



GPO Box 3161
MELBOURNE VIC 3001
Ph: (03) 9670 6422
Fax: (03) 9670 6433
Email: info@libertyvictoria.org.au

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**Australian Human Rights Commission Inquiry into
Freedom of Religion and Belief in the
21st Century**

Liberty Victoria – Victorian Council for Civil Liberties Inc

GPO Box 3161
Melbourne VIC 3001
Ph: 9670 6422
Fax: 9670 6433
Email: info@libertyvictoria.org.au

Contact persons:

Jamie Gardiner
Vice-President
Ph: 04 1279 5491
Email: jamie_gardiner@iosphere.net.au

Anne O'Rourke
Vice-President
Ph: (03) 9903 2785 (w) 0409 334 581 (m)
Email: Anne.O'Rourke@buseco.monash.edu.au

Liberty Victoria submission

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1. Introduction

1.1 The Victorian Council for Civil Liberties Inc—Liberty Victoria—is an independent non-government organization which traces its history back to the first civil liberties body established in Melbourne in 1936. Liberty is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia’s compliance with the rights and freedoms recognised by international law. Liberty’s contribution is well known to the Commission, as well as to Senate and House committees, and we have campaigned extensively in the past on issues concerning human rights and freedoms, democratic processes, government accountability, transparency in decision-making and open government.

1.2 Liberty Victoria welcomes the opportunity to contribute to the inquiry but time will not permit us to address all the issues raised in the discussion paper on pages 8-10. Instead our concern centres on the balancing of freedom of religion and belief with the right to equality. As such we aim to comment on this topic where the discussion paper raises the issue of equality under the following sub-headings: The Constitution; Religion and the State; The interface of religious, political and cultural aspirations; Religion, cultural expression and human rights; and Religious exemptions from anti-discrimination and equal opportunity law.

1.3 There are well over a hundred identifiable religious groupings in Australia.¹ In many ways they overlap with ethnic, cultural and national identities. Religious belief and membership of religious groupings have a long history of being the focus for discrimination and conflict. Many religious bodies also have a long history of prejudice against those of other, or of no, religion, and many cruelties have been inflicted on these grounds.

1.4 It is natural, therefore, that the establishment of religious freedom, against the imposition of religious orthodoxy and the persecution of the heterodox formerly widespread, and now perhaps less so, is a vital principle of the modern human rights framework. It is a principle that Liberty Victoria strongly supports, as part of our support for the human rights framework itself.

¹ *Australian Standard Classification of Religious Groups*, 1266.0 (2nd ed) ABS 2005

1.5 Individuals should not be persecuted or discriminated against because they hold, or do not hold, particular religious beliefs, or engage in or do not engage in particular religious practices. This is clear.

1.6 Unfortunately religious bodies have a long history of discriminating against and persecuting others. This is not surprising, given that many religions are based on a firm, even unshakeable, belief that they alone are in possession of the Truth. It is inevitable, however, that this cannot be true, given the incompatible competing claims.

1.7 Unfortunately the importance of religious freedom in the history of our politics has led to undue deference to the claims of religious bodies and individuals to be allowed to persecute or discriminate against holders of other beliefs or those with none. As a result the freedom of religion as against the state, which is important, sometimes gives way to a licence to discriminate which the state, wary of infringing the freedom of religion or preferencing one religion over another, fails adequately to rein in.

1.8 This submission points out several instances where this pernicious licence leaves individuals vulnerable to unrestrained discrimination by religious bodies, and where the state needs to protect such individuals' human rights, and for that matter their religious freedom not to believe in, nor act according to, the dictates of the beliefs of a religious body to which they do not subscribe.

1.9 In spite of the historic features mentioned, religious freedom must take its place as just one among many human rights elaborated in the modern human rights framework. Like most human rights the freedom of religion and belief is subject to the limitations inherent in that framework, and summarized at the end of this submission in the words of s.7(2) of the Victorian *Charter of Human Rights and Responsibilities*. Except in relation to their own internal practices, and involving their own members who are adult and competent, religious bodies and individuals must be subject to the general law, and must not infringe the human rights of those who do not share their beliefs.

