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Draft speech - Law & Religion Symposium at Brigham Young University

Theme: Religious Rights in a Pluralistic World

(12 minutes)

Introduction

Firstly, thanks very much to Brigham Young University for organising this wonderful conference and for bringing us all together.

Australia is a pluralist society. We are blessed with freedom, a stable system of government and a rich mix of ethnic, racial and religious groups. But inherent in a pluralist society are different views and beliefs and the challenge of how to accommodate those different perspectives.

The Catholic Church in Australia is an established part of the community, with a quarter of Australians identifying as Catholic, with one in five children attending Catholic schools and Catholic hospitals providing about ten percent of healthcare services across the nation.

But there has been a significant change in the environment facing the Church and other religious groups in recent years:

- The Catholic Church's credibility in the Australian community has been damaged over years by revelations of child sexual abuse and the terrible toll that has inflicted on survivors. This has been particularly highlighted since the Royal Commission into Institutional Responses to Child Sexual Abuse began in 2013.
- There has also been a decline in religious observance in the community, including among Catholics.
- The right to be free from discrimination and the right to equality have become dominating rights in the minds of some members of the public.

These factors mean the challenge of communicating religious views to the broader community is only increasing.

There is a persistent theme put by some in public debate that all points of view are valid, except if the person who holds them has a religious belief. I'm attracted to the comment by the University of Notre Dame Australia's Professor Iain Benson, who counters that by saying that everyone's a "believer" – the only question is what we believe in.

With so many competing beliefs in the country, religious groups need to keep exercising their right to participate in the public life of the nation.

Overview

I want to briefly explore two challenges religious groups in Australia have experienced this year where differences of view emerged on allowing religious bodies like churches and schools to determine who they employ. The first was a policy issue that appeared in this year's national

election, where there was a debate over the right of religious groups to hire staff who support their mission. The second is underway now in the Australian state of Victoria, where the government there wants to restrict the right of religious groups to hire the staff they want.

Exceptions to anti-discrimination legislation

I will just quickly explain the broad legal context for those challenges we face.

In Australia one of the principle ways religious freedom is recognised is through exceptions to anti-discrimination law. The exceptions are designed to allow religious groups to operate by their beliefs, including determining who they employ in their offices and agencies.

Employment policies in religious organisations are a complex area because in some agencies there may only be sensitivities about the religious commitment of people employed in senior roles. In institutions such as schools, the balance moves towards ensuring all staff support the values and ethos of the school both in what they say and in how they live their lives.

The national government and every Australian state have some exceptions to discrimination laws for religious groups.¹

The great difficulty of such a system is that it presents religious freedom as a negative right to get out of something rather than a positive right to pursue our religious mission.

Rather than have religious freedom expressly acknowledged in a positive way in legislation as an important right that needs to be balanced with other important rights, it is characterised by some as a right to discriminate.

The Australian Catholic Bishops Conference has argued that “... religious freedom is not a special permission to discriminate granted by government in contradiction to the general law, but a fundamental human right that government is obliged to protect. To make this clear ..., the language of exemptions and exceptions should be replaced in legislation with language that recognises and accommodates the overlapping rights and freedoms that co-exist in a pluralist society such as Australia, without devaluing them.”²

What religious groups want is the right to be able to employ people who are supportive of their mission. The ability to hire staff who support the religious mission and demonstrate that support in how they live their lives is of particular importance in the schools sector which is tasked with passing on important values and beliefs.

National election

So it is in that context that a minor party, the Australian Greens, launched an election policy in May on the International Day Against Homophobia, Biphobia and Transphobia, which they said would “strengthen anti-discrimination laws by eliminating exemptions that currently enable religious organisations to discriminate based on sexuality.”³

Further, they stated that “under current anti-discrimination laws, a gay man can be fired from working at a private school and a transgender person can be turned away from a religious homeless

¹ Evans, 148, 149

² Ref submission

³ Greens LGBTIQ policy

shelter. We shouldn't be giving religious organisations a get-out-of-jail-free card and the right to discriminate."⁴

Firstly I want to be clear that Catholic health and welfare services are committed to serving everyone without discrimination, noting there are some services not provided because of our religious beliefs.

