

Extra

**Balancing religion and rights**

Margaret Thornton - Margaret Thornton is a professor of law at the Australian National University.

734 words

4 October 2009

[Sunday Age](#)

SAGE

First

19

English

(c) 2009 Copyright John Fairfax Holdings Limited. [www.theage.com.au](http://www.theage.com.au)

## THE CASE AGAINST DISCRIMINATION

Allowing religious organisations to discriminate runs contrary to community standards.

WHY are Victorian religious groups committed to inequality? I thought that it was a Christian precept that everyone was equal before God. As with Animal Farm, however, it appears that some are more equal than others.

In a surprise move that pre-empted the report of the parliamentary Scrutiny of Acts and Regulations Committee Inquiry into Exceptions and Exemptions in the Equal Opportunity Act, Attorney-General Rob Hulls has announced that religious organisations may continue to discriminate selectively.

Although they will not be permitted to discriminate on the grounds of race, disability, political belief, age, physical features or breastfeeding, they will be permitted to discriminate on the grounds of sex, marital status or sexuality. While the proscription on the ground of the first cluster is claimed to represent an "advance" on the present position, the continuing exception in respect of the latter is a retrograde step.

It also imports a curious ranking of grounds based on a questionable moralising subtext that does not accord with contemporary community attitudes. The exception would continue to conflict with the objectives of the act itself, which promotes equal opportunity for everyone, and the elimination (as far as possible) of discrimination between people.

It is unlikely that there is a rational theological basis for the discrimination, although those fundamentalist Christians who favour a literal interpretation of the Bible can usually find something.

The Victorian **Charter of Human Rights** and Responsibilities specifies a right to freedom of religion, which is conceptualised in individualistic terms. This means that everyone is free to believe whatever they wish, however bizarre, and they can also engage in the religious practices of their choice.

The problem with the exception is that it extends the protection of personal belief to organisations such as schools run by religious bodies. A dangerous elision then occurs in attributing personal beliefs, which are deserving of protection, to corporations and other entities, which allows them to assume a conservative moralising position in regard to employees and clients. The most likely targets are gays and lesbians, or people (invariably women) in de facto relationships.

While the sex of a person is usually obvious, their sexuality, marital status and gender orientation may require inquiry and interrogation, which would be contrary to the provision of the charter dealing with privacy. Far from effecting harmonisation between the Equal Opportunity Act and the charter, in accordance with the terms of reference, Mr Hulls' proposal ensures continuing incompatibility.

The caveat of the Hulls' proposal is that any discrimination should be in accordance with the religious tenets of an organisation. This means that a person discriminated against would be able to challenge it. This would entail going to the trouble of lodging a complaint of discrimination, seeking to have it conciliated, and then facing the considerable expense, stress and uncertainty of legal proceedings if conciliation were unsuccessful.

Even if the burden of proof was reversed and the religious body were unable to show that the discrimination was in accordance with its beliefs and the aggrieved person succeeded, would he or she want to work in a hostile environment anyway? They could find that they were blackballed, and their career ruined.

But why should private schools that are the recipients of considerable public funds be entitled to ignore the general law? If religious bodies claim that their freedom of religion justifies them discriminating against citizens by virtue of sex, sexuality or marital status, they should be precluded from receiving substantial moneys from the state. After all, it has been contributed by those selfsame citizens.

The exception under the guise of "religious freedom" no longer accords with community norms. Nor does it comport with the norms of diversity and tolerance associated with modern democracies, among which Mr Hulls would like to include Victoria.

Many of the 53 exceptions currently in the act are at odds with community attitudes. It is disappointing that Mr Hulls succumbed to pressure from a small group of religious extremists to maintain discrimination. In the process he sacrificed not only his stated commitment to the modernisation of the act, but his credibility as a reformer. He could find that the move backfires. Decent Victorians prefer principle to pork barrelling.

Document SAGE000020091004e5a400023