Freedom of Religion in Australia

- Review conducted by Department of the Prime Minister and Cabinet

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Submission from Peter and Jenny Stokes

Introduction
The freedom of religion, and of thought and conscience, is under increasing threat in Australia.
The right to act according to one’s principles is enshrined in international law, specifically in Article 18 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, to which Australia is a signatory.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.


The right to freedom of religion was further expanded in the UN International Covenant on Civil and Political Rights, in 1976.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

‘Freedom of religion’ is not just about the holding of a personal ‘religious’ view. It applies to any ‘worldview’ or belief system.

‘United Nations Rapporteurs have taken the view that ‘religion or belief’ encompasses theistic, non-theistic and atheistic beliefs (noted in ‘Article 18: Freedom of Religion and Belief’, AHRC Report, 1998).

People should be able to act according to their conscience and belief, regardless of whether it is seen as ‘religious’ or not.

However, this is not just about the holding of a personal belief, either of any religion or none. It includes the ability to manifest that belief in practice in our daily lives. Naturally, that is within the context of normal law, as in noted in Article 18, (iii).

Previous Inquiries into religious freedom

Since the current Inquiry is to consider previous Inquiries held in Australia regarding religious freedom, then the two Inquiries conducted by the Australian Human Rights Commission are relevant, including all the submissions made to those Inquiries.


The first of these was held in 1997. The report was titled ‘Article 18: Freedom of religion and belief’, with the Discussion Paper titled ‘Free to Believe: The Right to Freedom of Religion and Belief in Australia’


The second Inquiry was conducted in 2008-2011 and was titled ‘Freedom of Religion and Belief in the 21st Century’.


The Australian Human Rights Commission notes that Article 18 refers to any religious or non-religious belief, as well as the “right not to profess any religion or belief”

Introduction

The right to freedom of thought, conscience and religion is recognised in Article 18 of the ICCPR.

Article 18 protects not only the ‘traditional’ religious beliefs of the major religions, but also non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The right recognised in Article 18 is simultaneously an individual right, and a collective right. It has both an ‘internal’ dimension (the freedom to adopt or hold a
belief), and an ‘external’ dimension (the freedom to manifest that belief in worship, observance, practice or teaching). While the internal dimension is absolute, the external dimension can be subject to certain limitations (on the strictly restricted grounds specified in Article 18(3)).


We have participated in these inquiries, and welcome the opportunity to contribute to the current discussion on religious freedom.

Opposition to Religious Freedom Act and ‘discrimination/vilification’ laws

We disagree with the 1998 proposal by the AHRC to implement a Religious Freedom Act.

We also disagreed with any proposal for new laws – whether discrimination or vilification – based on religion or a range of other attributes.

We have serious concerns about Section 18c of the federal Racial Discrimination Act, which allows for complaints to be made if “(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people;”

We believe that this Section 18C should be repealed.

This wording of ‘offend’ and “humiliate” have been used in the vilification laws of some states (eg Tasmania) whilst others have gone for ‘inciting hatred’.

Discrimination and vilification laws invariably pit one group against another – and it is often seen as a ‘battle of rights’… whose rights will triumph over the other? Whether it is religion or sexuality, there are always genuinely held beliefs that mean there will always be conflict between individuals and groups.

It is not the role of courts or tribunals to rule on matters of religious belief, conscience or thought.

Since 1998, we have seen various states implement a number of vilification (and also discrimination) laws based on religion, race and sexuality.

The implementation of discrimination laws and vilification laws, both at the state and federal level, has severely limited the freedom to speak openly about a wide range of topics.