2. The Constitution

2.1 The discussion paper raises a number of questions regarding religious freedom and the Constitution, specifically:

- How should the Australian Government protect freedom of religion and belief?
- Issues of concern regarding the separation of religion and state
- Do religious or faith-based groups have undue influence over government?
- Would a legislated national Charter of Rights add to these freedoms of religion and belief?

2.2 Liberty Victoria is a strong supporter of and advocate for human rights and the international human rights instruments under which Australia has

expressly undertaken to protect, respect and fulfil the human rights they cover, which include the protection of freedom of religion and belief. We do not believe, however, that freedom of religion should be extracted from other rights and protected under the Australian Constitution.

2.3 It is our view that the Australian Government should seek to enact a comprehensive Human Rights Charter that will reflect the international human rights instruments (ICCPR, ICESCR, CEDAW, CERD, Convention Against Torture, etc) and include all the rights that Australia has promised to respect, protect and fulfil under those instruments rather than privileging one right above others. Embedding rights in a comprehensive *Charter* is important because rights often require a balancing act, given that the human rights of people in one group may necessarily be in tension with the rights of those in another group. For example, there is a tension between freedom of religion and belief on the one hand and equality for all citizens on the other. This contestation often occurs over women's, and lesbians' and gay men's right to equality and non-discrimination when confronted with the protection of religious freedom.

2.4 The tension between these competing rights and the influence or privileging of religious beliefs was highlighted at the federal level in the debate over equal access to marriage, without discrimination on the basis of sex, sexual orientation or gender identity, and the availability of RU486 to Australian women.

2.5 As to the latter issue, a parliamentary vote in 2006 overturned the Minister's veto power over RU486. That veto power had been instituted by an amendment in 1996 by Senator Harradine, a strong Catholic and social conservative politician, irrespective of the impact on women and their rights under international human rights instruments and federal and state equal opportunity and anti-discrimination law.² Both the exercise of this veto and the power to do so were examples of the imposition of Roman Catholic religious doctrines upon women who did not subscribe to those doctrines, and in violation of their human rights to bodily integrity and security, and to the best available standard of health, at least.

2.6 Similarly, federal and state equal opportunity and anti-discrimination laws have failed to live up to the expectation of lesbians and gay men who are often on the receiving end of discriminatory conduct because of prejudice against their sexual orientation.

2.7 Indeed, before the 2007 election both leaders, John Howard and Kevin Rudd, sought the Christian vote in a webcast streamed live to a claimed

² See Luke Buckmaster, *RU486 for Australia?* Research Note no 19, Parliamentary Library, Parliament of Australia, (2005-06): <http://www.aph.gov.au/library/Pubs/RN/2005-06/06rn19.htm>; also Judith M Dwyer and Terri Jackson, 'Unwanted pregnancy, mental health and abortion: untangling the evidence', *Australian and New Zealand Health Policy*, 5(2) (2008), <http://www.anzhealthpolicy.com/contents/5/1/2>

100,000 Christians across the country.³ In that webcast both leaders spoke of the “traditional” family and opposed “gay marriage” despite the fact that this version of “tradition” discriminates against lesbians and gay men and that equality in marriage is supported by the majority of Australians.⁴ If the majority of Australians support gay marriage then it is arguable to assume that both leaders were opposing same-sex marriage as a means to appeal to a perceived religious vote.

2.8 In a democratic society, which is necessarily pluralist and secular, government policy and laws should not be based on religious belief. For given the multiplicity of religions religiously-based laws almost inevitably place unjustifiable limitations on the human rights, including the religious freedom, of those who do not subscribe to the dominant beliefs. Government must be neutral and ensure the rights of all, limited only by the principled human rights framework itself. People must be free to believe and follow their particular religious belief, so long as they respect the human rights of others, and government must ensure that those who do not share or accept that belief are not constrained by it, nor have it imposed on them.

