



RAINBOW CATHOLICS INTERAGENCY FOR MINISTRY

To: The Expert Panel on Religious Freedom  
C/o Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600  
Australia  
[religiousfreedom@pmc.gov.au](mailto:religiousfreedom@pmc.gov.au)

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## **RELIGIOUS FREEDOM REVIEW**

### **Introduction:**

*Rainbow Catholics InterAgency for Ministry* is a coalition of Lesbian, Gay, Bisexual, Transgender and Intersex (L.G.B.T.I.) affirming Catholic groups, organizations, pastoral carers and organizers. We work together through an *interagency* approach with diverse interests and approaches to support LGBTI Catholics, their families, friends and colleagues around Australia. Members comprises both LGBTI Catholics and non-LGBTI Catholics. The *interAgency* includes members from religious orders, clergy, lay and pastoral leaders from various parts of the Australian Catholic community in promoting the values and principles of the Gospel and Catholic Social Teaching in our support and care for LGBTI members of our Catholic communities.

### **Concerns**

Some members of our interagency network have expressed concerns about the enquiry, the process and the panel. These concerns emerge from the fact that the Enquiry on Religious Freedom follows upon the changes to the Australian Marriage Act to include all Australians. Members are concerned that this may erode LGBTI civil and human rights to placate those who have argued for this enquiry arising from those who supported the 'NO' vote in the postal survey.

We are concerned that some anti-LGBTI groups under the guise of protecting religious freedom, may delegitimize LGBTI groups, including LGBTI affirming religious groups who are working for the equal rights of all.

Some members of our interagency are concerned that the Chairperson, Mr Philip Ruddock, has been historically opposed to the LGBTI right to civil marriage as author of the original change to the Marriage Act in the Howard Government in 2004. In their view, how will this affect confidence and trust in the process from the perspective of LGBTI people who are religious and their loved ones?

Some members of our interagency are of the view that the credibility of the panel is also compromised because there are no respected religious LGBTI member(s) on the panel, to offer this essential perspective given that the Enquiry's report or recommendations may have particular significance for LGBTI Australians, especially those LGBTI Australians, their families, colleagues and supporters from a religious background.

These concerns are expressed in Appendix 1 by Contributor 'V' where the story of the contributor embodies some of the problems to be addressed.

### **Catholic teaching on non-discrimination:**

Australians have overwhelmingly voted 'NO' to discrimination against LGBTI citizens through the Postal Survey in 2017 on Marriage Equality, and thus 'YES' to affirming LGBTI civil and human rights. The majority of Australians who are Christian and Catholic supports Marriage Equality. Current anti-discrimination laws and the religious exemptions within that disproportionately affect LGBTI citizens, including LGBTI Catholics, their families and supporters need to be further defined to reflect the anti-discrimination stance of the community, including many Catholics who opposes discrimination because of their Catholic faith.

Catholic social teaching encourages the promotion of human rights for all dispossessed and marginalised people. This has particular relevance to promoting balance between religious and other human rights.

### **Religious Freedom is part of Human Rights**

We believe Religious Freedom must be seen in the context of the larger Human Rights framework. Australian sectarian history shows us the ugly side of religious bigotry<sup>1</sup>. Catholics are aware of how religious bigotry serves to further discriminate and marginalise. The experience of LGBTI Catholic Christians carries the same hallmarks as previous discriminatory action which excluded a significant percentage of that population from jobs, services or socialisation. We believe LGBTI Catholics, and those of other religious background who are LGBTI, should be protected from such discrimination especially when it is in the name of protecting religious freedom, which often only thinly masks discrimination.

### **Religious Rights and LGBTI Rights hand-in-hand**

Throughout the discussion on Marriage Equality and indeed discussions of the human rights and civil rights of LGBTI persons in our society, we have heard small groups of people who have continuously left out the rights and indeed the realities of LGBTI religious peoples within their communities. It is clear that such actions are often done deliberately to 'edit' and in fact 'erase' LGBTI people and their loved ones' experience and stories from inconveniencing and indeed advancing their anti-LGBTI positions, knowing full well that LGBTI people are a part of their religious communities. LGBTI people and their loved ones are lovingly and proudly a part of many Catholic communities.

