In defence of the “four freedoms”:
freedom of religion, conscience, association and speech

Understanding religious freedom

Religious freedom is a fundamental human right – the expression of which is bound up with the concept of human dignity as it enables people to live in accordance with deeply held views about what it means to be human. The right is safe-guarded by placing certain limits on government with regard to interference in the public and private exercise of religious freedom, and by ensuring that the government does not privilege one belief system over another.

Religious freedom can only operate in a society that embraces the principle of mutual tolerance and respect. Further, it goes hand-in-hand with freedom of conscience, speech and association, which serve as the means by which people can consider, discuss and debate important questions about human existence. These “four freedoms” are essentially indivisible, and each deserving of protection.

Religious freedom articulated in the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights ("ICCPR") provides a comprehensive framework for understanding religious freedom as it incorporates other fundamental freedoms. Article 18 states:

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 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.

Article 18 communicates the fact that freedom of religion is not just about respecting an individual’s right to hold private beliefs behind closed doors, but also to live out those beliefs in the public sphere, including in the workplace. Article 18 also recognises that freedom of religion is not merely an individual right, but also a group right which enables people to manifest their religion ‘in community with others.’ The manifestation of religion does not merely involve acts of worship, but also ‘observance, practice and teaching’, such as the running of religious schools and hospitals.

The right to gather together with people who share in a common faith and creed is also protected by article 22 of the ICCPR which states: ‘Everyone shall have the right to freedom of association with others’. Special protection is also afforded to religious minority groups, enabling them to preserve their own cultures, beliefs and traditions. Article 27 of the ICCPR specifically addresses this where it states:

‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.’

Article 18(3) also provides helpful guidance on what constitutes an appropriate limitation on freedom of religion. The use of the word ‘necessary’ means that a restriction cannot be imposed beyond what is strictly necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others – and not beyond what is necessary. In other words, any restriction must be clearly justified by real evidence and not assertion.

While Article 18 does not refer explicitly to freedom of speech, speech nevertheless plays an important role in freedom of religion. It is often through speech – whether verbal, written, or symbolic - that we come to adopt beliefs of our own in the first place, and having done so, we continue to use speech to test the truth or falsity of our religious claims, and to share our findings with others.

**Laws which undermine the “four freedoms”**

One of the difficulties in seeking to protect the four freedoms is drafting laws that promote community cohesion rather than being a source of division and increased tension. Over the last
12 years, however, our Australian parliaments have implemented, or attempted to implement, legislation which undermines each of these four freedoms.

**Anti-discrimination laws threaten freedom of religion and association**

Perhaps one of the most obvious threats to religious freedom in Australia comes from changes to anti-discrimination laws across the country. There is an active constituency arguing to reduce or eliminate ‘religious exceptions’ that exist to safeguard legitimate expressions of religious freedom. This constituency seemingly has little understanding of, or respect for, the rights of religious communities to maintain their identity.

For example, the *Sex Discrimination Amendment Act*, which was passed in the final days of the Labor government, was amended to remove exemptions for Commonwealth aged-care providers. As a result of this, it is no longer lawful for a Commonwealth-funded religious aged-care facility to preference a married couple over an unmarried couple – whether heterosexual or homosexual.

Of course the government has a duty to ensure that all people, irrespective of their sexuality, have access to aged-care facilities. The problem is that the previous government sought to achieve this end by prohibiting people who share in one faith, and share similar expressions of that faith, from choosing to live together in their old age.

This was followed almost immediately by the *NSW Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013*, which seeks to prevent private educational institutions from being able to discriminate against its students on the basis of attributes relating to their sexuality or relationship status.

However, such a proposal fails to recognize that many private educational institutions are religious communities established with the object of professing, practicing and teaching a particular religious faith. This involves much more than including prayers at school or college assemblies, or mentioning God in the curriculum. Religious educational institutions are interested in the formation of the whole person, and often seek to establish a community that upholds the full teaching of the faith, including teachings on sex and sexuality.

Many religions, including orthodox Christian denominations, teach that sex is the celebration of a union between a man and a woman who have given themselves exclusively to one another in marriage. In fact almost every major Australian Christian denomination has a doctrinal statement to this effect.

As a result of this, Christian educational institutions may expect their students to uphold particular standards in relation to sexual practice. This applies to heterosexual as much as to
homosexual practices. It is not about being “anti-gay” or “anti-anything”, rather it is about proposing a way of life, and seeking to establish a community that upholds this way of life.

