex relationships

As noted earlier in this submission, the power of interpretation of the religious exception rests largely with the religious body itself. Only one or a number of the factors highlighted above (which are not exhaustive) may lead to a determination that discrimination can be justified. The power of interpretation, it is submitted, has been and is open to abuse.

5.2.3 The inconsistent application of the religious exception has led to the situation whereby in several schools an openly “gay” staff member is accepted whereas in other schools an openly “gay” employee will live in secrecy for fear of the consequences of being found out.

5.2.4 Although the formal policy is applied inconsistently across the system it can be stated that employees generally live in fear of being discriminated against and either self regulate and try to maintain a secret life or resign and leave the sector. This culture of silence enables discriminatory attitudes to remain unchallenged.

5.2.5 The research of Dr Greg Curran - Homosexuality in Catholic schools: teachers perspectives

Dr Greg Curran⁴ presented a paper titled “*Homosexuality in the school environment: teachers perspectives*”, (as part of his PhD research in 1998) to a symposium titled “interrogating sexualities: addressing curricula, pedagogies and subjectivities in schools”, Dr Curran interviewed teachers working in a variety of Melbourne Catholic schools in Victoria. Dr Curran concluded from his research that due to the strong stance on homosexuality, the Catholic Church had to do very little policing of its employees since teachers self regulate their behaviour and language in order to avoid what they presume will be censure and dismissal. He argued that the general social impact that this has is to further entrench discrimination against homosexuality within the whole school community. He concluded:

“this acquiescence among teachers is evidenced by the maintenance of silence or particular discourses about homosexuality by teachers for as long as they are part of the Catholic education system. And with contrary opinions, knowledge and discourse relating to homosexuals within their school environments the dominant discourse of negativity towards homosexuality prevails.”

5.2.6 As noted earlier, the Catholic Church tolerates those who do not conform to religious doctrine only in the person is “private” about his/her “lifestyle”. This position places employees in an untenable position. It is not possible in some cases for an employee to be private about their marital status or identity. An example to illustrate this point was included as evidence to the HREOC inquiry into same sex entitlements. A teacher in a private school, living in a lesbian relationship, described her experience to HREOC:

⁴ Lecturer in Education, RMIT University

“Some of the other teachers were aware that I am a lesbian. One of my superiors advised me that if any of the pupils found out I am a lesbian, I would be sacked. I knew that the school had the power to do so, and it made me feel very uncomfortable and insecure. I had to be very careful about everything I said, making sure I never used the word ‘we’ when describing any activity or event in my life. I was forced to be constantly on my guard, in case I inadvertently implied that I had a partner or that I was in a same-sex relationship. This experience of discrimination continues to affect me today. Although I relate very well with young people, I have not worked with children since that time. This has restricted my employment options and stopped me from pursuing work in areas that I love. This discrimination also affects the community, because young people miss out on the positive qualities and input that I have to offer. Young people also get inaccurate and destructive messages when it is implied that all people are heterosexual, or when those who are not are silenced, as I was.”⁵

5.2.7 To further illustrate this point, employees in Catholic schools sometimes feel the pressure not to come out and feel they have no option but to leave the school. Recently VIEU received a call from a member (“Jane”) working in a Catholic primary school who was distressed about a colleague (“Michael”) because Jane did not know how to advise Michael who was in the process of “coming out” as same sex attracted after a long time as identifying as heterosexual. Michael wanted to talk to the parish priest and the school about what was going on because he was experiencing anxiety and depression and needed to take time off work. Michael was a practising Catholic and was a well respected teacher in the school community. In the end the pressure

⁵ Final Report Same Sex: Same entitlements: National Inquiry into discrimination against people in same sex relationships: financial and work related entitlements and benefits.p.134

was too much and he resigned without revealing anything to the school.

