



www.libertyvictoria.org.au

## **Special Religious Instruction in Victorian government schools - recent developments and implications for human rights**

### **Table of Contents**

- **Executive Summary** - Pages 2 and 3
- **Introduction** - Page 4
- **Section I: The Issues** – Page 4
- **Section II: Special Religious Instruction and Victorian human rights law** – Page 15
- **Section III: Special Religious Instruction and International Law** – Page 21
- **Appendix A: Direction 141, Victorian Department of Education and Early Childhood Learning (01/05/2014)** – Page 34
- **Appendix B: Direction 141 as amended by Direction 144 (19/08/2014)** – Page 42

The Report was prepared by Nick Moodie, Claire McMahon, Elly Petroulias, Jacquelyn Thompson and Asher Hirsch, as members of Young Liberty for Law Reform, under the supervision of Dr Adam McBeth. Young Liberty for Law Reform is a program that gives young professional and student volunteers the opportunity to engage in law reform and advocacy projects under the mentorship of Liberty Victoria members.

## Executive Summary

### Outline

This report considers the Special Religious Instruction (**SRI**) program currently implemented in many Victorian government schools under section 2.2.11 of the *Education and Training Reform Act 2006* (Vic) (**the 'Act'**) and Ministerial Direction 141 (**'Direction 141'**), released by the Victorian Department of Education and Early Childhood Learning in 2014.

Section I provides an exposition of the program's legal basis, the main providers of SRI, those groups opposed to the program and their reasons for opposition, as well as some of the legal controversies that have developed in recent years.

Section II considers the SRI program in light of Victorian human rights law, and considers possible violations of that law that might follow from the program's current legislative form and practical implementation.

Section III concludes the report with an analysis of the SRI program in terms of Australia's human rights obligations under international human rights law. This analysis is aided by a review of relevant case law from the European Court of Human Rights.

### Conclusions

Public schools have obligations under the *Charter of Human Rights and Responsibilities* (**the 'Charter'**), as do SRI providers, either directly as 'public authorities' as defined by the Charter or indirectly through their presence in public schools. It is likely that in practice the SRI program breaches sections 14(2) and 17(2) of the Charter. In practice the SRI program may breach section 38(2)(c) of the *Equal Opportunity Act 2010* (Vic).

It is also clear that the current implementation of the SRI program contravenes international law by effectively ignoring the rights of parents and guardians to guarantee the nature of the religious and moral education of their children, as well as offering religious dogma rather than education aimed at the full development of human personality. SRI is also in contravention of international law by segregating and discriminating against particular groups of children. Specifically:

- The SRI program is inconsistent with ICCPR article 18(4) as elaborated by the Human Rights Committee in General Comment 22 para 6, given that classes are not conducted in a neutral and objective manner and are geared towards a particular faith.
- The SRI program is inconsistent with UN Educational, Scientific and Cultural Organisation (UNESCO) *Convention Against Discrimination in Education* Article 2(b), given that the evidence suggests classes do not conform to educational standards developed by competent authorities.
- The SRI program conflicts with UNESCO Article 2(b) to the extent that the nature of taught material in SRI classes is still often not fully understood by parents, meaning it can be unclear whether classes are being taught in line with the wishes of parents.
- The SRI program conflicts with UNESCO Article 2(b) to the extent that the educational quality of alternative arrangements for children not participating in SRI classes is inadequate. Serious concerns have been raised about these alternative arrangements, and the policy guidelines from the Department do not adequately protect children in this regard.
- To comply with a number of international obligations concerning the rights of children, any SRI program must be designed with the best interests of the children involved as a primary consideration. It would be difficult to argue this is the case with Victoria's SRI program, given the numerous concerns outlined in this report.

## Introduction

The delivery of special religious instruction in government primary schools provided for in section 2.2.11 of the *Education and Training Reform Act 2006* is a source of continuing disagreement within the Victorian community. This report seeks to analyse the special religious instruction program from the point of view of domestic and international human rights law, and answer the question of whether provision of this program is consistent with that body of law.

This report concludes that there are strong grounds for the argument that the implementation of section 2.2.11 does in practice risk breach of Victorian human rights law. It also concludes that section 2.2.11 is inconsistent with multiple international human rights law instruments and principles.

## Section I: The Issues

The *Education and Training Reform Act 2006* (**‘Education Act’**) came into effect on 1 July 2007 after two years of development and represents, according to the Victorian Department of Education and Early Childhood Learning (**‘Department’**):

*...an undertaking by the Victorian Government to ensure that Victoria has a robust and modern legislative framework for education. It updates and replaces twelve separate education Acts.<sup>1</sup>*

Section 2.2.11 of the Education Act provides for special religious instruction (**‘SRI’**) in government schools, which in subsection (5) is defined as:

*...instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs.*

---

<sup>1</sup> Department of Education and Early Childhood Development, 2014, <<http://www.education.vic.gov.au/about/departments/legislation/pages/act2006.aspx>> [accessed 23 June 2014]

In mid-2014 the Department released Ministerial Direction 141 (**'Direction 141'**),<sup>2</sup> which came into effect on 14 July 2014. There is currently some confusion in the education community about the content and effect of Direction 141, as the document was revised on 19 August 2014<sup>3</sup> following lobbying from religious groups.<sup>4</sup>

An example of this confusion concerns a school principal's discretion to offer SRI. A clause in the original document allowed principals to decide not to offer SRI on the grounds of insufficient resources, once parents had been informed of the SRI program. This clause has been dropped from the revised Direction 141, and it is now unclear, from reading Direction 141, whether provision of SRI is mandatory. However, this authority to drop SRI on the grounds of insufficient resources remains buried in the Department's website.<sup>5</sup>

### **Who provides SRI?**

The most common form of SRI has traditionally been referred to as Christian Religious Education (**'CRE'**) and is delivered by volunteers from the Council for Christian Education in Schools, which trades as ACCESS Ministries (**'ACCESS'**). ACCESS is commonly cited as providing 96% of SRI in Victoria, with a presence in 850 government primary schools.<sup>6</sup> However, recent Department figures show that by 2013 these figures had dropped, with ACCESS delivering 81% of SRI in Victoria, to a total of 666 schools.<sup>7</sup> By 2013, the number of Victorian primary students receiving SRI had dropped to 92,808, down from 130,100 students in 2011.<sup>8</sup>

---

<sup>2</sup> This direction is replicated in Appendix A of this report.

<sup>3</sup> This amended direction is replicated in Appendix B of this report.

<sup>4</sup> 'Religious Class changes 'overreached' Vic Education Minister Martin Dixon reportedly admits', *ABC News*, 31 August 2014, <[http://www.abc.net.au/news/2014-08-31/education-minister-tells-christian-leaders-religious-instruction/5708550?WT.ac=statenews\\_vic](http://www.abc.net.au/news/2014-08-31/education-minister-tells-christian-leaders-religious-instruction/5708550?WT.ac=statenews_vic)> [accessed 20 October 2014]

<sup>5</sup> Department of Education and Early Childhood Development, 2014, <<http://www.education.vic.gov.au/about/department/legislation/Pages/md141faq.aspx>> [accessed 25 August 2014]

<sup>6</sup> Fairness In Religions In School, 2014, <<http://religionsinschool.com/the-facts/>> [accessed 17 July 2014]

<sup>7</sup> Konrad Marshall, 'Primary school principals shut down religious education classes', *The Age*, 17 February 2014, <<http://www.theage.com.au/victoria/primary-school-principals-shut-down-religious-education-classes-20140216-32ty8.html>> [accessed 17 July 2014]

<sup>8</sup> Konrad Marshall and Ben Butler, 'Pressure builds on state's religious instruction educator', *The Age*, 6 March 2014, <<http://www.theage.com.au/victoria/pressure-builds-on-states-religious-instruction-educator-20140306-349or.html>> [accessed 17 July 2014]

The ACCESS website states that the organisation has had a presence in Victorian schools for 65 years.<sup>9</sup> ACCESS receives about \$735,000 a year from the Victorian Government.<sup>10</sup> The organisation has also received Federal Government funding as part of the chaplaincy program (for example, \$5.7 million was received in 2013).<sup>11</sup> Financial statements from ACCESS show that the organisation received almost \$20 million in government funding between 2009 and 2012.<sup>12</sup>

SRI is also provided by other groups in Victoria. The Catholic Education Office provides Catholic SRI.<sup>13</sup> The United Jewish Education Board currently operates in 37 state schools, providing SRI to about 1300 students.<sup>14</sup> In addition, Religions for Peace Australia provides SRI to schools in the Buddhist, Baha'i, Greek Orthodox, Hindu and Sikh traditions.<sup>15</sup> Islamic SRI is provided by a program called Arkan Toledo, organised by the Islamic Council of Victoria.<sup>16</sup>

### **Controversy concerning SRI**

The SRI program has attracted criticism from a wide range of sources, with controversy centring on ACCESS Ministries. In 2011, then CEO Evonne Paddison stated in a conference that SRI provides an:

