viewpoint

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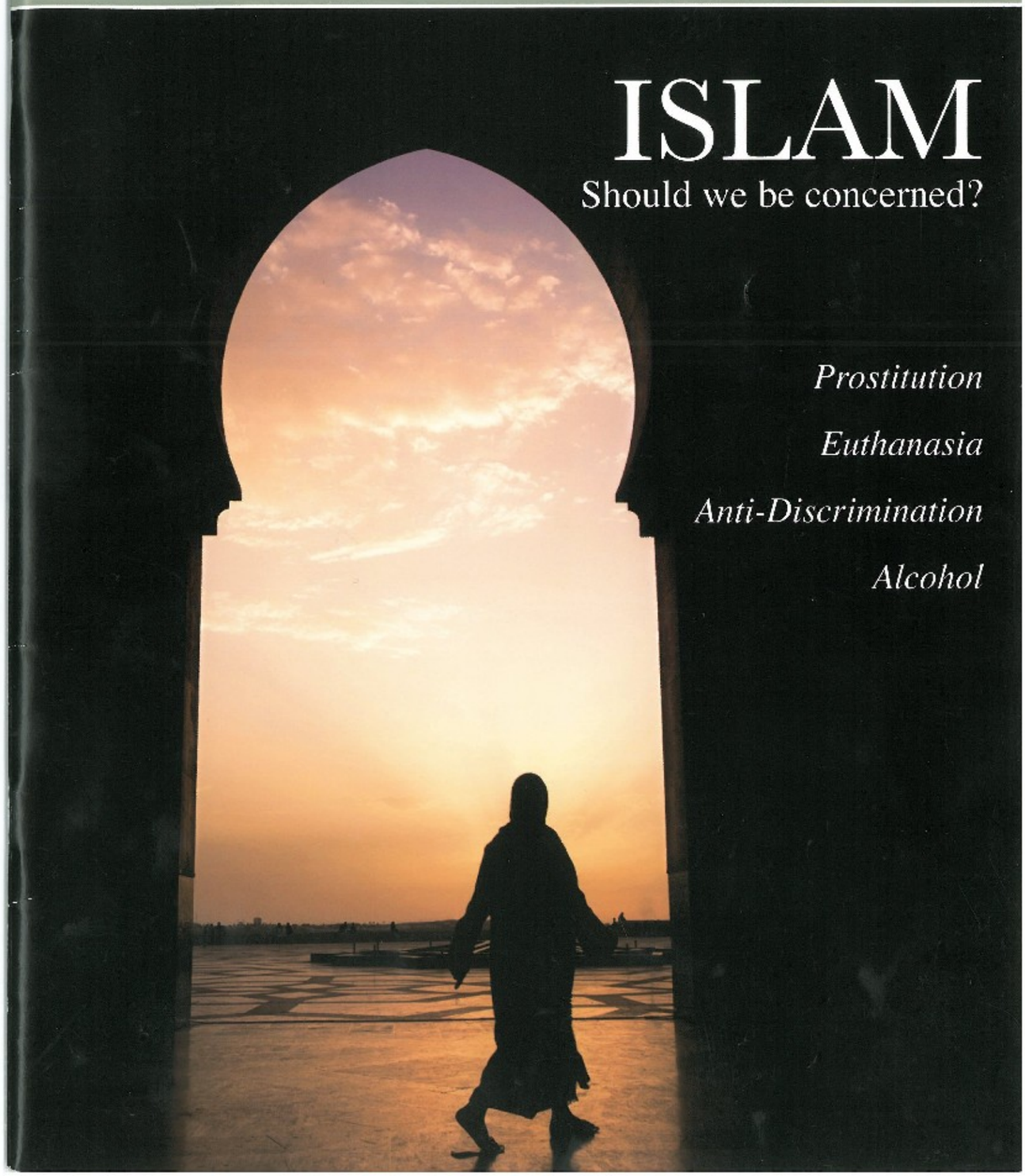

ISLAM

Should we be concerned?