2.9 Sunstein, in a paper on the tension between religious belief and equality in US constitutional jurisprudence, discusses the (possibly rebuttable) presumption that ‘facially neutral’ laws are *prima facie* permissible,⁵ where

A law is facially neutral if it does not specifically aim at religious practices or belief; thus a law banning the payment of taxes, the burning of animals, or the use of peyote is facially neutral, whereas a law banning the Lord’s Prayer, or the practice of Buddhism, is facially discriminatory.⁶

A US law that stated that Roman Catholics could not marry other Roman Catholics would be a facially discriminatory law and be unconstitutional.

2.10 But this is precisely analogous to what the Australian parliament did in excluding same-sex couples from marriage: it enacted a facially discriminatory law for no other reason than to appease certain religious beliefs (while overriding the human rights not only to equality but also of freedom of religion and belief of those of a contrary view). Allowing all competent, consensual couples of marriageable age, irrespective of sexual orientation, to marry is neutral as it does not interfere with any groups’ rights and does not affect the capacity of religious or non-believers to marry. In changing the law in 2004, the Australian parliament was unduly influenced by a particular religious view and deliberately maltreated one group of Australian citizens who did not hold that religious view. As Sunstein points

³ See ABC, *Howard, Rudd woo christians online*, (2007)

<http://www.abc.net.au/news/stories/2007/08/10/2001287.htm>; and Australian Election Study 2007, <http://aes.anu.edu.au/index.html>

⁴ A National Galaxy Poll for GetUp! in June 2007 found that 57% of Australians agreed “that same sex couples should be able to marry” and 37% disagreed.

⁵ Cass R Sunstein, *On the Tension Between Sex Equality and Religious Freedom*, Public Law and Legal Theory Working Paper No 167, The Law School, The University of Chicago, (2007), 5

⁶ *Ibid* 5

out, the reason for religious exemptions from ordinary law is respect for religious autonomy;⁷ allowing all citizens to marry does not interfere with religious autonomy as it does not affect the behaviour or rights of the religious in-group, it just provides those same rights to others. We discuss this issue further below as we believe that there are circumstances in which compelling public interest requirements necessitate the restriction of some religious beliefs.

2.11 In summary, the right to freedom of religion and belief should not be protected in the Constitution but should be protected in a Human Rights Act or statutory Charter of Human Rights. In a democracy religious rights should not be privileged over other rights but rather reflect the Universal Declaration of Human Rights and the ICCPR where they are recognised as one amongst many compelling rights. Protecting human rights in a comprehensive document will ensure that rights are balanced in a principled way rather than one group's rights prevailing over others in a way that has significant costs in the exercise of rights by other groups as outlined in the two examples highlighted above.

2.12 Liberty Victoria considers it essential to distinguish the freedom to hold a belief from a licence to impose it on others.

2.13 Religious belief and practice that is self-regarding, held or engaged in willingly by competent adults, must be respected. Religious practice that affects others, directly or indirectly, should have no special status.

3. Religion and the State

3.1 The discussion paper raises a number of questions for consideration under this sub-heading, stating that the section is concerned with balancing the expectations of "faith-based" organizations with those of civil society organisations. The issue we believe needs to be considered relates to the consequences of the Howard Government's promotion of "faith-based" services as major government service delivery agencies.

3.2 Since the advent of competition policy and the creeping privatisation of public functions religious organizations have become more prominent in the provision of services such as employment assistance, welfare and counselling services. "Faith-based" services may be as capable as secular organizations of providing excellent public services, but, once again, tensions can appear depending on the type of service and the clients involved.

