

## RELIGIOUS EXEMPTIONS IN ANTI-DISCRIMINATION LAW

## Is discrimination a dirty word?

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WHEN we hear of discrimination, our instinctive reaction is often to be repulsed. As a community we know all too well the scars of discrimination. They are tattooed onto the forearms of our grandparents.

Discrimination is a complicated and mostly dirty word, but in certain circumstances it is necessary.

A fairground ride might discriminate against those below a certain height lest they be injured through the experience. A girls' school may discriminate against boys for enrolment purposes. A co-ed school may discriminate in favour of a female when employing a sports teacher for girls.

These may seem like common sense exceptions to discrimination, but recently sexual and gender orientation have become the latest battleground in our 21st century culture wars.

Religious institutions in Australia, including schools, are allowed under certain circumstances to discriminate against students and staff on sexual and gender identity grounds. In other words, a Jewish school principal may lawfully dismiss employees because they are gay or transgender, and expel pupils who express same-sex attraction.

Crikey.



Photo: Christopher Smith/Dreamstime.com

he was aware of any same-sex attracted students or teachers in his school, he answered that 'currently I am not aware of any students who have got that orientation' and noted that it is a 'hypothetical situation'. I responded by quoting from the Australian Human Rights Commission, which notes that 11 per cent of Australians are of diverse sexual orientation, sex or gender identity. How sad for the 11 per cent of students and staff in schools whose leadership say that their sexual and gender identity is so preposterous that it is not an issue to be considered.

But for those schools who do not see sexual and gender identity as purely hypothetical but who nevertheless wish to preserve the right to discriminate, I am puzzled by their arguments.

One argument put forward is that the right to discriminate is based upon religious freedom. Really? A view which says that religious freedom is based upon discrimination is surely not one that is worthy of defending.

Choosing to exclude people based on a private choice, in the security and privacy of their own home or personal environment – or let's be frank, a public environment too – takes us down a dark path. Restricting or ending employment choices or student enrolment based on sexual or gender identity is such an infringement on personal liberty that we should not just be shocked. We should be horrified that such behaviour is currently protected in law.

What seems puzzling on a religious

level is that in reality most affiliates of a religion break some of its laws some of the time. Adherents break laws on a dietary level; there may be some playfulness with tax returns or poor judgement with employees' rights; the Sabbath day – be it a Friday, Saturday, or Sunday, may not be strictly followed. These are mysteriously forgiven in the context of the argument that only on matters of sexual and/or gender identity should we discriminate.

When considering whether a teacher should live by a school's ethos in this regard, a compromise put forward at last year's Senate inquiry by Melbourne's Catholic Archbishop Peter Comensoli was that gay teachers would be more acceptable at religious schools if they lived far from the school and their relationships were less visible.

Seriously? Regardless of the impracticality of this (what is the required palatable distance between a gay teacher's home and their school?), the idea that a teacher's legal lifestyle choice should impact on their employment or locale takes us back to a thankfully bygone era.

One panellist put the topics of sexual morality and promiscuity in the same context as sexual diversity. While this was instantly retracted, it showed the role of emotion, rather than logic and pragmatism, that the debate involves.

So let's move away from emotion and move to what we now need to do.

Many of our schools are already there. The idea of discriminating against a gay

or transitioning person is laughable. And in practice, both the curriculum and the policies to support children and adults of all orientation are already in place.

Subtly, the signals of inclusion are also already there. Some schools have gender neutral uniforms – my school has had this for years. Even enrolment forms which do not just have space for mother and father but instead include the reality and positivity about same-sex relationships send messages of inclusion. Flexible options with toileting, changing rooms, camps and so forth are all realities.

All of us – individuals, leaders and institutions – are on a journey. No-one has got it right – but kol hakavod (all honour) to those trying.

As Jews, we have an obligation to speak for inclusion, tolerance and freedom. Making representations to the review asking for religious exemptions allowing discrimination on sexual and gender identity grounds is the least that we can do. All of us should feel free to write in to the review – it's religion@alrc.gov.au

After all, if we do not end the right to discriminate, future generations will look at us with the same incredulity that we hold when we consider those who opposed the emancipation of slaves, universal suffrage or civil rights.

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Like the cane or the strap years ago, this is a power that should be removed from my office. Immediately.

Fortunately, the Australian government is currently conducting a review of these religious exemptions in anti-discrimination law.

A few months ago I participated in a national radio panel on the subject of whether schools should be permitted to discriminate on the basis of gender or sexual identity. Should we, for example, be permitted to discriminate against a gay teacher or child? On the panel there was an ex-judge and representatives from Islamic Schools Australia and Christian Schools Australia.

The ex-judge and I fought the good fight. When one participant was asked if