

Changes to the Victorian Equal Opportunity Act 1995 Options for changing exceptions and exemptions

Briefing Notes for Victorian Church Leaders
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The Victorian Parliament, through its 'Scrutiny of Acts and Regulations Committee' (SARC), has prepared a set of options for modifying Victoria's Equal Opportunity law. Some of these options, if implemented, could have highly significant implications for how churches and other religious groups function. These briefing notes have been prepared to assist church leaders understand what is happening, and to offer guidance on how best to respond.

Readers are urged to make submissions to SARC on this subject, which are due by July 10, 2009.

These notes are only intended to be a simple overview of the issues. For a more detailed understanding and precise wording, the reader will need to examine the *Options Paper* itself.

Background to the Options Paper

Equal Opportunity Law is designed to prevent unfair discrimination, so that people will be treated equally, including in relation to employment and the provision of services.

An important part of the law is the many exceptions, which make discrimination lawful under certain circumstances. These exceptions are under review in Victoria.

Exceptions are necessary for many reasons. For example, an organisation devoted to helping the vision-impaired could do its work better if it employs at least some vision-impaired people. But for this, the organisation might need the freedom, when employing staff, to discriminate in favour of the vision-impaired, and against sighted people. On the other hand, a particular job may require good vision, and an employer can discriminate against the vision-impaired under such circumstances.

Sometimes an exception is needed when different human rights could conflict. For example the right to privacy may conflict with community's right to live in safety. Thus the police can, under special circumstances, gain permission to invade someone's privacy.

As another example, the right to religious freedom implies that a congregation should be able to apply a test of faith when recruiting its pastor, but to apply such a test the church would need an exemption from anti-discrimination laws, which might otherwise prevent discrimination on religious grounds. The right to religious freedom for the congregation would need to take precedence over the

right of applicants for the position not to be discriminated against on religious grounds.

The process of determining in law how one right can take precedence over another is referred to as 'balancing' human rights.

There are literally dozens of different kinds of lawful exceptions to anti-discrimination which currently apply in Victoria. All are being reviewed at the moment. A view has been put forward in the Options Paper that many of the existing exceptions have been around for a long time, and community attitudes have changed over the years. There appears to be a will to tighten up the exceptions, so they are not so broad. This, it is claimed, would strengthen the right to equality.

Another factor behind the current Victorian review is the introduction of the Victorian Charter of Human Rights and Responsibilities Act (2006) ('the Charter'). By explicitly defining rights, the Charter gives a framework against which the exceptions to anti-discrimination can be evaluated. Indeed the Parliament is now obliged to examine laws against the Charter, to make sure that people's human rights – as the Charter defines them – are protected as much as is possible.

The Existing Religious Exceptions

Undoubtedly the religious exceptions in the Equal Opportunity Act are the most contested and complex aspect of the review process. A very great diversity of views has been put to the Parliamentary Committee on this subject. There is a lot at stake.

The religious exemptions at present include:

Section 38

Educational institutions can be run for particular groups of *students*, including students of a particular religious belief. (This exemption is broader than just religion: institutions can be run for other groups of students, e.g. for students with a specific disability, or gender).

Section 55

A religious body can discriminate in the provision of *accommodation* if the institution has been established for the welfare of a particular religion. (This exemption is also broader than just religion).

Section 56

An educational institution can discriminate in providing *accommodation for students* on the basis of religion (and sex, race, age or disability).

Section 75(1)

This exemption protects the freedom of religious groups in *selecting religious personnel* (e.g. priests, ordained pastors, members of orders), as well as people 'to perform functions in relation to, or otherwise

participate in, any religious observance or practice'. This second provision could apply, for example, to the selection of a church organist or a Sunday School teacher.

Section 75(2)

This exemption is intended to protect the right of religious groups to discriminate *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.'*

Section 75(3)

This extends 75(2) to *employment of people in educational institutions* directly under a 'body established for religious purposes'. For example a parish school, in employing people, could enjoy the same exemptions in employing people as the church which oversees its operations.

Section 76

This is a broad exemption for *educational institutions* which are 'established ... to be conducted in accordance with religious beliefs or principles' (but need not be under the control of a religious body). This would be available, for example, to an independent school with a Christian ethos, but which is not directly under the control of a church body.

Section 77

Individuals can discriminate if necessary to comply with their 'genuine religious beliefs or principles'.

Of the last five exemptions, the general thrust of the Options Paper is that 75(1) is to be maintained, 75(2)-(3) and 76 are to be tightened up, and 77 is to be repealed or significantly narrowed.