*...extraordinary opportunity to reach kids, with the good news about Jesus...Under God, many come to faith. Some find their way to church. What really matters is seizing the God-given opportunity we have to reach kids in schools. Without Jesus, our students are lost...Churches in the West are on a slow death march. We have the opportunity to create life...What a*

---

<sup>9</sup> ACCESS Ministries, 2014, <<http://www.accessministries.org.au/about/key-people>> [accessed 17 July 2014]

<sup>10</sup> Karen Percy, 'Victorian Department of Education to overhaul religious education after Access Ministries breach', *ABC News*, 30 May 2014, <<http://www.abc.net.au/news/2014-05-29/victoria-department-of-education-to-overhaul-religion-education/5487274>> [accessed 16 July 2014]

<sup>11</sup> Benjamin Preiss and Ben Butler, 'Schools to lose secular welfare staff under Christian chaplaincy drive', *The Age*, 29 May 2014, <<http://www.theage.com.au/federal-politics/political-news/schools-to-lose-secular-welfare-staff-under-christian-chaplaincy-drive-20140528-394sk.html>> [accessed 16 July 2014]

<sup>12</sup> Konrad Marshall and Ben Butler, 'Pressure builds on state's religious instruction educator', *The Age*, 6 March 2014, <<http://www.theage.com.au/victoria/pressure-builds-on-states-religious-instruction-educator-20140306-349or.html>> [accessed 17 July 2014]

<sup>13</sup> Catholic Education Melbourne, 2014, <<http://www.ceomelb.catholic.edu.au/>> [accessed 4 August 2014]

<sup>14</sup> Benjamin Preiss, 'Jewish group fears new religious instruction rules threaten diversity in schools', *The Age*, 4 July 2014, <<http://www.theage.com.au/victoria/jewish-group-fears-new-religious-instruction-rules-threaten-diversity-in-schools-20140706-zsvzv.html#ixzz36sNYhfdH>> [accessed 16 July 2014]. The UJEB website is <<http://www.ujeb.org.au/>>.

<sup>15</sup> Religions for Peace, 2014, <<http://religionsforpeaceaustralia.org.au/index.php/ri>> [accessed 4 August 2014]

<sup>16</sup> Arkan Toledo, 2014, <<http://arkan.org.au/>> [accessed 4 August 2014]

*commandment, make disciples. What a responsibility. What a privilege we have been given. Let's go for it.*<sup>17</sup>

Statements such as this by ACCESS leaders have underscored the evangelical or 'instructional' nature of the programs on offer, as opposed to the 'educational' program that providers like ACCESS claim to deliver. In response, parents, academics, religious leaders and others have argued a number of reasons why SRI is inappropriate in government schools. Although the program has changed since 2011 to an 'opt-in' system, with parents required to provide consent before their children take part, the criticism has not abated.

Objections to SRI tend to take the following forms:

- SRI does not teach comparative religious studies, nor does it teach a critical approach to religious dogma. Instead it involves preaching one particular religion to young children;
- Volunteers who teach SRI are not required to be trained teachers - they receive as little as one day's training;
- Parents have trouble finding out what is being taught to their children, and are often unaware of the dogmatic nature of the material and that it is being taught by volunteers;
- SRI divides children, as those whose parents do not opt for the program are taken out of class. Often it is only children from minority religions who are separated from their classmates. In addition, if a school offers SRI in more than one religion, children are consequently divided into religious subgroups;
- Some schools are reluctant to emphasise that the program is not compulsory, as it is inconvenient to organise alternatives for non-participating children;
- Few schools offer non-Christian SRI.

---

<sup>17</sup> Leslie Cannold, 'It's time to deny ACCESS to our children', ABC Religion and Ethics, 17 May 2011, <<http://www.abc.net.au/religion/articles/2011/05/16/3218537.htm?topic1=&topic2=>> [accessed 16 July 2014]

## Who objects to SRI?

### *Parents*

Vocal criticism regarding SRI has come from Victorian parents, most prominently in the form of a grassroots campaign called Fairness In Religions In School ('**FIRIS**').<sup>18</sup> In addition, Parents Victoria has stated that the organisation does not support SRI during school hours and has petitioned to have the program reviewed.<sup>19</sup>

### *Education sector*

The Australian Education Union has reiterated its position on the issue, condemning the SRI program and the changes made in the revision of Direction 141. The organisation has stated:

*AEU Joint Primary and Secondary Council condemns Minister Dixon and the Napthine Government for putting ideology and the interests of faith based groups above those of our public schools and their communities. The AEU Joint Primary and Secondary Council calls upon Minister Dixon and the Napthine Government to halt the provision of SRI in Victorian Government schools until full consultation with the education profession and school communities can occur.*<sup>20</sup>

Primary school principals have spoken publicly about their objections to SRI. Joe Kelly, principal of Cranbourne South Primary School for 15 years, has called ACCESS' program 'dogmatic' and has called for the repeal of section 2.2.11 of the Act.<sup>21</sup>

### *Academics*

---

<sup>18</sup> Fairness In Religions In School, 2014, <<http://religionsinschool.com/>> [accessed 17 July 2014]

<sup>19</sup> Jewel Topsfield, 'Access Ministries in red, despite \$5m grant', *The Age*, 10 June 2013, <<http://www.theage.com.au/federal-politics/political-news/access-ministries-in-red-despite-5m-grant-20130609-2ny3f.html>> [accessed 17 July 2014]

<sup>20</sup> Australian Education Union, 'AEU resolution on Special Religious Instruction', 5 September 2014, <[http://www.aeuvic.asn.au/267102\\_11\\_88394848.html](http://www.aeuvic.asn.au/267102_11_88394848.html)> [accessed 17 November 2014]

<sup>21</sup> Samantha Donocan, 'Vic Principal calls for abolition of compulsory religious instruction', 17 February 2014, *The World Today*, <<http://www.abc.net.au/worldtoday/content/2013/s3946196.htm>> [accessed 17 July 2014]



Public criticism has also been emanating from Victorian academics since at least 2011. In that year a network of academics named the Religions, Ethics and Education Network Australia wrote to Prime Minister Gillard, State Premier Ted Baillieu, NSW Premier Barry O'Farrell and the respective education ministers, seeking urgent review of religious education, arguing for the substitution of a multi-faith curriculum taught by trained teachers.<sup>22</sup>

Dr David Zyngier, a pedagogy lecturer at Monash University, has concluded that ACCESS' program does not meet curriculum standards.<sup>23</sup> In early 2014 he was quoted in *The Age* on his reaction to reviewing ACCESS' teaching material:

*I have reviewed all six booklets produced by Access Ministries, and it's basically low order, unintelligent, busy work and rote learning...It horrified me. There's nothing educational about it. It's all about becoming a disciple of Jesus.*<sup>24</sup>

Macquarie University theology Professor Marion Maddox has concluded that ACCESS' program amounts to proselytising and evangelicalism.<sup>25</sup> She has stated:

*Education about religion is too important to be left to amateurs. Our kids deserve to learn about all the traditions that make up our multicultural nation – from qualified teachers.*<sup>26</sup>

---

<sup>22</sup> Barney Swartz, 'Academics call for review of school religious teaching', *The Age*, 7 April 2011, <<http://www.theage.com.au/national/education/academics-call-for-review-of-school-religious-teaching-20110406-1d4h5.html>> [accessed 16 July 2014]

<sup>23</sup> Karen Abidi, 'May' shouldn't be 'must' in school religion', *Herald Sun*, 1 July 2014, <<http://www.heraldsun.com.au/news/opinion/may-shouldnt-be-must-in-school-religion/story-fni0ffsx-1226972820456?nk=3e5b3018c036273ceb629dfa746c80e3>> [accessed 17 July 2014]

<sup>24</sup> Konrad Marshall, 'Primary school principals shut down religious education classes', *The Age*, 17 February 2014, <<http://www.theage.com.au/victoria/primary-school-principals-shut-down-religious-education-classes-20140216-32ty8.html>> [accessed 17 July 2014]

<sup>25</sup> Karen Abidi, 'May' shouldn't be 'must' in school religion', *Herald Sun*, 1 July 2014, <<http://www.heraldsun.com.au/news/opinion/may-shouldnt-be-must-in-school-religion/story-fni0ffsx-1226972820456?nk=3e5b3018c036273ceb629dfa746c80e3>> [accessed 17 July 2014]

<sup>26</sup> Fairness In Religions In School, 2014, <<http://religionsinschool.com/famous-quotes/>> [accessed 17 July 2014]

Australian Catholic University law professor Spencer Zifcak wrote to the Education Minister Martin Dixon in October 2012 in his then capacity as Liberty Victoria President, recommending that the Department revise its policy guidelines:

*...to make it clear that Principals of Victorian primary schools, in consultation with their Councils, may choose to offer SRI but are under no obligation to do so.*<sup>27</sup>