Prostitution

Euthanasia

Anti-Discrimination

Alcohol

CONTENTS

EDITOR'S NOTE

Welcome to *Viewpoint*. It is my privilege and pleasure to have taken over the editing of *Viewpoint* from David Yates, who maintained a standard of excellence in the quality and breadth of articles published in each issue. I am thankful to him for his skill and passion in forging what has become a well-read, researched and informative journal tackling some of the most contentious topics of our time.

Viewpoint aims to educate, inform and challenge readers, including policy makers, on issues of concern, particularly to the Christian constituency served by the Australian Christian Lobby. We do this by allowing credible authors, including academics, politicians, journalists and other experts in their fields, to give their informed and often opposing views on a broad range of issues in the news or being considered by the parliament. Our objective is to cover issues in enough detail so as to enable policy makers and voters to make informed decisions about important topics.

The magazine seeks to remain impartial in presenting contrasting perspectives, providing the forum for a higher level of critical analysis in policy debate. This issue is no exception. We unpack the controversial and emotional topic of Islam, and consider the growth and dangers of the burgeoning prostitution industry within Australia, as well as discussing the merits and risks of euthanasia and anti-discrimination laws. In their regular opinion pieces, columnists Claire van Ryn, Ruth Limkin and Toby Hall address such diverse societal and cultural issues as alcohol, the need for a hug, and the merits of finding private organisations to address society's most difficult social problems.

Viewpoint is distributed to all federal and state politicians, plus a growing subscriber base, and is on sale in selected newsagencies across Australia. It is published three times a year in February, June and October.

Jim Wallace AM
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Australian Christian Lobby

Paul O'Rourke
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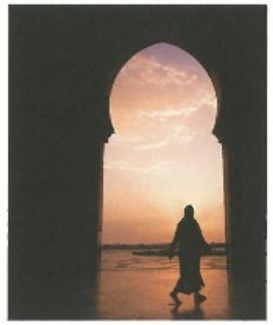


COVER STORY •

REVEALING ISLAM

In our cover story, Christian theologian, church leader and author *Dr Mark Durie*, and *Professor Samina Yasmeen*, a specialist in the role of Islam in world politics, discuss the relevance of recent world events and their application to Australia, both immediately and into the future, within the context of the Muslim religion.

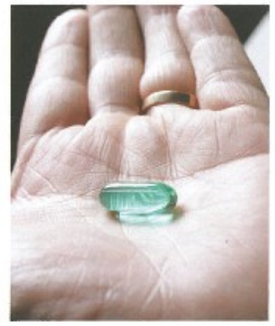
Read their expert reports on pages 12-20

• EUTHANASIA

A RIGHT TIME TO DIE?

Professor Nicholas Tonti-Filippini from John Paul II Institute in Melbourne, who is battling a terminal illness, debates this issue with Neil Francis, President and CEO of Dying With Dignity Victoria, and Chairman and CEO of YourLastRight.com, the National Alliance of Australian State and Territory Dying with Dignity and Voluntary Euthanasia Societies.

Their reports start page 31



• PROSTITUTION

BUSINESS OF SEX

Viewpoint editor *Paul O'Rourke* gives an overview of prostitution within Australia, including the size of the industry and who makes use of its services. *Elena Jeffreys*, who is a fulltime sex worker and part time President of Scarlet Alliance, the Australian Sex Workers Association, argues that prostitution is a valid work choice which should be legalised, while *Janice G. Raymond*, Professor Emerita of Women's Studies and Medical Ethics at the University of Massachusetts, Amherst, says prostitution demeans women and leads to traffiicking and exploitation. *Reports page 4, 21-29*

• ANTI-DISCRIMINATION

FREEDOM AND PROTECTION

Should religious organisations be exempted from anti-discrimination laws? Debating this issue are Professor Patrick Parkinson from the University of Sydney and Professor Margaret Thornton from the Australian National University.

Read their reports on pages 41-48

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REGULAR FEATURES •

CHRISTIANITY 'PRIVILEGED' IN LAWS PROTECTING FAIRNESS

Written by **Margaret Thornton**

Margaret Thornton is Professor of Law and ARC Professorial Fellow in the ANU College of Law, ANU. Her current research project is entitled 'EEO in a Climate of Uncertainty'. She is a Fellow of the Academy of Social Sciences and a Foundation Fellow of the Australian Academy of Law.