The main focus of concern is:

- Rights of religious groups in general – 75(2).
- Rights of religious schools and colleges – 75(3) and 76.

These three exemptions were all strongly contested in submissions, and are under challenge. The heart of the objections to these exemptions is that they are too broad, and not adequately defined. It is claimed that they need to be tightened up. There is a view, in the challenging task of balancing competing rights, that these exemptions are out of balance, given current community expectations. They are believed to grant too much to religious freedom at the expense of equality.

If one accepts this, the question then arises: How to tighten up the exemptions? It is argued that the bar should be raised by tailoring the exemptions more closely, both to the religious freedom requirement itself (instead of granting blanket exemptions), and also to the needs of those who could be disadvantaged. A 'reasonableness' test is also proposed, requiring the actions should be

reasonably necessary in terms of the doctrines or sensitivities of the religious group. It is also suggested that there is a lack of clarity at present in Section 75(2), as to just what 'conforms with the doctrines' means: the meaning of this, it is argued, should be spelled out.

In the case of 75(3) and 76, relating specifically to educational institutions, options include limiting the exemptions only to discrimination on the basis of religious belief or activity; allowing 75(3) but not 76; placing the onus on the institution to show that reasonable requirements justify the exemptions; and distinguishing between different categories of religious educational institutions.

Whilst changes to exemptions 75(3) and 76 would impact the functioning of religious schools, changes to 75(2) could have a profound impact upon the functioning of all religious bodies.

It also needs to be noted that people are able to discriminate on religious grounds by making use of other exceptions which are not explicitly defined in religious terms. These include:

- Section 16 – Domestic or personal services in the home
- Section 17 – Genuine occupational requirements
- Section 21 – Small Business
- Section 54 – Shared accommodation

For example Section 54 allows someone who lets out accommodation to up to six people in their own home to use a religious test when selecting tenants, and Section 16 would allow someone to select a co-religionist as their domestic personal carer.

The Broader Context

In some overseas jurisdictions the trend in balancing the right to religious freedom against the right to equality is looking increasingly severe for religious freedom. The Christian Legal Centre in the UK is currently receiving around 12 requests a week from Christians who are seeking legal assistance to defend their freedom, and is running up to 20 live legal cases on behalf of Christians whose rights have been compromised in the workplace. UK Equalities Minister Maria Eagle recently addressed a conference on 'Faith, Homophobia, Transphobia and Human Rights,' at which she stated, "The circumstances in which religious institutions can practice anything less than full equality are few and far between." What Eagle is saying is that religious exemptions will be as narrow as possible. This reflects a trend towards a 'hierarchy of rights' in which some rights, in this case equality, are given precedence over other rights, in this case freedom of religion.

Here in Victoria recent history has suggested that legislators can too easily discount the right to religious freedom. The Abortion Law Reform Bill (2008) denied the right of doctors – even as conscientious objectors – to refuse to make an effective referral for someone seeking an abortion. The Racial and Religious Tolerance Act (2001), despite making strongly supportive references to the right

to freedom of expression, overlooked the right to freedom of religion and made no reference to it. Indeed the exceptions in the Act were all framed in terms of freedom of expression requirements.

A positive acknowledgement

A positive aspect of the Options Paper is that it acknowledges, as a fundamental point, that limiting or removing religious exemptions impacts upon freedom of religion, with reference to the Charter, Section 14 'Freedom of Thought, Conscience Religion and Belief'. This in itself is a welcome development, in contrast to the thinking which informed the Racial and Religious Tolerance Act 2001.

The key question is whether religious schools would be unreasonably impeded in their functioning by changes to 75(3) and 76, whether all manner of religious bodies would be unreasonably impacted by changes to 75(2), and whether individuals would be coerced in the practice of their religion by changes to 77.

The Ideological Framework which shapes the Options Paper

The Chair's Foreword to the Options Paper acknowledges the key role played by Associate Professor Beth Gaze of Melbourne University. It appears that Gaze was the expert who drafted the paper.

