

A PASTORAL LETTER OF THE CATHOLIC BISHOPS OF VICTORIA ON THE THREAT TO RELIGIOUS FREEDOMS

To the Catholic people of Victoria and all people of goodwill

Dear Friends

We wish to alert you to a threat to the religious freedoms currently available under the Victorian Equal Opportunity Act.

These freedoms, paradoxically expressed as exemptions, enable the Church and its agencies in education, health, welfare and aged care to conduct its activities in accordance with Church teaching. The existing Act includes exemptions in relation to religious bodies (s.75); exemptions in relation to religious schools (s.76); and exemptions for discrimination which is necessary to comply with a person's genuine religious beliefs or principles (s.77).

The exemptions have particular application for Church service agencies and for people who access the services that they provide. The exemptions protect the particular priorities that the Church gives to the importance of marriage and sexual ethics in establishing the security of families as the basic unit of society, and respect for human life from conception to natural death. It is important that religious people are able to uphold a theological understanding of gender and of sexual ethics and life matters and that they not be prevented from giving witness to those authentic values that are essential to community life.

The Scrutiny of Acts and Regulations Committee of the Victorian Parliament is holding an Inquiry into these and other exemptions available under the Act.

In May this year, the Committee, which split on party lines, released an Options Paper for public discussion seeking submissions by 10 July 2009.

Of concern is the weight of argument for a weakening of the religious freedom exemptions despite the Options Paper citing no legal cases or giving no instances of complaints of injustice by religious agencies that would justify law reform. There is nothing in the Options Paper to indicate that any problem has been identified with the operation of the equal opportunity legislation with respect to religious agencies.

Appeal by the Bishops

We made a submission to the Inquiry opposing such a weakening and expressing a desire to be involved in the public hearing process which will follow the taking of submissions. We offer no comment on the other sections of the Act under review by the Committee.

A thrust of our submission was to reject fundamental misconceptions about the practice of the Catholic faith and the role of the Church in society. We also asserted the significant contribution the Church has offered and continues to offer the Victorian

community and emphasised that the Church is a leader in protecting the rights of people who are disadvantaged or marginalised. In conclusion, we assert that the relevant exemptions constitute a guarantee of religious freedoms for religious bodies in Victoria not found elsewhere and need to continue to have the same effect.

We express particular concern that the proposals in the Options Paper to remove protection from religious bodies would, in effect, force the secularisation of service delivery by religious agencies. The likely effect of these proposals would be profound because it would go to the heart of the religious motivation that leads people to be involved in ownership, governance and employment, as well as through volunteerism. Experience of the secularisation of service delivery here and overseas indicates that the result of forced secularisation is that some religious agencies withdraw from that work because it removes part of its vocational meaning for them. Secularisation also results in a loss of volunteerism. If people can no longer identify with the religious meaning of the activity, then they are likely to withdraw.

We acknowledge the current exemptions may go much further than protection of the Church's need to give witness to its beliefs and practices in relation to life, gender and matters relating to marriage and sexual ethics. The Church's concern is with the conduct of a person working in a capacity covered by the Act that conflicts with the public witness that the Church agency is required to give to the doctrines, beliefs and practices of the Church. The Church does not see a need for the exemptions to apply to all attributes or to any of the contraventions. The Church seeks exemption only in relation to seven attributes – religious belief or activity, sex, sexual orientation, gender identity, lawful sexual activity, marital status and parental status or status as a carer.

We further acknowledge that the Equal Opportunity Act needs to be aligned with the new Victorian Charter of Human Rights and Responsibilities and drafting could always be improved.

The Committee's attention has also been drawn to His Holiness, Pope Benedict XVI's latest Encyclical Letter *Caritas in Veritate* (Charity in Truth), and several of the Pontiff's specific references pertinent to the task of the Committee.

Charity is at the heart of the Church's social doctrine (paragraph 2), which emphasises the point that it is a core element in Christian evangelisation.

The right to religious freedom is a central element of human development (paragraph 29).

The Christian religion and other religions can offer their contribution to development only if God has a place in the public realm, specifically in regard to its cultural, social, economic, and particularly its political dimensions (paragraph 56).