The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land.[1]

Australia is a secular state. Unlike the UK, it has no established religion, but Christianity remains privileged in myriad ways. There are ever-present reminders of this through the observance of Easter and Christmas, and the swearing of oaths, although multiculturalism, religious diversity and the growth of secular humanism has ostensibly weakened commitment to these rituals as the 2001 census data reveals. The percentage of the population who identified as Christian fell from 96.1% in 1901 to 68% in 2001 and, between 1996 and 2001, the number of people who identified with non-Christian religions increased by 79% for Buddhism, 42% for Hinduism, 40% for Islam and 5% for Judaism. Deference to institutionalised Christianity nevertheless remains strong and the census also reveals an increase of 11.4% for Pentecostal Christians.[2]

Traditionally, Australia has prided itself on its tolerance as a secular society, accepting that people are entitled to believe whatever they wish. There is strong resistance to any suggestion that the beliefs of one group should impinge on the freedom of others. Most State and Territory anti-discrimination legislation proscribes discrimination on the ground of religious belief or activity, but New South Wales, South Australia and the Commonwealth remain notable exceptions. The ground of religious belief or absence of belief was originally intended to be included in the NSW *Anti-Discrimination Act 1977* (ADA) but it never materialised, despite a recommendation from the NSW Anti-Discrimination Board in 1984 following publication of a substantial report. In South Australia, the *Equal Opportunity Act 1984* was amended in 2008 to outlaw discrimination on the ground of appearance or dress associated with religious belief, but not the ground of religious belief itself.

Although discrimination on the ground of religious belief is not outlawed at the federal level, the *Australian Human Rights Commission Act 1986* (Cth) (AHRCA) permits a complaint to be lodged with the Commission and an inquiry conducted. If settlement is inappropriate, a report may be made to the Minister (AHRCA s 29). This initiative is based directly on the *International Covenant on Civil and Political Rights* (ICCPR), which is included as a Schedule to the AHRCA. By not being made unlawful, it would appear at first glance that discrimination on the ground of religious belief is treated less seriously than race, sex, disability or age, the grounds on which discrimination is proscribed at the federal level,[3] but this impression is misleading.

The Australian Human Rights Commission (AHRC) is currently conducting a project entitled *Freedom of Religion and Belief in the 21st Century*, which includes consideration of a federal Religious Freedom Act. As evidence of the strong community views animating the issue, the AHRC website reveals that approximately 2000 submissions were received by the end of February 2009,[4] but the fate of the Act remains uncertain. A consolidation exercise involving the current federal anti-discrimination Acts is underway and religious belief could be included as a new ground

euthanasia cannot be made safe for people who are seriously ill and thus vulnerable. It is worth noting that jurisdictions such as the Netherlands and Belgium that legalised euthanasia, lacked the availability of the kind of palliative care services that had developed in the UK.

• Euthanasia law cannot be made safe. The Northern Territory briefly had similar law. As discussed above, several of those for whom the legislation was implemented did not in fact meet the criteria of the Act despite the safeguards.[13] This is reflected also in the Dutch experience where much larger numbers than were expected have been subject to the law, raising human rights concerns, see United Nations' concern below.

• Euthanasia is contrary to the International Human rights instruments. When the Human Rights Committee of the United Nations considered a euthanasia law enacted in the Netherlands to codify what had become euthanasia practice, the Committee said that where a State party seeks to relax legal protection with respect to an act deliberately intended to put an end to human life, the Committee believes that the International Covenant on Civil and Political Rights obliges it to apply the most rigorous scrutiny to determine whether the State party's obligations to ensure the right to life are being complied with (articles 2 and 6 of the Covenant). The committee expressed the concerns that the new Act (in the Netherlands) contains a number of conditions under which the physician is not punishable when he or she terminates the life of a person, inter alia at the "voluntary and well-considered request" of the patient in a situation of "unbearable suffering" offering "no prospect of improvement" and "no other reasonable solution". The committee also expressed concern lest such a system may fail to detect and prevent situations where undue pressure could lead to these criteria being circumvented. The Committee was also concerned that, with the passage of time, such a practice may lead to routinization and insensitivity to the strict application of the requirements in a way not anticipated. The Committee learnt with unease that under the present legal system more than 2000 cases of euthanasia and assisted suicide (or a combination of both) were reported to the Netherlands' review committee in the year 2000 and that the review committee came to a negative assessment only in three cases. The large numbers involved raise doubts whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained.[14]

People often make a distinction between active euthanasia in which a fatal intervention such as a drug overdose is given in order to end the suffering by ending the life, and passive euthanasia in which life-prolonging treatment is deliberately withdrawn in order to end the suffering by ending the person's life.

