

Ad Hoc Interfaith Committee

c/o Rev David Palmer, [Phone number removed] [Email address removed]

Wednesday 1st February 2012

Assistant Secretary
International Human Rights and Anti-Discrimination Branch
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

E-mail: antidiscrimination@ag.gov.au

Dear Sir/Madam,

Submission to Consolidation of Commonwealth Anti-Discrimination Laws Enquiry

The Ad Hoc Interfaith Committee was formed to provide an opportunity for people of different faiths to meet and to respond to the many social issues that are currently the subject of public policy formation. The membership of the Committee is by invitation to people who share similar ideas about being unafraid to give witness to faith and to seek respectfully to persuade others by that witness as well as by appeal to reason. We regard it as a civic responsibility to listen to what others are saying and to add our voices to the discussion on issues that shape the kind of community to which we belong.

The Attorney-General's Department's review of Commonwealth Anti-discrimination laws was foreshadowed in the document, *Australia's Human Rights Framework*, issued by the then Attorney General in 2010, as is made explicit in point 9 in the Executive Summary of the Discussion Paper. In the section **Respect** of *Australia's Human Rights Framework* (page 5, pdf version) the Attorney-General states:

The Government will review legislation, policies and practices for compliance with the seven core UN human rights treaties to which Australia is a party.

Further, the Department's review of Commonwealth Anti-discrimination laws and therefore the Discussion Paper follows on directly from this commitment by the Government to

“review legislation, policies and practices for compliance with the seven core UN human rights treaties to which Australia is a party”.

This understanding is confirmed by point 6 in the Executive Summary of the Discussion Paper where the seven core human rights treaties to which Australia is a party are listed, including the International Convention on Civil and Political Rights (ICCPR).

The ICCPR contains articles covering the right to freedom of thought, conscience and religion (Article 18), the right to freedom of expression (Article 19), and the right to freedom of association with others (article 22). These are fundamental human rights with pedigrees stretching back to at least the 1688 Bill of Rights which sought to bring about a situation where “religion, laws, and liberties might not again be in danger of being subverted”.

We raise the matter about rights to freedom of conscience, religion, speech and association because, inexplicably in our view, the Discussion Paper fails to mention any of them.

It has been well documented that anti-discrimination measures come into conflict with freedom of religion and conscience where the attributes of sex, sexuality, marital and parental status and gender identity are concerned. Thus we are well aware that the Department will receive submissions that will argue that the exceptions currently granted religious bodies are contrary to the principle of non-discrimination and should be scaled back if not repealed. The Discussion Paper acknowledges this in paragraph 166.

The great majority of clergy in Australia belong to Christian denominations that limit ordination to males only in accordance with their respective religious belief. The same situation exists with those adhering to the Jewish and Islamic religions. Equally, in faith based schools, religious conviction invariably requires the employment of staff who uphold and adhere to the religious “doctrines, beliefs and principles” of the particular school, regardless of how well qualified an applicant may be in their own discipline. This is necessary if the schools are to serve their purpose of educating children in the faith chosen by their parents. This right is recognised in section 18(4) of the ICCPR:

The States Parties to the present Covenant 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.

The Discussion Paper implicitly, at least, recognises this potential for conflict by including Question 22:

How might religious exemptions apply in relation to discrimination on the grounds of sexual orientation or gender identity?

Noting that the various Federal laws with anti-discrimination provisions contain specific exceptions and exemptions, the Discussion Paper canvasses:

- a. the use of a *general limitations clause* (Question 20)
- b. exceptions for *inherent requirements/genuine occupational qualifications* (Question 21)
- c. *exemptions* for religious organisations (Question 22)
- d. power given to the Commission to grant *temporary exemptions* (Question 23)

Replacing permanent exceptions with a *general limitations clause* would be tantamount to years of uncertain litigation through the courts and will be strenuously opposed by religious bodies. The problem with an *inherent requirements test* is determining what is the crucial element in assessing an applicant's suitability for employment in, say, a faith based school. In other words an *inherent requirements test* may not allow an exception for religious organisations to employ people of similar faith and values, but rather narrowly define inherent requirements in terms of professional qualification.