The Identity of Catholic Services: "Love Your Neighbour" (Mark 12:30-31) as Essential to the Practice of the Catholic Faith

Catholicism is a public religion in its very essence. Indeed the word "Catholic" means "universal". Reaching out to serve the wider community is central to the ordinary daily practice of its faith.

Since the earliest times of Christianity the followers of Jesus of Nazareth have always seen this service of others as the critical test of their faith. Hence James the Apostle put it

bluntly, "faith without works is dead" (i.e. not real faith at all - James 2:26). The works of the Catholic Church are the way it lives its faith.

A recent authoritative iteration is found in the 2005 Encyclical letter of Pope Benedict XVI, *Deus Caritas Est* (God is Love):

As the years went by and the Church spread further afield, the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel. The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word (paragraph 22).

The Church's deepest nature is expressed in her three-fold responsibility: of proclaiming the word of God, celebrating the sacraments and exercising the ministry of charity. These duties presuppose each other and are inseparable. For the Church, charity is not a kind of welfare activity which could equally well be left to others, but is a part of her nature, an indispensable expression of her very being (paragraph 25).

That is why the Catholic Church in Victoria has been serving and educating the people of Victoria, especially the poorest and most marginalised in society, since its foundation in 1839.

Its Catholic hospitals, Catholic aged care facilities, Catholic schools and universities, Catholic foster care programs, Catholic AIDS residences, Catholic refugee and immigration outreach centres, Catholic shelters for the homeless and Catholic drug treatment programs – all exist as practical expressions of our Catholic faith.

In this endeavour of service we work with our fellow Victorians joined by our common humanity. We are mindful of the exhortation of the Prophet Micah to act justly, to love tenderly and to walk humbly with your God (Micah 6: 8).

The distinction made in the Options Paper between the core "internal" aspects of freedom of religion such as the right to adopt a religion and the freedom to participate in religious observance and practice and the undertaking of "business" activities such as in education, health, welfare, etc. away from the "core" activities, is false and is therefore rejected.

The theological basis of service by Catholic agencies is to witness to the founding inspiration expressed in Christ's injunction to love your neighbour and in imitation of the healing ministry of Christ. That inspiration is for Catholics to provide genuine service to the community, but most particularly those who are in need.

The delivery of services in education, health, aged care and welfare by religious agencies in Victoria has been and remains particularly important for migrants. Church agencies provide a context of shared belief and culture where new arrivals could find a familiar source of welcome. That welcome also extends beyond shared belief and culture. Often the Church agencies were almost the only agencies available. They were certainly a safety net for those who did not receive Government assistance.

Historically Italian and Greek migrants depended heavily on religious agencies, as did the South East Asian migrants. More to the point, religious agencies continue to be an important source of welcome for each wave of new migrants, especially those who have

come seeking asylum. Religious agencies are heavily involved, for instance, assisting new arrivals from strife-torn areas of Africa and the Middle East.

Witness to Faith in Education

Catholic Education is not only a right, but also a duty that is imposed on the Church (Canon 794 § 1). Catholic Education must not only ensure that the instructions given in them is at least as academically distinguished as that in other schools (Canon 806 § 2) but must pay regard to the formation of the whole person (Canon 795).

In education, therefore, the religious identity of Catholic schools has a particularly formative role given that the formation of students is the purpose of the activity. Parents choose a religious education for their children in the expectation that the institution will educate their children according to the teachings and traditions of that religion.

Religious schools therefore require those who are in a position to influence students to give witness to those teachings. That does have lifestyle implications. To preserve that role of witness, educational institutions need to be able to make witness to the religious teachings an employment criterion.

The Options Paper is quite mistaken when it gives as an example the unacceptability for a church to refuse to employ a receptionist on the basis that he or she is in a de facto relationship (pages 113-114). A receptionist in a religious school is in a position to influence the formation of students and if he or she were to make known to the students a lifestyle matter such as that, which clearly contradicted the teaching of the Church, the religious identity of the school may be compromised if the situation were to continue.

These matters require prudential judgement about the circumstances, but if religious schools are to be maintained then they do need to retain the capacity to make employment decisions in relation to known lifestyle. The Options Paper offers no evidence that the current exemptions have been misused or that Catholic schools have acted unjustly or insensitively in these matters.

