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THE EXCEPTIONS REVIEW

**Submission on behalf of
Australian Evangelical Alliance Inc.**

18.04.2008

Australian Evangelical Alliance Inc.

Australian Evangelical Alliance Inc.

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The Exceptions Review

C/- Department of Justice

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Friday, April 18 2008

Dear Sir / Madam,

Re: Submission to the Department of Justice regarding the review of the exceptions and exemptions in the *Equal Opportunity Act 1995*

The Australian Evangelical Alliance's Religious Liberty Commission and Public Theology Department welcomes the opportunity to make a submission to the Exceptions Review regarding the exceptions and exemptions in the *Equal Opportunity Act 1995* (the Act) to determine their compatibility with the *Charter of Human Rights and Responsibilities 2006* (the Charter).

Australian Evangelical Alliance Inc. is a network of approximately 350 Australian churches and agencies with a common interest in the engagement of Christianity with Australian society and culture. It is the autonomous national affiliate of the World Evangelical Alliance, representing over 400 million Christians in 120 countries. The Religious Liberty Commission (RLC) provides a local and international alert and advocacy role as part of the World Evangelical Alliance Religious Liberty Commission, an international agency which monitors human rights and religious liberty issues around the world. The RLC has prepared this submission in consultation with the Australian Evangelical Alliance's Public Theology department.

In response to the Exceptions Review's stated purpose it is the position of the Australian Evangelical Alliance that the religious exemptions – Sections 75, 76 and 77 – in the *Equal Opportunity Act 1995* are compatible with the *Charter of Human Rights and Responsibilities Act 2006*. We believe that the current religious exemptions do not limit the enjoyment of human rights protected and promoted by the Charter; that they are compatible with the right to equal and effective protection against discrimination; and that they do not need to be reformed to improve equality of opportunity and the elimination of discrimination in Victoria.

We would be available for further consultation particularly if any legislative changes were to be introduced.

Anna Kha

for **Australian Evangelical Alliance Religious Liberty Commission**

Australian Evangelical Alliance Inc.

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SUBMISSION SUMMARY

In response to the stated purpose of the Exceptions Review the position of the Australian Evangelical Alliance is that the religious exemptions – Sections 75, 76 and 77 – in the *Equal Opportunity Act 1995* are compatible with the *Charter of Human Rights and Responsibilities Act 2006*. We submit that the current religious exemptions do not limit the enjoyment of human rights protected and promoted by the Charter; that they are compatible with the right to equal and effective protection against discrimination; and that they do not need to be reformed to improve equality of opportunity and the elimination of discrimination in Victoria.

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AUSTRALIAN EVANGELICAL ALLIANCE INC.

Australian Evangelical Alliance Inc. is a fellowship of churches, organisations and individuals.

AEA is affiliated with the World Evangelical Alliance, an international fellowship representing more than 400 million Christians in 120 countries.

The Religious Liberty Commission is committed to making a difference, with all the help it can muster from concerned fellow Christians in Australia. It does this as the local arm of World Evangelical Alliance (WEA) RLC, which serves as a co-ordinating and networking team within the international advocacy community, on behalf of Christians persecuted for their faith. Through the RLC, WEA has observer status at the United Nations Commission on Human Rights. Research and development are key functions of the RLC.

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SUBMISSION RATIONALE

We believe the religious exemptions – Sections 75, 76 and 77 – in the *Equal Opportunity Act 1995* are compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

1. General principles

a. It is proper, as a matter of principle, that legislation recognises that religious beliefs carry moral status for religious adherents, such that their religious commitments are of a higher order than other obligations. Conforming one's behaviour to one's religious beliefs automatically entails questions of conscience.

b. It is necessary to accept that the freedom of one person to act in a given way may impact on the freedom of others. The existing religious exemptions rightly recognise that where clashes of interest arise it is proper to protect the freedom of religious bodies and individuals to express their religious convictions in their policies and practices in a way that accords with their principles and conscience.

c. We recognise – indeed we are firmly committed to – the protection of the rights of minorities. While the EA Religious Liberty Commission champions the rights of Christians to freedom from harassment and persecution, it also champions the rights of other religious minorities where they are under threat.

d. We believe that, in a secular society in which religious beliefs and practices should not be imposed on society, secularism has a way of imposing itself on religious believers and often fails to recognise that its own basic assumptions are just as open to question as religious assumptions. The present exemptions rightly recognise that supporting a secular social framework does not, and should not, entail the imposition of secular principles on religious bodies or individuals in a way that requires them to violate their conscience.

e. While it is possible that any particular religious beliefs may be judged by people of other religions or no religion to be intellectually indefensible or even offensive in some way, the law should not be used to force conformity to social practice except where it can be clearly demonstrated that significant harm is being done. It is our contention that there is no evidence that the existing exemptions are a cause of significant harm to society or even to individuals but act to prevent discrimination against religious bodies. Removal of the exemptions would enable discrimination to be practised without recourse by an injured religious body.