The Catholic Church, however, makes no such distinction and has declared that euthanasia, in the strict sense, is understood to be an action or omission, which of itself and by intention, causes death, with the purpose of eliminating all suffering. Euthanasia's terms of reference, therefore, are to be found in the intention of the will and in the methods used", and asserts that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.[15]

The Church, however, makes a distinction between passive euthanasia or killing by omission and withdrawing or withholding treatment that is futile, (that is it is ineffective), or treatment that is overly burdensome:

"Euthanasia must be distinguished from the decision to forego so-called "aggressive medical treatment", in other words, medical procedures which no longer correspond to the real situation of the patient, either because they are by now disproportionate to any expected results or because they impose an excessive burden on the patient and his family. In such situations, when death is clearly imminent and inevitable, one can in conscience "refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted".[16] Certainly there is a moral obligation to care for oneself and to allow oneself to be cared for, but this duty must take account of concrete circumstances. It needs to be determined whether the means of treatment available are objectively proportionate to the prospects for improvement. To forego extraordinary or disproportionate means is not the equivalent of suicide or euthanasia; it rather expresses acceptance of the human condition in the face of death." [17]

Simply expressed, therefore, euthanasia may be defined as deliberately bringing about death by active intervention (e.g. overdose) or by neglect of reasonable care (e.g. withholding non-burdensome treatments such as nutrition and hydration/antibiotics) in order to end suffering by ending life.

CONCLUSION

Euthanasia law can never be made safe to protect the vulnerable as experiences in other countries have proven.

Instead, more resources should be spent on palliative care services.

Euthanasia is not supported by those in the medical profession and others in the care of the aged, dying and those with chronic pain. ●

in the omnibus Act, but this is by no means certain in light of the contention surrounding the ground, which includes opposition from a number of religious bodies themselves.

I should interpolate here a brief comment about the National Human Rights Consultation led by Frank Brennan SJ in 2009[5], even though its chief recommendation — that Australia should have a federal Human Rights Act — was rejected by the Rudd Government, a step understood to have been sought by the mainstream Christian churches. As with the Victorian *Charter of Rights and Responsibilities Act 2006* (Vic Charter) and the ACT *Human Rights Act 2004* (ACT HRA), the Brennan Report favoured a "dialogic" model, whereby the legislature, the courts and the community would work together and utilise educative means to realise the aims of the Act, rather than rely on litigation. Equality of opportunity for all, including equality between men and women, and freedom of religion, were identified as important rights arising from the seven main international human rights treaties ratified by Australia, including the ICCPR, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Despite the absence of an entrenched guarantee of freedom of religion in Australia[6] or a federal Human Rights Act, as well as continuing ambivalence regarding the inclusion of religious belief (or non-belief) as an operable ground within anti-discrimination legislation, we find that religious belief is nevertheless accorded a privileged status de facto. Thus, while the Australian state has responded to pressure to improve the status of women, Indigenous people, and gays and lesbians through the enactment of anti-discrimination legislation, it has simultaneously sought to appease powerful conservative interests more interested in maintaining the status quo than in promoting the non-discrimination principle. I will show how these dichotomous aims are achieved by way of exception to the stated grounds.

RELIGIOUS EXCEPTION

Other than the Vic Charter and the ACT HRA, anti-discrimination legislation is the nearest we have to a bill of rights. The legislation is designed to facilitate equality of opportunity for all on specified grounds in specified areas of public or quasi-public life, including employment, education, access to goods and services, clubs and accommodation. The overwhelming proportion of complaints relate to employment, which is perhaps unsurprising, given its centrality to the lives of most people.

