

**Commonwealth Sex Discrimination Act 1984  
Inquiry**

**A submission from Anglican women church leaders  
focussing on the ‘Scope of existing exemptions’ –  
point ‘n’ of the Inquiry terms of reference**

We, the seven women members of the Standing Committee of the General Synod of the Anglican Church of Australia, are pleased to have this opportunity to make a submission to the Inquiry into the Commonwealth Sex Discrimination Act 1984. Given the review’s short time frame, however, we have not been able to prepare a substantial submission; nor have we had the opportunity to seek wider support among Anglican women generally, though we have little doubt that such support would have been forthcoming.

Our major concern with the Act as it stands is with the exemptions it gives to religious bodies, and educational institutions established for religious purposes (Sections 37 & 38 of the Act). Our submission is focussed on those exemptions.

In summary, we seek the removal of automatic exemptions for religious bodies, because they entrench discrimination against women who belong to one of the last remaining significant male-dominated sectors of Australian society. As the exemptions are automatic, religious bodies are not required to justify exemption, or demonstrate if and how they are promoting the equality of women as far as is possible within the parameters of their doctrines, tenets or beliefs. Nor, as concerns Section 38, are they required to demonstrate if and how they ensure that individual officers responsible for employment, training and education always act in good faith when they discriminate “in order to avoid injury to the religious susceptibilities of adherents of [their] religion or creed”.

Automatic exemption for religious bodies takes no account of the following:

1. Religious bodies are, to a greater or lesser degree, male-dominated in terms of their leadership. Their membership, however, is predominantly female.
  - 1.1 The views of the majority female adherents – those who are disadvantaged by the exemption – are not able to be heard because of the nature of the exemption. Systemic discrimination against women is thus entrenched, prolonging a situation where issues of equality and discrimination are absent from the agenda of the (mostly male) leadership. A status quo that discriminates against women is thus maintained, and protected from any outside challenge in a way that would be unacceptable in any other sphere of Australian society in the 21<sup>st</sup> century.
  - 1.2 The numbers of women discriminated against by the exemption is high. Statistics from the Christian churches illustrate the scope of the

discrimination: 19 per cent of Australians – about 4,060,415 people<sup>1</sup> – attend church at least monthly. Female worshippers account for 61 per cent of the total – 2,476,853 Australians, or 11.5 per cent of the Australian population.<sup>2</sup> A large section of the Australian community is thereby left at risk of cultural discrimination on the basis of gender in terms of their membership of religious bodies. This militates against the rationale for the Act.

2. The doctrines, tenets or beliefs of religious bodies change over time. A significant proportion of Australia's Christian churches no longer hold doctrines, tenets or beliefs that prevent the full equality of women in all areas of church leadership and governance, making their continued exemption inappropriate and unjust for their women clergy.

2.1 Since the Sex Discrimination Act came into force in 1984, the Anglican Church of Australia has provided for the admission of women into all three levels of its ordained ministry.<sup>3</sup> The latest available figures show that there are 633 women clergy in the Anglican Church of Australia, of whom 182 are deacons, 449 priests and two bishops. These women are employed in a range of church activities – as chaplains in schools, hospitals and welfare agencies; as assistant clergy in parishes; as priests in charge of parishes; and as assistant bishops. Some also hold senior office as Cathedral canons, area deans and archdeacons. Women are now being actively considered for election as diocesan bishops, that is, as leaders of the main units of church government. Women now represent approximately one sixth of Australian Anglican clergy.<sup>4</sup>

2.2 Women deacons can be employed in all but one of the 23 dioceses that constitute the Anglican Church of Australia, and as priests or bishops in all but five.<sup>5</sup> There are also many more lay women who are in paid employment in quasi-ordained pastoral roles in the Anglican Church. (This is quite separate from women employed in churches and church organisations as secretaries, accountants, etc.) Overall figures are not kept, but in Melbourne alone, 66 women are listed in the

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<sup>1</sup> The Australian population was estimated as 21,370,609 by the Australian Bureau of Statistics on 22 July 2008

<sup>2</sup> Church attendance statistics are from [www.ncls.org.au/default.aspx?sitemapid=28](http://www.ncls.org.au/default.aspx?sitemapid=28) and [www.ncls.org.au/default.aspx?sitemapid=30](http://www.ncls.org.au/default.aspx?sitemapid=30), accessed 22 July 2008.