Religious rights are also LGBTI rights, as LGBTI religious peoples and their families are part of our community. LGBTI Catholics and LGBTI-supportive Catholics have the right to worship and be free from discrimination and vilification.

### **Religious Freedom beyond the scapegoating myths**

Some would argue that the abuse and indeed the infringement of religious freedom often comes from adherers of different religions with diverging views, often fringe elements within a tradition, and also within a denomination itself. Orthodoxy and orthopraxis of different traditions, denominations and communities vary widely and are complex matters related to each's belief, practice, development, dialogue, etc.

Examples of abuse and violence against religious communities and groups are largely found between different religions or their adherers. Examples of sectarianism between different religious groups is widely available. Whether it is the Sikh community who have been 'mistargeted' in due to Islamophobia<sup>2</sup>; or the Hindu temple that has been gun-shot at<sup>3</sup>; or a protest against the building of a place of worship<sup>4</sup>; or the Catholic parish community that have been vilified and threatened with arson

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<sup>1</sup> A Very Contrary Irishman – The Life and Journeys of Jeremiah O'Flynn by Paul Collins. Morning Star Publishing, November 2014.

<sup>2</sup> <http://www.abc.net.au/news/2014-10-29/vandals-attack-sikh-temple-with-anti-islamic-graffiti/5852050>

<sup>3</sup> <http://www.smh.com.au/nsw/fear-strikes-as-temple-showered-in-bullets-20110329-1ceuo.html>

<sup>4</sup> <http://www.abc.net.au/news/2015-10-12/who-was-behind-bendigoes-anti-mosque-protests/6848468>

because their Catholic faith teaches them to affirm LGBTI Catholics and their loved ones<sup>5</sup>; or indeed the historical sectarianism between Protestants and Catholics in Australia that some would argue still exist.<sup>6</sup>

Scapegoating of LGBTI people as antagonistic towards religious freedom and rights are false, damaging and a bogus dichotomy that only serves to give oxygen to extremism of all stripes. LGBTI religious people and their families are an inextricable part of religious communities and indeed LGBTI communities. It does a great disservice to the majority of LGBTI-affirming Catholics, and indeed LGBTI-supportive religious people to allow such falsehood to claim any credibility, and serves to garner division and further polarise the great enterprise in advancing a respectful, inclusive, diverse, multifaith, multicultural and pluralistic democratic Australian society.

### **Singling out LGBTI persons**

Catholic teaching enshrines a strong position on discrimination. It upholds the dignity of all without exception and therefore there must be no discrimination. Pope Francis famously said that "if a person is gay and seeks God and has good will, who am I to judge?"<sup>7</sup> Even with this welcoming and affirming position toward gay people, LGBTI Catholics continue to face discrimination, vilification and prejudice within their own Catholic schools, Catholic workplaces, and sadly, even at some Catholic parishes, with little hope of any recourse to justice. This is due largely to the broad exemptions given to religious institutions under anti-discrimination laws. These have an adverse effect on LGBTI persons.

Catholics who hold views expressed in word or action which are perceived by some church authorities to be opposed to church teaching as they interpret it, risk discrimination. This risks their livelihood as they are threatened with the loss of their jobs or career advancement. There are many examples of this among LGBTI Catholics or those working for Catholic institutions.

### **Recent Examples**

An example of this reality is that of the story of "Mish":

Mish is a Catholic who was told by their Catholic school employer, that Mish was discovered to have posted on their personal Facebook page their support for a 'YES' vote during the postal survey on civil marriage equality. The Catholic school employer felt that Mish's position was in contradiction (in their interpretation) of the teachings of the Catholic faith. The person was then told by their Catholic school employer in no uncertain terms that their career pathway for advancement is now terminal, effectively ending the career of this Catholic in this school. Devastated and after seeking counsel, Mish found there was little recourse to justice after such an action by the Catholic school. Mish resigned soon after. Mish took a stance to support a 'YES' vote to civil marriage equality because of their Catholic faith, not in spite of it. This position is common amongst many Catholics who've supported civil marriage equality, including clergy, religious and lay leaders in the Australian Catholic community, including some who have spoken out publicly on this issue because of their Catholic faith.