3.3 In some instances the delivery of service is inadequate due to religious prejudice. For example, counselling groups such as those that claim they can "cure" homosexuality through "acceptance of Jesus Christ" and the use of so-called "reparative therapy", which is neither reparative nor therapy, often do enormous damage to vulnerable people that can result in self-loathing,

⁷ Ibid 8

alienation and suicide.⁸ Such “therapies” are based on false science and the notion that homosexuality is a disease of the mind or mental illness, a notion that has long been dismissed by medical experts yet still persists amongst religious groups.⁹

3.4 The delivery of counselling services must be based on sound, scientific, medical evidence and not on religious views. Any service that provides counselling must adhere to a code of ethics and evidence-based practice recognised by independent medical bodies. Governments need to ensure that vulnerable people are not damaged by the delivery of services using false science. There are grave issues to be explored with “faith-based” service delivery.

3.5 Another example that raises similar issues concerns pregnancy counselling by services that fail to declare their religious affiliation. This was highlighted recently when Senators Natasha Stott-Despoja (Dem), Judith Adams (Lib.), Claire Moore (Lab.) and Kerry Nettle (Greens) joined together to support Stott-Despoja’s *Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005* which would have required religious counselling groups to inform women seeking counselling that they opposed abortion. The Bill was also designed to stop such groups from giving women false and misleading information about the impact of abortion. Such counselling services did not provide women with accurate information but instead were faith-based organisations that opposed abortion and acted to discourage women from seeking abortions.

3.6 A similar issue was raised recently in Victoria during the debate on the *Abortion Law Reform Act 2008*. Religious hospitals, primarily Roman Catholic, opposed the conscientious objection clause in the Act as it required them to refer the woman on to a non-objector in the event that she wished a termination. As Liberty highlighted in its submission to the Victorian Law Reform Commission:

Liberty Victoria does not believe that people should be forced to do things that they morally object to. If medical practitioners object to abortion on religious or ethical grounds then they should inform their patients of their objections. Medical practitioners should not be forced to undertake procedures they object to.

3.7 Where a woman’s life is in serious danger, however, and she presents at a hospital for treatment that may require termination of a fetus, the situation is different:

Under such circumstances refusal to treat the woman is highly questionable, if not objectionable. Doctors working in public hospitals are to some degree the medical equivalent of a public servant and refusing treatment that could result in the

⁸ Mel Sheesholtz, *Science v Politics and Religion: The ex-Gay Sham*, Counterbias, (2005) <http://www.counterbias.com/478.html>; see also Arthur Berliner, ‘Sex, Sin and the Church: The Dilemma of Homosexuality’, *Journal of Health and Religion*, (1987) 26:2,

⁹ Berliner, *ibid*; see also Shidlo and Schroeder, ‘Changing Sexual Orientation: A consumer’s report’, *Professional Psychology: Research and Practice*, (2002) 33:3, 249

death of a woman on the basis of subjective religious beliefs is problematic and should not be protected in legislation.

3.8 This raises the question as to whose human rights prevail: the woman's or the religious doctor's? In relation to the applicability of discrimination laws and religious beliefs—but equally applicable to the provision of public services—Evans and Gaze argue that if 'neither religious autonomy nor non-discrimination should always prevail in liberal democracies, then some principles are necessary'.¹⁰ One principle they outline concerns public funding. They argue:

When public funding is used by religious organizations to fund their activities, there should be a presumption that non-discrimination laws apply to those activities. Religious organizations are not obliged or coerced to take public money and can exercise their autonomy by refusing it. ... Public money is raised by all members of society and should not be expended in a manner that deliberately excludes some members of that society.¹¹

3.9 This does not mean that doctors who have a conscientious objection should be forced to perform abortions. What it does mean is that in a secular democracy religious beliefs, particularly in the context of publicly funded provision of services, should not be privileged over other rights such as unbiased and timely access to counselling or medical services. Women who are not of their own free will bound by those beliefs are entitled to be protected from them. A balancing exercise must be undertaken and the provision of advice or services must be based on sound science and respect the rights of others to equal treatment. The law must guarantee that if faith-based services cannot provide unbiased counselling or the full range of medical services then the state must do so. The rights of others must be guaranteed by the state if religious service providers are unable to offer the full range of services or unbiased counselling.

