

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

Melbourne — 5 August 2009

Members

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Witnesses

Mr D. Fitzgerald, Executive Director, Catholic Social Services Victoria  
Ms A. Tymensen, Director, Centacare Gippsland, and  
Mr B. Dalton, Chief Executive Officer, Society of St Vincent de Paul (Victoria).

**The CHAIR** — The next witnesses will be from Catholic Social Services. I would like to introduce Brian Dalton, Arda Tymensen and Denis Fitzgerald. Thanks for coming to the public hearings. The purpose of these hearings is to report to the Parliament whether any amendments should be to the exceptions and exemptions of the Equal Opportunity Act 1995.

Anything you say or publish before the committee today is protected by parliamentary privilege. However, once you leave the hearing anything you say or publish outside the room is not so prohibited. I would like to invite you know to make a brief statement to the committee on the relevant issues that you consider important to your organisation concerning the inquiry, and we will follow it up with questions. Thank you.

**Mr FITZGERALD** — Thank you for the opportunity to appear before the committee today. The opportunity is appreciated because of the importance for the Catholic Social Services sector and the church as a whole, the importance of the promotion of human rights, and the objectives of the Equal Opportunity Act because of the importance as part of that broad fabric of protection of human rights and respect for freedom of religion.

Catholic Social Services is represented here today, as the chairman said, by Arda Tymensen, director of Centacare Gippsland, provider of counselling, marriage preparation, workplace support, community development services through the Greater Gippsland region; and Mr Brian Dalton, the CEO of the St Vincent de Paul Society in Victoria, one of the largest providers of welfare and community services spread throughout the state with particular emphasis in material support, aged-care, disability support, homelessness and executive director of Catholic Social Services, Victoria. Arda and Brian are members of the council.

As our submission outlines, our member agencies provide services on the basis of need, not just to the Catholic community but to those in most need throughout the community and through the provision of those services. Among other things we seek to build a more just and compassionate society. This charitable and welfare work is an integral part of the church's mission.

It is clearly established from the life and teachings of Jesus Christ. It has been taught through the ages and most recently reiterated in letters to the whole church by the current Pope Benedict XVI. As he put it, charity and service are integral to our calling as Christians and to the work of the church at all levels. Our members are established through religious purposes, and they are acting in conformity with the teachings of the church. We will work on behalf of the Christian community to engage in services to the community as a whole, especially those who are marginalised or disadvantaged.

In order to effectively carry out this work, our mission on behalf of the church, Catholic organisations need to be able to adopt employment practices that will reflect the religious nature of our organisations. There are three areas where we need to do this, as our submission points out. In general we need to be able to recruit people whose views are aligned with the social mission of the church and whose conduct will not compromise or undermine the witness of the church. That goes to some of the questions asked before of Bishop Prowse and Mr Moore.

We need to be able to take into account religious affiliation in the recruitment of our senior staff in particular. If senior management of the organisation does not as a group retain a close connection with the church, then the organisation over time will cease to be Catholic. That does not mean that all of our senior people need to be Catholic — some of our distinguished leaders in the sector are not Catholic — but it does mean that we need a critical mass within the leadership group of the organisation to retain affiliation with the Catholic church or, as I said, the organisation will cease to be identified with Catholic.

There are some particular service areas where the beliefs and religious commitment of staff are relevant to the delivery of services — for example, marriage counselling. It would be untenable to have someone who did not believe in and accept the sacredness and importance of marriage providing instruction to people entering into marriage.

The religious natures of our organisations impact on our service delivery. As Bishop Prowse pointed out, they are the motivator, they drive the compassion and service of our staff, of our volunteers and of our boards. In some areas the nature of the organisation needs to be respected by law. Catholic agencies share the compassion and professional competence of nearly all other agencies working in the broad social services sector in Australia. But we have some further particular commitments.

Support for the rights of the unborn is a tenet of the church that our agencies, very strongly, come in behind. We also work in support of the sanctity of the life of those who are elderly and infirm. Our aged care sector is not a dominant part of the aged care sector, but it is an extremely important service, and the ethos within those services is religiously based.

People seek out those services because of that ethos, and we need the support of the legal system to be able to deliver the services of support that are currently valued. The promotion of the family based on marriage as a natural environment for the raising of children is another characteristic of Catholic Social Services. Freedom under the law to apply these principles is required for Catholic agencies to be able to continue the provision of the wide range of care we currently deliver.

The Equal Opportunity Act currently recognises this right. Section 75(2) in particular, which you would know well, permits action that would otherwise be discriminatory but which ‘conforms with the doctrines of the religion’ or ‘is necessary to avoid injury to the religious sensitivities’. These exemptions are quite limited. The Catholic welfare agencies’ action that ‘conforms with the doctrines of the religion’ or ‘is necessary to avoid injury to the religious sensitivities’ would rarely require the activation of the exemptions.