The aim of the legislation is to achieve equality of opportunity at the point of access rather than equality of outcome, that is, the focus is on formal not substantive equality. A simple metaphor to illustrate the point is that of a race where all are treated equally at the starting points, although the outcome is going to depend on the varying ability of the contestants. An affirmative action model of anti-discrimination legislation is concerned

'Should such organisations have the right to specify that well-credentialed professionals, trades people and administrative staff adhere to a particular religious belief or support a particular lifestyle?'

with end result but a strict equal treatment model is the one favoured by Australian anti-discrimination legislation. It sets out to ensure that individuals are not penalised in their life chances by virtue of a particular attribute over which they generally have little control, such as race, sex, disability, sexuality or age.

As suggested, religious belief is often at odds with sex, sexual orientation and marital status, because certain conduct is believed to be contrary to morality. The prescription of standards for sexual conduct, particularly for women, has long been a characteristic of Judaco-Christian and Islamic traditions. Thus, even though discrimination on the ground of religious belief may not itself be proscribed, the privileged status of institutional religion may insidiously trump discrimination on a proscribed ground by way of an exception.

State and Territory anti-discrimination legislation generally contains a religious exception pertaining to core employment activities, such as ordination.[7] Thus, while the exclusion of women from ordination is clearly discriminatory on the ground of sex, the state has deferred to pressure from religious bodies and accepted that such activities should remain outside the purview of anti-discrimination law. Once male priests have been ordained, their appointment on merit becomes uncontentious as they become, perforce, the best people for the job. Hence, while the exception rhetoric is couched in terms of religious freedom, it can be seen that it also privileges masculinity, thereby underscoring the patriarchal character of mainstream religion. In terms of the legislation's stated aim of equality between the sexes, the exception is regressive, although the masculinity of religious leadership has long been normalised in our society.

NON-CORE EMPLOYMENT

Despite the sexism of the core employment exception, it is the issue of non-core employment that is most fraught. Non-core employment covers the entire gamut of positions necessary for the conduct of an organisation under the auspices of a religious body, such as a welfare agency, a hospital or an educational institution. Should such organisations have the right to specify that well-credentialed professionals, trades people and administrative staff adhere to a particular religious belief or support a particular lifestyle? In such cases, anti-discrimination legislation presently excepts religious bodies, generally either to conform with religious doctrine or to avoid injury to "religious sensitivities".[8] This means that an arguable case has to be put forward.

It is notable that the religious exception does not prevail in all jurisdictions in respect of all grounds. The most recent Australian anti-discrimination instrument, the Victorian *Equal Opportunity Act 2010* (EOA Vic), which has a default commencement date of 1 August 2011, is exemplary. It prohibits discrimination by religious bodies on the grounds of race, impairment, physical features and age, but allows the exception to prevail in the case of "a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity".[9] Hence, the exception may be selectively invoked to obstruct the realisation of equality for (inter alia) women, gays, lesbians and transgender people contrary to the principles of the EOA (Vic) and the Victorian Charter which binds other employers.