4. The interface of religious, political and cultural aspirations

4.1 This interface encompasses gender and cultural equality and the right to freedom of religion. There is a perception amongst many commentators—and it is shared by Liberty Victoria—that religious freedom is too often prioritised over gender equality. Hilary Charlesworth, noting Australia's obligations under CEDAW, writes that the *Sex Discrimination Act 1984 (Cth)*, grants an extraordinarily "broad ambit for discrimination on the basis of sex in relation to any act or practice of a body established for religious purposes".¹² She states that:

¹⁰ Evans and Gaze, 'Between Religious Freedom and Equality: Complexity and Context', (2008) *Harvard International Law Journal* 49, 49.

¹¹ *Ibid.*

¹² Hilary Charlesworth and Sara Charlesworth, "The Sex Discrimination Act and International Law", (2004) *University of NSW Law Journal* 27, 2.

The clash between the norm of non-discrimination on the basis of sex and the practice of most religious traditions in excluding women from significant spiritual roles is usually in favour of religious tenets.¹³

4.2 They further highlight that “religious institutions are free to discriminate on the basis of marital status and pregnancy in employment of staff” if that discrimination is “in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed”.¹⁴ The argument relating to sex applies equally to discrimination against lesbians and gay men. In both cases the latitude afforded to discrimination by religious institutions is an affront to human dignity. It is a historical anomaly, and must be ended.

4.3 Charlesworth *et al.* point out that if religious groups sought exemption from laws preventing racial discrimination there would be public consternation.¹⁵ Substituting the word ‘black’ for women and homosexuals illustrates the point: modern Australia would find such discrimination unacceptable.

4.4 An example of this is provided by the case of the Dutch Reformed Church in South Africa and its absolute support of *apartheid*. The Church insisted on the total separation and segregation of the races, holding strong views on miscegenation and prohibiting inter-racial marriage.¹⁶ The Church Congress stated that ‘only carrying out the policy of apartheid in the light of God’s Word and with God’s blessing would provide deliverance from the dark danger of colour mixing and bastardization’.¹⁷

4.5 If a Church wished to teach such views in its schools to its believers’ own children, should the state intervene to stop the teaching of these views or should the state refrain because of freedom of religion and belief? In this example we would expect the state to intervene and apply anti-discrimination laws. The teaching of racial discrimination to children surely amounts to child abuse.

4.6 It is a disgrace that when religious groups assert that to treat lesbians and gay men without discrimination would violate their religious beliefs the state supinely allows them exemption from such laws. The indoctrination of children in homophobia, or sexual prejudice, is as much child abuse as the teaching of racial prejudice in *apartheid* South Africa was.

4.7 We need to remember that the burning of old women alleged to be witches was also a religious custom¹⁸ fully sanctioned by the church fathers:

¹³ Ibid, 2

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Susan Rennie Ritner, ‘The Dutch Reformed Church and Apartheid’, *Journal of Contemporary History*, (1967) 2:17, 24

¹⁷ Ibid.

¹⁸ Exodus 22:18, “Thou shalt not suffer a witch to live”

what was once taken to be a religious prerogative we now rightly view as repugnant, indeed criminal.

4.8 Another example of religious views supporting outdated prejudice can be found in the American case, *Loving v Virginia*, 1967. This concerned the marriage of a white man and a black woman in 1958 which violated Virginia's laws on interracial marriage. They pleaded guilty and each received a one year jail sentence which was suspended provided they leave the state of Virginia for a period of 25 years. In sentencing the couple the Judge in the Virginia Court said:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.¹⁹

4.9 In *Loving* the US Supreme Court finally struck down both the Virginia miscegenation statute and the analogous statutes in 15 other US states. Here too a discriminatory tradition based upon religious belief was finally discredited.