Monash University law lecturer Karen Abidi recently published an opinion piece in the *Herald Sun* critical of the Department's interpretation of the Act and in favour of Professor Zifcak's interpretation.<sup>28</sup> Philosopher Tim Dean wrote an opinion piece on *The Drum*, outlining his concerns about the use of scripture as an educational and value-building tool.<sup>29</sup> Professor Gary Bouma, an Anglican priest and the UNESCO chairman in Interreligious Intercultural Relations, has also been publicly critical of SRI:

*The curriculum developed by Access Ministries is appalling. Now, unfortunately, most of the Christians out there trying to train the next generation are putting them off with the kind of crap they serve.*<sup>30</sup>

### *Faith groups*

Criticism of SRI has also come from religious leaders in Victoria, including Father Bob Maguire<sup>31</sup> and Reverend Dr Ron Noone.<sup>32</sup>

---

<sup>27</sup> Fairness in Religions In School, 2014, <<http://religionsinschool.com/legal-opinion/>> [accessed 17 July 2014]

<sup>28</sup> Karen Abidi, 'May' shouldn't be 'must' in school religion', *Herald Sun*, 1 July 2014, <<http://www.heraldsun.com.au/news/opinion/may-shouldnt-be-must-in-school-religion/story-fni0ffsx-1226972820456?nk=3e5b3018c036273ceb629dfa746c80e3>> [accessed 17 July 2014]

<sup>29</sup> Tim Dean, 'School isn't the place for scripture lessons', *The Drum*, 16 July 2014, <<http://www.abc.net.au/news/2014-07-16/dean-public-schools-arent-the-place-for-scripture-lessons/5601630>> [accessed 17 July 2014]

<sup>30</sup> Fairness In Religions In School, 2014, <<http://religionsinschool.com/famous-quotes/>> [accessed 17 July 2014]

<sup>31</sup> Jewel Topsfield, 'Call to teach students the ethos of all religions', *The Age*, 18 April 2011, <<http://www.theage.com.au/national/education/call-to-teach-students-the-ethos-of-all-religions-20110417-1djt3.html>> [accessed 17 July 2014]

<sup>32</sup> Ronald Noone, 'Teach, don't preach: how to do religion in schools', *ABC Religion and Ethics*, 23 May 2011, <<http://www.abc.net.au/religion/articles/2011/05/23/3224387.htm>> [accessed 17 July 2014]

## Legal controversies concerning SRI

In addition to the concerns listed above, the legitimacy of the SRI program in a legal sense has also been questioned and controversies remain live.

### *'May' or 'Must'*

As is clear from section 6(1) of Direction 141, the Department has adopted a restrictive interpretation of section 2.2.11(1) of the Education Act, an interpretation that constructs the phrase “special religious education may be given in a Government school” as “special religious education *must* be given in a Government school.” This interpretation of ‘may’ as ‘must’ was confirmed in legal advice sought by the Department when the Education Act was introduced in Victoria in 2006.<sup>33</sup> A 2011 article in *The Age* includes an explanation from the Department, received in an email by a concerned primary school parent:

*The word ‘may’ used in section 2.2.11 of the Education and Training Reform Act 2006 is interpreted as ‘must’ to conform with the original intent of the Victorian legislation on the provision of special religious instruction in government schools. This interpretation (of ‘may’ = ‘must’) was confirmed by legal counsel sought by the Department when the Act was introduced in Victoria in 2006.<sup>34</sup>*

Former President of Liberty Victoria, Professor Spencer Zifcak, advised Education Minister Martin Dixon to alter this interpretation, thereby allowing public schools to choose whether or not to offer SRI while being under no obligation to do so.<sup>35</sup> According to Professor Zifcak, the Department’s interpretation is not only restrictive, but legally incorrect. Section 45 of the *Acts Interpretation Act 1985* (Vic) deals directly with the manner in which the words ‘may’ and ‘shall’ should be

---

<sup>33</sup> Michael Bachelard, ‘Backlash as God forced into schools’, *The Age*, 27 March 2011, <<http://www.theage.com.au/victoria/backlash-as-god-forced-into-schools-20110326-1cb7c.html>> [accessed 16 July 2014]

<sup>34</sup> Michael Bachelard, ‘Backlash as God forced into schools’, *The Age*, 27 March 2011, <<http://www.theage.com.au/victoria/backlash-as-god-forced-into-schools-20110326-1cb7c.html>> [accessed 16 July 2014]

<sup>35</sup> Professor Spencer Zifcak, Letter to The Hon. Martin Dixon, 19 October 2012, <<http://religionsinschool.com/legal-opinion/>> [accessed 17 July 2014]

interpreted, explicitly suggesting that the word ‘may’ is “language of authorisation and not of command”.<sup>36</sup>

The effect of this interpretation is that public schools are obliged to offer students SRI. As explained above, the discretion of school principals to drop the SRI program for lack of resources does appear to remain, although it is no longer found in the amended Ministerial Directive.

One possible justification for the Department’s legislative interpretation might be that the permission given by the word ‘may’ is directed at the Minister to implement an SRI program, rather than directed at individual school principals. As such, it could be argued that section 2.2.11(1) allows the Minister to decide whether any such program is to be compulsory for government schools or not.

At this point it is worth reiterating that the Education Act’s language is to be interpreted in line with the Charter. If compulsory SRI provision is a breach of the Charter, this would strengthen the argument that ‘may’ in section 2.2.11(1) should not be interpreted as ‘must’.

If the Act and Direction 141, read together, are interpreted as demanding that SRI be implemented in every government school, the scheme may breach of the right to freedom from coercion that limits freedom of thought, conscience, religion and belief, as protected by section 14(2) of the Charter. The only sentence that might undermine this conclusion is in section 2.2.11(2)(c) of the Act, which states:

*attendance for the special religious instruction is not to be compulsory for any student whose parents desire that he or she be excused from attending.*

The fact that parents can choose whether or not their children will attend SRI sessions (changed since 2011 from an opt-out system to an opt-in system) at first glance appears to save section 2.2.11 from an obvious breach of the Charter.

---

<sup>36</sup> *Re Carl Zeiss Pty Ltd's Application* (1969) 122 CLR 1, per Kitto J; see also *Ward v Williams* (1955) 92 CLR 496.

However, as will be demonstrated in the next section, the implementation of the SRI program likely leads to *de facto* contravention of the Charter.

#### *Lawfulness of volunteers (i.e. approval by the Department)*

FIRIS has raised concerns that the Department could not possibly have had the resources to approve all SRI volunteers individually, as required by section 7 of Direction 141. If this procedure was not followed, then thousands of volunteers have been operating in government primary schools unlawfully.

Following these concerns, the Department has required all SRI providers to reaccredit their instructors and then submit these accreditations to the Department for Ministerial approval. ACCESS has stated that reaccreditation will take place throughout February 2015.<sup>37</sup> However, FIRIS has accumulated evidence that SRI providers have already been approaching primary schools and that principals have begun offering parents the option of SRI, despite it being highly unlikely that enough time has passed to allow for reaccreditation and Ministerial approval.

#### *Breaches of regulations*

In May 2014 an investigation by the Department found ACCESS in breach of several guidelines, although a full report was not released by the Department on the grounds of legal and privacy reasons. As a result of the investigation, ACCESS was advised that volunteers were not to attend school functions, and ACCESS was directed to update their training and instruction material.<sup>38</sup>

---

<sup>37</sup> ACCESS Ministries, SRI 2015 Reaccreditation Training for Existing Volunteers <<http://www.accessministries.org.au/events/category/sri-2015-reaccreditation-training-for-existing-vol>> [accessed 2 March 2015]

<sup>38</sup> Karen Percy, 'Victorian Department of Education to overhaul religious education after Access Ministries breach', *ABC News*, 30 May 2014, <<http://www.abc.net.au/news/2014-05-29/victoria-department-of-education-to-overhaul-religion-education/5487274>> [accessed 5 March 2015]

### *Threats of litigation over disclosure of teaching material*

In May 2014 ACCESS threatened to sue FIRIS for uploading some of their teaching materials to the internet, specifically a booklet called *Launch Red 1*, alleging breach of copyright law.<sup>39</sup>

### *Domestic and International Human Rights Law*

Another concern, which is the focus of Sections II and III of this report, is that the program violates principles of domestic and international law regarding non-discrimination, the rights of the child and the rights of parents. Section II will consider the program through the lens of Victorian human rights law, while Section III will consider implications deriving from international human rights law.

---

<sup>39</sup> Konrad Marshall, 'Access Ministries uses taxpayer money to threaten parents over religious teaching', *The Age*, 31 May 2014, <<http://www.theage.com.au/victoria/access-ministries-uses-taxpayer-money-to-threaten-parents-over-religious-teaching-20140530-399f.html>> [accessed 16 July 2014]

## **Section II: Special Religious Instruction and Victorian human rights law**

### **What is the Charter of Human Rights and Responsibilities?**

The *Charter of Human Rights and Responsibilities* ('**Charter**') is a Victorian law that sets out the basic rights, freedoms and responsibilities of all people in Victoria. Twenty fundamental rights are protected in the Charter that reflect human rights as protected by international law.