BELIEFS QUESTIONED

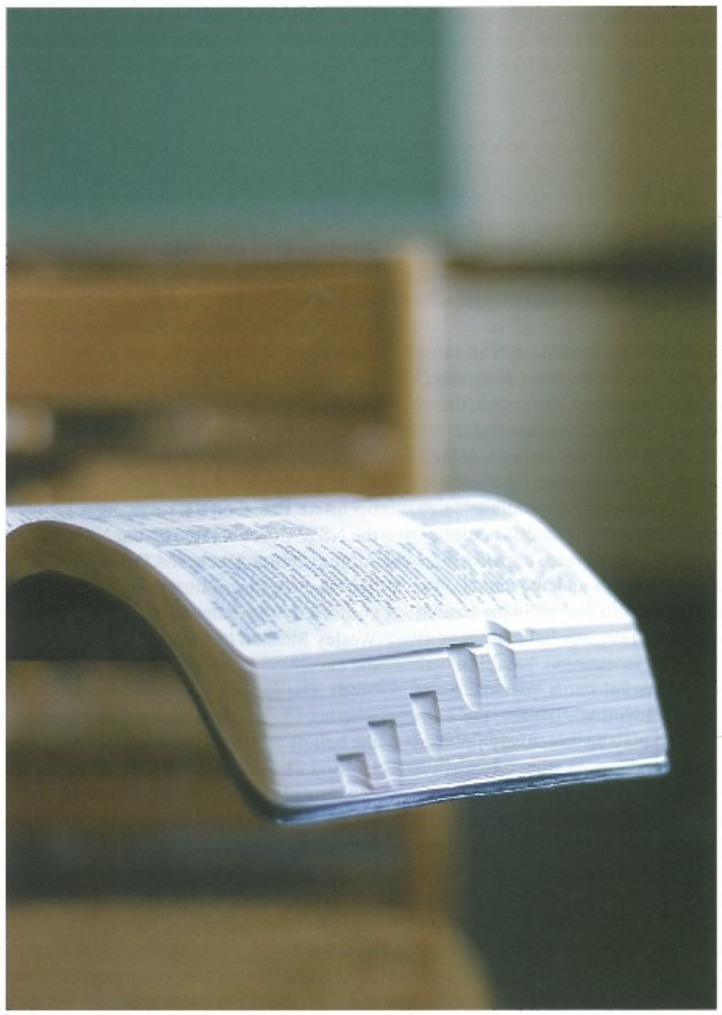
If an unsuccessful job applicant were to lodge a complaint alleging discrimination and it were not resolved at the conciliation level, s/he would carry the burden of proving the discrimination at a hearing, while the religious body would normally carry the onus of proving the exception. (The Acts vary on this point). Because of uncertainty in the wording of the exception, including the definition of religion itself,[10] its applicability to the instant case is likely to differ, which makes litigation risky for a potentially unemployed worker, who could be faced with hefty legal costs—that of the respondent religious body—as well as their own.

Although it did not deal with employment, but foster care by a welfare agency, the *Wesley Mission* case[11] underscores the difficulties involving the interpretation of an anti-discrimination statute that proscribes discrimination on the ground of homosexuality but contains a religious exception. The complaint arose from the refusal of Wesley Dalmar to allow a gay couple to apply to foster children. The matter was resolved in favour of Wesley Dalmar at the fourth hearing in December 2010,[12] seven years after the alleged incident occurred. Based on the reasoning of the NSW Court of Appeal, the NSW Administrative Decisions Tribunal held that the discrimination was "in conformity" with the doctrines of the Wesley Mission in accordance with the exception set forth in ADA, s 56(d). The various hearings debated whether Christianity, Wesleyanism, the beliefs and practices of the Uniting Church or the Wesley Mission constituted the relevant religion, finally determining that the latter prevailed. The varying positions on homosexuality adopted by the different sects and congregations constituted an additional source of uncertainty.

Another recent case of interest, although again not in the area of

Youth camp imposed doctrine

employment, involved the refusal of services in accommodation. This was *Cobaw Community Health Services v Christian Youth Camps,*[13] in which the Victorian Civil and Administrative Tribunal found in favour of the complainant. The respondent ran an adventure resort under the auspices of the Christian Brethren and the complainant had unsuccessfully sought to book a weekend for same-sex young people from rural areas as part of a youth suicide prevention project. Hampel J held that the religious exception did not apply as the Christian Youth Camps were a for-profit organisation, which failed to prove that the refusal of the booking conformed with the doctrines of the Christian Brethren religion. In fact, the Christian Brethren connection did not appear on the website of the respondent and attendees at the camp were not asked about their beliefs on marriage, sexual relationships or homosexuality, nor were they offered any religious program. The beliefs regarding homosexuality were found to be personal, which meant that the respondent was not entitled to impose them on others "in a manner that denies them the enjoyment of their right to equality and freedom from discrimination in respect of a fundamental aspect of their being" [362]. A small amount of compensation—$5000—was awarded.



RELIGIOUS SCHOOLS

The ambiguity of the religious exception is underscored in the case of employment in religious schools, which are singled out for special mention within the legislation. Education is the area most likely to animate community passions, even though it might be suggested that élite schools charging high fees are more likely to be class-based than faith-based. Notably, however, discrimination based on class is not proscribed in any Australian anti-discrimination jurisdiction.

