

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE
Inquiry into exceptions and exemptions in the Equal Opportunity Act

Melbourne — 5 August 2009

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Witnesses

Bishop C. Prowse, Catholic Bishops of Victoria, and
Mr F. Moore, business manager, Catholic Archdiocese of Melbourne.

The CHAIR — The next witnesses will be Bishop Christopher Prowse, Bishop of Sale, Mr Francis Moore, Business Manager for the Catholic Archdiocese of Melbourne and Catholic Bishops of Victoria. Thank you both for attending these public hearings. I invite you to make a brief statement to the committee on the relevant issues that you consider are important to your organisation concerning this inquiry and we will follow that up with a series of questions from committee members.

Bishop PROWSE — I am Bishop Christopher Prowse, the recently installed eighth Catholic Bishop of Sale, which is in the Greater Gippsland area, and one of the signatories to the bishops' submission. I speak on behalf of all those signatories.

Prior to my being installed at Sale, I was an auxiliary bishop of the Archdiocese of Melbourne serving in both the southern and western regions. In my time in Melbourne I have at various times held the positions of vicar-general, episcopal vicar for health, episcopal vicar for social services and justice, and head of the diocese and agency and a priest in many parishes.

I attend this hearing with Mr Francis Moore, the business manager of the Catholic Archdiocese of Melbourne. I would like to make four points.

Firstly, we bishops have an unconditional and an absolute obligation, both personally and on behalf of the church, to ensure that the religious beliefs, doctrines and principles of the church are observed in all our church activities. It is in this teaching capacity that we speak for the church; on the matters before the committee we have confined ourselves to commenting on those matters which arise from this obligation. Relevantly, in a recent article commenting on legislation currently before the British Parliament, the Catholic Archbishop of Cardiff made the following observations:

Nor, however, should Catholics ignore their responsibilities: they have the freedom in a democracy to put their case and they should not be shy of doing so in a spirit of charity and openness. However, it is important to understand why Catholics have this responsibility and why they need to begin to educate secular culture about their faith even if it chooses not to agree with it.

...

The Christian life is lived in responsibility to the community of faith, its tradition and its future hope. That community is not just a sociological phenomenon. For all its many obvious and painful failings, it understands itself as sustained by the grace of Christ. And if it is to be faithful to Christ then it must also be faithful to what is the lasting universal human good. That is why so much of the Church's energy is given to the real practical works of charity which not only want to change the condition of the poor, marginalised, powerless and voiceless, but also seek to build a culture in which the human person can flourish.

That is why the Church is passionately engaged in the issues that face society and the debates that surround them. It cannot stand by while public debate is conditioned by utilitarian, economic and technological questions only. For there are deeper moral and human questions about the meaning and purpose of our lives and actions. The answer we give to these determines the sort of society we want to be.

And that is why we must resist a situation in which religion is regarded as a legally permissible private eccentricity; allowable behind closed doors once a week, but not in any way to be given expression in public or working life. That is not acceptable ... our response needs to be tailored to suit the differing circumstances: argument, where there are minds open to reason; challenge, where we are faced with unwarranted restrictions; and, where our values are denied, reclaiming in the public space our true identity as a contributor to the common good.

This committee needs to be aware that we bishops in Victoria are not usually directly responsible for the day-to-day operation of many Catholic bodies as they are often the work of religious congregations. I am aware that you have received a submission from Catholic Religious Victoria, which is the representative body for religious congregations that own and operate our major Catholic public and private hospitals, aged care providers, schools and welfare services. I encourage members of the committee to pay due consideration to the submission from Catholic Religious Victoria.

Secondly, I wish to emphasise that the Catholic Church is a major contributor to the social fabric of the Victorian community. Our works encompass a wide range of activities in areas such as primary, secondary and tertiary education, health, aged care and social welfare. I am pleased that you will hear during the course of the day from representatives of the church engaged in the provision of a wide range of services.

We are at the forefront of supporting human rights and the most marginalised in the community. I am sure members, for example, are aware of the outstanding work of the St Vincent de Paul Society and the work of the church in supporting newly arrived migrants, especially those who have come seeking asylum.