There is a close correlation between the assumptions and approach used within the Options Paper itself, and other writings of Dr Gaze. The approach is sophisticated, and informed by certain key assumptions or ideas. These include:

- The key to reconciling the tension between right to freedom of religion and the right to equal treatment is judicious 'balancing' of the two rights.
- Both rights need protecting: it is wrong and unworkable for either one to dominate the other.
- It is thought that in the past religious freedom rights have taken precedence over equality rights. There is claimed to be widespread community support for redressing this imbalance by reducing the scope of exemptions, and limiting religious freedom so that equality may increase.
- Patriarchal religious institutions, as powerful contributors to the injustice of unequal treatment of women, should be more subject to the requirements of equality than they have been in the past. This is essential to achieving the cultural changes needed to reach the end-goal of equality in society.
- The increasing reliance of states upon religious groups to provide services of a public nature (such as education, health, welfare and adoption services), funded by the state, requires a greater emphasis on equality by these providers in the way they conduct themselves, and less on religious freedom.
- When the religious service providers constitute a large proportion of the sector, the emphasis on equality, at the expense of religious freedom, must also be greater. (In this sense, the more successful religious groups

are in service provision, the less freedom of religion they might be entitled to.)

- A workable distinction can be made between 'core' functions of religions and other 'extended' or 'wider' activities.
- The fundamental right to freedom of religion only applies to 'core' activities, not 'extended activities.' It follows that it is only 'core' activities which needs protection through freedom of religion exemptions.
- A distinction can be made between 'internal' and other aspects of a religion. This seems to suggest a distinction between private and public functions of religions. In practice the Options Paper appears to use 'internal' as a synonym for 'core', suggesting that the defining feature of 'core' activities is that they are private and not public.
- In discussing the important relationship between sexuality and religious exemptions, there is a surprising indifference in the Options Paper to the importance of sexual ethics for religious bodies. Instead the Paper presupposes that religions would only wish to discriminate on the basis of sexuality **identity**. Where specifically ethical issues arise they tend to be dismissed. For example, there is a theological presumption that it would be unacceptable for a church to refuse to employ a receptionist on the basis that he or she is in a de facto relationship: such a distinction, it is claimed, could **not** 'have some connection with the religion' (pp.113-4).

Is the concept of 'core, internal' functions viable?

A crucial and troubling aspect of the Options Paper's approach is its construct of 'core' or 'internal' religious functions. References to these concepts from the Options Paper include:

- It is asserted that what the Charter protects are the 'core, internal' aspects of religions (p.109).
- Choosing and training religious (i.e. ordained) officials are 'core' functions (p.18).
- 'Core, internal' aspects do not extend to practices such as providing welfare, schooling, healthcare, accommodation etc (109-111, 116ff).

What the Options Paper is in effect saying is that the provision of services to the public is not a 'demonstration' of religion in 'observance' or 'practice'. These terms, taken from the Charter, are treated by the Options Paper as only applying to 'internal' activities, especially worship.

The Options Paper acknowledges that religious groups have a broader understanding of their religious character:

It is clear that religious organisations have a different view about where the line is to be drawn between 'religious activities' and secular activities of a religious organisation, and what makes the organisation or the particular activity religious. It would be desirable for the EO Act to encourage organisations that want to rely on these exceptions in relation to extended activities (i.e. outside the core or internal area) to identify

and state what makes the position or activity inherently religious.
(p.116)

The onus is thus to be on the religious group to defend the religious nature of the activities they undertake. However Evans and Gaze have argued that, where public funds are involved, not even making this case successfully should suffice to qualify for an exemption: 'the onus should be on the religious organization that accepts public funding to demonstrate a good public (rather than religious) reason why it should not comply with non-discrimination principles.'¹

In their paper in the *Harvard International Law Journal*, a test which Evans and Gaze propose to help distinguish between 'core' and 'peripheral' functions of religions is that core functions are ones which religions 'cannot stop' even if 'regulatory burdens on these activities become oppressive'.² In other words the believers would follow their consciences, even if the state persecutes them for it. (This could be viewed as a rationale for tyranny: a right should be respected only if people are willing to suffer for it.) In contrast 'peripheral' or 'extended' activities may be abandoned by the religion: 'a religion may simply withdraw from providing schools or hospitals (a danger that the state needs to be aware of when deciding how much to regulate a particular organization)'.³ The Options Paper reflects this distinction, by supposing that 'extended activities' do not deserve protection.

The distinction between 'core' and other functions can be regarded as a manifestation of an aggressive secularist worldview, which has been criticized by UK lawyer Andrea Minichiello Williams:

This is the secularist point of view—that religion should be confined to the home and the church and excluded from the public square and the workplace.