This is one of several examples experienced during the postal survey on Marriage Equality. It is disturbing to witness such unjust actions and behaviour towards good standing members of the Catholic community. They have been marginalised because of their stance in support of the civil and human rights of LGBTI members of the community. This is a demonstration of deliberately singling out LGBTI people by those claiming rights to religious freedom, but experienced as precisely the opposite by LGBTI people. These examples clearly had nothing to do with the person's ability to perform their job as an educator.

Another educator, 'H', contributed to this written submission (See Appendix II). 'H' made the point that having been a Catholic educator for over 19 years, they are fearful that they might be dismissed simply

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<sup>5</sup> See Appendix IV – Contributor 'R'

<sup>6</sup> <https://www.theaustralian.com.au/opinion/columnists/gerard-henderson/bad-oldfashioned-anticatholic-sectarianism-colours-accounts/news-story/d102326504991e108bbf6dd62513bdba>

<sup>7</sup> 'Pope Francis: Who am I to judge gay people?', <http://www.bbc.com/news/world-europe-23489702>, Jul 29, 2013

by exercising their civil right to marry their partner of many years. This clearly has nothing to do with their ability to perform their duty in the Catholic education institution in which they works.

Using the same logic as that threat to 'H', one could argue that thousands of employees in Catholic institutions who hold a different position to their employer on various issues, or who are divorced, have sexual relations out of heterosexual marriage or who have a different religious belief might all be penalised or feel the threat of penalty. This in our view is an abuse of religious exemptions provided under anti-discrimination laws. There is a danger that unless these problems with some anti-discrimination laws are addressed and incorporated into changes to the Act, LGBTI persons will continue to be subject to homophobic abuse and discrimination.

We hope that this Enquiry will protect the rights of LGBT persons who have been dismissed or forced to resign under fear of being outed or publicly humiliated for their LGBTI identity or spousal status, so that this will not continue to be sanctioned.

### **Unsafe Pastoral Care:**

All pastoral carers have a duty of care towards their clients. Pastoral carers employed by Catholic institutions risk compromising the safety and care of LGBTI people seeking support through Catholic institutions because of overt or perceived pressure to act against the interests of LGBTI Catholics. Even though many Catholic organizations do not discriminate against LGBTI Catholics, LGBTI clients can not be sure when they will be subjected to this kind of discrimination. Many Catholic agencies are funded by taxpayer money to provide services in the Australian community. It is a moral and ethical imperative that all people who depend on these services feel safe and will not be subjected to discrimination based on their LGBTI status or identity or their marital status.

Further damage may occur to pastoral care relationships where LGBTI Catholics or others feel they are not free to disclose issues freely. This not only destroys client practitioner trust but risks the integrity of the pastoral care being offered and may cause further damage to a vulnerable person seeking support. These are issues of ethical practice that have been raised by Pastoral Carers. See Appendix III: Contributor 'M'.

### **Religious Freedom overreach**

Other examples of the negative effect of failing to address these possible abuse situations under the guise of 'religious freedom' laws include employees in Catholic institutions being fearful of speaking out for the rights of LGBTI peoples such as rights to civil marriage and speaking up for the human rights of their LGBTI colleagues, friends and family from their religious perspective. Where job prospects are compromised with the support by Australian law, we need to be concerned.

### **Combating discrimination in society and the church**

The history of discrimination toward LGBTI people is lamentable and its legacy continues in our society and our church. Pope Francis has suggested Christians apologise to gay people for historic injustices<sup>8</sup>.

However, there are people, some who are Christian and Catholic, who argue for the right to discriminate against LGBTI people on the grounds of 'conscientious' objection based on religious faith and freedom of religion. Pope John Paul II however said that the "*Freedom of conscience does not confer a right to indiscriminate recourse to conscientious objection. When an asserted freedom turns into licence or becomes an excuse for limiting the rights of others, the State is obliged to protect, also by legal means, the inalienable rights of its citizens against such abuses*"<sup>9</sup>.