The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights contained in the Charter.

### **What does the Charter mean for the Education Act?**

The *Education and Training Reform Bill 2006* passed the Legislative Council of the Victorian Parliament on Thursday 4 May, 2006 and received Royal Assent through the Governor in Council on Tuesday 16 May, 2006. However, as the Charter came into force after this date, on 1 January 2007, no statement of compatibility under section 28 of the Charter was required for the introduction of the Education Act.

Nevertheless, as with all statutory provisions in Victoria, the Education Act "must be interpreted in a way that is compatible with human rights"<sup>40</sup> unless Parliament has expressly declared that the Charter is to have no effect on the legislation in question.<sup>41</sup> As no such express statement exists, it is clear that the Education Act, along with Direction 141 made pursuant to the Education Act, is to be interpreted in line with the Charter.

The Charter also provides:

---

<sup>40</sup> *Charter of Human Rights and Responsibilities* s 32.

<sup>41</sup> *Charter of Human Rights and Responsibilities* s 31.

*...it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.*<sup>42</sup>

Public schools come under the definition of a public authority under the Charter, as provided in section 4.<sup>43</sup>

### **Do SRI providers have obligations under the Charter?**

Public schools and their employees have an obligation to act in a manner compatible with human rights under the Charter, and so SRI activity in public schools must conform to the requirements of the Charter in order for a school to be acting lawfully. SRI providers themselves may also come under the definition of a 'public authority' and therefore it is arguable that their activities and the activities of their volunteers are directly subject to the Charter. For example, the primary provider of SRI in Victoria, ACCESS Ministries, is – for the purposes of the Charter – likely a 'public authority'. ACCESS receives approximately \$735,000 annually to fund SRI, and it is expressly authorised to do so under section 2.2.11 of the Education Act. Therefore it can be argued that pursuant to section 4(1)(c) of the Charter, ACCESS is a 'public authority' since it is an "entity whose functions are of a public nature", and those functions are "being exercised on behalf of the State".

Even if ACCESS Ministries or other SRI providers are not considered public authorities under the Charter, government schools certainly are and so their allowing the provision of SRI is clearly an act of a public authority. Therefore, where SRI is carried out in a government school, all provisions of the Charter must be observed. As such, it is necessary to examine the extent to which the Education Act and Direction 141 are compatible with the Charter.

---

<sup>42</sup> *Charter of Human Rights and Responsibilities* s 38.

<sup>43</sup> *Charter of Human Rights and Responsibilities* s 4.



## **Which human rights are involved?**

Section 14 of the Charter protects the right of ‘freedom of thought, conscience, religion and belief’:

*(1) Every person has the right to freedom of thought, conscience, religion and belief, including—*

*(a) the freedom to have or to adopt a religion or belief of his or her choice; and*

*(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.*

*(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.*

## **Practical Conflicts between the Charter and implementation of the SRI program**

As explained in Section I, SRI is now an ‘opt-in’ program, with parental consent required before children can attend SRI classes. It might be argued that while the previous ‘opt-out’ system risked breaching section 14(2) of the Charter, given parents generally did not realise the content of the classes, that risk no longer exists and section 2.2.11 of the Act does not breach the Charter. However, a case can still be made that an SRI regime, whenever offered in a government school, is likely to contravene section 14(2) of the Charter in practice.

One example is the fact that consent forms given to parents are still often unclear about the true, inherently dogmatic content of SRI classes. Contemporary criticism of SRI from parents, academics and those in the primary education sector suggests that, in practice, SRI serves to actively promote (mainly Christian)

religious beliefs in a “dogmatic” fashion.<sup>44</sup> As quoted above, Dr David Zyngier of Monash University has stated that “there is nothing educational” about SRI as provided by ACCESS; that “it’s all about becoming a disciple of Jesus”.<sup>45</sup>

In addition, the fact that SRI classes focus on one religious dogma to the exclusion of other ideologies (and indeed criticism of religious ideologies broadly) plays on the vulnerability of children to religious indoctrination. This vulnerability cannot be avoided in the private family sphere, but can and should be protected in government schools. This is especially so if parents are not fully informed regarding the content of SRI classes. This special vulnerability of children may also lead to a breach of section 17(2) of the Charter, which offers protection, without discrimination, to the best interests of the child.<sup>46</sup>

A less dogmatic version of SRI than that offered by providers such as ACCESS could be envisaged, one that takes a more educative, comparative and critical approach. However, such a class sounds largely indistinguishable from a GRE curriculum, the establishment of which has been called for in place of SRI by many SRI critics, religious and non-religious alike.

Section 32(3)(a) and (b) of the Charter provides that these conflicts do not invalidate any part of the Education Act or Direction 141. Nevertheless, it can still be argued that Victorians might be reasonably concerned that the Education Act and the Department have implemented a program that appears to violate their fundamental human rights.

### **Is there a breach of the *Equal Opportunity Act 2010*?**

The operation of SRI in practice may also constitute a breach of the *Equal Opportunity Act 2010* (Vic) (**‘EOA’**). The EOA took effect in August 2011, and replaced the *Equal Opportunity Act 1995* (Vic), with an aim to strengthen

---

<sup>44</sup> Samantha Donocan, ‘Vic Principal calls for abolition of compulsory religious instruction’, 17 February 2014, *The World Today*, <<http://www.abc.net.au/worldtoday/content/2013/s3946196.htm>> [accessed 17 July 2014]

<sup>45</sup> Konrad Marshall, ‘Primary school principals shut down religious education classes’, *The Age*, 17 February 2014, <<http://www.theage.com.au/victoria/primary-school-principals-shut-down-religious-education-classes-20140216-32ty8.html>> [accessed 17 July 2014]

<sup>46</sup> See *Charter of Human Rights and Responsibilities* s 17(2).

discrimination laws in Victoria by creating new responsibilities for the Victorian Equal Opportunity and Human Rights Commission to assist businesses and the community in identification and elimination of discrimination.

In particular, the EOA sets out to encourage the identification and elimination of systemic causes of discrimination. Section 6 of the EOA defines discrimination to include discrimination against another on the basis of religious belief or activity. Section 7 of the EOA states that discrimination need not be direct, and so can include indirect discrimination. Indirect discrimination is defined in section 9 of the EOA as occurring when:

*a person imposes, or proposes to impose, a requirement, condition or practice... that has, or is likely to have, the effect of disadvantaging persons with an attribute, and that is not reasonable.*

Section 9(3) of the EOA outlines the circumstances that must be considered in determining whether a requirement, condition or practice is reasonable. It states that regard must be had for the nature and extent of the disadvantage resulting from the imposition, whether the disadvantage is proportionate to the result sought, the cost of any alternative requirement or practice and whether reasonable adjustments could be made to reduce the disadvantage caused.

Division 3 of the EOA outlines the requirements for educational authorities, which includes all Victorian schools. Section 38(2)(c) of the EOA specifies that:

*(2) An educational authority must not discriminate against a student -  
(c) By subjecting the student to any other detriment.*

While the word 'detriment' is not defined within the EOA, it can be argued that the manner in which the SRI operates in practice subjects students to a significant detriment by segregating those who opt out of SRI from the remainder of their cohort. The issue of whether a detriment is in fact suffered by students who opt out depends largely on the way in which the SRI is implemented in schools. If students are offered educational activities as an alternative to participating in the

SRI program, then it is unlikely that they will be deemed to suffer a 'detriment' under the EOA. However, if students are simply left to 'twiddle their thumbs' while the remainder of their peers take part in the program, it is likely that this will fall under the 'detriment' requirement in the EOA. It should be noted that principals must ensure that students not attending SRI classes are not provided with instruction in areas within the Australian Curriculum in Victoria curriculum (see the amended Direction 141 section 12(2)).

If students are faced with a choice to join their class in the SRI program, or else face unproductive time away from their peers, this would constitute a form of indirect discrimination, defined under section 9, which is 'unreasonable' under the EOA.

In practice, opting in or out of an SRI program will almost always be an expression of a family's religious views, which means the different treatment of the child in question is in effect based on religion, even though in form it is based on the preference to opt in or out.

## **Conclusion**

For the above reasons, it is likely that Direction 141 and the Education Act itself breach the right of freedom of thought, conscience, religion and belief as protected under the Charter, and it is possible that the implementation of SRI in conformity with Direction 141 may constitute a breach of section 38 of the EOA.