Thirdly, and a fundamental point: we consider that the exemptions and exceptions which are an integral part of the existing legislation provide the right balance between freedom of religion and freedom from discrimination. There is nothing in the options paper to indicate that any problem has been identified with the operation of the equal opportunity legislation with respect to religious agencies. Our submission supports alignment of this act with that of the charter.

The submission recognises that we do not need protection in respect of all the attributes and that drafting can always be improved. However, the case for fundamental change cannot be made on the facts. Furthermore, the Charter of Human Rights and Responsibilities explicitly identifies freedom of religion and belief as a fundamental human right, and this right should not be diminished by weakening these exemptions.

In the development of western rights theory, freedom of religion and conscience has always been afforded an elevated place. The denial of a person's right to hold and exercise their own conscience and beliefs is an effective denial of their own personhood and individuality. This special position is recognised in article 18.3 of the International Covenant on Civil and Political Rights, which places particular requirements on the limitation of conscience and religion, requiring that these be only those 'necessary' to protect the public safety, health, order, morals or fundamental rights and freedoms of others.

This special position is of considerable practical relevance as most rights issues are not attempts to assert a specific right in a moral vacuum but rather to accommodate clashes between two otherwise acknowledged rights.

The case for change is ideological and based on a fundamental misunderstanding of the church's role in society. The distinction between the core 'internal' aspects of freedom of religion, such as the right to adopt a religion and the freedom to participate in religious observance and practice, and the undertaking of so-called 'business' activities, such as in education, health, welfare et cetera, away from the 'core' activities is false and is rejected.

The theological basis of service by Catholic agencies — and I can speak as a moral theologian — is to witness to the founding inspiration expressed in Christ's injunction to love your neighbour. That inspiration is for Catholics to provide genuine service to the community, but most particularly to those who are in need.

My fourth and final point is one that the proponents of change need to address: weakening or eliminating the religious exemptions would, in effect, force the secularisation of service delivery by religious agencies. The likely effect of such proposals would be a profoundly negative effect on two fronts. It would go to the heart of the religious motivation that leads people to be involved in ownership and governance and as an employee or volunteer.

It would also go to the heart of the motivation that leads people, whether Catholic or not, to prefer the services of many Catholic providers. The popularity of Catholic providers is, I suggest, largely attributable to the mission and witness those providers demonstrate in what they do, how they do it and why they do it.

Thank you for providing this opportunity to address you today. We are happy to address any questions you may have in relation to our submission.

The CHAIR — Thank you. I have read your submission and a number of others from religious organisations. The issue of attributes and which attributes should be exempted seems to come up in many of the submissions. It seems to me that where religious belief and religious freedom conflict with certain attributes or create a justification for discrimination seems to be around marriage, family relations, religious belief and sexuality. There is a whole series of others where it seems to me there is an opportunity for reform.

The one I am interested is the attribute of gender in schools and Catholic organisations. Is there a need to have the attribute of gender as a genuine attribute that should be exempted from those areas?

Bishop PROWSE — The Catholic Church bases its vision or mission very much on family life and marital life. That is our core business. We say that a healthy society comes through the family and an unhealthy one comes through troubles with the family. From that area, we then look at employment and other matters as well. Rather than move into specific areas of gender identity, which quite often are worked out at the local rather than the global level, our feet are very much and firmly planted on the foundation of family life.

Mr MOORE — I think also that the issue of gender gives rise to cross-gender and that would clearly be a problem within Catholic schools, in terms of the modelling that is provided by the teachers to the students in the schools.

The CHAIR — I meant whether you wanted to be able to discriminate in employment terms, in employing men and women. You have made a case that issues such as age or race are not attributes that the Catholic Church would want to necessarily maintain. I wonder whether gender is an issue that you want to maintain as an attribute that you could discriminate around?

Mr MOORE — In the context of the school system, we have girls schools and boys schools. There might be circumstances in which it is appropriate in a girls school for female staff to be undertaking work in that school, and similarly in a boys school. We cannot I think rule out that gender would be required as an issue around which we need to protect our own religious doctrines, beliefs and principles.

