

Submission 2.

Submission to the enquiry into the effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality, specific to term of reference(n) and a number of other terms of reference.

Noel Gregory LLB, member Ordination of Catholic Women Inc.OCW.
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The *Sex Discrimination Act* 1984 provides by section 37 that:

"Nothing in Division 1 or 2 affects:

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes for in connection with, or otherwise to participate in, any religious observance or practice;
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion."

This provision took that form as a result of Government amendments to the original Government Bill presented by Senator Susan Ryan, Minister for Education and Youth Affairs, on 2 June 1983. The original Bill followed the wording in a Private Member's Bill presented by Senator Ryan in November 1981 and to the South Australian *Sex Discrimination Act*, 1975. The wording in the earlier versions was as follows:

"This Act does not apply to/Nothing in this Act affects-

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion, or members of a religious order; or
- (c) any other practice of a body established to propagate religion that conforms with the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

In her Second Reading Speech, (Hansard, page 1186), Senator Ryan said:

" New South Wales, Victoria and South Australia all have laws prohibiting discrimination on the ground of sex or marital

status, and the present Bill closely follows the substantive provisions of that State legislation . . .

The Bill provides for a number of exemptions and in this regard closely follows the State sex discrimination legislation with respect to the provisions of exemptions from the legislation."

On 29 November 1983, Senator Ryan presented a second Bill incorporating the Government amendments. In her Second Reading Speech on this Bill, she said:

"There are alterations in clause 37 dealing with religious bodies to extend it to the selection and appointment of acolytes, deacons and so on and in the language of the final paragraph which has been broadened."

We would suggest that, whatever Senator Ryan meant by 'acolytes, deacons and so on', the provision is far broader than is necessary to avoid injury to the religious susceptibilities of any rational adherents of the Catholic religion. It deals with practice, not belief. For example, many adherents of the Catholic religion were aggrieved by the introduction of girls as altar servers some decades ago. In any case, we would argue that the exemption of a practice necessary to avoid injury to the religious susceptibilities of adherents of that religion is far broader than is justified by freedom of religion. In addition, there is a great difference between 'the adherents' in the early versions and 'adherents' in the final version, namely, the difference between the great bulk of adherents and any number more than one.

The Sex Discrimination Act is based on the United Nations Convention on the Elimination of all Forms of Discrimination Against Women which was signed on behalf of Australia in 1976/80 and ratified in July 1983. Article 1 of the Convention defines the term 'discrimination against women'. By article 2 States Parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. To that end, they undertake to ensure the practical realisation of the principle of the equality of men and women, to prohibit discrimination against women, to ensure the effective protection of women against any act of discrimination, to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise, to take all appropriate measures to modify or abolish existing customs, and practices which constitute discrimination against women. We note that these undertakings are not qualified by the expression 'by all appropriate means', i.e. they are absolute.

Article 11.1 binds States parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular, the right to the same employment opportunities, the right to free choice of profession and employment. We would argue that these particular rights are the minimum measures that States Parties must take and not merely examples of measures that States Parties might consider appropriate.

The Convention does not provide for any exemption on the basis of religious beliefs or practices. In Article 28 it acknowledges the possibility of States Parties making reservations at the time of ratification. Only two reservations were made by Australia at the time of ratification, namely, in relation to employment of women in the Defence Force in combat and combat-related duties and paid maternity leave. No reservation was made in respect of religious belief or practice. The exemption contained in section 37 is contrary to Australia's obligations at international law and should be removed as a matter of integrity and good faith.

We can understand why the Government may have felt compelled to provide for the exemption. Thus, it was following a model that preceded Australia's signature of the Convention, let alone its ratification. More importantly, women were still generally disadvantaged at that time and the legislation was radical enough, without risking a major dispute with male church hierarchies. There was fierce opposition to ratification of the Convention and to the Bill. The extent of female disadvantage is illustrated by the fact that at the time of debate of the Bill there were 13 female Senators (as opposed to 27 now) and only 6 female members of the House of Representatives (as opposed to 39 now). Even the House of Representatives Standing Committee on Legal and Constitutional Affairs, which produced the report 'Halfway to Equal' in April 1992 was made up mostly of males. It is noteworthy that that report did not deal with the exemption in section 37.