<sup>3</sup> National Church legislation permitting the ordination of women as deacons was passed in 1985 and as priests in 1992. The Church's Appellate Tribunal decided in 2007 that women priests could legally be consecrated as bishops.

<sup>4</sup> *The Australian Anglican Directory 2008*

<sup>5</sup> Women can become deacons in every diocese but The Murray, a small rural diocese in South Australia. They can become priests or bishops in all but five dioceses –Armidale (NSW), Ballarat, North-West Australia, Sydney and The Murray.

capacity of paid pastoral work.<sup>6</sup> There are also numbers of women in training for ordination, accounting for close to half of ordination candidates in some Australian dioceses.<sup>7</sup>

2.3 While women are now officially accorded full equality in terms of doctrines, tenets and beliefs in the overwhelming majority of dioceses in the Anglican Church of Australia, there is anecdotal evidence that women clergy are at times discriminated against in employment because of their gender in ways that would not be acceptable under the Act if religious bodies were not exempt.

2.4 The Uniting Church in Australia has had women clergy since its inception in 1977. In 2006, there were about 353 women clergy, comprising an estimated 25 per cent of its ordained ministers.<sup>8</sup> There are also small numbers of women clergy in the Baptist Church and the Churches of Christ. (These churches also employ non-ordained women in pastoral roles, and have women candidates training for the ministry.) The total number of ordained women clergy in Australia in 2008 would be more than 1,000. More than 1000 women clergy, numbers of female ordination candidates, and many more non-ordained female church workers around Australia are left without any legal protection against gender-based discrimination in their employment because of the Act's exemption for religious bodies.

2.5 The Catholic Church is the only large mainstream Christian church in Australia that still does not permit women to be clergy. However, given the shortage of male clergy in the Australian Catholic Church, numbers of women – both women who are members of religious orders and lay women – are currently employed as parish pastoral associates, chaplains etc. These are roles that would otherwise be filled by male clergy.<sup>9</sup> These women have no employment protection under the current Act.

3. Automatic exemption is uncomfortable for many Christians because of the implicit assumption that we desire or need it because discrimination is entrenched at the very heart of our faith. On the contrary, discrimination on the basis of sex, race or any other differentiating marker runs counter to the strong thrust of New Testament teaching which supports the intrinsic equality of all human beings.

3.1 In matters of sex this principle of equality is manifested in Jesus' interactions with women and acceptance of them as disciples and

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<sup>6</sup> *Yearbook of the Diocese of Melbourne 2007*

<sup>7</sup> National statistics on ordination candidates are not kept.

<sup>8</sup> Quoted by Jill Rowbotham *The Australian*, 2 February 2006

<sup>9</sup> See ABC *Compass* two-part program, 'The Catholic Dilemma', screened on 20 & 27 July 2008

supporters of his ministry, despite the cultural and religious norms of his time. He taught women, healed women, encouraged women. They occupied a central place in Jesus' ministry and also in the early church, where they led congregations and took leadership roles. It should be noted that it was a woman who was the first witness to the resurrection of Jesus, one of the most significant events in Christian history.

3.2 This principle of equality is articulated theologically in St Paul's Letter to the Galatians where he argues that 'There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus' (Galatians 3: 28, NRSV). More prosaically, St Paul is indicating that in Christian community, there is no place for discrimination on the basis of ethnicity, social standing or sex, whatever cultural norms may exist in the wider society.