People apply to work in our agencies because they identify with the mission. Our agencies, as do government agencies — where I worked for a long time — recruit for mission, so people who come to work for us are aligned with Catholic social teaching. We make it clear pre-employment — in advertisements, in the way agencies portray themselves publicly — that the conduct of those working with the agencies has to be consistent with the witness of the church. As was discussed with Bishop Prowse before, action that conforms with Catholic doctrine does not allow for discrimination on the basis of race, age, disability or several of the other attributes outlined in the act.

A key issue is whether we have the right balance in Victoria at the moment between freedom of religion and other rights. Freedom of religion is a fundamental right. It goes to the core of a person’s being. This is recognised in the International Covenant on Civil and Political Rights, which — as you would know — identifies the freedom of thought, conscience, religion and belief as rights from which there can be no derogation. The covenant talks about action on the basis of one’s religion or beliefs:

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.

Bishop Prowse alluded to that same statement. It is a central point, I think, for the activation of religious freedom in our society. As discussed before, there is indeed scope to narrow the broad exemption from part 3 of the act without compromising religious freedom.

Our submission lays it out that of the attributes listed in section 6 of the act, it is those that relate primarily to marriage, family relations, religious belief and sexuality — so marriage, family relations, religious belief and sexuality — that could in some circumstances conflict with the obligations of Catholic organisations.

Catholic Social Services agencies would not seek to discriminate on the basis of the remaining attributes — age, impairment, industrial activity, physical features, pregnancy or race — nor would Catholic social service agencies discriminate on the basis of gender, except in the special cases relating to ministers of religion, members of a religious order or religious society. We would not discriminate on the basis of gender, in general employment or in the delivery of services.

In conclusion, Catholic social service agencies need to be able to take religious requirements and beliefs into account in their staffing decisions and to deliver services in accordance with the requirements of Catholic teaching. These freedoms are necessary for the Catholic Church and community, acting through Catholic agencies, to live out the requirements of their faith. They are also necessary for us to continue the provision of their wide range of services and social services and support for the general community. This freedom of religion would not be impaired by some narrowing of the existing exemptions, as outlined in our submission. Thank you.

**The CHAIR** — Thank you for that. I really appreciate you trying to identify those attributes that may conflict with religious freedoms. That has been really useful. Would it be more difficult to seek a VCAT

exemption in all those cases? What is your attitude towards seeking those exemptions rather than having them within the actual act?

**Mr FITZGERALD** — I do not think it is a role of VCAT to decide what is a doctrine of a particular church. You would need considerable expertise. The taxation list at VCAT draws on experts in the particular lines of taxation. It is up to each religion in our society to determine what is a doctrine of the religion. Christianity, as you know well, has different denominations. In some of these areas the Catholic Church has a different doctrine from the others that you will hear from today.

We share doctrines in common with people of Moslem background, or Buddhist and many other areas, but we have our own special areas. I do not think any government agency in Australia can have expertise in that. It would be impracticable as well, because most decisions are made at a very devolved level. The St Vincent de Paul Society is stretched across the state. Many of our other agencies have many branch officers and employment decisions; delivery of services is not delivered by a centralised bureaucracy.

**Mr SMITH** — I know this is going to be a difficult question, simply given the broad range of services you provide, but I was after some practical examples of how some of those services might be diminished if these exceptions were removed.

**Mr FITZGERALD** — Marriage education would be much more difficult. There are agencies in Victoria that offer relationship education. Relationships Australia is one of the largest providers. People choose to go to Relationships Australia because of the broader approach to relationships that they seek to strengthen people to enter into. If we could not take into account the religious affiliations of people who deliver those services, we could not deliver the services that we as the church need to deliver.

In aged care it would not be unworkable, because we would have to go back to scratch to work out how to move forward, but for an aged care facility to have to employ someone who had different religious or social views, whatever the motivation, to those coming from our religious background to end-of-life issues would make the current level of care unmanageable. You would need a common sense of purpose, a common mission, a common identification, with the basic tenets underpinning the care that you give, to be able to run an aged care service where everybody has confidence in the standard and the detail of the care that is provided.

**Mrs PEULICH** — Thank you very much for that evidence. I wholly agree with much of what you have said and in particular have concerns about secular tribunals making determinations about issues of religious principle and belief, and I think a number of literary works have been inspired by those types of attempts, but what I would like to put to you is the view that was put to us yesterday and via some of the submissions, and that is that in defending the freedom of religion — and I wholly endorse your comments — that you are in effect denying others who do not share your views on sexuality, on marriage and abortion their rights and freedoms. Could you just comment on that?