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f. Legislation should not be based on the faulty premise that any individual should be free to impose his or her will on a religious institution merely as a matter of choice nor should religious institutions be free to impose their will on others in an arbitrary way.

g. It is the experience of the World Evangelical Alliance Religious Liberty Commission that the assault on religious liberty in any society proceeds by small steps, such as the spread of disinformation, or the gradual adoption of measures which increasingly amount to the very serious infringement of human rights. Communist regimes have illustrated this in stark terms, on the basis of the right of the state to impose restrictions on those whose beliefs do not conform to their ideology. But it is essentially no different when a secular state imposes its own beliefs on religious bodies. We believe the present exemptions are a proper and necessary defence against an oppressive application of anti-discrimination legislation.

h. Finally we call for vigilance to ensure that a perception of anti-religious motivation does not become a reality. Any proposals for change to the religious exemptions are likely to betray an anti-religious zeal that has little to do with the protection of individual rights and a lot to do with the desire to deny religious values. Australian citizens have a right to live and work within an environment compatible with their personal values. The AEA RLC is concerned that such proposed legislative changes could result in situations such as in the UK where Christian Churches were forced to employ staff who opposed the beliefs of the Church; or have resulted in the closure of social service ministries.

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KEY QUESTIONS FOR CONSIDERATION

The submission of the Australian Evangelical Alliance Religious Liberty Commission includes responses to the Exceptions Review key questions for consideration that directly relate to the religious exemptions (sections 75, 76 and 77) and does not include the VCAT and statutory authority exception questions.

Questions to be responded to include:

General questions

- 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?

Exceptions and exemptions

- Are the exceptions reasonable limitations on the right to equality? If so, how can they be justified?
- Should any exceptions be repealed? If so, which exceptions and why?
- Should any exceptions be amended? If so, which exceptions and why?

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RESPONSE TO KEY QUESTIONS FOR CONSIDERATION

General questions

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

We believe that the current religious exemptions do not limit the enjoyment of human rights protected and promoted by the Charter and that they are compatible with the right to equal and effective protection against discrimination. It is the position of the Australian Evangelical Alliance therefore that these exemptions do not 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?**

The Australian Evangelical Alliance is concerned that there would be a considerable social cost to individual employees, families with students at non-government schools and school staff, places of worship and social service providers in the subsequent loss of freedom that would occur in changing the current exceptions in the Act. A loss of religious freedom of such a magnitude would restrict individuals, religious schools, places of worship and social service providers from self-governing within the framework of the law. Changes to the exemptions would in themselves be discriminatory as they would limit the right of religious Australians to worship, observe, practice and teach their faith.

Exceptions and exemptions

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

The three religious exemptions – Sections 75, 76 and 77 – in the *Equal Opportunity Act 1995* are reasonable limitations on the right to equality as they grant religious institutions the right to hire staff that uphold and respect the institution's beliefs. In the instance of individuals who claim disadvantage as a result of the exemption other legal avenues of redress are available. Conversely religious Australians would have their rights removed in the event of a repeal of or amendments to the religious exemptions.

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- **Should any exceptions be repealed? If so, which exceptions and why?**
- **Should any exceptions be amended? If so, which exceptions and why?**

To repeal the existing religious exemptions or to amend the exemptions in ways that limit religious bodies would in fact contravene the *Charter of Human Rights and Responsibilities Act 2006*. Specifically Section 38, clarifies that whilst it is unlawful for a public authority...

'to act in way that is incompatible with a human right' (Section 38 Part 1),

...it goes on to clarify that

'Subsection (1) indicates that this 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' (Section 38 Part 4).

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CONCLUSION

It is the position of the AEA RLC that the three religious exemptions – Sections 75, 76 and 77 – in the *Equal Opportunity Act 1995* should be retained without change. We urge the Exemptions Review to respect and uphold the rights of religious Australians to act in accordance with their beliefs. This includes, for example hiring staff in worship, social services and school contexts who uphold these stated beliefs. To repeal or limit these exemptions would be tantamount to a denial of religious freedom that is currently exercised in Australia.

Respectfully submitted,

Australian Evangelical Alliance Religious Liberty Commission