



because Australians should be free to believe

Submission on Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013

Introduction

Freedom 4 Faith (F4F) is an organisation that was formed to educate the Christian church and wider public on issues relating to freedom of religion in Australia. F4F's leadership team includes senior Christian leaders from the Anglican, Baptist, Pentecostal, Presbyterian and Seventh-day Adventist traditions, as well as legal experts.

The purpose of this brief submission is essentially twofold:

1. To advocate for the retention of exemptions for religious aged care providers; and
2. To request an additional exemption that would enable individuals to act in accordance with the doctrines, beliefs or principles of their religion.

In doing so, Freedom 4 Faith seeks to assist the government in striking the appropriate balance between freedom of religion and the right to non-discrimination.

Exemptions for religious aged care providers

While the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* ("the Bill") does not remove any of the exemptions currently afforded to religious organisations, F4F is aware that the Australian Human Rights Commission (AHRC) has called for the Bill to prohibit discrimination against same sex couples in relation to the provision of aged care.¹ This was, of course, a provision in the exposure draft of the *Human Rights and Anti-Discrimination Bill 2012* which has now been withdrawn.

¹ <http://www.humanrights.gov.au/news/media-releases/there-should-be-no-exemption-discrimination-aged-care-2013>

F4F understands entirely the need for same sex couples to have appropriate aged care services like anyone else in the community, and supports appropriate measures to ensure that any difficulties in this area are addressed. F4F considers, however, that mandating this provision through anti-discrimination law is an inappropriate and unnecessary strategy. This issue is best dealt with by discussion with the various service providers, and on the basis of reliable information that there is in fact a problem.

According to data from the 2011 census, only 0.7% of all couples in Australia are in same sex relationships (33,714 couples). This is comparable to data from other countries. The proportion of same sex couples in the population varies with age. Only 0.1% of all partners aged 65 years and over are in same sex relationships. That is, 99.9% of all partners over the age of 65 are in heterosexual relationships.²

Many people who need residential aged care are likely to go into such care following the death of their partner or when the partner cannot continue to care for them at home. It follows that even where a person is, or has been, in a couple relationship, he or she will enter a care facility without that partner. Only an infinitesimally small number of same-sex couples are likely to need residential aged care as a couple.

There is no clear evidence that there is any problem concerning access to aged care services that needs to be addressed. Indeed even the AHRC acknowledges this. In calling for an amendment to the Bill, the Commission argued that this “actually reflects current policies of most church based aged care providers.”³ If that is so, it begs the question why any legislation is needed.

F4F is opposed to legislation which creates grounds for disputation and complaint when there is absolutely no demonstrated need for regulation. F4F is also concerned that legislative amendments of this kind are the thin end of the wedge, gradually eroding the religious exceptions in anti-discrimination law in pursuit of a policy agenda that is antithetical to religious faith.

Governments fund a diverse range of aged care providers in Australia in a non-discriminatory manner, and that is appropriate. Our elderly population have paid their taxes and Medicare levies, and made their contribution to the life of the country. Many old people are devoutly religious and they, or their families, choose aged care facilities which are based upon a strong religious foundation. It is important that people retain the freedom to choose a religiously based aged care service, and for that service to be able to adhere to its religious values. By helping to fund a diverse range of aged care

² Australian Bureau of Statistics, *Same Sex Couple Families*, 28th June 2012.

³ <http://www.humanrights.gov.au/news/media-releases/there-should-be-no-exemption-discrimination-aged-care-2013>

options without discriminating against faith-based services, the Government can ensure maximum freedom of choice for everyone in the community to find a facility that suits their needs, including, of course, same sex couples.

In the absence of a clearly and reliably identified problem – and the AHRC appears to acknowledge there is none – there is no basis for amending the current Bill.

For these reasons, F4F is opposed to the proposed restraints on the freedom of providers and users of aged care services.

Exemption for individuals on the grounds of religious beliefs or principles

The right to freedom of religion is articulated by article 18 of the International Covenant on Civil and Political Rights (ICCPR), which reads:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

The Commonwealth *Sex Discrimination Act 1984* (“the Act”) seeks to protect this right by carving out certain exemptions for religious organisations. For example, section 37(d) of the Act indicates that it is not unlawful for a body established for religious purposes to exercise discrimination where doing so “conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.”

Such exemptions are necessary to ensure that religious groups can uphold their unique teachings and beliefs. This is particularly important in Australia where there are many religious communities which adhere to traditional views on sex, marriage and the family. While such views may differ from mainstream opinion, they are nonetheless deserving of respect in a society that is multi-cultural and built on liberal democratic ideals. This is what the exemptions that the Act affords to religious groups seek to do.

However, the right to freedom of religion is not just a group right i.e. a right exercised in association with others. It is also a right exercised in the day-to-day lives of individuals. Article 18(1) of the ICCPR recognises this where it states that freedom of thought, conscience and religion includes the freedom ‘individually’ to manifest one’s religion or belief. The right to manifest religion or belief does not merely extend to worship, but also to ‘observance, practice and teaching.’ An individual’s religious observance, practice and teaching involves much more than prayer or other acts of piety that may occur behind closed doors. Rather, it informs all aspects of a person’s life, including their

work. Article 18(1) explicitly recognises this when it states that the right to freedom of religion includes the freedom to manifest one's religion or belief in 'public or private.'

Despite this, the current Act offers no protection for individuals who seek to live out their faith in work and other areas public life. For this reason, Freedom 4 Faith strongly recommends that the government implement an exemption clause along the lines of section 84 of the Victorian *Equal Opportunity Act 2010*, which reads:

"Nothing in Part 4 applies to discrimination by a person against another person on the basis of that person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary for the first person to comply to the doctrines, beliefs or principles of their religion."

The implementation of such a clause would better reflect article 18, which is a proper articulation of the right to freedom of conscience, religion and belief. Obviously, however, such a clause would need to be amended to reflect the relevant attributes that the Bill proposes to protect.

Freedom 4 Faith is aware of cases in the United Kingdom where individuals have lost their jobs because they have expressed a reservation about providing a service that conflict with their religious convictions. For example, Christian Concern reports:

"Gary McFarlane, a relationship counsellor from Bristol, was dismissed for gross conduct by Relate after he refused to confirm that he would provide directive sex therapy to homosexual couples due to his religious beliefs. Mr McFarlane had never refused to provide sex therapy to a 'live couple' but had told his managers that if the issue arose he would discuss it with them."⁴

One may not understand or agree with Mr McFarlane's position regarding the provision of directive sex therapy to same sex couples. However, government funded entities such as 'Relate' in the UK ought to be able to accommodate a diversity of opinions that exist in a multi-cultural society. In this instance, no one was denied a service, and there was no reason why 'Relate' could not have accommodated Mr McFarlane's religious beliefs by assigning him work that he could carry out professionally and in good conscience.

Thus, the inclusion of an exemption clause along the lines of section 84 from the Victorian *Equal Opportunity Act 2010* would assist in avoiding unnecessary litigation against those who adhere to traditional views on marriage, sex and family life.

⁴ <http://www.christianconcern.com/cases/gary-mcfarlane>

Conclusion

The purpose of this brief submission is to ensure that the government strikes the appropriate balance between the right to freedom of religion and the right to non-discrimination. Freedom 4 Faith proposes that an appropriate balance will only be struck if the government upholds its commitment to retaining exemptions for religious bodies, including aged care facilities. However, the Act would be much improved if it implemented an additional exemption clause that recognised individual expressions of religious freedom.