The CHAIR — Yesterday we had a number of people from gay and lesbian organisations speak to us. One of the issues they raised in terms of sexuality was that their belief is that many members of their community are working in the Catholic or private school system but have to keep everything quiet or silent — and stay in the closet, in their terms. I am wondering how things might work in practice.

Bishop PROWSE — The Catholic Church's attitude to these important areas is well known. We would not want to have working under our employ people who are undermining our ethos and the general direction in which we move, which we say comes from our religious theological basis in the scripture and tradition and the way it is articulated in our times through the bishops and particularly the Pope. So the undermining of that would be seen in a very negative light.

However, we are not ethical or moral policemen and we do not go around pointing the finger at people. We are a very compassionate community. I think we do that very well despite the stereotypes the place is under sometimes. A lot of these issues are worked out at a local level, but we would not want persons or communities undermining our well-known and well-founded teachings on these matters particularly in our own agencies.

The CHAIR — Just finally, and just to go back to the issue of attributes, and we can use the attribute of age or the attribute of race: I understand from what you said that they are not ones that you need to maintain in terms of those — —

Mr MOORE — I think the issue with those is that it would be against church teaching to discriminate on the basis of race.

Bishop PROWSE — Sorry, I could not hear that.

The CHAIR — Physical impairment.

Mr MOORE — It would be against church teaching to discriminate on the basis of race, and I think we can safely say that I do not think the committee could point to a circumstance where the church has discriminated on the basis of race. In fact, the church would claim a very proud history of supporting people of every race as they arrived in our country.

The CHAIR — Yes. The reason I ask that is because one of the things the committee might consider is just narrowing the attributes down to the ones that could potentially conflict with religious freedoms — —

Mrs PEULICH — Chair, you have now asked four questions. Do the rest of us get a go?

Mr BROOKS — That is rich coming from you, Inga.

The CHAIR — Do you want to limit the number of questions?

Mrs PEULICH — I know there is a specified time for each witness, and ordinary practice has been that members get a question each. Does that mean the rest of us at the end of the table will not have a chance — —

The CHAIR — I am just trying to draw out the question of attributes.

Mrs PEULICH — Thank you.

The CHAIR — It is a matter of clarification.

Mr MOORE — I think to answer the question, in relation to attributes like race and age, for example, we do not discriminate on those bases, and we would say that it would be inconsistent or in conflict with church teaching for us to do so. We do not have a problem with that.

Mrs PEULICH — First of all may I pay tribute to the good work of the Catholic Church, certainly in my life, and the role that it played in the downfall of communism. We were able to emigrate from the former communist Yugoslavia through the very good work of the Catholic Church and through a system of loans. I give credit to the wonderful role that the church has played in history.

Bishop PROWSE — Thank you.

Mrs PEULICH — However, one thing perturbed me yesterday, and this is on the other side of the coin. In evidence given — and I cannot recall exactly which witness — it was alleged that religious schools and religious organisations create enclaves, and dare I say that obviously the Catholic Church would be a very large enclave, that deny people within its influence — students and so forth — an opportunity of learning about alternative lifestyles and values, and therefore by inference somehow they were lesser beings for it. Are you able to comment on that?

Bishop PROWSE — It is a surprising comment. In the Catholic community we have robust discussions on all sorts of things. An enclave is a troublesome word. It suggests that we are some sort of clique or sect which is entirely the opposite of what we are, coming from our religious inspiration using the words of Christ, ‘The light on the hill’ and ‘The salt of the earth’.

In the midst of that robust discussion, however, we are unapologetic for our fundamental beliefs which are based on the teachings of the scripture and from our 2000 years of tradition which we re-express in every age. If some people feel that is belittling them or shutting them up, then as one of the bishops I apologise because that is not our idea.

On the other hand to undermine our ethos — to stand up and say in particular that the organisation where the person is a leader, perhaps a teacher is undermining our teaching clearly has to be addressed and has to be looked at and perhaps corrected. That makes eminent sense.

Mr MOORE — I think the other thing I would say is that the popularity of the services we provide, whether in education, health or welfare, are testament to the value the community attaches to the manner and way in which we deliver our services.

