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## Religious Freedom Review Supplementary Submission of the Church of the Flying Spaghetti Monster Australia

Captain Tanya Watkins

Dear Mr Ruddock,

Thank you for giving me the opportunity to make a supplementary submission on this complex issue. You asked me to elaborate on how an individual's rights could be protected if organisations surrounding or founded upon religious beliefs did not have similar protections.

As John Stuart Mill so accurately observed;

'The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-preservation. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'<sup>1</sup>

It is clear that Mill believed that the individual was sovereign over their own body and mind and they should not be compelled to do what is considered wise, right or moral in the eyes of others. This idea that the rights and freedoms of an individual or group only extends until they infringe on the rights of others is a central concept in modern liberal societies.<sup>2</sup>

Clearly, to have a situation in Australia where an individual is compelled to follow a belief (that they do not hold) in order to obtain a service provided to the public (subsidised by tax payer funding), to keep their employment or to remain as a student in an educational facility, goes against Article 18.2 of the International Covenant on Civil and Political Rights which states;

'No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.'

If a person is compelled to follow the religious teachings of the service provider, then that severely infringes upon their right to hold a different belief, whether that be a differing religious or non-religious belief. A similar situation that had been occurring in the United Kingdom was solved by the passing of the *Equality Act 2010*.

The *UK Equality Act 2010* built upon the earlier *2006 Equality Act*, and additionally it consolidated and simplified over 35 different pieces of UK legislation in regards to anti-discrimination and equality (including, but not limited to, the *Equality Pay Act (1970)*, the *Sex Discrimination Act (1975)*, the *Race Relations Act (1975)*, the *Disability Discrimination Act (1995)*, the *Employment Equality (Religion or Belief) and Employment Equality (Sexual Orientation) Regulations 2003*, the *Employment Equality (Age) Regulations 2006*, and the *Equality Act (Sexual Orientation) Regulations 2007*), along with a substantial number of sub-ordinate legislation and policy documents.<sup>3</sup>

One important thing that the *UK Equality Act* does is that it requires equal treatment in private and public services and access to employment for persons regardless of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.<sup>4</sup> Conduct that is prohibited under the *Act* includes discrimination, harassment and victimisation on any of the aforementioned grounds. There are exceptions for transactions conducted on religious premises, allowing religious organisations to employ, for instance, a priest of a particular gender, or to rent out a church building only to particular groups or particular purposes, at their discretion.<sup>5</sup> However, where an organisation (religious or otherwise) is providing a service on behalf of a public authority (such as an educational facility for the public, a hospital or social service) they are unable to discriminate against potential users on any of the 'protected characteristics' defined in the *Act*.<sup>6</sup>

Far from being seen as a threat to their religious freedom, the Catholic Church of England and Wales welcomed the *Act* due to its advancing the law against discrimination on the grounds of religion and belief, and that it reflected the Catholic teachings of social justice.<sup>7</sup> The Methodist Church, the Baptist Union of Great Britain and the United Reformed Church released a 'Joint Briefing' stating that the *Equality Act* was unlikely to be detrimental to the religious freedoms and requirements of churches or individual Christians, and that the *Act* strengthened protections for faith communities.<sup>8</sup>

As an example of how the *Equality Act* was received in the UK by religious service providers, I will provide information on what occurred in the adoption sector. The new *Act* meant that adoption agencies could not discriminate against people in the provision of adoption services. When looking specifically at the eleven (11) Catholic adoption agencies, only two (2) decided to close, whereas the other nine (9) continued to provide adoption services in a non-discriminatory manner.<sup>9</sup>

As an example of how the *Equality Act* is able to protect the rights of individuals, I will highlight the case of two nurses who were Roman Catholics. They both had religious objections to abortion, and did not want to assist with those medical procedures or work in a clinic that provided those services. Under the *Act* they were successful in stating that their belief in 'the sanctity of life from conception on' meant that they did not have to participate in any abortion procedure or work at clinic providing such services, and that their refusal would not have any negative impact on their nursing careers.<sup>10</sup>

The *UK Equality Act* is a working example of how the individual's right to religion and belief is protected, without allowing a religious organisation to discriminate against individuals in society on the basis of a 'protected characteristic'.