The Committee will be aware that there were disagreements in the Parliament about the exemption. Mr Steele Hall said in the House of Representatives on 7 March 1984 (Hansard, page 675):

"It is a sobering thought, of course, that exemptions are give on religious grounds. I do not want to develop that thought further, but it is a sobering and disappointing thought that the provisions have been put into this legislation. I support these provisions because I can see no way of not putting them in with the community as we have it, but I am disappointed that it is on religious grounds that some discrimination is allowed."

On the other hand, Senator Peter Durack said on 21 October 1983 (Hansard, page 1919):

" . . . the attempt to legislate in this area reveals the degree to which there is conflict of principles. Principles of individual rights and liberties generally - principles of freedom of religion in this case - conflict . . . with the principles of equality between men and women and the elimination of discrimination on that ground."

(It is important to note in this regard that the Catholic hierarchy argue that the failure to ordain women rests upon the example of Christ and tradition, not on inequality of the sexes. In addition, one can argue that it is not so much the freedom of religion of the faithful as the freedom of the hierarchy that is in play).

Senator Michael John Macklin said in the adjournment debate about ratification of the Convention on 12 May 1983 (Hansard, page 446):

" . . .specific items such as concern about whether this Convention would trespass upon the rights of certain churches not to have women ministers is one which is of concern to a number of people".

(We would comment that churches as such do not have rights. The people who are members of churches have rights. The real issue is whether people in the Catholic Church are being denied their rights by the hierarchy. We would also refer to the inaugural ACFOA Human Rights Day lecture by Hilary Charlesworth, then of the University of Melbourne, on 10 December 1992. The lecture was entitled 'Has the United Nations Forgotten the Rights of Women?' At page 9 she said:

"Moreover, the notion of cultural, and religious rights can often reinforce a distinction between public and private worlds that operates to the disadvantage of women: culture and religion can be seen as spheres protected from legal regulation even though they are often the sites for oppression of women by men. While the right to gender equality on the one hand and religious and cultural rights on the other can be reconciled by limiting the latter, in political practice cultural and religious freedom tend to be accorded much higher priority nationally and internationally.")

Senator Michael Tate said on 21 October 1983 (Hansard, page 1923):

"I wish to quote from a 1976 Social Justice Statement of the Catholic Commission for Justice and Peace entitled 'Towards a Whole Community: Reflections on the Situation of Australian Women.' Under the heading 'Being valued as a full person in community' it says, among other things:

Woman as a person

recognised as physiologically different but not biologically determined, gifted with freedom to give herself in ways responsible to herself, family, society

not defined in terms of motherhood or used as a sex object

totally incorporated into the mainstream of society's activities, acknowledged and rewarded equally with men

not ignored in her vital contribution as homemaker, nor confined to home for lack of options

fully integrated into society, into its political, economic, cultural, religious decision-making process contributing gifts and talents, expanding the human potential

not maintained as a child, dependent, a second class citizen

The aspiration in that document is something with which I fully agree. In fact, I was a member of that Catholic Commission for Justice and Peace when that document was drafted."

(Nearly 25 years later, the facts are quite different from the aspiration. Shortly after his arrival in Canberra, Mark Coleridge, the new Archbishop, told Graham Downie of the Canberra Times that although the question of ordination was simply off the radar screen, he was interested in exploring every possible involvement of women beyond the question of ordination, in the Church. On how women might play an active, leadership role in the Catholic Church he said: 'That is the great question. That is where we need a quality of imagination we haven't demonstrated to this point.' He said that inter-religious dialogue was an area in which women might play an enormous part in peacemaking. Apart from the fact that the area identified by the Archbishop for the possible activity of women is somewhat marginal, we are not aware that he has done anything about it.)

There appear to be four main arguments against the ordination of women in the Catholic Church:

1. Christ ordained only men
2. Our constant tradition has been to ordain only men
3. Ordination would diminish the dignity of women
4. Only men can appropriately represent Christ in the Eucharist because Christ was a man.

We would argue that it is not clear that Christ ordained only men and that the tradition has run for long enough. As Senator Janine Haines said in the debate on the Sex Discrimination Bill on 21 October 1983 (Hansard, page 1930:

" I suggest that slavery is slavery, whether it takes place on a cotton plantation or on a pedestal."

With regard to the last point, we would say that the essential point about Christ was that he was a human being, not that he was a man.

Recommendation

That the Committee consider anew the rationale for the continued existence for religious bodies of automatic exemptions from the Act contained in sections 37 and 38.