4.10 Sunstein also highlights the tension between religious belief and equality and the anomaly of society's predilection for favouring religious belief over equality. He specifically focuses on the relativisation of non-discrimination laws in relation to the exercise of religious belief. He argues that 'interference with religious autonomy is pervasive under the ordinary criminal and civil law' but is absent 'if sex discrimination is the problem that the government is seeking to address'.²⁰ As a result of this anomaly he states that an important commonplace of democratic theory and practice might therefore be called the *Asymmetry Thesis*: 'it is unproblematic to apply the ordinary civil and criminal law to religious institutions, but problematic to apply the law forbidding sex discrimination to these institutions.'²¹ He argues against this asymmetry pointing out the circular nature of its acceptance. He says that there is

good reason to believe that some of the most pernicious forms of sex discrimination are a result of the practices of religious institutions, which can produce internalized norms. Those internalized norms might undermine equality of opportunity itself, as when women scale back their aspirations to conform to those internalized norms. People's preferences, especially in the domain of sex equality, should not be taken as a given, or as coming from the sky; discriminatory beliefs and role based choices are often produced by a discriminatory society.²²

¹⁹ As quoted in *Loving v Virginia* (1967), where the US Supreme Court struck down the miscegenation statute of Virginia (and so too of the other 15 US states which similarly privileged religious belief over racial equality); see <http://www.ameasite.org/loving.asp>

²⁰ Sunstein above n 3, 2.

²¹ *Ibid* 2.

²² *Ibid* 4.

4.11 As a society we need to question our acceptance of the Asymmetry Thesis, and indeed to repudiate it. Australian politicians too often privilege freedom of religion over the human right of others to equality. Australians need to acknowledge that there are no compelling social or public interest reasons that dictate that anti-discrimination laws should be routinely overruled by religious beliefs.

5. Religion, cultural expression and human rights.

5.1 In this section we address how faith communities perceive diversity of sexual orientation and how they can be more inclusive. All religions have a problem with this diversity and very many believe that sex other than between a man and a woman is morally wrong. As outlined in examples above, recent debates over non-discriminatory marriage are one example of the prejudice against citizens who do not fit within the “traditional family” framework. Indeed, many religions actively and openly promote discrimination against lesbians and gay men.²³

5.2 While some advances are being made, such as the recent enactment of the *Assisted Reproductive Treatment Act 2008* in Victoria and the removal of discrimination against same-sex couples in legislation at the federal level, there is still much discrimination against lesbians and gay men, and bisexual, transgender and intersex people. Often this discrimination involves opposition to gay people parenting, and the promotion by Christian organisations of pseudo-scientific material claiming that such parenting damages children. This claim has been clearly refuted by sound research.²⁴ The problem for the children of gay parents is not their parenting but the prejudice and abuse practised by others, and mostly fanned under the color of religion.²⁵

5.3 Sexual prejudice – a broader term encompassing the commonly used, if confusing, term “homophobia”²⁶ – is a blight on the lives of lesbians and gay men, transgender, intersex and bisexual people, and also on their families.

²³ See for example the following Christian websites:

Salt Shakers <http://www.saltshakers.org.au/>;

Australian Christian Lobby <http://www.acl.org.au/search/display.stw>;

Culture Watch <http://www.billmuehlenberg.com/>; Creation Ministries <http://www.google syndicated search.com/u/creationontheweb?q=homosexuality&hl=en&lr=>;

²⁴ Elizabeth Short, Damien W. Riggs, Amaryll Perlesz, Rhonda Brown, Graeme Kane, *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families – A Literature Review prepared for the Australian Psychological Society*, August 2007: accessed 27 January 2009 via http://www.psychology.org.au/publications/statements/lgbt_families/

²⁵ See Stephen Hicks, ‘The Christian Right and Homophobic Discourse: a Response to ‘Evidence’ that Lesbian and Gay Parenting Damages Children’, *Sociological Research Online*, 8:4, <http://www.socresonline.org.uk/8/4/hicks.html>, Hicks reviews the evidence on such claims and provides references for further examination on this topic.