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<sup>8</sup> <https://www.theguardian.com/world/2016/jun/26/pope-francis-says-christians-should-apologise-to-gay-people>

<sup>9</sup> Message of Pope John Paul II for World Day of Peace: If you want Peace, Respect the Conscience of Every Person. Jan 1, 1991 para 6

As Catholic-Christians we are concerned that religious freedom/protection/privilege laws are fairly balanced with other equally important human rights such as the right to livelihood, the right to access services, the right to be free of discrimination, the right to free speech, the right to be free of religious interference. In our view, the religious freedom of those who oppose or are antagonistic toward the civil and human rights of LGBTI members should not be elevated above those of us who are religious and are supportive of the civil and human rights of LGBTI people because of our religious faith.

Clergy and Religious in the Catholic church face a particular challenge when standing up for the rights of LGBTI people and those who do not live according to church teaching in the interpretation of their superiors. This is complex because they voluntarily promise “obedience and respect” at the time of making their religious commitment. However we are concerned that some may claim that the civil law should protect the rights of superiors to discriminate against priests and religious. We claim that the civil law should protect the less vulnerable, and thus, if anything, outline the limits of the more powerful to sanction those who make such voluntary religious commitments.

### **Positive Laws**

Current anti-discrimination laws whilst helpful in protecting minorities, the inclusion of wide ranging religious exemption clauses in most states unfairly target LGBTI people in our religious communities. Within a comprehensive Human Rights Act or Human Rights charter, a balanced religious freedom protection framework would be possible. Religious freedom is not more important than other human rights, but equally important, and must be balanced with other human rights as they have done so in countries such as Canada and indeed our neighbour New Zealand. Religious freedom can also mean the right to dissent within a denomination; freedom of belief and the right to exercise one’s conscience.

### **Uneven Protection**

Current religious exemptions within anti-discrimination laws unevenly protect resource rich and powerful religious institutions and religious hierarchy over the rights of groups or individuals within their denomination or faith or in their employ. Such broad religious exemptions disproportionately affect LGBTI Catholics, their families and supporters as they are vulnerable to discrimination such as dismissal from employment or being refused pastoral or professional services. If there is a genuine need for exemption, it should only be provided to the extent of the ability of being able to provide religious instruction or education, or to conduct religious worship, or limited to the inherent performance of the role within a job description.

### **Religious Freedom or Freedom to Discriminate?**

Some points of concern:

- How far does ‘religious freedom’ extend and when does it become unacceptable discrimination?
- To what extent do parents “following their faith” have the right to “discriminate” against their children or those in their care?
- When does the state, through the law, step in to protect children from their parents’ discriminatory and damaging behaviour towards their children based on religious grounds, or at least indicate the danger signs? i.e. gay ‘aversion’ therapies, etc.
- How can anti-discrimination laws protect parents of religious affiliation who support their children against the advice of the clergy or religious or pastoral carers or educators?
- Does the law have a role in protecting civil marriage celebrants who choose to marry LGBT couples and also work for a Catholic institution? (This situation might arise for people working for Catholic or faith institutions who also work part-time as pastry chefs, florists, hairdressers or celebration organisers and choose to support the weddings of LGBTI couples.)
- Will Catholic workers who attend civil same sex marriages or support civil marriage equality be subjected to dismissal or penalties?

**Recommendations:**

- That a Human Rights Act or Human Rights Charter, as a set of positive laws that affirm, protect and strengthen Australia’s human rights legal framework, counter discrimination and protect individual and collective liberties, including religious freedom. The Human Rights Act would be similar to the one recommended in 2009 by the National Human Rights Consultation, taking into account the needs of Lesbian, Gay, Bisexual, Transgender and Intersex peoples.
- That a ‘Royal Commission’ on LGBTI Inclusion, Health and safety be established to enquire into, and understand fully both the historical and current challenges faced by LGBTI people and their communities to ensure no further discrimination or violence and their adverse effects will continue. Whilst Marriage Equality has been legislated, LGBTI peoples and their loved ones continue to face violence, discrimination, bullying, and marginalisation, including the lack of support from government policies. LGBTI people, especially those who come from religious backgrounds continue to be overrepresented in suicide and depression rates in Australia. The commission will be able to ask: Are LGBTI peoples in Australia are truly treated justly and equally throughout Australian society? The Royal Commission would do similar work as that of the Royal Commission on Human Relationships in the 1970s. The Royal Commission will have the opportunity to understand the intimate experience of LGBTIQ people and their loved ones in Australia, including their right to religious freedom and freedom of conscience, amongst other human rights. The Royal Commission will also have the power to protect the identity of LGBTI people who are still vulnerable to being targeted by violence, discrimination, bullying and marginalisation.
- That while religious institutions must be free to teach and conduct their religious practices according to their religious doctrines, including the freedom to teach about affirming LGBTI non-discrimination, exemptions that allow religious groups to dismiss or delay employment by qualified and competent practitioners who conduct their work ethically and according to church teaching, must be limited and defined narrowly rather than broadly.
- That in the protection of religious freedom, religious-exemptions within anti-discrimination laws be reviewed and be better defined to ensure that it does not single out LGBTI persons and their supporters in areas of the provision of service, of employment, of access to healthcare and various social and pastoral supports, because of their sexual orientation, gender identity or intersex status.