This question came into sharp relief with the previous Victorian Labor Government's proposed changes to the religious exception clauses in the Victorian Equal Opportunity Act. These changes had an *inherent requirements test* but was couched in language that permitted an understanding that an applicant's adherence to the "doctrines, beliefs and principles" of the faith based institution would be counted as an inherent requirement for the position applied for. However once the Victorian Equal Opportunity and Human Rights Commission made clear their view that this was not their understanding, thereby opening up the uncertainty of application to the Courts to resolve differences of opinion, the newly elected Coalition Government (December 2010) at the request of the Australian Christian Lobby - acting on behalf of many religious bodies including the main Christian School Associations - removed the inherent requirements test.

Temporary exemptions are opposed on the basis of uncertainty, cost and disruption, and the more basic point that an exception on the basis of genuine religious belief either exists or it does not, thereby making the question of a time limit beside the point.

Recommendations

In relation to the issues of Exceptions and Exemptions posed by Questions 20-23 of the Discussion Paper, it should be acknowledged that anti-discrimination laws which in their preambles acknowledge Australia's international obligations, need to comply with those specific international obligations in relation to the rights to freedom of conscience, religion, speech, association and cultural expression. Whilst there are limitations to these rights, the limitations are strictly narrowly defined, especially so in relation to religion which we note ICCPR, Article 4 defines as non-derogable, even in times of public emergency.

Currently this protection to the right to freedom of religion, association and cultural expression is achieved by way of the provision of exception clauses. Protecting these basic

rights in the form of exceptions to anti-discrimination law seems scarcely adequate considering their importance, but nevertheless, if adequately expressed, can be accepted.

The essential point is that there should be no unlawful discrimination where a right to freedom of religion, association and cultural expression is being genuinely exercised. The contentious attributes are sex, sexuality, marital and parental status and gender identity.

Any new legislation ought to be drafted in such a way that faith based organisations are free to select staff who adhere to the doctrines, beliefs, principles and customs of the organisation without being accused of 'discrimination' just as for example, political parties or environmental groups – Greenpeace, Friends of the Earth, etc – ought to be free without similar accusations to select staff who will work for and promote their mission and adhere to their values.

Further, protection of freedom of conscience and religion should be accorded to all faith based institutions providing various kinds of services, not just educational but also health, aged care, counselling, etc in those circumstances where it is intended that such services are provided in accordance with the particular religious beliefs and practices of the individual organisation.

Should there be the opportunity to appear before a public hearing, we would appreciate an invitation to do so.

Yours sincerely,

[signature removed]

Rev David Palmer

On behalf of the following:

Rev David Palmer
Presbyterian Church of Victoria

Professor Nicholas Tonti-Filippini
John Paul II Institute for Marriage and Family

Pastor Peter Stevens
Victoria State Officer, FamilyVoice Australia
Pastor Graham Nelson,
Chair, Victorian State Council, Australian Christian Lobby

Maurice Benington
Executive Pastor – Stairway Church Whitehorse

Fr. Geoff Harvey
Priest of Good Shepherd Eastern Orthodox Parish

Rev Dr Mark Durie
Vicar, St Mary's Anglican Church, Caulfield

Marlene Pietsch
Lutheran Church of Australia – Victorian District

Rev Dr Max Champion,
National Director, Assembly of Confessing Congregations within the Uniting Church in
Australia

Matthew MacDonald
Executive Officer, Life, Marriage and Family Office, Melbourne Catholic Archdiocese

Dr Rosalie Hudson,
Lay person, Uniting Church in Australia

Rev Ross Carter,
Minister, Uniting Church in Australia

Rabbi Dr Shimon Cowen,
Director, Institute for Judaism and Civilization

Imam Riad Galil
West Heidelberg Mosque
Chaplain RMIT