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Submission in final consultation on Religious Discrimination Bill (Exposure Draft)

The “free exercise” of religion and the constitution

The Federal Religious Discrimination Bill represents the Government’s expressed desire that religious freedom be properly protected in Australia in accordance with the provision of the Constitution in section 116 for the free exercise of religion.

Religious freedom provided for health practitioners

Accordingly, it has appropriately taken measures with this Bill to override State legislation (manifest in several State jurisdictions) which has abridged the religious freedom of conscience of medical practitioners to refuse certain services. Thus, it is explained in Explanatory Notes to the Bill, paragraphs 137 and 138, that health practitioner rules requiring doctors to refer for abortion or euthanasia (for example) are “not reasonable”. This will rightly affect existing State legislation which force a doctor to refer for an abortion or euthanasia, to which his or her religion objects.

Religious freedom protection required also in the Bill for patients

The protection of religious freedom in Australia, however, requires another override of actual or potential state legislation which would limit the access of patients to medical services, which they require in pursuit of their religious beliefs.

Presently the Governments of Victoria and Queensland are preparing bills to criminalize the provision of psychological services to individuals who seek to overcome unwanted sexual preoccupations. Similarly, the Bills would criminalize the provision of psychological services for those who want to reduce gender dysphoria by increasing comfort within an identity congruent with chromosomes.

Why is the attempt to block patient access to these services a violation of religious freedom?

A basic tenet of religious belief is that the human being is not just a physical being, but also has a soul or conscience. This belief requires the human being



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to struggle if need be with impulses and perceptions, which, when actualized in conduct, are contrary to the values of conscience and belief. Religious belief further states that the human being is both free to modify his or her behaviour and obligated to do so. If a person, for example, has a psychological problem with kleptomania (an impulse to steal), the human is bound by conscience to struggle with that impulse, and to observe the precept upheld by religion, not to steal. If a person has difficulty in mastering that impulse, it is incumbent upon him or her to access counselling and psychological help to overcome that impulse.

Foundational texts of Jewish and Christian believers point to the sanctity of heterosexual marriage and the containment of sexual experience within that bond. It may therefore be requisite that believers struggling with sexual preoccupations beyond that union be able to receive psychological help in order to overcome unwanted impulses and perceptions and live in accordance with their consciences. An example might be the desire to be free from a preoccupation with paedophilia. Surely, a sufferer from that sexual preoccupation should not be denied professional help for his and society's sake.

Similarly, the foundational texts of these faiths do not support the ideology that would claim there is no binary separation into males and females, and that gender identity and sexual expressions are a flexible, unrestrained entity on a spectrum between the poles. While accepting the rare entity of physical disorders of sexual differentiation, these texts would promote the stability of gender identity in accordance with chromosomal directive and would encourage psychological support for the confused. In order to live with their faiths, medical practitioners should be able to prescribe such psychological support, and sufferers should have the opportunity to receive it.

The political movements which are seeking to criminalize the access to psychological help, in cases such as these, reject the value of such support and the reality of conscience in both prescriber and recipient. The ideology of gender fluidity does not validate the conscience of religious people. It seems not to believe that the human being is free, or permitted, to struggle with impulses and perceptions at variance with conscience. They believe only in submission to the dictation of impulse and perception, not the sovereignty of conscience and the right to struggle with impulse.



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For them, all change can be a “one-way street” only. Thus, they will allow minors, without parental consent, to take puberty blockers and commence transitioning, but they will not allow minors to undergo counselling back to their biological gender. They will encourage children through school programs such as the “Safe-Schools”, away from parental supervision, to embrace the ideology of gender fluidity but they will prohibit any counselling to lead them back to a stable identity in accordance with chromosomes.

It is mooted also by such legislation to deny this autonomy of choice even to adults. They can get help to transition to another gender, but not to return to their biological gender; they are free to visit a “gay-affirming” psychologist, but not to a therapist who may be able to help with unwanted pre-occupations.

Such legislation discriminates against those who believe, as do traditional Jews and Christians, that it is conscience which is sovereign in the person, and that the person is both able and obligated to live in accordance with conscience. The legislation denies freedom of choice: to be free to live psychologically and behaviourally in accordance with one’s own standards or conscience, and the freedom to seek help if desired.

The ruse of “quackery”

The severe restriction of religious freedom in legislative plans to criminalize the above provision of psychological services to persons is hidden by the blanket denunciation of all such therapies as “quackery”. This, however, intentionally suppresses the evidence of many successful such therapies, and the absence of evidence that all such therapies are harmful.

In respect of “quackery”, the movements which seek to criminalize therapies for unwanted sexual preoccupations, themselves, espouse a host of techniques to which the very same charge can be made. There is no evidence, for example, to support the experimental administration to children of puberty blockers, cross sex hormones, and physical sex-reassignment (with its inherent castration). To the contrary is evidence that should dissuade such intrusion: the side effects of these hormones on the brain, the complications of surgery, and the high levels of suicide in its clients.

Parliaments cannot legislate on how to remove tonsils. It is not for a Parliament to decide which therapies are medically and psychologically sound and which are not. Nor is it the role of a politically appointed “Health



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Complaints Commissioner” to do so. That is the role of an independent medical and psychological board, which dispassionately considers all evidence and determines what practices are “quackery” and what are not, in a case-by-case, therapy-by-therapy examination. Whilst Parliaments cannot assume medical or psychological expertise, they can make sure that the medical and psychological boards, which do make that examination, contain members of all persuasions, and that free and open enquiry is conducted in such boards (see Part 3, Division 2, section 16, which requires that there be no religious discrimination in the conduct of qualifying bodies).

In conclusion

The Religious Discrimination Bill (Exposure Draft) sets an important criterion for all legislation in States and Territories in respect of the protection of the religious freedom of doctors not to have to refer for abortion and euthanasia.

The Bill needs to establish a parallel criterion for legislation that protects the religious freedom of patients to access therapies which enable them to live in accordance with their religious beliefs. What is “quackery” will be determined not by demagoguery in the media or in Parliament, but by free and open, independent medical boards. Parliaments are, however, required not to deny the free exercise of religion, guaranteed by the Constitution, to which patient access to therapy is integral.

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