### **Section III: Special Religious Instruction in Victoria and International Law**

Freedom of religion and belief is a universal human right and has been described as the right to theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.<sup>47</sup>

The 1948 Universal Declaration of Human Rights ('UDHR')<sup>48</sup> recognises the importance of freedom of religion or belief in Article 18:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

#### **What rights exist under international law in relation to religion and education?**

##### International Covenant on Civil and Political Rights

Article 18(1) of the International Covenant on Civil and Political Rights ('ICCPR')<sup>49</sup> codifies Article 18 of the UDHR. In addition, Article 18(3) outlines some limitations:

*Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

---

<sup>47</sup> Paragraph 2, UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July

1993, CCPR/C/21/Rev.1/Add.4 <<http://www.refworld.org/docid/453883fb22.html>> [accessed 5 August 2014].

<sup>48</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) <<http://www.refworld.org/docid/3ae6b3712c.html>> [accessed 7 August 2014].

<sup>49</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <<http://www.refworld.org/docid/3ae6b3aa0.html>> [accessed 11 August 2014].

Article 18(4) also requires that States parties:

*undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

Consistent with the importance and universality of human rights, States parties to the ICCPR cannot derogate from their obligations under Article 18, even in times of public emergency.<sup>50</sup> The right is simultaneously an individual and collective right. It has both an internal dimension (the freedom to *adopt* or *hold* a belief) and an external dimension (the freedom to *manifest* that belief in worship, observance, practice or teaching).<sup>51</sup> While the internal dimension is absolute, the external dimension can be subject to certain limitations (on the restricted grounds specified in article 18 (3)).<sup>52</sup>

The Human Rights Committee ('HRC') elaborates on Article 18 of the ICCPR in *General Comment 22 ('GC 22')*,<sup>53</sup> identifying the acts covered by Article 18:

*The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. ..., such as ...the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.*<sup>54</sup>

Paragraph 6 elaborates on religious education in public schools and the rights of parents, stating:

*The Committee is of the view that Article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it*

---

<sup>50</sup> See n47, above.

<sup>51</sup> See Australian Human Rights Commission, *Freedom of Religion and Belief*, <https://www.humanrights.gov.au/freedom-religion-and-belief> [accessed 5 August 2014].

<sup>52</sup> *Ibid.*

<sup>53</sup> See n47, above.

<sup>54</sup> *Ibid.*, at paragraph 4.

*is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in Article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in Article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.*

However, the HRC also explores limitations that may be lawfully put in place in relation to this freedom:

*Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination...Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18. The Committee observes that paragraph 3 of Article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner...*<sup>55</sup>

---

<sup>55</sup> Ibid, at paragraph 8.

## Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Also of importance is the 1981 United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief ('**Religion Declaration**').<sup>56</sup> It is widely considered to be the "most comprehensive international statement of the right to freedom of religion and belief".<sup>57</sup> Although the Religion Declaration has no enforcement mechanism of its own, the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) noted that the Australian Government consulted with the States and Territories before declaring the Religion Declaration to be a "relevant international instrument" for the purposes of the *Human Rights and Equal Opportunity Commission Act* (1986) in 1993.<sup>58</sup> The Religion Declaration therefore triggers certain processes and obligations under this act. Of particular relevance are Article 5 and Article 6(e), which state:

### Article 5

*(1) The parents or, as the case may be, the legal guardian of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.*

*(2) Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.*

---

<sup>56</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55

<<http://www.refworld.org/docid/3b00f02e40.html>> [accessed 11 August 2014].

<sup>57</sup> Human Rights and Equal Opportunity Commission (HREOC) (1998), *Article 18: Freedom of religion and belief*, Submission to the Attorney-General, p. 3

<[https://www.humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/religion/article\\_18\\_religious\\_freedom.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/religion/article_18_religious_freedom.pdf)> [accessed 11 March 2015].

<sup>58</sup> *Ibid.*



*(3) The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.*

*(4) In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.*

*(5) Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.*

#### Article 6

*... the right to freedom of thought, conscience, religion or belief shall include...*

*(e) The right to freedom of thought, conscience, religion or belief includes the freedom to teach a religion or belief in places suitable for these purposes.*

#### Other international human rights instruments

Other international human rights instruments that include relevant references to education and religion include:

- **The Convention on the Rights of the Child ('CRC')**

Article 14(2) echoes the ICCPR in mandating respect for the liberty of parents to educate their children in conformity with their own religious and

moral beliefs.<sup>59</sup> It differs from Article 5 of the Religion Declaration in that while it respects the rights and duties of parents or legal guardians, it places an emphasis on providing direction in a manner consistent with the “evolving” capacity of the child.

Furthermore, Article 3 insists that in all actions concerning children, the best interests of the child should be a primary consideration. Although this term is not defined under the CRC, the Australian Human Rights Commission considers it to be a general principle under which various considerations may be taken into account, including the views of the children themselves.<sup>60</sup> Importantly, the Australian Human Rights Commission specifies that religious and economic considerations of parents must be balanced against the best interests of the child.<sup>61</sup>

The Declaration on the Rights of the Child, a precursor to the CRC, is also scheduled to the Australian Human Rights Commission Act, which indicates the emphasis placed on this instrument by Australian human rights bodies.

- **International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)**

In Article 13, States parties agree that education shall promote understanding, tolerance and friendship among all religious groups and reiterates the right of parents to educate their children in conformity with their own religious and moral beliefs (as expressed in Article 14(2) of the CRC and Article 18 of the ICCPR).<sup>62</sup> Furthermore, Article 2 provides that the right to education must be provided in a manner that is non-discriminatory, including on the basis of religion.

---

<sup>59</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 <<http://www.refworld.org/docid/3ae6b38f0.html>> [accessed 4 August 2014].

<sup>60</sup> Australian Human Rights Commission, *Human Rights Brief 1*, March 1999 <<https://www.humanrights.gov.au/publications/human-rights-brief-no-1>> [accessed 14 September 2014].

<sup>61</sup> *Ibid.*

<sup>62</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 <<http://www.refworld.org/docid/3ae6b36c0.html>> [accessed 11 August 2014].

- **UNESCO Convention against Discrimination in Education ('CDE')**

Articles 2 and 5 of the CDE state that the establishment or maintenance of separate educational institutions for religious reasons is not discriminatory, if it is in keeping with the wishes of parents or legal guardians, and providing that these institutions conform to educational standards developed by competent authorities, and are directed to the full development of the human personality and to strengthening respect for human rights and fundamental freedoms.

### Case Law from the European Court of Human Rights

Case law from the European Court of Human Rights (**'the Court'**) has significantly contributed to international law concerning freedom of religion. Judgments of the Court have elevated freedom of religion to the rank of a substantive right under the European Convention for the Protection of Human Rights and Fundamental Freedoms (**'the Convention'**).<sup>63</sup> Freedom of thought, conscience and religion is enshrined in Article 9 of the Convention which states:

*(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

In addition, Article 2 of Protocol No. 1 to the Convention concerns the right of parents to ensure the education of their children in conformity with their own religious convictions and states:

---

<sup>63</sup> Paragraph 7, European Court of Human Rights, *Overview of the Court's case-law on freedom of religion* <[http://www.echr.coe.int/Documents/Research\\_report\\_religion\\_ENG.pdf](http://www.echr.coe.int/Documents/Research_report_religion_ENG.pdf)> [accessed 11 March 2015]

... In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

In *Folgerø and Others v. Norway*<sup>64</sup> the Court found a violation of Article 2 of Protocol No. 1. The Norwegian primary school curriculum at the time included a subject that covered Christianity, religion and philosophy (known as **KRL**). The court held that KRL gave preponderant weight to Christianity because the stated purpose was “to give pupils a Christian and moral upbringing.” Allowing children to be exempt from certain parts of the curriculum was insufficient to avoid a breach of the convention. The court considered that the exemption process would likely subject “the parents concerned to a heavy burden with a risk of undue exposure of their private life, and that the potential for conflict was likely to deter them from making such requests”.<sup>65</sup>

The Court also found a violation of Article 2 of Protocol No. 1 in *Hasan and Eylem Zengin v Turkey*.<sup>66</sup> Having examined the Turkish Ministry of Education’s guidelines for lessons in religious culture and ethics and school textbooks, the Court found that the syllabus gave undue priority to knowledge of Islam over other religions and philosophies. Again, although there was a provision for exemption from the class, the court found this insufficient to avoid a breach of the convention.<sup>67</sup>

In *Grzelak v Poland*<sup>68</sup> the Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 9. The case concerned parents who did not want their son to attend religious classes in school. While their son was exempt from religious class, no alternative lessons in ethics were offered. He therefore received no grade in his school report reserved for ‘religion/ethics’. The

---

<sup>64</sup> *Folgerø and Others v. Norway*, no. 15472/02, ECHR 2007  
<<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81356>> [accessed 11 March 2015]

<sup>65</sup> Paragraph 100, *Folgerø and Others v. Norway*, no. 15472/02, ECHR 2007  
<<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81356>> [accessed 11 March 2015]

<sup>66</sup> *Hasan and Eylem Zengin v Turkey*, no. 1448/04, ECHR 2007  
<<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82580>> [accessed 11 March 2015]