4. Automatic exemption has significant flow on effects. It bolsters a culture that assumes male dominance in all areas, including those that do not concern issues of doctrine, tenets or belief, and implicitly maintains a culture of discrimination against women in all areas. For example, there is no incentive for an exempted religious body to ensure that it provides significant, let alone mandatory, levels of representation for women in areas that do not conflict with its doctrines, tenets or belief, such as appointing women to lay church bodies. The culture enforced by the automatic exemption makes it difficult for women adherents to argue for a satisfactory level of representation. If religious bodies had to apply for exemption, demonstrating commitment to equality principles wherever possible for them could be required as part of the application process.
5. Automatic exemption makes it difficult for proponents of full female equality in specific religious bodies to press for change. Women in the Anglican Church of Australia, for example, had to pursue their case for the ordination of women within the (male-dominated) structures of their churches without any support or assistance from the legal environment. The automatic exemption also allows religious bodies to resist re-examination of their beliefs regarding the role of women. If exemption had to be applied for at regular intervals, re-examination would be required from time to time, and female adherents would take encouragement to challenge the status of current beliefs. At present, women members of major religious bodies that claim their beliefs prevent extending full equality to women, have little opportunity or incentive to challenge their situation. Many feel that the discrimination they face is not taken seriously by wider society. Removing automatic exemption would redress that perception.
6. Gender discrimination by religious bodies has a flow on cultural effect in wider Australian society. As Catholic laywoman Dr Marie R. Joyce said in a

letter published in two Australian newspapers (*The Australian & The Age*) on 18 July 2008, 'Until leaders of all religions offer women the respect of equal status, there will be implicit rationales for unjust treatment of women, including domination, exploitation, abuse and violence. Women will continue to be perceived as "less than" and subordinate to men. In recent community and government soul searching for Australian values I have noted that valuing equality of women and men always featured in people's lists and I wonder when people in the Australian community will begin to question the granting to churches of exemptions to anti-discrimination law.'

7. The removal of automatic exemption for religious bodies would not prevent specific bodies from applying for exemption on the basis of their doctrines, tenets and belief. Both the Catholic Church and the five Anglican dioceses which claim their beliefs preclude women in ordained church leadership, for example, would be able to seek continuing exemption. But it is both inappropriate and unjust that the Anglican dioceses and other Christian churches which officially accord women full equality in terms of their doctrines, tenets and beliefs, continue to have automatic exemption.

Further, the terms of the current sections 37 & 38 of the Commonwealth Sex Discrimination Act (SDA) providing an exemption for religious bodies are very broad in comparison with more recent discrimination legislation, which has adopted a narrower and more focused drafting of such exemptions. For example, the most recent legislation is the Anti-Discrimination Act Tasmania 1998. If any form of exemption is to remain it is important that it be as narrow as possible to properly achieve its aim.

Section 38 SDA gives an exemption

- (1) ... in connection with employment as a member of the staff of an {religious} educational institution...
- (2) ...in connection with a position as a contract worker that involves the doing of work in a {religious} educational institution..
- (3) ...in connection with the provision of education or training by an {religious} educational institution..

By comparison section 51 in the Tasmanian Act, states

- (1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment if the participation of the person in the observance or practice of a particular religion is a genuine occupational qualification or requirement in relation to the employment.
- (2) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institution that is or is to be conducted in accordance with the

tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, teachings, principles or practices.

At the very least the SDA requires amendment to restrict the exemptions given to religious bodies to the necessary minimum. Even the Tasmanian Act provisions should be scrutinised to ensure this is achieved.

So long as automatic exemptions exist, the Act is fundamentally flawed and compromised, and a significant body of women, left without the protection of law against discrimination, are effectively discriminated against by the Act.

As Anglican women leaders, we see our Church as an integral and intrinsic component of the wider Australian society and not as some 'satellite' community requiring special protection. We therefore seek the removal of automatic exemptions on religious grounds from the Commonwealth Sex Discrimination Act.

Submitted on behalf of the women members of the General Synod Standing Committee, Anglican Church of Australia:

**Clergy:**

The Ven. Dr Sarah Macneil  
 Diocesan Archdeacon  
 Diocese of Canberra & Goulburn  
 The Revd Canon Dr Colleen O'Reilly  
 Vicar of St George's Church, Malvern  
 Diocese of Melbourne

**Lay women:**

Ms Rose Elu  
 Diocese of Brisbane  
 Ms Leigh Haywood  
 Deputy Chancellor, Diocese of Bathurst  
 Ms Audrey Mills  
 Chancellor, Diocese of Tasmania  
 Dr Muriel Porter OAM  
 Diocese of Melbourne  
 Ms Ann Skamp  
 Lay Secretary, General Synod  
 Diocese of Grafton