Jonathan Seglow's analysis of the *Equality Act* shows that the legislation successfully brings together the three competing rights of sexual equality, religious freedom and property rights.<sup>11</sup> Where these rights intersect, a delicate balance must be struck between the competing rights' claims, including majority versus minority rights,<sup>12</sup> and their relevance for a possible hierarchy of rights where certain rights are perceived as superior, more intrinsically valued than others.<sup>13</sup> The *UK Equality Act* has

managed, in practice, to effectively find the correct balance to allow the greatest amount of protection of equality, and protection from discrimination over a broad sphere of human rights.

I hope you will take the *UK Equality Act* into consideration as a model piece of legislation in any recommendations on religious freedom in Australia. It has been shown to protect the rights of individuals on all of the covered 'protected characteristics', whilst at the same time bringing religious and non-religious organisations under the same applicable obligations to not discriminate against individuals when providing goods and services in the public sphere.

Kind regards,

Captain Tanya Watkins

Church of the Flying Spaghetti Monster Australia

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<sup>1</sup> John Stuart Mill, *On Liberty* (New York: Doubleday, Doran and Company, Inc., 1935) at 310.

<sup>2</sup> Alex Fielding (2008). *When Rights Collide: Liberalism, Pluralism And Freedom Of Religion In Canada. Appeal, Review of Current Law and Law Reform*, 13, 28.

<sup>3</sup> Hunt, S. (2013). Negotiating Equality in the Equality Act 2010 (United Kingdom): Church-State Relations in a Post-Christian Society. *Journal of Church and State*, 55(4), 690-711.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> The Catholic Church in England and Wales Bishops' Conference, Consultation on the Equality Act (2010) CBCEW Consultation: Equality Act Guidance for Catholics, <[http://www.oxtedandwarlinghamparish.org/index\\_htm\\_files/ConsultEqualityAct.pdf](http://www.oxtedandwarlinghamparish.org/index_htm_files/ConsultEqualityAct.pdf)>.

<sup>8</sup> 'It is important ... [t]o challenge the fearful perception that the law is ... "against Christians." It is undeniable that secular law has taken a different view of justice and morals to some Christians, however in the vast majority of cases this legislation is not only compatible but can actively safeguard social justice and inclusion, helping to bring about God's Kingdom, which is a Kingdom of diversity, united in the love of Christ. ... Churches may wish to strongly agree with the basic principles of equality legislation, which are in line with the Christian call for justice, tolerance of diversity and fairness, while giving careful consideration where the letter of the law may inadvertently lead to ill-treatment of themselves and others.' Joint Public Issues Team, Churches and Equality Act 2010, <[http://www.methodist.org.uk/static/jpit/jpit\\_equality\\_act\\_2010\\_0711.pdf](http://www.methodist.org.uk/static/jpit/jpit_equality_act_2010_0711.pdf)>.

<sup>9</sup> Hunt, above n 3.

<sup>10</sup> *British Pregnancy Advisory Service v. Secretary of State for Health*, (2011) EWHC 235 (Admin).

<sup>11</sup> Jonathan Seglow, "Theories of Religious Exemption," in *Diversity in Europe: Dilemmas of Differential Treatment in Theory and Practice*, ed. Gideon Calder and Emanuela Ceva (London: Routledge, 2010).

<sup>12</sup> Davina Cooper, *Challenging Diversity: Rethinking Equality and the Value of Difference* (Cambridge: Cambridge University Press, 2004).

<sup>13</sup> Theodore Meron, "On a Hierarchy of International Human Rights," *American Journal of International Law* 80, no. 1 (1986): 1–23. The view that a hierarchy of rights would enhance the legitimacy of some while minimizing the status of others is argued by H. L. A. Hart in *The Concept of Law*, 2nd ed. (Oxford: Clarendon Press, 1997).