Laws which undermine freedom of conscience

Threats to religious freedom don’t just stem from anti-discrimination measures. Limitations are also imposed by legislation that limits freedom of conscience and speech, both of which go hand in hand with religious freedom.

For example, the Victorian Abortion Law Reform Act (2008) requires medical practitioners who have a conscientious objection to abortion to provide a referral to another health professional who does not have such an objection. Doctors and nurses are compelled to assist in abortion where there is a threat to the life of the woman, again irrespective of any conscientious objection they may have to the procedure.

Very recently, Tasmania passed the Reproductive Health (Access to Terminations) Act 2013 which similarly limits the right of conscientious objection in relation to the issue of abortion by requiring medical practitioners who conscientiously object to abortion to provide their patients with a list of those who do not hold such an objection.

Laws which undermine freedom of speech and assembly

The Tasmanian Reproductive Health (Access to Terminations) Act 2013 also limits freedom of speech and assembly by preventing members of the public from engaging in ‘prohibited behaviour’ within 150 metres of abortion clinics. The Act defines ‘prohibited behaviour’ to include engaging in ‘a protest’ that can be ‘seen or heard’ by a person accessing the clinic.

Abortion is an extremely sensitive issue, and no woman approaching an abortion facility should be harassed or threatened. However, the difficulty is that the definition of ‘prohibited behaviour’ is so broad that it has the possibility of imposing a hefty fine, or even a prison sentence, on those who engage in even the most peaceful of protests.

In 2001, the Victorian parliament introduced legislation called the Racial and Religious Tolerance Act which proved to be controversial in its application. Section 8 of the Act states:

‘A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.’
In *Islamic Council of Victoria (ICV) v Catch the Fire Ministries (CFM)*, the ICV claimed that CFM and two pastors had vilified Muslims in a church publication and seminar they had given on the topic of Islam. At first instance, the Victorian Civil and Administrative Tribunal (VCAT) found against CFM and the pastors and ordered them to make a public apology in *The Age* and the *Herald Sun* acknowledging, amongst other things, that they had vilified “all Muslim people, their God, their prophet Mohammed and in general Muslim beliefs and practices”. On appeal, however, the Court found that the Tribunal had incorrectly interpreted and applied the Act and referred the matter back to VCAT to be reheard in light of the Court of Appeal’s determination. The hearing never eventuated as the matter was settled through mediation. However, the proceedings had come at a great emotional and financial cost to the pastors and also had the effect of stifling reasonable public discussion on the topic of religion.\(^3\)

This case provides evidence of how legislation can be used as a vehicle to promote hostility and division as opposed to mutual tolerance and respect. We warn against creating or expanding legislation in a way that encourages litigation as the preferred method of dispute resolution.

**Recommendations**

What religious organisations really need by way of accommodation in anti-discrimination law is three things:

1. Accommodation which allows religious organisations to employ staff using criteria which derive from the mission and identity of the organisation;
2. The right to give preference in some kinds of service provision to those for whom the service was established; and
3. Freedom to uphold moral standards within faith communities.

In addition to the maintenance of the existing protections for religious freedom, which could readily be redrafted in more appropriate and modern terms, adherents of a religious faith also need better protection for their human rights in a new environment of hostility to religious faith. In particular, there is a need to extend the notion of reasonable accommodation to cover issues of conscience in the workplace.

Finally, religious organisations need human rights’ organisations to support the four freedoms with the same energy that they expend on supporting other human rights. The track record of some of those organisations leaves much to be desired.

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3. For further reading on the subject of religious hatred legislation, F4F recommends Parkinson, Patrick ‘Religious anti-vilification, anti-discrimination laws and religious minorities in Australia: The freedom to be different’ (2007) 81 ALJ 954.
Conclusion

The four freedoms are at risk of being undermined in Australian society due to a focus on other, sometimes competing rights. In light of this, there is a need to “re-balance” the rights agenda in view of recent developments, particularly the over-reach of the equality lobby. We now call the Federal and State governments to take steps to ensure that the freedoms of religion, speech, association and conscience are protected, strengthened and promoted. The value of protecting and promoting religious freedom as an essential and indivisible part of a broader program to safeguard fundamental freedoms for Australian society.