<sup>67</sup> Paragraph 76, *Hasan and Eylem Zengin v Turkey*, no. 1448/04, ECHR 2007  
<<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82580>> [accessed 11 March 2015]

<sup>68</sup> *Grzelak v Poland*, no. 7710/02, ECHR 2010 <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99384>> [accessed 11 March 2015]

Court held this amounted to unwarranted stigmatisation, in breach of his right not to manifest his religion or convictions.<sup>69</sup>

### **Is SRI in public Victorian schools consistent with international law?**

International law strongly acknowledges the fundamental right of a parent to ensure the religious and moral education of their children in conformity with their own convictions,<sup>70</sup> and to undertake such teachings in a public setting.<sup>71</sup> In GC 22, the Human Rights Committee specifically includes within that right the freedom to manifest one's religion by establishing religious seminaries.<sup>72</sup> This could include SRI lessons, although requiring SRI to be conducted outside school hours – ensuring that parents make a conscious decision that their child attend – would not breach this element of the right. In addition, international law states that the establishment or maintenance of separate educational institutions for religious reasons (for example, temporary separate classrooms) is not discriminatory if it is in keeping with the wishes of parents or legal guardians, providing that these institutions conform to educational standards developed by competent authorities.<sup>73</sup> This is in line with the Religion Declaration, Article 6(e):

*...the right to freedom of thought, conscience, religion or belief includes the freedom to teach a religion or belief in **places suitable** for these purposes.*  
(emphasis added)

Whether or not a public school setting is suitable for religious teachings is discussed in GC 22:

*The Committee is of the view that Article 18(4) permits public school instruction in subjects such as the general history of religions and*

---

<sup>69</sup> Paragraph 99, *Grzelak v Poland*, no. 7710/02, ECHR 2010

<<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99384>> [accessed 11 March 2015]

<sup>70</sup> ICCPR, Article 18 (4), CRC, Article 14 (2), the Religion Declaration, Article 5 (2), ICESCR, Article 13, ECHR, Article 9 and ACHR, Article 12.

<sup>71</sup> ICCPR, Article 18 (1).

<sup>72</sup> Paragraph 4, UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4

<<http://www.refworld.org/docid/453883fb22.html>> [accessed 5 August 2014].

<sup>73</sup> See Article 2, UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960 <<http://www.refworld.org/docid/3ae6b3880.html>> [accessed 11 August 2014].

*ethics if it is given in a neutral and objective way...The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18.4 **unless** provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.*<sup>74</sup> (emphasis added)

## Guiding questions

Therefore, in determining whether SRI in Victorian public schools is in accordance with international law, it is necessary to consider the following questions:

### **1. Are the classes conducted in a neutral and objective manner or are they geared towards a particular faith?**<sup>75</sup>

According to FIRIS, the SRI delivered by ACCESS “is a devotional exercise, which instructs and leads children in devotional worship, on a confessional basis, and is explicitly designed to motivate children to form a relationship with Jesus”.<sup>76</sup> The accuracy of this description is clear from the materials used in class by ACCESS volunteers, examples of which can be found at the FIRIS website.<sup>77</sup>

The broader argument can also be made that given the inherently dogmatic nature of religious *instruction* as opposed to education, any SRI program provided in a government school is very unlikely to be neutral and objective.

### **2. If SRI is not neutral and objective, do the classes conform to educational standards developed by competent authorities?**<sup>78</sup>

---

<sup>74</sup> Paragraph 6, UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4 <<http://www.refworld.org/docid/453883fb22.html>> [accessed 5 August 2014].

<sup>75</sup> Paragraph 6, UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4 <<http://www.refworld.org/docid/453883fb22.html>> [accessed 5 August 2014].

<sup>76</sup> Fairness In Religions In School, 2015 <<http://religionsinschool.com/category/general/page/2/>> [accessed 11 March 2015]

<sup>77</sup> See Fairness In Religions In School, 2015 <<http://religionsinschool.com/cre-curriculum/vic/>>.

<sup>78</sup> Article 2, UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960 <<http://www.refworld.org/docid/3ae6b3880.html>> [accessed 11 August 2014].

Given the criticisms of the substantive coursework in SRI programs quoted in this report, it is clear that there is widespread concern that educational standards are not being adhered to by those who develop SRI coursework.

### **3. Are the classes in line with the wishes of the parents?<sup>79</sup>**

No coercion or compulsion of children to receive teaching on religion or belief against the wishes of parents or legal guardians may occur.<sup>80</sup> This includes respecting the liberty of parents or guardians to ensure their children are *not* schooled in any religious dogma or belief. It also includes providing full disclosure surrounding SRI content to enable parents or guardians to make informed decisions.

The concerned parents group FIRIS believes that ACCESS in particular does not use clear language to explain what it offers by way of religious instruction. Consequently, parents and schools commonly have misconceptions regarding SRI objectives, the curriculum and how it is delivered. FIRIS has undertaken extensive research into the practical implementation of SRI by ACCESS and believes that the reality is “wilful deception on the part of an evangelistic missionary group who views our children as a “mission field”.”<sup>81</sup> Legal action launched by ACCESS against FIRIS for publishing SRI teaching material indicates that full disclosure of teaching materials is not a high priority for the organisation.

The change to an ‘opt-in’ system has been a positive one in this respect, as parents are now at least given the chance to make an active decision about whether or not their child will participate. However, given concerns about disclosure and the recent revision of Direction 141 (which weakens requirements that non-participating children be given a satisfactory alternative) it is still far from clear whether the wishes of parents on the whole are being respected.

---

<sup>79</sup> Ibid.

<sup>80</sup> Religion Declaration, Article 5 (2) and ICCPR, Article 18 (4).

<sup>81</sup> Fairness In Religions In School, 2014 <<http://religionsinschool.com/category/general/>> [\[accessed 23 August 2014\]](#)

**4. Is there provision for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians?**

Concerned parents have raised questions about the quality of alternatives to SRI offered in schools, and the effect SRI has of dividing children from their classmates. In addition, according to the amended Direction 141 there is no requirement that non-participating students be accommodated in a room other than the one being used for SRI, or that they be supervised by anyone other than the SRI instructor; therefore non-participating students may still be exposed to unwanted religious instruction.

**5. What is the nature or content of the classes?**

The classes must be directed towards the full development of the human personality and to strengthening respect for human rights and fundamental freedoms.<sup>82</sup> They must also promote understanding, tolerance and friendship among all religious, national and racial groups.<sup>83</sup> A common criticism of SRI in Victoria is that the classes serve to entrench division of students along religious lines. As a review of ACCESS teaching materials also shows, the emphasis is not on strengthening respect for human rights and fundamental freedoms, but is instead on narrow religious dogma.

**6. Do the classes respect and uphold the best interests of the children involved?**

The best interests of the child should be the guiding principle.<sup>84</sup> SRI must be provided in a manner consistent with the evolving capacity of the child and avoid practices that may be injurious to the child.<sup>85</sup> In addition, non-discriminatory exemptions and alternatives that accommodate the wishes of parents/guardians

---

<sup>82</sup> Religion Declaration, Article 5 (3), CDE, Article 2 and ICESCR, Article 13.

<sup>83</sup> ICESCR, Article 13 and UDHR, Article 26.

<sup>84</sup> Religion Declaration, Article 5 (2); CRC, Article 3. See also CRC, Article 18.

<sup>85</sup> CRC, Article 14 (2).



must be made for the children who do not participate in SRI.<sup>86</sup> This includes avoiding any detrimental follow-on effects, such as insufficient supervision during the SRI class time or children being subjected to unproductive school hours.

## **Conclusion**

The preceding analysis demonstrates that the current implementation of the SRI program contravenes international law by effectively ignoring the rights of parents and guardians to guarantee the nature of the religious and moral education of their children, as well as offering religious dogma rather than education aimed at the full development of human personality. The SRI program also risks violating international laws and principles relating to protection from discrimination.

For comment on this report please contact the Liberty Victoria office on 03 9670 6422 or email [info@libertyvictoria.org.au](mailto:info@libertyvictoria.org.au).

---

<sup>86</sup> ICCPR, Article 18 (4) and Religion Declaration, Article 5 (3).

**APPENDIX A**  
**Education and Training Reform Act 2006**  
MINISTERIAL DIRECTION MD141 - SPECIAL RELIGIOUS INSTRUCTION IN  
GOVERNMENT SCHOOLS

**1. Title**

This Direction may be cited as Ministerial Direction MD141 — Special Religious Instruction in Government schools.

**2. Authorising provisions and commencement**

(1) This Direction is made under sections 5.2.1(2)(a) and (b) and 5.2.1(3) of the **Education and Training Reform Act 2006** for the purpose of sections 2.2.10 and 2.2.11 of that Act.

(2) This Direction comes into effect on 14 July 2014.