5.3 Dr. Michael Crowhurst, former Catholic secondary school teacher and lecturer in Education at RMIT University also had this to say about his experience:

“I was employed as a teacher in a Catholic secondary college in Melbourne in the mid 1980’s and early 1990’s when I was in my early 20’s. During that time I was “coming out” as a gay man. I decided to stay quiet because I loved my job and the students I taught. In the end, I decided to resign because I intended to pursue Doctoral Studies (which I completed) around the experiences of queer young people in secondary school settings and I knew that this would mean that there would be no place for me in the Catholic system.

At the same time the government school system was being “downsized” by Premier Jeff Kennett. Consequently I was unable to find employment in the state school system. This meant that I had to change my career path. Since that time however I have been fortunate enough to succeed in a career in the tertiary sector where I am currently teaching.

In my role as a teacher educator I am responsible for supervising student teachers who undertake placements as part of course requirements. A number of student teachers, who identify as queer, are beginning to request that they be sent to State schools because they are worried about not being able to be themselves on placement.

In my view religious schools are losing potentially valuable and skilled teachers, not to mention the hurt that they are causing

*students who receive the message that they are unnatural, evil and abnormal.*⁶

5.3.1 As noted previously, evidence of direct discrimination is difficult to obtain for the purposes of this submission. However, one example that can be provided involves a beginning teacher who became pregnant whilst on a fixed term contract, which she had been promised on several occasions would be converted to permanent employment the following year. The member sought assistance from VIEU because she was being denied employment the following year on the basis that she was pregnant and living in a de facto relationship. She had the reputation of being a successful teacher amongst students and parents and was very popular. She tried to hide her pregnancy during these conversations about her future employment at the school with the principal because she was worried about what the reaction of the school principal and parish priest would be. After a while she could not hide her pregnancy so she decided to officially inform the principal. Not soon after the meeting with the principal she was informed that there were no positions available at the school the following year and she had to leave. Her job was also advertised around the same time. She contacted the union in a state of distress because not only was she losing her employment rights but also access to maternity leave. The union intervened on her behalf and was able to negotiate a return to her original position with the parish priest and the school principal.

5.4 The Catholic Church and the parent myth- “Loco Parentis”

5.4.1 Religious bodies present their views on the so called parent group, in their arguments to uphold the right to the religious exception, as a stereotyped and homogenous group despite the fact that there would be a range of views held by parents. The Catholic Church argues that because teachers act in “loco parentis” a parent can assume that the

⁶ Interview with VIEU conducted April 2008. Permission has been received to include this quote.

Catholic religion, including doctrine that does not allow for de facto or same sex relationships is upheld and taught to students.

5.4.2 Reference to the *loco parentis* justification invokes that part of the religious exception which allows discrimination if such action is “necessary to avoid injury to the religious sensitivities of people of the religion”⁷.

5.4.3 A high profile case in point, where this issue was considered, is Jacqui Griffin v. CEO (Sydney) which HREOC considered in 1997. The CEO refused employment to Jacqui Griffin in 1993 claiming during a hearing in 1997 that:

“Ms Griffin’s prominent public stance on the question of homosexual rights and behaviour is contrary to the teachings and values of the Catholic Church. Catholic parents would be outraged and offended by the prospect of the CEO permitting a high profile lesbian activist who engages in what the Catholic Church teachers to be immoral, homosexual activity to stand in loco parentis to their children”.

“Some educational authorities may also be influenced by the existing social and religious structure which perceives the in loco parentis authority to be within a heterosexual context.

5.4.4 HREOC went on to conclude, after considering all submissions:

*“..... If the employment of Ms Griffin would injure the religious susceptibilities of these students and their parents, the injury would be founded on a misconception. **Indeed it would be not an injury to their religious susceptibilities but an injury to their prejudice.** These injuries do not come within the terms of exception and are not a permissible reason for discriminating on the ground of*

⁷ Section 75(2)(b) Equal Opportunity Act (Vic) 1995

sexual preference. In applying for classification with the CEO Ms Griffin asserts that she will act in accordance with its Principles of Employment. If she fails to adhere to those Principles then the CEO can take action in relation to her classification.”

