

University of Newcastle - Australia

From the Selected Works of Neil J Foster

May 9, 2014

New anti-discrimination laws 'erode religious freedom'

Neil J Foster
Katherine Towers



Available at: https://works.bepress.com/neil_foster/81/

New anti-discrimination laws ‘erode religious freedom’

KATHERINE TOWERS THE AUSTRALIAN MAY 09, 2014 12:00AM



Chelsea Pietsch, executive officer for Freedom 4 Faith, said the winding back of religious exemptions would restrict the ability of religious organisations to operate within their own faiths. Source: News Corp Australia

ONE of the nation’s leading authorities on law and religion has warned that religious freedom in Victoria is being degraded in favour of anti-discrimination laws.

This warning follows a decision of the Victorian Court of Appeal that watered down the exemptions allowed for religious bodies under the state’s Equal Opportunity Act.

It comes soon after the Law Institute of Victoria urged the state government to tighten religious exemptions under the EOA to force religious organisations into a more transparent and public use of those exemptions.

Associate professor in law and religion at the University of Newcastle Neil Foster said the Court of Appeal’s ruling last month in a case known as *Christian Youth Camps v Cobaw* would narrow the rights of religious groups in Victoria and have wide ramifications for religious organisations across the country.

He said the complex decision — in a 2-1 majority led by Court of Appeal president judge Chris Maxwell — had limited the freedom of religious organisations to exercise their exemption rights under the EOA and the issues needed to be clarified by the High Court.

“Unfortunately, the way the court has ended up reading these provisions is to give priority to one set of values, the freedom from discrimination, over the freedom of religious exercise,” he said.

“My view is that this decision has got some problems with it and it leaves a lack of clarity — it would be a good idea if someone were to appeal it so the High Court could offer more clarity.”

The court ruled that a Christian Youth Camp run by the Christian Brethren denomination had breached anti-discrimination laws in refusing to allow a support group for same sex youth to use the site.

The CYC argued that it did not discriminate against the group because of the sexual orientation of the individual members but discriminated against it because the group was advocating homosexual behaviour contrary to its beliefs.

It argued that it was entitled to discriminate against the group under the religious exemptions to the EOA because the group’s homosexual behaviour breached the organisation’s beliefs and principles.

But the court ruled that discriminating against homosexual behaviour was the same as discriminating against individual homosexuals, which is unlawful under the Act.

“In the end (the court has taken) the view that a refusal to support an activity providing support for homosexual sexual activity is the same as discrimination against a homosexual person,” Mr Foster said.

Groups representing religious lawyers in Victoria are concerned that the Court of Appeal decision, together with the LIV’s push to water down the religious exemptions, is a direct attack on the rights of religious groups.

Chelsea Pietsch, executive officer for Freedom 4 Faith — a multi denominational group advocating for religious rights — said the winding back of religious exemptions would restrict the ability of religious organisations to operate within their own faiths.

Ms Pietsch was one of three signatories to a letter to the LIV warning it against its advocacy for the winding back of the religious exemption.

She said the LIV had a long history of “deep suspicion” over the religious exemptions under the EOA and said that it should stick to issues of regulation of the legal profession.

“Religious organisations are worried (that if exemptions are rolled back) they are not going to be able to operate in a way that upholds their ethos and values, leaving them with less flexibility in making decisions on who is part of their community,” she said.

“For example, tightening the exemptions would mean religious schools would have less flexibility in appointing teachers that uphold the ethos of their faith.

“Unfortunately, there’s a deep suspicion of religious groups by the LIV so there is this desire to impose more laws in terms of how they operate.”

Daniel Hickman, secretary of the Melbourne Catholic Lawyers Association and another signatory to the letter to the LIV, said he too was concerned that the legal body was trying to narrow the scope of religious freedoms.

“They seem to see religious freedom as a subsidiary right and non-discrimination as a primary right,” he said.

Mr Hickman said religious organisations in the state were feeling under attack over the exemption debate especially as it came on top of the Court of Appeal decision in CYC.

“The court has taken a very narrow view of religious freedom and has tried to narrow the scope of it and it ties back to treating religious freedom as some sort of secondary subsidiary right that should be restricted as much as possible in favour of all other rights,” he said.

“The court has taken a very narrow approach on what constitutes religious freedom.”

Derrick Toh, president of the Christian Legal Society of Victoria, also signed the letter to the LIV and said it seemed as if they had an agenda to roll back religious freedom.

“The LIV fails to recognise that we are coming from a position where we do have a free right to hold a religious belief,” he said.

“It’s like they want us in a position where we have to ask for permission to hold a religious belief.”

LIV president Geoff Bowyer rejected the criticism and said the institute supported a level of exemptions for religious organisations under the EOA.

But he said there had to be a balance between the freedom for individuals and groups to practice religion and the right of individuals not to be discriminated against.

“Religious organisations, when exercising their rights (under exemptions), ought to be able to clearly demonstrate that they have exercised their rights responsibly,” he said.

“So there has to be a clear and transparent application of the policy of exemption and secondly there has to be a clear linkage between the exercise of any discrimination and any reasonable conflict with the tenets of that religion.”

Mr Bowyer, who described himself as a practising Catholic, said he did not want religious exemptions to become secondary to discrimination rights, but wanted religious organisations to clearly set out how and why they have used the discrimination exemption.

He said the LIV was asking the state government to amend the act so that religious bodies had to be clear and transparent in their discrimination under the exemptions.

×

Share this story

Facebook ([http://facebook.com/sharer.php?u=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&t=New anti-discrimination laws ‘erode religious freedom’](http://facebook.com/sharer.php?u=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&t=New%20anti-discrimination%20laws%20%27erode%20religious%20freedom%27))

Twitter ([https://twitter.com/intent/tweet?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&text=New anti-discrimination laws ‘erode religious freedom’](https://twitter.com/intent/tweet?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&text=New%20anti-discrimination%20laws%20%27erode%20religious%20freedom%27))

LinkedIn ([http://www.linkedin.com/shareArticle?mini=true&url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&title=New anti-discrimination laws ‘erode religious freedom’](http://www.linkedin.com/shareArticle?mini=true&url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&title=New%20anti-discrimination%20laws%20%27erode%20religious%20freedom%27))

Google (<https://plus.google.com/share?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242>)

Email ([mailto:?body=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&subject=New anti-discrimination laws ‘erode religious freedom’](mailto:?body=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&subject=New%20anti-discrimination%20laws%20%27erode%20religious%20freedom%27))

×

Share this story

Facebook ([http://facebook.com/sharer.php?u=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&t=New anti-discrimination laws 'erode religious freedom'](http://facebook.com/sharer.php?u=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&t=New+anti-discrimination+laws+%27erode+religious+freedom%27))

Twitter ([https://twitter.com/intent/tweet?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&text=New anti-discrimination laws 'erode religious freedom'](https://twitter.com/intent/tweet?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&text=New+anti-discrimination+laws+%27erode+religious+freedom%27))

LinkedIn ([http://www.linkedin.com/shareArticle?mini=true&url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&title=New anti-discrimination laws 'erode religious freedom'](http://www.linkedin.com/shareArticle?mini=true&url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&title=New+anti-discrimination+laws+%27erode+religious+freedom%27))

Google (<https://plus.google.com/share?url=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242>)

Email ([mailto:?body=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&subject=New anti-discrimination laws 'erode religious freedom'](mailto:?body=http://www.theaustralian.com.au/business/legal-affairs/new-antidiscrimination-laws-erode-religious-freedom/story-e6frg97x-1226910856242&subject=New+anti-discrimination+laws+%27erode+religious+freedom%27))