

## View from The Hill: Discrimination debate will distress many gay school students

Written by Michelle Grattan, Professorial Fellow, University of Canberra

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The leak of part of the Ruddock report on religious freedom has come at a very bad time in the government's battle to hold the crucial seat of Wentworth on October 20. But there are other, more serious concerns than the byelection in the debate that's been opened.

Fairfax Media on Wednesday reported that religious schools would be guaranteed the right – under specified conditions - to decline to enrol gay students, in changes to anti-discrimination legislation recommended by the inquiry.

Wentworth had a very high vote for same-sex marriage in the plebiscite – almost 81% in favour compared with less than 58% for NSW as a whole. And the main threat to the Liberals' grip on the seat is from Kerry Phelps, a prominent (and gay) figure in the marriage equality campaign.

No wonder Liberal candidate Dave Sharma was quick to say he would be “opposed to any new measures that impose forms of discrimination on the basis of gender or sexual orientation, or anything else for that matter”.

Rightly or wrongly, sources sympathetic to, or close to, Malcolm Turnbull are copping blame for the leak - although second guessing the origins of leaks is a hazardous business and Turnbull is a fan of Sharma.

The government has been keeping the report under wraps since May, but now it can't stop the argument from raging in the final days of Wentworth campaigning.

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Scott Morrison immediately had the fire hose out. Asked “should religious schools be able to

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turn away students on the basis of their sexual orientation?" he said, "Well they already can. That is the existing law." He kept hammering the point.

Attorney-General Christian Porter said there is no proposal for any new exemption. "The exemption that allows schools to make employment and student admission decisions in a way consistent with the tenets of their religion already exists for religious schools under the Commonwealth Sex Discrimination Act," Porter said.

The government points out that the thrust of the Ruddock report's recommendation is to constrain and codify things. The school would have to give primary consideration to the child's best interests, and spell out its policy.

The report [says](#) : "To the extent that some jurisdictions do not currently allow religious schools to discriminate against students on the basis of sexual orientation, gender identity and gender characteristics, the panel sees no need to introduce such provisions.

"To the extent however that certain jurisdictions including the commonwealth do allow this type of discrimination, the panel believes the exceptions should be limited by the requirement that the discrimination be in accordance with a published policy which is grounded in the religious doctrines of the school".

In sum, the report has recommended tightening the federal Sex Discrimination Act and similar legislation in the ACT, NSW and Western Australia; the other states do not have such provisions and would be unaffected.

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But while the committee sees itself as recommending less scope for discrimination by religious bodies, just opening a discussion about the right to reject gay students could give cover for a resurrection of homophobic attitudes that campaigners and legislators have spent decades working to stamp out.

The government argues that, given the existing legislation, there's nothing to see. What there is to hear, however, is a new debate about the rights and wrongs of discrimination against certain kids. This will be distressing and unsettling for many young people.

Some on the right downplay the issue by saying the only students in the frame are those who would be campaigning on gay issues. They overlook that this seems to contradict the right's general line that we need more protections for freedom of speech. Or do they think there shouldn't be such freedom in a religious school?

Before people say these are not government schools and so should have free rein, remember that they get big dollops of taxpayers' money.

While it may be reasonable to allow them some exemptions based on faith issues, they should also conform to core community values.

It certainly is not in line with those values to think a school should be able to accept one boy while refusing admittance to his brother on the ground the second boy is gay and is willing to strongly defend his sexuality.

This debate will divide and discredit the Liberals unless it can be shut down quickly. Within the party it will split the moderates from the right, and cause division within the right too.

And, beyond the Liberals, it is now causing critics to focus on the existing legislation and say the discrimination against students that it permits should be scrapped.

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More generally on religious freedom, the government will be embroiled in a row that it didn't have to have over an issue it had no need to address.

Turnbull set up the Ruddock inquiry to placate the rightwingers upset over same-sex marriage.

It was a sop in search of a problem. Despite the claims of some, religious freedom is not under threat, a point apparently confirmed by the report.

The right brought down Turnbull regardless of his various attempts to pacify them, but Morrison is left with the legacy. Morrison himself has built expectations of action, suggesting recently there could be threats to religious freedom in the future and he favoured "preventative regulation and legislation".

The issue is likely to become a quagmire for him. As for the report – that should be put out immediately.

*Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.*

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