But I want to concentrate on the implications for schools, because a Greens senator said "I know people who teach in religious schools and are afraid to come out about sexuality. How can that be allowed? Most people would recognise that sexuality doesn't impact on your ability to do your job."⁵

Pope Francis himself has been quite clear on this general issue, saying: "if someone is gay and is searching for the Lord and has good will, then who am I to judge him?"⁶

When asked about these comments some years later, Pope Francis said: "I was paraphrasing by heart the Catechism of the Catholic Church where it says that [gay] people should be treated with delicacy and not be marginalised."⁷

So it is clear that a gay person should be assessed for employment on the same basis as anyone else. That is, staff in a school could reasonably be expected to support the teachings of the particular religion, to not undermine that teaching and to act as role models to their students.

There seems to be a significant misunderstanding here between what the Catholic Church teaches about gay people and what some members of the public and particularly some politicians understand. There's a need for more reflection on how to better communicate our message.

Victorian legislation

The second significant challenge facing religious groups in Australia this year is legislation put forward by the Victorian Government in August.

Religious groups at the moment can use exceptions to anti-discrimination laws that allow them to hire suitable staff. The Victorian Government wants to impose a new inherent requirements test on religious bodies and schools. The test would be a defence against breaking the anti-discrimination provisions of the law.

The Attorney General, Martin Pakula, said: "... the defence will only be available where conformity with religious doctrines, beliefs or principles is an inherent requirement of the job in question, and, because of that particular attribute, an employee or job applicant does not meet that inherent requirement."⁸

⁴ Media statement, Australian Greens launch LGBTIQ policy package on IDAHOBIT, 17 May 2016. Senators Janet Rice and Robert Simms.

⁵ Karp, P, Greens promise to end religious exemptions to Sex Discrimination Act. The Guardian Australia, 17 May 2016.

⁶ Apostolic Journey to Rio de Janeiro on the occasion of the XXVIII World Youth Day. Press Conference of Pope Francis during the return flight. Papal Flight, Sunday, 28 July 2013.

http://w2.vatican.va/content/francesco/en/speeches/2013/july/documents/papa-francesco_20130728_gmg-conferenza-stampa.html

⁷ The Name of God is Mercy

⁸ Pakula, Martin, Second Reading Speech on the *Equal Opportunity Amendment (Religious Exceptions) Bill 2016*. Victorian Legislative Assembly Hansard, 31 August 2016. Page 3235.

Explaining the Government's motivation, the Attorney General said: "we respect people's right to religious expression, but not at the cost of equality."⁹

So in the case of a religious school, it might be argued that it is not an inherent job requirement for a gardener or cleaner to be "in conformity with religious doctrines, beliefs or principles". You could also envisage someone arguing a science or mathematics teacher does not have an inherent requirement to be in accord with religious doctrine.

This obviously has important implications for the freedom of schools to determine who they employ and the religious culture they can create in the school by hiring staff who have common beliefs.

The legislation was passed by the Legislative Assembly – the government-controlled lower house of parliament – in September¹⁰ and is due to be considered by the upper house, the Legislative Council, as early as Tuesday, 11 October.

Conclusions

It is the nature of pluralist societies that there will be differences of opinion and the challenge is always how to accommodate different beliefs. In Australia, religious groups need to constantly reapply themselves to explaining their interest in manifesting their religious beliefs and the value that has for their religious community, but also for the broader community. Exceptions to anti-discrimination law will be an ongoing debate.

⁹ Cook, H and Jacks, T, Discrimination in religious schools faces crackdown. The Age, 31 August 2016.

¹⁰ 15 September 2016