²⁶ Herek, G. (2004). Beyond “homophobia”: Thinking about sexual stigma and prejudice in the twenty-first century. *Sexuality Research and Social Policy*, 1(2), 6-24. For an excellent collection of articles on this topic see Dr Herek’s blog: <http://www.beyondhomophobia.com/blog/category/sexual-prejudice/>

The transmission of sexual prejudice is fostered by, and often actively engaged in, by religious bodies. Under the guise of religious freedom some religious bodies cause great harm and human rights violations in this way, and use their unjustified licence to obstruct and delay social progress towards the greater protection and promotion of human rights. This traditional licence of religious bodies and individuals to vilify, exclude and harm lesbians and gay men and their families cannot be allowed to continue, and must be revoked.

6. Religious exemptions from anti-discrimination and equal opportunity law

6.1 Liberty Victoria believes that freedom of religion and belief should be protected. We acknowledge, however, that religious accommodations and exemptions often impose costs on others, sometimes quite significant costs. We believe that Sunstein's analysis of the Asymmetry Thesis is applicable to the approach adopted by the various governments in Australia and demonstrates the illegitimacy of this approach. If a law is derived from religious beliefs—such as that only heterosexual couples can marry—and has no negative impact on those in the religious in-group but harmful consequences for those aside the religious group then the law should favour neutrality not the religious groups. Allowing same-sex couples to marry does not impact on, nor interfere with, the capacity of those with religious convictions to marry and raise a family, and non-discrimination and equal opportunity for all should be the basis for the enactment of laws relating to human rights. As Skjeie points out, systematically allowing the maltreatment of certain categories of people, namely women, lesbians and gay men, effectively annuls their citizenship status.²⁷

6.2 Liberty Victoria is not arguing that religious groups should be forced to ordain women or homosexuals, or eat pork, or wear clothing of mixed fibre. We believe that within their own organizations and membership, religious groups are entitled to freedom of conscience and protection of their right to hold their beliefs—subject always to the ordinary criminal law: for example clergy are not entitled to abuse children, nor husbands to beat their wives. We can see, however, no justification for allowing religious groups to discriminate against others based on mere beliefs, however holy and ancient, or for governments to enact laws reflecting such beliefs.

6.3 In deliberating whether religion should be exempted from anti-discrimination laws another factor, alongside public funding, that must be considered is the seriousness of the impact on those people subject to the discrimination.²⁸ The reason for balance is illustrated by Evans and Gaze:

Religions are powerful social and economic actors in most societies. They play a significant role in creating culture and public morality and some actively seek

²⁷ Hege Skjeie, 'Religious Exemptions to Equality, *Critical Review of International Social and Political Philosophy*, (2007) 10:4, 472.

²⁸ Carolyn Evans and Beth Gaze, above n, 8, 46

political influence ... [T]hey are significant employers and welfare providers. If religious organizations are excluded, in all their manifestations, from non-discrimination laws, then the goal of equality is undermined and non-discrimination laws run the risk of being treated as trivial, optional or – at worst – illegitimate.²⁹

6.4 Allowing religious bodies an exemption automatically, without consideration to the equally compelling right to equality, would in effect mean that discrimination becomes a religious group right. This is an indefensible policy position in a democracy.

7. Conclusion

7.1 As stated at the beginning of our submission, Liberty Victoria supports freedom of belief and conscience. That freedom is not absolute, however. As with other rights it must be balanced with the rights of others to believe – or not – as they consider appropriate. Religious beliefs cannot be above the law, and the state must also ensure that all its citizens are treated with true equality, dignity and respect.

7.2 The best way to ensure the rights of all is in a comprehensive Charter of Rights where no right is privileged above other rights, but all rights are subject to limitations in a principled framework. The principle is eloquently put in Victoria's *Charter of Human Rights and Responsibilities*, section 7(2):

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including –

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

²⁹ Ibid, 45.