The Options Paper's reliance on the concepts of 'core' and 'internal' aspects is contrary to fundamental requirements of the right to freedom of religion. The right to demonstrate or manifest one's religion through observance applies both in private **and in public**, as expressed both in international Human Rights Instruments, and in the Charter itself, which affirms the right to 'demonstrate the religion individually ... **in public** or in private'. Essential to what the Options

¹ Carolyn Evans and Beth Gaze, 'Between Religious Freedom and Equality: between complexity and context.' *Harvard International Law Journal Online*, vol.49, p.46.

² Carolyn Evans and Beth Gaze, 'Between Religious Freedom and Equality: between complexity and context.' *Harvard International Law Journal Online*, vol.49, p.47.

³ Carolyn Evans and Beth Gaze, 'Between Religious Freedom and Equality: between complexity and context.' *Harvard International Law Journal Online*, vol.49, p.47. This is happening in the UK and the US: the Catholic church is abandoning adoption services in various jurisdictions, because of the requirement that adoptions be made to gay couples, without discrimination.

Paper proposes is that the right to private manifestation be protected, but the public right to freedom of religion be presupposed **not** to apply, unless those who adhere to a religion can make a convincing case for it to the state, and some would say not at all if they are spending public money. In discussing Section 77, the Options Paper also appears to discount the right to freedom of religion for individuals 'in the **public** sphere of activity' (p.130).

In reality, people of faith do not make a distinction between private and public, or 'core' and 'peripheral' observance. There are at least two aspects to this.

First, some religions, including Christianity, make it a point of religious observance to proclaim truth – as understood of course from the ideological perspective of the faith – to the world. This proclamation is a public observance. It is partly for this reason that almost all church services in the state of Victoria are public events, open to all: most worship is not a private or internal affair. It is certainly true that when Christians have been persecuted, they can and do take some of their observances underground, making them private, as for example happened in China, after the communist regime took over the Christian hospitals, schools and universities, and closed public church buildings. Such privatization of worship through the enforced secularization of public religious institutions is a tactic of totalitarian states.

Second, the Christian faith teaches its followers that religious observance includes acts of mercy and care for others, such as seeking justice, providing welfare, offering care for the dying, visiting and caring for people in prison, and educating children. This is expressed in many passages of scripture, including Micah chapter 6, which rejects acts of worship as the primary locus of religious observance, and instead calls for believers to 'do justice, love kindness and walk humbly' with their God:

'With what shall I come before the Lord,
and bow myself before God on high?
Shall I come before him with burnt-offerings,
with calves a year old?
Will the Lord be pleased with thousands of rams,
with tens of thousands of rivers of oil?
Shall I give my firstborn for my transgression,
the fruit of my body for the sin of my soul?
He has told you, O mortal, what is good;
and **what does the Lord require of you
but to do justice, and to love kindness,
and to walk humbly with your God?**

Jesus likewise offered a critique of a narrow understanding religious observance:

"Woe to you, teachers of the law and Pharisees, you hypocrites! You give a tenth of your spices—mint, dill and cummin. But you have neglected the more important matters of the law—justice, mercy and faithfulness. You

should have practiced the latter, without neglecting the former.”
(Matthew 23:23)

Jesus also taught that Christians should make attending to the needs of the poor one of their highest priorities. This is the true essence of religious observance:

When Jesus heard this, he said to him, “You still lack one thing. Sell everything you have and give to the poor, and you will have treasure in heaven. Then come, follow me.” (Luke 18:22)

For a Christian, how one lives in the world is as much a ‘religious observance’ as ritual acts conducted in the privacy of a home or locked chapel. For this reason, most Christians have found that no distinction can be made between ‘private’ and ‘public’ aspects of their faith. Christian religious orders did not found hospitals and schools because they thought that these activities were ‘peripheral’ to the observance of their faith. (In many cases the provision of such services formed the whole reason for the existence of the order, and formed the essence of the religious vocation taken by members of the order.) When William Wilberforce and many other Christians fought for the abolition of slavery, and Australian Christians worked for prison reform in 19th century, they did so as acts of religious observance. The work of the Salvation Army in caring for the poor is not, for its adherents, outside the core area of their faith and observance.

For Christians who understand the origins of many of our prominent ‘public’ institutions in generous acts of religious observance (including schools, universities, hospices, and hospitals), the suggestion that establishing and maintaining such institutions is not a religious observance will seem incredible.

Individual religious rights downgraded?