**Mr FITZGERALD** — Freedom of religion is a fundamental human right. Distinction is made in the international instruments between levels of rights. Freedom of religion is up the top — a right from which there can be no derogation — a quote that Bishop Prowse gave and that I repeated on the action arising from that, and is not to be interfered with except in very strict circumstances. So I think there is a hierarchy of rights.

I think freedom of religion goes to the heart of a person and collectively to the heart of a society. At the same time, we do not impinge significantly on the rights of others. There are no cases to my knowledge in Victoria of people who have come forward and felt that their rights have been offended or offended against by Catholic social service agencies. Some choose not to work with us. One could argue that that is a derogation of rights in that they cannot work with the whole field of social service agencies because some of those agencies are Catholic.

I do not think the social service sector in a society can run if employment and practice in every agency has to be open to everyone in the society. I think choices need to be made if the Catholic social services sector is to exist, if the catholic community is to carry out its core mission through these agencies to the society as a whole.

**Mrs PEULICH** — So you saying it is a mixed economy of service providers, so rights are not denied?

**Mr FITZGERALD** — That is part of what I am saying, yes.

**Ms PULFORD** — Thank you very much for your presentation this morning. I represent a large regional and rural electorate, and I did note in the submission a percentage — I cannot find it right now, but a percentage was given — that is Catholic Social Services' share of service provision in an incredibly broad range of services. I was wondering if there are, to the best of your knowledge, many areas in Victoria where your service providers are the only service providers?

**Mr FITZGERALD** — I do not think that is the case. We are present in most of Victoria, but to my knowledge there are others in most areas, but I would defer to Arda, who is an expert on rural Victoria.

**Ms TYMENSEN** — Definitely in Gippsland there are many other service providers. There are definitely Christian ones; there is Anglicare and there is Uniting Care. There is also Ponton, a community not-for-profit in Gippsland. There is Berry Street, Drug Community Health. There are lots.

**Mr JASPER** — Through you, Chair, my question is quite simple: do you see any advantages to your organisation's excellent services that you provide with changes to the act as proposed in this investigation?

**Mr FITZGERALD** — No advantage to our organisation, no, but at the same time we respect that from time to time reviews need to be made. Legislation needs to be checked to see how it is working, but it seems to us that it is working quite well. We do not have examples of complaints against our agencies or our sectors in the areas covered here, so we see no advantages, but we see no disadvantage in some of those attributes being removed from the general exemption.

**Mr BROOKS** — In the public debate that surrounded this particular review, a few people have focused on the issue of government funding being a differentiating factor when it comes to these issues; in other words, people arguing that if government funds are provided to a religious service provider, then that changes the game, if you like, that whereas if the religious service is providing service on its own without any government assistance, it should be free to operate as it does, but if it receives government funds, it should not discriminate or should not be exempted from the outcome. Could you comment on that particular position?

**Mr FITZGERALD** — Yes. Government funding does not change the nature of an organisation. An organisation is established for a purpose — in our case for a religious purpose, and we act in conformity with the tenets of religion to deliver services to the community as a whole as appropriate to the particular service and the particular location.

Government funding is to deliver particular services. Our agencies are very good at that. Our agencies attract funding from lots of parts of government. Much of that funding is not sought out. There are very many cases where governments ring up because they know that the agency is active there, they want the services delivered.

Why should governments, when they see an agency operating effectively in delivering services — and it was humbling to hear some of the speakers before talk about services they have been part of over the decades — seek to change the nature of those agencies in order that the agencies be supported to continue doing what they are already doing well? Arda, could you talk about governments' approach to you to take on work?

**Ms TYMENSEN** — We are actually asked to do certain — like with the bushfire recovery, we were given money without having to ask for it, so they were obviously happy with the work we were doing. But in Gippsland too, and I just mentioned the different agencies we have — Anglicare, Uniting Care and I did not mention the Salvation Army — these are all religious organisations. I presume if they all went and there were just government agencies, it would change the whole ball game, would it not? That is how I see it.

**Mr SMITH** — One would hope that you are receiving funding because of the quality of services you are providing rather than your conforming to any government's ideology.

**Ms TYMENSEN** — Absolutely, that is right.

**Mr DALTON** — Similarly, if I can add, in terms of St Vincent de Paul, in terms of the welfare arm of our organisation, that sector of our organisation receives probably about 4 per cent government funding and in recent times governments have approached us, particularly in areas like bushfire recovery and things like that, in terms of additional funding and again it is for the purposes of the work we do.

**The CHAIR** — I have to close off there. All MPs know your organisations and their valuable work. We are very familiar with that, so I do not think you need to justify any of that to us. I really want to thank you for your attendance and the time you put into the submission. I must say it was a particularly good submission, and it is very useful to the deliberations of this committee. Thank you very much.

**Witnesses withdrew.**