**Thank you**

We thank you for the opportunity to contribute to this enquiry on behalf of the *Rainbow Catholics InterAgency* for Ministry. We consent to this submission being made public by this Review under the name of our collective - ‘*Rainbow Catholics InterAgency for Ministry*’. However, the personal names, membership and contact details of members of the interagency be kept in strict confidence for reasons outlined in this submission as many are employees in the Catholic church. Members of the *Rainbow Catholics InterAgency for Ministry* includes leaders and organizers from:

[Redacted names and contact details]

## Appendix I: Contributor 'V'

I am a man who campaigned in the cause of marriage equality. I am also gay and Catholic, which is not incompatible. The very notion of a religious freedom enquiry is ridiculous, being birthed from the minds of opponents of marriage equality, during the plebiscite last year. If there is anyone religious freedoms they are worried about protecting, it seems to be their own.

What about the religious freedoms afforded to me as a gay Catholic who though working my whole life in Catholic institutions has lived in fear of being fired by the very establishment that has taught about social justice and yet has persecuted so many, including my rainbow community?

If this enquiry is some belief ploy to overturn the gains of marriage equality, I want to remind that the Dean Smith Bill was the result of a robust senate inquiry and represented a workable compromise that delivered marriage equality for LGBTI couples whilst protecting the religious celebration of marriage.

We, the Australian community voted overwhelmingly for fairness and equality for LGBTI people, not for more discrimination, nor to wind back discrimination protections for LGBTI people. This inquiry should not be used opportunistically by 'No' campaigners to re-litigate these arguments.

Religious freedom is a fundamental human right and should be protected under law, just as should my right to live as a religious gay man, without fear of religious persecution by some of my own faith leaders and institutions whose views are narrow and hearts do not understand what it is to follow a man who gave His life (Jesus) for the oppressed.

Civil law already goes too far in allowing religious organisations to discriminate through broad exemptions in federal and state discrimination laws. Religious charities who provide publicly funded welfare and social services can legally turn away LGBTI people, single mothers and so many others where this refusal is in line with the charity's religious beliefs.

Religious exemptions act as a barrier to vulnerable people accessing the support services they need. As a psychotherapist, as a leader within the rainbow community, I have seen and heard and experienced this over and over again in the lives of my clients, my community, and in my own family life. Many people who do not live up to the heavy demands by exclusivist Church leaders, many of them hypocritical in their own actions, not doing what they preach, only serve to burden others and allows the powerful to Lord it over, not the weak, but the un-powerful, the unprivileged. Many have faced discrimination from religious charities but are reluctant to speak out or lodge a complaint because they still rely on these services. Others are afraid of seeking support for fear of discrimination and mistreatment, even when faith based service providers do not seek to enforce the exemptions available to them.

Any further religious exemptions should not specifically target LGBTI people. This would allow religious organisations to discriminate against people, not because of religious reasons, but because of a person's sexuality or gender identity. This is a complete slap in the face of the command to love-thy-neighbour from any spiritual practice and holy text.

Let's not even talk about discrimination on the basis of an individual's conscientious belief.

Where businesses are providing goods and services in the secular marketplace there is absolutely no place for discrimination.

