

29 March 2019

Submission to the Legislative Council Committee on Procedure

Dear Committee

I write to make a submission to your review into the proposal to remove or replace the Lord's Prayer from the opening of each sitting of the Legislative Council.

I am an Associate Professor of Constitutional Law at Monash University. I am the author of *Religious Freedom and the Australian Constitution: Origins and Future* (Routledge, 2018).

The Legislative Council has a compulsory Christian prayer. Legislative Council Standing Order 4.02 provides: "The President will take the Chair as soon after the time appointed for the meeting of the Council as a quorum of Members is present, and will read the Lord's Prayer."

Victoria regularly declares itself to be an inclusive State. The objects of the *Racial and Religious Tolerance Act 2001* include "promot[ing] the full and equal participation of every person in a society that values freedom of expression and is an open and multicultural democracy". The preamble to the *Charter of Rights and Responsibilities Act 2006* declares that "human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community".

It is not inclusive for the Legislative Council to start its sittings with a compulsory sectarian prayer. Official prayers, which of their nature preference one religious tradition over others, are inconsistent with Victoria's secular and religiously plural social fabric.

There are also serious human rights issues with a compulsory sectarian prayer, as is the current situation in the Legislative Council. Compulsory prayers in Parliament are inconsistent with religious freedom.

The compulsion is visited upon:

- The President, who is commanded by the Standing Order to pray,
- Members present in the chamber, who are compelled to engage in a group religious observance: the Lord's Prayer read by the President speaks of "we" and

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“our”, and

- Other persons present in the galleries, who have the option either of conforming to and participating in a Christian religious observance or leaving the gallery to avoid that participation.

Compulsory prayers of their nature compel individuals to engage in religious practice. Compulsory prayers in Parliament also amount to engaging in collective religious worship on the part of the State.

The practice of having official prayers endorses particular religious beliefs or traditions, favouring them over others. This is exclusionary. It sends a message to non-adherents of the preferred religion that they are not truly full members of the community.

Canadian Courts have said the following about the effects of official prayers:

- “The recitation of the Lord's Prayer, which is a Christian prayer, and the reading of Scriptures from the Christian Bible impose Christian observances upon non-Christian pupils and religious observances on non-believers.”

Zylberberg v Sudbury Board of Education (1988) 52 DLR (4th) 577 (case about compulsory prayers at start of school day)

- “The right to be excused from class, or to be exempted from participating, does not overcome the infringement of the Charter freedom of conscience and religion by the mandated religious exercises. On the contrary, the exemption provision imposes a penalty on pupils from religious minorities who utilize it by stigmatizing them as non-conformists and setting them apart from their fellow students who are members of the dominant religion.”

Zylberberg v Sudbury Board of Education (1988) 52 DLR (4th) 577, 656

- “to physically leave the chamber for the duration of the prayer highlights the exclusive effect of the practice. Rather than limiting the religious nature of the By-law, the possibility so afforded accentuated it.”

Mouvement laïque québécois v City of Saguenay, 2015 SCC 16, [101] (case about official prayers at start of municipal council meetings)

- “The prayer recited by the municipal council in breach of the state’s duty of neutrality resulted in a distinction, exclusion and preference based on religion — that is, based on Mr Simoneau’s atheism — which, in combination with the circumstances in which the prayer was recited, turned the meetings into a preferential space for people with theistic beliefs. The latter could participate in municipal democracy in an environment favourable to the expression of their beliefs. Although non-believers could also participate, the price for doing so was isolation, exclusion and stigmatization.”

Mouvement laïque québécois v City of Saguenay, 2015 SCC 16, [120]

- “When Mr Simoneau went to meetings of the municipal council, he had to choose between remaining in the chamber and conforming to the City’s religious practice, excluding himself from the practice by refusing to participate in it, and physically excluding himself from the chamber for the duration of the prayer. If he chose to conform to the council’s practice, he would be acting in direct contradiction with his atheistic beliefs. If he chose to exclude himself from the prayer either by refusing to participate in it or by leaving the chamber, he would be forced to reveal that he is a non-believer.”

Mouvement laïque québécois v City of Saguenay, 2015 SCC 16, [121]

- “giving those who preferred not to attend the recitation of the prayer the time they needed to re-enter the council chamber, far from tempering the discrimination, exacerbated it”

Mouvement laïque québécois v City of Saguenay, 2015 SCC 16, [122]

These comments are equally applicable to the practice of having an official prayer in the Legislative Council.

Official prayers are inconsistent with the right to freedom of religion or belief because they *compel* people to engage in religious observances. It is no part of that right to compel others to conform to one’s religious beliefs or practices.

The Legislative Council should act in an inclusive manner. It should not favour one religious tradition over others or over non-religious traditions. It should not compel participation in religious practices. The Legislative Council should therefore reform the current practice of opening its sittings with the Lord’s Prayer.

I trust this submission is of assistance.

Yours sincerely

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