Witness to the Faith in Health and Aged Care

The client expectation of a religious health or aged care facility is that it will be conducted according to the teaching of the religion. For staff members this means a requirement that they abide by the mission, philosophy and code of ethical standards (which cover the Church's teaching on life matters) while working within the institution. Nevertheless, employees in health and aged care also require particular skills, knowledge and sensitivity towards those whose spiritual needs may be more sharply focussed as they enter the last chapter of their life.

Catholic Health Australia has published a Code of Ethical Standards which sets down the standards that patients and aged care residents can expect of staff in Catholic health and aged care facilities. It also publishes update documents from time to time on specific issues as they arise. The latter include documents on future care planning, artificial nutrition and hydration and specific issues to do with care of those with dementia.

The Code of Ethical Standards is not just a catalogue of ethical guidelines on specific issues. Significantly it defines what constitutes the identity of Catholic health and aged care within the mission of the Church in giving expression to the healing ministry of Christ in accordance with love and respect for the inherent dignity of every person. The Code

also establishes the goals of Catholic health and aged care, the right to receive health and aged care services and a particularly religious view of the human body, of solidarity with one's neighbour, and the mystery of suffering and death.

The Code is part of the employment conditions of the staff of Catholic hospitals and aged care facilities. They are asked to not only adhere to the ethical standards of their respective professions, but also to be willing to abide by the standards of Catholic health and aged care. That requirement is necessary if Catholic health and aged care institutions are to meet the expectations of the community that they will offer services in accordance with the teaching of the Church.

Of course, Catholic health and aged care is not confined to those who accept Catholic beliefs. The Code requires that Catholic institutions respect the different cultures and religious traditions of all whom they serve, and those who work within the institutions, and value that diversity. The Church understands that many in the community who are not Catholics choose to be cared for in Catholic hospitals and aged care facilities because of the values and conduct of the institution.

Witness to the Faith in Welfare

In welfare service delivery, the issue is similar to the issue in health and aged care. In order that the activity continues to meet the expectations of clients, a religious welfare service requires that its staff conduct the service in a way that is in accordance with the teaching of the religion.

In the delivery of Catholic social services, it is important to acknowledge that the desire to be of service is not expressed as a desire to proselytise but to serve.

Appeal to People of Goodwill

The tolerant pluralism of the Australian society that values difference and diversity is under threat and religion is a major target. It is important therefore that people of goodwill defend their religious liberties.

The importance of service delivery, by religious people and religious agencies, as an essential element of religious belief and practice in service to neighbour is one our Parliamentarians need to hear. It is also important to defend our pluralist society, the diversity of service delivery, the right of people to receive services in the context of their own beliefs and practices, and the rights of parents to give their children an education in their own faith tradition.

The Options Paper can be located at
http://www.parliament.vic.gov.au/sarc/EOA_exempt_except/default.htm#options_paper

The names and contact details of Members of the Victorian Parliament can be located at
<http://www.parliament.vic.gov.au/mps.html>

We wish you peace and blessings.

Yours sincerely in Christ,

+ Denis J. Hart

Most Reverend Denis J Hart DD
ARCHBISHOP OF MELBOURNE

+ Joseph Grech

Most Reverend Joseph Grech DD
BISHOP OF THE DIOCESE OF SANDHURST

+ Peter J. Connors

Most Reverend Peter Connors DD
BISHOP OF THE DIOCESE OF BALLARAT

+ Christopher Prowse

Most Reverend Christopher Prowse DD
BISHOP OF THE DIOCESE OF SALE

+ Peter J. Elliott

Most Reverend Peter Elliott DD
AUXILIARY BISHOP OF THE DIOCESE OF
MELBOURNE

Tim Costelloe SDB

Most Reverend Timothy Costelloe DD
AUXILIARY BISHOP OF THE DIOCESE OF
MELBOURNE

+ Leslie Tomlinson

Most Reverend Leslie Tomlinson DD
AUXILIARY BISHOP OF THE DIOCESE OF
MELBOURNE

15 July 2009