**3. Purpose**

The purpose of this Ministerial Direction is to:

- (a) clarify the basis upon which special religious instruction may be provided in a Government school;
- (b) establish procedures for the provision and conduct of special religious instruction in Government schools; and
- (c) establish procedures for the care and supervision of students who do not participate in a school's special religious instruction program.

**4. Application**

This Direction applies to all Government schools, teachers, principals and school councils.

**5. Definitions**

(1) In this Direction, unless the contrary intention appears, words and expressions have the same meaning as in the Act.

(2) Further to subclause (1):

**accredited** means persons who are accredited representatives of churches or other religious groups;

**Act** means the **Education and Training Reform Act 2006**;

**approved** means approved by the Minister or his or her delegate for the purpose of delivering special religious instruction in Government schools;

**Department** means the Department of Education and Early Childhood Development or any Department which may succeed to the functions of that Department;

**Minister** means the Minister for Education;

**parent** in relation to a child means any person who has parental responsibility for 'major long term issues' as defined in the **Family Law Act 1975 (Cth)** or has been granted 'guardianship' for the child pursuant to the **Children, Youth and Families Act 2005** or other State welfare legislation;

**principal** means an employee within the meaning of Division 3 of Part 2.4 of the Act occupying, or for the time being performing the duties of, the position of principal of a Government school;

**school hours** means the hours between the start and finish times of the school day;

**Note:** The majority of Government schools, at the time of the making of this Direction, operate during the hours of 8.30am and 3.30pm.

**special religious instruction** means instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs, provided in accordance with section 2.2.11 of the Act.

## 6. Scheduling special religious instruction

- (1) If a principal receives notification from an accredited and approved instructor that the instructor is available to deliver special religious instruction at the school, the principal must offer parents of children enrolled at the school the opportunity for their children to be provided with special religious instruction.
- (2) A school principal, prior to offering special religious instruction in a school, may request further information from an accredited and approved instructor who has provided notification in accordance with subclause (1), including the instructor's name, details of their accreditation and approval, the instructor's religious affiliations, an overview of the program to be taught by the instructor and any other information the principal requires in order to comply with this Direction or the Act.
- (3) If special religious instruction is offered at a school, it must be offered and provided in accordance with the Act and this Direction.
- (4) If special religious instruction is to be provided at a school, the principal must ensure that it is scheduled:
  - (a) during school hours;
  - (b) as part of the school timetable;

- (c) as part of normal class organisation; and
  - (d) for no more than 30 minutes per week.
- (5) A principal must ensure that, during that time set aside for special religious instruction:
- (a) all students participating in special religious instruction are adequately supervised by at least one teacher; and
  - (b) all students who are not participating in special religious instruction are adequately supervised by at least one teacher, who is not the same teacher that is supervising students in accordance with subclause (5)(a).
- (6) A principal must ensure that the supervision of students under subclause (5) meets the standard of care appropriate to the discharge of a teacher's duty of care for Government school students.
- (7) If, once a principal has offered special religious instruction at a school, the principal determines that the school does not have sufficient resources to meet the obligations set out under this clause, special religious instruction will not be offered at the school.

**Example:** A principal may determine that there are not sufficient teaching staff to enable adequate supervision of students during that time that special religious instruction would be provided.

**Example:** A principal may determine that there is no suitable learning space available in which special religious instruction may be delivered.

## **7. Requirement of accredited and approved instructors and volunteer checks**

- (1) A principal must ensure, through consultation with the Department, that any person who is to provide special religious instruction at the school is an accredited and approved instructor.

**Note:** The process for accreditation of instructors is published on the Department's website.

- (2) A principal who offers special religious instruction in a school must request a copy of the instructor's formal accreditation and retain such a copy on the school's records.

- (3) A principal must ensure that each accredited and approved instructor delivering special religious instruction in a school complies with the school's volunteer and visitors to schools policies.

**Note:** Information about volunteer checks is published on the Department's website.

## 8. Program to be delivered

- (1) A principal must ensure that each accredited and approved instructor delivering special religious instruction in a school delivers a program that is:
- (a) approved by the instructor's organisation;
  - (b) available for parents to access in an online format.

## 9. Distribution and display of religious material

- (1) A principal must not permit material to be distributed or displayed at a school if that material has the effect of promoting any particular religious practice, denomination or sect.

**Note:** Section 2.2.11 provides that the Minister may give an authorisation for special religious instruction to be given on a basis other than the normal class organisation of the school having regard to the particular circumstances of a school or schools or in preparation or conduct of a pageant, special event or celebration of a festival in a school or schools.

Section 2.2.10(1) of the Act states that, apart from special religious instruction, education in Government schools must be secular and must not promote any particular religious practice, denomination or sect.

Section 2.2.10(3) of the Act states that a Government school teacher must not provide religious instruction other than the provision of general religious education in any Government school building.

**general religious education** for the purposes of section 2.2.10(4) means education about the major forms of religious thought and expression

characteristic of Australian society and other societies in the world.

## 10. Supervision and monitoring of accredited and approved instructors

(1) A principal must ensure that:

- (a) information, ideas, opinions or beliefs communicated to students;  
and
- (b) written material distributed to students –

by an accredited and approved instructor or their organisation during the course of a special religious instruction program do not contradict the school's values, curriculum, an applicable law, or Department policies or guidelines.

**Note:** Section 1.2.1 of the Act provides that:

*Parliament has had regard to the following principles in enacting this Act—*

*(1) all providers of education and training, both Government and non-Government, must ensure that their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy, including a commitment to—*

- (i) elected Government;*
- (ii) the rule of law;*
- (iii) equal rights for all before the law;*
- (iv) freedom of religion;*
- (v) freedom of speech and association;*
- (vi) the values of openness and tolerance.*

(2) A principal must ensure that an accredited and approved instructor of a special religious instruction program in the school does not:

(a) provide or offer to students who attend special religious instruction any enticement, reward or other benefit of a tangible nature;

**Example:** An enticement, reward or other benefit of a tangible nature may include gifts, sweets or stickers.

(b) induce or attempt to induce any student to convert to a particular religion.

(3) A teacher who is responsible for the supervision of special religious instruction in accordance with clause 6(5) must report any concern he or she has about the delivery, provision or content of special religious instruction to the principal, as soon as it is practicable.

**Example:** A teacher who believes that the content of special religious instruction conflicts in some way with a Department policy must report that concern to the principal.

(4) An accredited and approved instructor must not, in their capacity as an accredited and approved instructor, participate in any school activity except for the delivery of a special religious instruction program in accordance with this Direction and the Act.

(5) For the avoidance of doubt, an accredited and approved instructor does not contravene subclause (4) if he or she participates in school activities as a parent, school council member or in any other capacity in which he or she would ordinarily be allowed to participate in school activities.

## **11. Attendance at special religious instruction not compulsory**

(1) Attendance at special religious instruction is not to be compulsory for any student whose parents desire that he or she not attend.

(2) A principal who offers special religious instruction in a school must do so on the basis that special religious instruction is not compulsory for any student.

(3) A principal who offers special religious instruction in a school must obtain written advice from all parents of students at the school regarding whether their child is to participate or not participate in special religious instruction.

(4) In obtaining written advice from parents in accordance with subclause (3), a principal must use the form, if any, published by the Department for that purpose.

**Note:** At the time of making this Direction, the relevant form is available on the Department's website.

- (5) A principal must ensure that parents are provided with the following information in relation to the provision of special religious instruction in a school:
- (a) what type of religious instruction is offered or provided at the school;
  - (b) how long it is to be delivered for each week;
  - (c) an overview of the program to be taught by the accredited and approved instructor;
  - (d) the name of the accredited and approved instructor who will deliver the special religious instruction program and his or her religious affiliations;
  - (e) how a parent may access the special religious instruction program materials online, in accordance with the requirement in clause 8(1)(b); and
  - (f) that a parent may withdraw their child from special religious instruction at any time by notifying the school in writing.
- (6) A principal must seek written advice in accordance with subclause (3) and (4), and provide information in accordance with subclause (5), at the following times:
- (a) if special religious instruction is to be introduced to a school that currently does not offer special religious instruction, before special religious instruction commences at the school;
  - (b) if special religious instruction in a different religion to that already offered is to be introduced at a school, before special religious instruction in the different religion commences at the school; and
  - (c) at least once per calendar year in a school that offers special religious instruction.
- (7) If a parent does not provide written advice in accordance with clause (3) and (4) within the time frame requested by the principal or specified in the form, the principal must treat the student who is the child of that parent as if the parent had not consented to that child receiving special religious instruction.



## **12. Educational activities for students not attending special religious instruction**

- (1) A principal must ensure that students who do not attend special religious instruction are, at the time that the special religious instruction is being provided, engaged in educationally valuable activities.

**Example:** For example, educationally valuable activities may include self-study, revision, reading, community service, peer mentoring, and participation in clubs.

- (2) At the time special religious instruction is being provided, a principal must ensure that students who do not attend special religious instruction are not provided with instruction in areas within the Australian Curriculum in Victoria (AusVELS) curriculum.