Australia already allows enough freedoms where people are free to express political, philosophical and religious views and observe, practice and teach their faith. If anything, it is the religious leaders who need to learn to live peacefully and humbly in a secular democracy.

If freedom of thought, conscience and religion is to be protected under law it should ideally be part of a comprehensive bill of rights that protects and balances all fundamental human rights.

Again I ask, how am I, as a person of faith who is LGBTI, protected or helped by this enquiry? I remain hopeful but am yet to be convinced.

Regards,  
'V'

## **Appendix II: Contributor 'H'**

To Whom it May Concern:

RE: Religious Freedoms Review.

### Open to Dismissal

I have been an employee in the Catholic Secondary Schools sector for 19 years, two weeks after Marriage Equality became law, I had to renew my Workplace Agreement. A standard line, I believe, in these types of contracts refers to termination without notice "... in the event of behaviour inconsistent with the teachings and values of the Catholic Church". I have seen this line many times upon previous renewals, however on this occasion, the gravity of this line stood out above all.

By legally marrying my same gender partner, for some Catholics, they might believe that I will be at odds "with the teaching of the Catholic Church" and thus in breach of my contract making me vulnerable to dismissal, even when it is untrue. I note - 'some Catholics', as Catholics have diverse points of view, including those who support civil Marriage Equality from a Catholic religious perspective.

The response from my superiors was a hollow reassurance that this, dismissal if I married my same gender partner, was unlikely to occur. This might be so, however the potential remains.

A strengthening or a separate law regarding Religious Freedoms, puts me in a very vulnerable position.

### Positive Role Models

One of the greatest difficulties I had as a young person grappling with my sexuality was identifying with positive (Catholic or non-Catholic) Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) role models. In these modern times, our schools support our young LGBTQ people with words and policies of assurance that they "are ok" and work with them in their struggles. Marriage Equality sends a clear message to our LGBTQ young people that they are indeed "Ok".

A strengthening or a separate law regarding Religious Freedoms, prevents LGBTQ teachers and adults in Catholic schools who are legally married, being these positive role models as they will be subject to dismissal and/or career curtailment as per the contractual issue raised above.

### Recommendation

If anything, this Enquiry should recommend strengthening the rights and protections of LGBTQ people employed in Religious based institutions as their relationships form a legitimate basis of our community.

'H'

Sydney

29 January 2018



**Appendix III: Contributor 'M'**

To:

Rainbow Catholics InterAgency for Ministry submission to the Enquiry into Religious Freedom

Pastoral Care for LGBTI Catholics

As a pastoral carer in the Catholic church, I am concerned that the duty of care and ethical practice with LGBTI Catholics may place carer and parishioner or patient or student in danger of emotional and/or spiritual stress and trauma.

Some examples are LGBTI young people being rejected by family or peers, LGBTI Catholics being told they are ill or must change or leave the church, gay couples unable to have their children baptised and LGBTI Catholics being denied communion based on sexual orientation. This happens while the Catholic catechism is clear that there should be no discrimination on the basis of sexual orientation.

My recommendation is that the Enquiry recognise this reality and experience of LGBTI people of faith and somehow raise awareness by naming these situations as coercive or discriminatory. How can the anti-discrimination law protect the vulnerable from church power? Can the Enquiry address protection for Church pastoral carers who are doing their work ethically to support the vulnerable?

Yours in Christ,

'M'

#### **Appendix IV: Contributor 'R'**

##### Submission to the InterAgency for Religious Freedom Review

As a priest responsible for pastoral care of LGBTI Catholics for over 10 years in X parish, I experienced the effects of discrimination on “religious grounds” not only by the experience of exclusion LGBTI Catholics felt from home and church by misguided and hurtful interpretations of church teaching but on numerous occasions the ministry with LGBTI Catholics was disrupted by Catholics demonstrating against our ministry outside the church.

I needed to call the police a number of times to protect LGBTI Catholics leaving church for fear they would be accosted, vilified or accused of being anti-Catholic and threatened with danger in this life and the next.

So we need to have some reference to this kind of internal religious vilification which threatens the rights and freedom of adherents of their faith.

It is not without significance that the demonstrators vilified and harassed me as the priest of the parish because I supported LGBTI Catholics.

Fr 'R', x Parish