Bishop PROWSE — It is interesting that despite the public image that the church is on the wane, in fact the church’s services have never been more popular, and although we are having challenging times here in secular Australia I can assure you that as a global church there are parts of the world where really the voice of the Catholic Church is the only proponent of freedom.

It is essential that the freedom of religion happens here in this complex but wonderful country of Australia and the state of Victoria. It is something we need to work through very carefully, and that is why we are delighted to have this opportunity to discuss this.

Mr O’DONOHUE — Thank you, Bishop, for your evidence this morning. Yesterday several witnesses put to us the proposition that the behaviour of teachers and others could be influenced by an employment contract, and that would therefore necessitate the broad exemption which religious organisations enjoy. As that was put specifically by several witnesses, would you like to make a comment about that?

Mr MOORE — I am not quite sure that I understand the point. If the point is that students in a school — and I understand you are talking about a school context — might somehow look to their teachers for a way of living their lives, then that is fundamental to the reason why we think we need to protect the capacity of the church to employ teachers who will model behaviour that is consistent with church teaching.

Ms PULFORD — Thank you very much, in particular for clarifying some of the different circumstances around the different sets of attributes, because as you are probably aware we have all had considerable correspondence from people arguing for a position of no change, which of course is difficult to reconcile with what we all know about the Catholic Church and its fine social justice history in the areas of race as you talked about earlier.

Again this is something that has been the subject of a little commentary in recent weeks. Could you please make some comments about the example that has been cited occasionally about the cleaning contractor who perhaps has no contact with students in a school setting and the requirement for them to be of the same religious conviction as the rest of the school body?

Bishop PROWSE — Yes. That is a good question. That example has arisen from this strange distinction made in the options paper between core activities and peripheral activities. We do not accept that at all. For instance, in a Catholic community although as I said there is robust discussion within our community, we are all moving in the same direction. It is not just that the person might be the head of the school or the head of the agency, but all the people are actively involved, and even the people who are in maintenance, or, as you mentioned the gardener or the person who has an important job.

These jobs are not inferior to us; they are all motivated by the same transcendent value system. You do not have to be a Catholic to embrace that value system. In our agencies we have many people who are not Catholic or people of different beliefs or no belief in fact, but they are animated by a religious motivation and inspiration. This goes across, it is a holistic thing; it is the whole package. It is not simply some people but not others. This is why this distinction is an odd one, which we reject categorically. I am glad you brought that question up to enable me to express that point. Thank you.

Ms PULFORD — Thank you.

Mr LANGUILLER — Bishop, thank you. I must confess I am a Catholic myself, although my mother reckons I am not a very good one.

Bishop PROWSE — You must come to confession then; not just confess!

Mr LANGUILLER — We are a very broad church, Bishop! I assume you will see this committee as a very broad church as well. In contrast to my colleague, I was once a refugee persecuted for my left-wing views in Latin America. I want to thank the church again, because the church was there defending human rights, as I am sure it was in your case.

In my electorate I know a number of schools that have kids who are Muslims, Hindus; from all sorts of religious backgrounds. I wonder whether you can comment on that in terms of the experience of your organisations and schools, particularly in terms of accommodating kids who are — publicly, incidentally — Muslims, for example?

Bishop PROWSE — The Catholic ethos is animating many people, who are religious or not. Many times they are knocking on the door of our agencies because we are not a sect or a club; we are a community that is open and universal — that is what the word ‘Catholic’ means. We allow and gratefully accept people from different religious backgrounds, as long as they do not upset the threshold, as it is a Catholic community and there has to be a threshold level where the majority of people are Catholic, otherwise it would undermine our vision.

In every community I think we will find people from not only different cultures but also different faiths. They are very welcome; indeed they help with the inter-religious dialogue imperative that is now becoming not just something on the periphery but towards the centre of a healthy society. They make good healthy Catholic communities healthier, and that will continue.

The CHAIR — I have to cut off discussion there. We are running a bit behind schedule. I would like to thank you for the contribution; it was really valuable. I really appreciate the time that you have put in to come to the committee and all the work that has been done in terms of the submission. It is, I think, adding to the work of the committee. Thank you very much.

Bishop PROWSE — Thank you so much; I appreciate that.

Witnesses withdrew.