Dated this 1<sup>st</sup> day of May 2014

**The Hon. Martin Dixon MP**  
**Minister for Education**

## APPENDIX B

### Education and Training Reform Act 2006

#### MINISTERIAL DIRECTION MD141 - SPECIAL RELIGIOUS INSTRUCTION IN GOVERNMENT SCHOOLS

*(incorporating amendments made by Ministerial Direction MD144 dated 19 August 2014)*

#### 1. Title

This Direction may be cited as Ministerial Direction MD141 — Special Religious Instruction in Government schools.

#### 2. Authorising provisions and commencement

(1) This Direction is made under sections 5.2.1(2)(a) and (b) and 5.2.1(3) of the **Education and Training Reform Act 2006** for the purpose of sections 2.2.10 and 2.2.11 of that Act.

(2) This Direction comes into effect on 14 July 2014.

#### 3. Purpose

The purpose of this Ministerial Direction is to:

- (d) clarify the basis upon which special religious instruction may be provided in a Government school;
- (e) establish procedures for the provision and conduct of special religious instruction in Government schools; and
- (f) establish procedures for the care and supervision of students who do not participate in a school's special religious instruction program.

#### 4. Application

This Direction applies to all Government schools, teachers, principals and school councils.

#### 5. Definitions

(1) In this Direction, unless the contrary intention appears, words and expressions have the same meaning as in the Act.

(2) Further to subclause (1):

**accredited** means persons who are accredited representatives of churches or other religious groups;

**Act** means the **Education and Training Reform Act 2006**;

**approved** means approved by the Minister or his or her delegate for the purpose of delivering special religious instruction in Government schools;

**Department** means the Department of Education and Early Childhood Development or any Department which may succeed to the functions of that Department;

**Minister** means the Minister for Education;

**parent** in relation to a child means any person who has parental responsibility for 'major long term issues' as defined in the **Family Law Act 1975 (Cth)** or has been granted 'guardianship' for the child pursuant to the **Children, Youth and Families Act 2005** or other State welfare legislation;

**principal** means an employee within the meaning of Division 3 of Part 2.4 of the Act occupying, or for the time being performing the duties of, the position of principal of a Government school;

**school hours** means the hours between the start and finish times of the school day;

**Note:** The majority of Government schools, at the time of the making of this Direction, operate during the hours of 8.30am and 3.30pm.

**special religious instruction** means instruction provided by churches and other religious groups and based on distinctive religious tenets and beliefs, provided in accordance with section 2.2.11 of the Act.

## 6. Scheduling special religious instruction

- (1) If a principal receives notification from an accredited and approved instructor that the instructor is available to deliver special religious instruction at the school, the principal must offer parents of children enrolled at the school the opportunity for their children to be provided with special religious instruction.
- (2) A school principal, prior to offering special religious instruction in a school, may request further information from an accredited and approved instructor who has provided notification in accordance with subclause (1), including the instructor's name, details of their accreditation and approval, the instructor's religious affiliations, an overview of the program to be taught by the instructor and any other information the principal requires in order to comply with this Direction or the Act.
- (3) If special religious instruction is offered at a school, it must be offered and provided in accordance with the Act and this Direction.

- (4) If special religious instruction is to be provided at a school during the hours set apart for instruction, the principal must ensure that it is scheduled:
- (a) as part of the school timetable;
  - (b) as part of normal class organisation unless the Minister authorises it to be scheduled on a different basis; and
  - (c) for no more than 30 minutes per week on average over a school year.
- (5) A principal must ensure that, during that time set aside for special religious instruction:
- (a) all students participating in special religious instruction are adequately supervised by at least one teacher; and
  - (b) all students who are not participating in special religious instruction are adequately supervised in accordance with normal requirements .
- (6) A principal must ensure that the supervision of all students meets the standard of care appropriate to the discharge of a teacher's duty of care for Government school students.

## **7. Requirement of accredited and approved instructors and volunteer checks**

- (1) A principal must ensure, through consultation with the Department, that any person who is to provide special religious instruction at the school is an accredited and approved instructor.

**Note:** The process for accreditation of instructors is published on the Department's website.

- (2) A principal who offers special religious instruction in a school must request a copy of the instructor's formal accreditation and retain such a copy on the school's records.

- (3) A principal must ensure that each accredited and approved instructor delivering special religious instruction in a school complies with the school's volunteer and visitors to schools policies.

**Note:** Information about volunteer checks is published on the Department's website.

## 8. Program to be delivered

- (1) A principal must ensure that each accredited and approved instructor delivering special religious instruction in a school delivers a program that is:
  - (a) approved by the instructor's organisation;
  - (b) available for parents to access in an online format.

## 9. Distribution and display of religious material

- (2) A principal must not permit an accredited and approved instructor to distribute at a school material that has the effect of promoting any particular religious practice, denomination or sect, unless it is a part of an authorised special religious instruction program and the principal is satisfied that the material has been approved by the instructor's organisation.
- (3) For the avoidance of doubt, nothing in clause 9(1) prevents students from distributing religious materials, displaying religious materials on their person or personal belongings or bringing religious materials to a Victorian government school.

## 10. Supervision and monitoring of accredited and approved instructors

- (1) A principal must ensure that:
  - (a) information, ideas, opinions or beliefs communicated to students;  
and
  - (b) written material distributed to students –by an accredited and approved instructor or their organisation during the course of a special religious instruction program do not contradict the school's values, curriculum or an applicable law.

**Note:** Section 1.2.1 of the Act provides that:

*Parliament has had regard to the following principles in enacting this Act—*

- (1) *a*  
*Il providers of education and training, both Government and non-Government, must ensure that their programs and*

*teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy, including a commitment to—*

(2)

*(i) elected Government;*

*(ii) the rule of law;*

*(iii) equal rights for all before the law;*

*(iv) freedom of religion;*

*(v) freedom of speech and association;*

*(vi) the values of openness and tolerance.*

- (2) A principal must ensure that an accredited and approved instructor of a special religious instruction program in the school does not:
- (a) provide or offer to students who attend special religious instruction any enticement, reward or other benefit of a tangible nature;
  - (b) induce or attempt to induce any student to convert to a particular religion.
- (3) A teacher who is responsible for the supervision of special religious instruction in accordance with clause 6(5) must report any concern he or she has about the delivery, provision or content of special religious instruction to the principal, as soon as it is practicable.

**Example:** A teacher who believes that the content of special religious instruction conflicts in some way with a Department policy must report that concern to the principal.

## **11. Attendance at special religious instruction not compulsory**

- (1) Attendance at special religious instruction is not to be compulsory for any student whose parents desire that he or she not attend.

- (2) A principal who offers special religious instruction in a school must do so on the basis that special religious instruction is not compulsory for any student.
- (3) A principal who offers special religious instruction in a school must obtain written advice from all parents of students at the school regarding whether their child is to participate or not participate in special religious instruction.
- (4) In obtaining written advice from parents in accordance with subclause (3), a principal must use the form, if any, published by the Department for that purpose.

**Note:** At the time of making this Direction, the relevant form is available on the Department's website.

- (5) A principal must ensure that parents are provided with the following information in relation to the provision of special religious instruction in a school:
  - (a) what type of religious instruction is offered or provided at the school;
  - (b) an overview of the program to be taught by the accredited and approved instructor;
  - (c) the name of the accredited and approved instructor who will deliver the special religious instruction program and his or her religious affiliations;
  - (d) how a parent may access the special religious instruction program materials online, in accordance with the requirement in clause 8(1)(b); and
  - (e) that a parent may withdraw their child from special religious instruction at any time by notifying the school in writing.
- (6) A principal must seek written advice in accordance with subclause (3) and (4), and provide information in accordance with subclause (5), at the following times:
  - (a) if special religious instruction is to be introduced to a school that currently does not offer special religious instruction, before special religious instruction commences at the school;
  - (b) if special religious instruction in a different religion to that already offered is to be introduced at a school, before special religious instruction in the different religion commences at the school; and
  - (c) at least once per calendar year in a school that offers special religious instruction.

- (7) If a parent does not provide written advice in accordance with clause (3) and (4) within a reasonable time frame requested by the principal or specified in the form, the principal must treat the student who is the child of that parent as if the parent had not consented to that child receiving special religious instruction.

## **12. Educational activities for students not attending special religious instruction**

- (1) A principal must ensure that students who do not attend special religious instruction are, at the time that the special religious instruction is being provided, engaged in educationally valuable activities.

**Example:** For example, educationally valuable activities may include self-study, revision, reading, community service, peer mentoring, and participation in clubs.

- (2) At the time special religious instruction is being provided, a principal must ensure that students who do not attend special religious instruction are not provided with instruction in areas within the Australian Curriculum in Victoria (AusVELS) curriculum.

Dated this 1<sup>st</sup> day of May 2014

**THE HON. MARTIN DIXON MP**  
**Minister for Education**