The Law Institute of Victoria’s submission (in its discussion of Section 76) states that “The LIV notes that only persons have human rights.” This is quite true: Human rights apply to individuals. It is therefore troubling that the exception which specifically protects the religious liberty of individuals (Section 77) is treated more dismissively than those which protect the liberty of groups (Sections 75-76).

There have been a growing number of recent punitive actions brought by activists in other countries against Christians to force them to act against their consciences. These have included forcing a Christian psychologist to offer a same-sex internet matchmaking service in the US, and the suspension of a Christian counsellor in the UK because he requested not to be compelled to provide sexual counselling to a same-sex couple. Given the growth in such cases around the world, Section 77 is needed to protect the rights of individuals not to be ‘coerced or restrained in a way that limits his or her freedom to ... demonstrate the religion’ (the Charter). The need for this exception is all the greater when clients can easily access services from other providers, who do not have a conscientious objection to providing the service in question.

Practical Implications of the Options Paper

Clearly religious freedom is not unlimited. There is such a thing as bad religion. Some religious practices, such as child sacrifice and female genital mutilation, are illegal in Victoria and should remain so. It is also not the case that people of faith are seeking unlimited exemptions from the laws of the state. The challenge is where to draw the line, and there are just so many problems with implementing the framework proposed in the Options Paper for drawing this line. The distinction between 'core' and other functions to limit exemption 75(2) is, as we have noted, particularly ill conceived.

Issues of implementation include:

1. **Para-church organisations need protection too.** The use of the 'core-peripheral' test could penalise hundreds of para-church organisations, with many thousands of supporters. Such groups have been constituted for a religious purpose, yet employ no clergy and conduct no officially recognized worship. A great deal of the diversity and vitality of the Christian community derives, not from official clerically led denominational activities, but from independent lay organisations. These include many mission bodies, as well as groups dedicated to providing a diverse range of services, both to their members, and to the broader community. The Options Paper seemingly has little or no awareness of the extent of these groups in the Australian community, and the impossibility of protecting their members without a broad interpretation of 75(2).
2. **The danger of regulating religion by limiting non-institutional manifestations.** By proposing to protect 'core' religion the Options Paper begins to walk down a path, well-trodden by oppressive regimes, of regulating religion through channelling its observance into officially recognized denominational observance, at the expense of lay-led and independent non-conformist religious activity. This privileges institutional manifestations of religion over the exercise of independent personal conscience. Such a model for regulating religious freedom has failed again and again, being used as an effective instrument of persecution. By discouraging diversity it also encourages narrow, restrictive religious practices.
3. **Service roles are religious vocations too.** Churches employ many staff who are not clergy, but whose function is regarded as integral to the religious vocation and life of the Christian community. In a congregational context, roles such as receptionist, playgroup coordinator or caretaker are not simply 'secular' functions devoid of spiritual content. They are understood as involving the exercise of what are regarded as *charismata* 'spiritual gifts' (such as hospitality and helps: see Romans 12, 1 Corinthians 12, Ephesians 4), and are to be conducted as an act of service to God, and as a witness of faith to the community. It would prove impossible to impose secular morality – include secular sexual ethics – upon churches' processes for choosing employees or volunteers in such

contexts by limiting exemptions to clergy or some narrow secularist conception of 'core' functions.

4. **Incompatible religious worldviews.** Some religions are inherently opposed to each other. It would be unworkable to compel a Satanist group to employ a Christian cleaner or cook, or vice versa, solely on the grounds that cleaning is alleged not to be a 'core' function. Such compulsion would moreover cause deep hurt and offense. For the state to fine or imprison clergy, or lay church leaders, over equal opportunity violations of this kind would cause deep offense, and indeed widespread scandal in the community, as conflicting religions take their theological battles and antipathies into courts and tribunals.
5. **Judges to rule on doctrinal tests?** There are serious difficulties with demanding that religious groups justify to secular judges what constitutes 'reasonable' religious practices, and what does or does not accord with religious doctrines. To do so would require Tribunals and Courts to make wide-reaching and complex determinations on which religious beliefs and practices are reasonable or authorized by the state. As Evans and Gaze have said, 'assessing whether non-discrimination laws should apply' on the basis of 'the centrality of a particular activity to a religion' 'is a fraught issue because it requires legislatures or courts to make an assessment of religious practices.'⁴ States should attempt this as little as is necessary. The attempt of the Victorian Civil and Administrative Tribunal to make doctrinal judgements in the case of the Islamic Council of Victoria vs. Catch the Fire led to ludicrous results. The potential for abuses to occur if exemptions are limited by doctrinal tests is very great indeed.
6. **Community attitudes strongly support faith-based schools.** The claim that community attitudes have changed so as to justify the limitation of religious freedom, in order to promote equality, is contradicted by the tremendous take up of places in faith-based schools. The community has been opting to send their children to these schools in growing numbers because they **want** their children to be brought up under a religious influence, and to be formed by religious ethical values. Many of the newer schools have a very marked religious character, demonstrated for example by doctrinal tests for teaching staff. If community sentiment was for more secularized education, parents would have been choosing state schools instead of abandoning them.
7. **Religious schools are diverse.** The full variety of religious schools needs to be appreciated when contemplating restricting the religious freedom of educational institutions. While some schools might be only minimally affected by a tightening of sections 75(3) and 76, others would be completely incapacitated. Many families do choose to send their children to strongly Christian schools, because and not in spite of teachers being required to subscribe to codes of conduct shaped by faith and