Chris Sidoti, Federal Human Rights Commissioner recommended that the CEO (NSW) employ Jacqui Griffin⁸. The CEO ignored this recommendation.

⁸ Report of Inquiry into a Complaint of Discrimination in Employment and Occupation discrimination on the ground of sexual preference to the Attorney General 1998

6. The negative impact the religious exception has on same sex attracted students in schools

- 6.1 The religious exception, which has as its consequence the silencing of discussion of sexuality in schools, can have a harmful effect on students, who identify as same sex attracted, and who are trying to come to terms with their sexuality.
- 6.2 Extensive research now exists in the area of same sex attracted youth, linking problems they face to the schools they attend and the prevalence of homophobia in the school environment.⁹ A LaTrobe university survey of 1749 same sex attracted young people, aged between 14 and 24, conducted in 2004, revealed that the most common site for abuse against same sex attracted youth, as in 1998, was school. The report noted that school remained one of the most dangerous places for these young people to be, with 74% of all the abuse happening in schools.
- 6.3 On the impact this discrimination had on students the report noted:

“Perhaps the most striking finding of this research is the extent to which homophobic abuse had a profound impact on young people’s health and wellbeing. Young people who had been abused fared worse on almost every indicator of health and wellbeing than those who had not. Young people who had been abused felt less safe at school, at home, on social occasions and at sporting events. Those who had been abused were more likely to self-harm, to report an STI and to use a range of legal and illegal drugs. Two main methods of self-harm were reported by 35% of the group – self-mutilation and attempted suicide. On the positive side

⁹ Writing Themselves In Again - 6 years on: the 2nd national report on the sexuality, health and wellbeing of same sex attracted young Australians⁹(Australian Research Centre in sex, health and society (ARCSHS) LaTrobe University 2005)

those who had been abused were more likely to have sought support from an individual or an organisation.

Despite the difficult and violent situation, young people reported generally feeling safer in schools than in 1998, indicating that more supports for those abused are now available in the school setting. Research participants responded in many different ways to experiencing homophobia and, despite the fact that there were many negative health outcomes as a result of this treatment, many also reported being stronger and more determined than they were before.”

- 6.4 There are currently employees, ex-religious and religious who are working within the religious school system to try and address issues of sexuality amongst young people at the school level, arguably in opposition to the same religious doctrine that silences employees in relation to their own identities. The work is conducted in the context of pastoral care and social justice teachings to legitimise it.
- 6.5 Dr Curran cites in his paper the example of an ex-religious teacher who, in opposition to religious doctrine, does take a stand and works to support students who identify as same sex attracted. She says she was able to “get away” with her stance because she worked charitably for an AIDS organisation and such pastoral care work was viewed in the context of social justice which legitimised her work. She talks about her work with same sex attracted students and is quoted as saying:

“I think i had a voice and the kids (gay and lesbian kids) couldn’t have a voice and therefore i felt i had a certain responsibility to do what i could”.

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- 6.6 More recently, to provide a resource for Catholic schools to support young students who identify as same sex attracted in Catholic schools and to try and address the homophobic culture that is harming these same students and is

¹⁰ Ibid 4

going unchallenged, Father Peter Nordon S.J from the Ignatius Centre for social policy and research and Parish Priest at St Ignatius primary school in Richmond, Victoria, has co authored a publication for Catholic secondary schools titled “Not so straight”. The report is presented in the context of being a “pastoral care” resource to ensure that discrimination against same sex attracted students or those perceived to be same sex attracted is not tolerated.

6.7 The report identifies four inter-connected levels of possible intervention:

- pastoral care, welfare and counselling of students;
- staff development and training;
- school curriculum and availability of information and resources;
- the fostering and sustaining of an inclusive school culture and the development of school/community relationships;

6.8 The report concludes that:

“the solution lies in a commitment by the school management and teaching staff to working on the “whole school environment” so that students who are different do not have to conform or submerge their natural behaviour in order to be acceptable”.