The 2011 AHRC report found that there was “little enthusiasm” for a Religious Freedom Act! Or indeed for vilification (incitement to hatred) laws… with varying groups having opposing views:

“The major issues of the 1998 report related to new religious movements as well as recommendations regarding a religious freedom Act. But more than a decade later, little enthusiasm was found for such an Act. Other key issues of the 1998 report were around specific areas relating to the practice of religion, such as burials and autopsies. The 1988 report also made recommendations on religious discrimination and incitement to hatred on the basis of religion and belief. It would seem from the evidence that support for religious anti-vilification legislation has become more polarised.
Regarding discrimination and vilification laws, we have found that fear often drives people to be silent, as they do not want to be dragged before state Tribunals or courts, or federal courts.

When discrimination and vilification complaints are made, they are generally made on the basis of ‘feelings’, even if the specific law says that it is about ‘incitement to hatred’. It is easy for a complaint to be made – and the person complained against has to defend themselves.

Often the ‘initial stage’ is responding to a complaint to an anti-discrimination Commission – usually behind closed doors and in ‘secret’. The person complained against is often put under pressure to back down or apologise, and are often required to make payments to the ‘injured’ party. If ‘mediation’ is not successful, the person often finds themselves in a tribunal or court, trying to justify their comments – at huge expense.

As the founders of Salt Shakers, a Christian ethics group that operated for 22 years from 1994 to 2016, we have investigated many of these laws, and have found ourselves providing support and assistance to people who find themselves answering discrimination or vilification complaints – for example, the case brought by the Islamic Council of Victoria against Daniel Nalliah and Daniel Scot for a seminar they ran about Islam; the case brought against Dr Reina Michaelson by the OTO (both ‘religious vilification’), the case against CYC youth camps for not renting their property to a homosexual youth group (sexuality discrimination, Vic) and the case brought against Sarah Champness and the Catholic Leader by PFLAG in Queensland (sexuality vilification).

When the laws include ‘humiliate’ and ‘offend’ and ‘insult’ – such as the Federal Racial Hatred law, and some states’ vilification law – it is very easy for groups and individuals to lodge complaints, which the defendant is then required to defend. The wording of these is very flexible, and relies on feelings and thought.

In the discrimination case brought against the Catholic Leader by PFLAG, the original ‘complaint’ claimed that an article written by Champness and published in the Catholic Leader, had ‘offended and insulted’ homosexuals. The Anti-Discrimination Commission of Queensland wrote to PFLAG, telling them that the Queensland sexuality vilification law did not cover ‘offend and insult’. PFLAG then relied to the Commission, changing their claim to ‘inciting hatred, ridicule, contempt’ etc. The complaint was then accepted by the Commission!

In any evaluation of ‘religious freedom’ in Australia, we recommend that no federal law regarding ‘religious hatred’ or ‘sexuality vilification’ be considered or implemented.

Racial Hatred Act – 18c – Repeal

The wording of Section 18C allows for complaints to be made if someone is offended or insulted.

“RACIAL DISCRIMINATION ACT 1975 - SECT 18C

Offensive behaviour because of race, colour or national or ethnic origin

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.


As we noted when Victoria considered this wording in the initial draft of the Racial and Religious Tolerance Act, anyone could be ‘offended’ or insulted’ every day – and how could a court or tribunal decide how ‘offended’ someone was on the basis of their religion…

After a public outcry, the proposal was changed to “incites or encourages hatred, serious contempt, revulsion or severe ridicule”.


We also recommend that Section 18c of the federal Racial Hatred Act be repealed.

Inclusion of ‘religion’ in the Racial Discrimination Act

We totally oppose the inclusion of ‘religion’ or ‘religious groups’ in the federal Racial Discrimination Act.

Over the years there have been various attempts to have Muslims included under the Act. Both by individual complaints made, and an Inquiry conducted by the AHRC called ‘IsmaE’.


However, Islam is not a race – Islam is a religion, and adherents of Islam come from many countries and many ‘races’ and ethnic groups. Thus it should not be included in the racial hatred section of the Racial Discrimination Act.

Freedom of religion relating to the legalisation of same-sex ‘marriage’

As Christians, we believe that marriage is between a man and a woman. We believe that we have the right to uphold this view, despite the Australian government legislating to the contrary, without being taken to tribunals or courts on the grounds of discrimination or vilification.