⁴ Carolyn Evans and Beth Gaze, 'Between Religious Freedom and Equality: between complexity and context.' *Harvard International Law Journal Online*, vol.49, p.47.

adhere to statements of religious belief. Parents who do this are exercising their freedom to educate their children both morally and religiously, in conformity with their convictions (see Article 18 of the International Covenant of Civil and Political Rights). Moreover teachers who serve in these schools do so out of conviction, not lack of opportunity: there are many state schools which would employ them if they did not agree with the school community's beliefs. The proposal to allow broader exemptions only to schools which are under the oversight of religious bodies (such a religious order or denomination) would not adequately protect such schools.

8. **A religious ethos, sustained by believing staff, can be vital to valued service provision.** Some religious public institutions are deeply imbued with a spiritual ethos which is integral to their quality and success. For example Cabrini Palliative Care has such a high reputation in the community precisely because it embodies Christian and Catholic values. Caring for the dying is regarded by the institution as something done out of a religious obligation to show compassion and mercy. To maintain this ethos, which is so appreciated by the community, and benefits many who do not adhere to Catholic beliefs, requires the active participation of people of compatible religious convictions throughout the institution, at every level, both in leadership positions, as well as at the coal-face of service provision. To force such institutions to secularize their workforce would be damaging and degrade the social capital that such institutions represent. An institution like Cabrini Palliative Care offers excellent care to the dying precisely because of its Christian ethos. Many clients of other health-care institutions and Christian schools hold a similar view about the services they receive: that their services are sought out and valued is because of the religious ethos which motivates the institution. To degrade this through over-zealous Equal Opportunity regulation of public institutions would do damage to community wellbeing.
9. **The impact on religious freedom of altering the non-religious exceptions.** One of the arguments offered against retaining section 77, which is intended to protect the right of individuals to act in accordance with their religious convictions, is that in many cases other exceptions could be relied upon instead (for example in respect to sub-letting a room in your own home protection if offered by Section 54). It is a matter of concern that, if exceptions such as 16, 17, 21 and 54 are wound back – as some options propose – then removal of Section 77 could be even more damaging to religious freedom.
10. **Guide dogs and taxi licensing.** In relation to people with guide dogs being refused taxi services – the only specific example given of a problem caused by Section 77 – the most appropriate solution would be through regulation of the taxi industry, requiring drivers to carry passengers with guide dogs as a license condition. This would be a 'less restrictive means' (Section 7 (2) (e) of the Charter) of limiting the right. It would restrict individuals' right to practice and enjoy their religion less than abolishing the protection provided by Section 77.

Summary

In summary, the Options Paper's conceptual framework for determining how to limit religious rights is deeply flawed. Its approach is antithetical to Christian understandings of faith and public life. The Options Paper seems to veer towards the prohibition of the public manifestation of religion, by setting up an unworkable and ultimately discriminatory dichotomy between 'core' and other functions, and seemingly conflating it with an equally unworkable 'private' vs. 'public' dichotomy.

The Options Paper is flawed in its discussion of the religious exemptions. It applies an innovative and untested model for regulating religious freedom which is essentially secularist and, if accepted, will penalize public manifestations of religion. The present system of exemptions should be left in place. They have served us well. Meddling with the religious rights of Victorians by applying an ill-considered and ill-informed analysis of religious liberty can only cause disharmony and great distress in the Victorian community.

REFERENCES

The Victorian Charter of Human Rights and Responsibilities 2006

http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/

The Options Paper

http://www.parliament.vic.gov.au/SARC/EOA_exempt_except/default.htm