

Final Report ambivalent concerning religious freedom

Dear friends of religious freedom,

The **Final Report** from the **Scrutiny of Acts and Regulations Committee (SARC)** was published last month and is available at www.free2believe.org.au

This Report reviewed proposed changes to religious exemptions and exceptions in the *Victorian Equal Opportunity Act 1995*.

A **Minority Report** published by four non-government MPs of the SARC committee, gives important insights into concerns resulting from the review process and is also available at www.free2believe.org.au.

Although there were some positive conclusions in the **SARC committee's Final Report**, a key recommendation [3], if adopted, would see uncertainty and erosion of religious freedom in Victoria because it would mean that employment by religious bodies and schools would be subjected to an inherent requirement test .

This test would be used to determine whether or not religious schools or organisations could exercise the freedom currently available to them to employ according to its ethos and religious beliefs. There remains strong concern that ultimately, VCAT would have the power to make decisions on important matters of religious principle .

This recommendation is consistent with a media statement issued by Victorian Attorney General, Rob Hulls in September where he said:

"In relation to employment, the religious nature of the organisation or school will need be taken into account in determining **whether a particular position needs to be filled by someone who adheres to that religion's beliefs.**"

Mr Hulls views are completely opposite to that expressed during the inquiry and encapsulated by the Communications Officer for the Association of Independent Schools:

"we are of the firm belief that the people at schools are in the best position to employ those people they feel are the best people to educate students attending those schools, based on the values and tenets of those schools, whether they be faith or not."

"Core" and "Non-core", again...

The term "inherent requirement", practically speaking, reintroduces the concept of "core" and "non-core" as presented in the original *Options Paper*.

Whether a position is distinguished as "inherent" (**core**) or "non-inherent" (**non-core**), it is still asking religious bodies to classify employment positions in the same manner and to make distinctions that may lock in precedents that are inescapable.

For example, if a principal of an independent school with a Christian ethos decides that it is not an inherent requirement for their librarian, mathematics teacher or gardener to be a Christian, or to live by Judeo-Christian values, what freedom will subsequent principals or administrators of the same school have to reverse such a policy?

And how will a VCAT judge deal with a situation where a professed atheist is denied employment by a Christian school, when a number of other Christian schools are employing atheists for similar positions?

Further, if **Recommendation 50, Part 2** of the **Final Report** is adopted, how would a VCAT judge, who probably has no theological training, determine the weight and seriousness of “religious beliefs and principles” of a particular individual as opposed to the “limitation of another person’s rights”, in accordance with a test laid out in section. 7(2) of the *Victorian Charter of Human Rights and Responsibilities (VHRCC)*? which reads:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including:

(a) the nature of the right; and

(b) the importance of the purpose of the limitation; and

(c) the nature and extent of the limitation; and

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

A test such as this is open to broad interpretation and compounds the disastrous effect of further constricting exemptions from anti-discrimination laws: That religious bodies will inevitably be burdened with strict policy criteria in order to avoid legal prosecution.

This is not a recipe for a free and egalitarian society, but rather, a paranoid and persecuted one.

Although the Victorian Government will have to respond to SARC’s Final Report before May 2010, it is under no obligation to accept any of its recommendations.

The Report leaves many lingering uncertainties, but one thing is for sure: religious people and communities will be letting themselves down and future generations of believers, if they do not continue to carefully scrutinize the movements of Mr Hulls and the changes to our equal opportunity laws over the coming months.

In the words of Thomas Jefferson, “The price of freedom is eternal vigilance”!

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