With the passing of legislation to allow same-sex marriage in Australia, we have serious concerns about the imposition this will have on freedom of religion in Australia.

Whilst ministers of religion are currently awarded some protection, in not having to marry a same-sex couple, most other people do not have such protection.

Some of our concerns include:

- The regulations relating to civil celebrants and same-sex ‘marriage’. The new Marriage Act attempts to give some protection to civil celebrants – but only on the basis of ‘religious beliefs’. Anyone with ‘conscience’ objections has NO protection. See https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Documents/Fact-Sheet-New-subcategory-of-religious-marriage-celebrant.pdf
‘Equality Campaign says: “All civil celebrants must uphold anti-discrimination laws and cannot unlawfully discriminate against couples, including same-sex couples. Existing civil celebrants that wish to conduct marriages in accordance with religious beliefs can elect to be registered as religious marriage celebrants.”

However this protection clause of the new category of ‘religious marriage celebrant’ is very limited, and itself discriminates against people with religious beliefs

- A civil celebrant may refuse to marry a same-sex couple for reasons OTHER than religious, on conscience or thought or belief grounds. They cannot just become a ‘religious marriage celebrant’. The exemption ONLY applies to civil celebrants who have ‘religious’ objections. The only option is for them to STOP being a civil marriage celebrant!
- There is some continuing protection for ministers of religion, who will continue to be registered as a ‘religious marriage celebrant’.
- For civil celebrants who are not ministers of religion, the exception ONLY applies to civil celebrants who were registered BEFORE 8 December, 2017. They can apply to be a ‘religious marriage celebrant’.
- If a person applies to be a civil celebrant AFTER 8 Dec 2017 they will NOT qualify to be a ‘religious marriage celebrant’ - “Persons who are registered as a marriage celebrant after 8 December 2017 to perform civil ceremonies (and who are not a minister of religion) will not have access to the religious marriage celebrant subcategory.” This effectively stops ANY FUTURE celebrants being able to register as a ‘religious marriage celebrant’ – it will be ‘marry everyone, or NO-ONE’!
- For those who were registered prior to 8 Dec 2017, and do apply to be a ‘religious marriage celebrant’, they are REQUIRED to include this in ANY advertising of their services. One of the roles of a civil celebrant has been to provide non-religious services OR religious services, as desired by the couple. This NEW restriction would severely limit the ability of such a person to provide a wide range of services. Christians who have been civil celebrants have been able to help couples who are not religious to find significant ways to celebrate this important commitment. It would be a question of – apply to be a ‘religious marriage celebrant’ and lose access to anyone who would not employ a ‘religious’ person’ OR don’t list in that category and be forced to marry same-sex couples (or risk being taken to court if they refuse such a request).

The right of individuals to refuse to provide services related to marriage – this could range from the baking of wedding cakes, provision of photography services, venues for weddings etc. When there are so many available services, why anyone would want to persist in asking someone to provide such personal and intimate services when they are philosophically opposed to doing so, has always amazed us.

The ability to freely express our views on the Christian view of marriage as being between a man and a woman. In Canada, where same-sex marriage has been legal for some years, it is increasingly difficult to express views opposing same-sex marriage or expressing concerns about homosexuality.

We are concerned that, in the future, Christian charities, hospitals, schools and aged care may lose their current status because of their expressed views opposing same-sex marriage.
We are concerned that there will be an increasing number of discrimination and vilification claims made against those who express the Christian Biblical view of marriage being between a man and a woman, and oppose same-sex marriage.

Conclusion

In conclusion, freedom of religion, and belief and conscience, is a vital part of our community.

Although Australia has become increasingly secular, the Christian principles that undergird our laws provide stability in our nation.

Freedom of religion will not be increased by new discrimination and vilification laws. They bring fear and distrust, rather than harmony.

As a society we must protect the ability to speak and think based on our convictions, whether religious or not.