6.9 VIEU agrees with this approach and conclusion however notes that the religious exception, unless it is addressed to outlaw discrimination against job applicants and employees in schools and by consequence students, will render ineffective the intervention plan. The veil of silence for employees needs to be lifted before any real discussions can take place in the school community.

7. Social and economic benefits: the case for removing the religious exception

Removing the religious exception in employment in non-government schools will lead to many social and economic benefits. Such benefits will include:

- an improvement in the employment and career prospects of job applicants and employees wanting to be open about their marital status/sexual preferences;
- an improvement in the health and wellbeing of employees currently working in religious schools who have been put in the untenable position of having to lead double lives and fear the consequences of discrimination;
- a contribution to the solution in addressing teacher shortage problems in Victoria¹¹. Valuable, highly skilled and experienced teachers, who either leave the system because they do not conform to the religious doctrines or who do not apply for positions because they choose not to be part of such a system, may be attracted and retained;
- a contribution towards the wellbeing of same sex attracted students in schools as their issues will be able to be discussed more freely and staff will be able to engage in a more effective way with such students;
- a contribution towards tackling homophobia in schools and in society more generally, consequently furthering the objectives of the Act and the Charter.
- a contribution to the Victorian Government's goal of creating a fairer society that reduces disadvantage and respects diversity, as set out in *Growing Victoria Together, a vision for Victoria*.

¹¹ Over the five years to 2010 an estimated 3,220 new teachers will be required (on average) each year across all Victorian schools to cover increases in student enrolments, teacher retirements and resignations, policy initiatives and teachers taking leave (Source: Teacher Supply and Demand Report 2006 prepared by the Teacher supply and demand reference group (Vic))

8. Conclusion

The religious exception should be amended to exclude coverage of job applicants and employees working in religious schools. Not only is the exception incompatible with the Charter and the human rights contained therein but it is also an unreasonable limitation on the rights of job applicants and employees who apply to or choose to work in non-government schools in Victoria.

Society has changed significantly since 1977 when the Act and the religious exception were first introduced. Diversity and respect for fellow human beings is advocated for, largely due to the workings of equal opportunity legislation in Victoria and around the country. School communities, which reflect society at large, house a complex demographic population. To accept the argument that parents choose to send their children to religious schools to ensure that their children conform with religious morality that dictates what marital status and sexual preference is acceptable, is to accept a reality that does not exist. In fact such a reality harms the very children the exception apparently tries to protect. As has been demonstrated, the effect of this silencing of sexuality in schools has caused great emotional and in some cases physical harm to students.

More specifically the religious exception, as it covers the employment of staff in non-government schools should only be relied on to the extent that it is necessary to ensure that religious doctrine is taught to students. This ensures that whilst religious schools have the right to hold their own religious beliefs and to teach these beliefs this does not mean that these same beliefs should be forced on to others. The Victorian Government, through its legislative power should determine that religious schools respect the rights, values and ways of being of job applicants and employees who do not share the same beliefs.

The floodgates will not open if the exception is removed. As has been demonstrated, employees are employed throughout Catholic schools even when their private lives are not in conformity with the religious doctrine of the Catholic Church. The removal of the

exception will allow the silencing of employees to end. Tolerance, understanding and respect for diversity will be the consequence. Staff will also be able support same sex attracted with students knowing they will not be discriminated against and will be able to contribute towards the work which challenges homophobic attitudes. Further, principals, employees and religious staff will not have to hide their support for gay students and teachers under the guise of pastoral care or social justice to try and legitimise it.

Amending the legislation to remove discrimination is long overdue. The economic and social benefits that will result from the removal of the right of religious schools to discriminate will be great. Amending the legislation will also send a powerful educational message to religious educational institutions, particularly to the parents, staff and students in schools. The message received will be that discrimination by religious bodies is no longer tolerated by this government.

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