The typical hypothetical school scenario involves a situation where a maths teacher, clerical officer or gardener, for example, is denied a position in a faith-based school by virtue of "lifestyle", a euphemism for sexual preference. Evidence given in the *Wesley Mission* case suggests that there was more concern with foster carers who were in a homosexual relationship than with those who were non-Christian or atheist.[14] Similarly in *Cobaw,* the evidence revealed that it was sexual activity that was of most concern, either outside marriage or in homosexual acts [300, 321].

In the case of an allegation of discrimination, the burden of proving the exception could probably be met in the case of a teacher of religion if the complainant were a non-believer or an adherent of a different religion, but this would be much more difficult in the case of, say, a science teacher, even if the school wished to teach that the Bible was literal truth and opposed the teaching of theories of evolution. There is nothing comparable in Australia to the *Scopes Trial,*[15] dealing with opposition to the teaching of evolution.

The religious exception would also be difficult for a religious school objecting to the sexuality of, say, a

maths teacher. It would have to prove that the private life of the teacher was just as important as his or her professional qualifications and the teaching of mathematics had to be in conformity with religious doctrine. An argument based on pastoral care might have some substance but would be difficult to link to mathematics. The avoidance of injury to religious sensitivities would be likely to be an issue only if the sexual preference of the teacher were public. In *Griffin v Catholic Education Office*,[16] for example, a teacher was refused classification in Catholic schools because her "public lifestyle" as a lesbian activist conflicted with Catholic teachings.

The uncertainties in proving discrimination, the possibility of a protracted legal case and the award of hefty costs against them are significant deterrents against individuals pursuing complaints of discrimination in this vexed area. In any case, the prospect of withstanding a hostile workplace, even if perchance they were successful, could be a daunting prospect.

CONCLUSION

Moral values based on ancient religious texts, including the Bible, are often patriarchal, misogynistic and homophobic, which necessarily conflict with the egalitarian secularism of anti-discrimination legislation. While the ICCPR upholds freedom of religion, it does not prioritise religious belief over equality between the sexes or sexual autonomy. I am critical of the hierarchisation of grounds, particularly race, disability and age over sex and sexuality, when the latter are also attributes over which one generally has no control. Furthermore, sex is not neutral—or neuter. As with ordination, the exception implicitly favours masculinity over femininity, and marital status or carer discrimination also disproportionately impacts on women.

Discrimination by religious organisations, such as schools and welfare agencies, is highly questionable as they are likely to be the recipients of substantial public moneys (an issue adverted to but not resolved in *Wesley Mission*). These bodies nevertheless

'... religious exception did not apply as the Christian Youth Camps were a for-profit organisation, which failed to prove that the refusal of the booking conformed with the doctrines of the Christian Brethren religion.'

claim that they are private and independent, which enables them to exercise the freedom to discriminate selectively, contrary to the law of the land that binds other employers. The treatment of religious exceptions under anti-discrimination legislation highlights the way the secular state defers to powerful interests despite its own egalitarian rhetoric. A way forward would be to make adherence to the non-discrimination principle a condition of receiving money from the public purse.[17] The receipt of public moneys for the purpose of running a school or welfare agency should automatically disqualify a religious organisation from relying on the religious exception within anti-discrimination legislation. If the organisation wishes to avail itself of the "private" rubric, it should renounce any claim on public moneys.

While the right to freedom of belief (and non-belief) for all, without interference or coercion, may be exercised in association with others, as set forth in ICCPR, Articles 18, 19 and 27, adequate regard must be paid to competing freedoms and respect for the rights of others (ICCPR Art 19, s3(a). Furthermore, human rights, by definition, are not vested in corporations, but in human beings, as the international instruments make clear. It is a logical fallacy to extrapolate from an individual's private beliefs to an impersonal for-profit corporation, a factor that was implicitly recognised in the conceptualisation of rights in the Brennan Report. Why should corporations run by religious bodies be privileged above other corporate employers, particularly when there is no sense in which religious belief can be said to be an inherent requirement of a non-core job? Homosociality in employment runs counter to egalitarianism and the merit principle.

It is one thing for the state to support remedial group rights for persecuted religious minorities, but the situation of mainstream Christianity is quite different. Here, we are talking about already powerful sectional interests seeking to augment their power at the expense of the historically marginalised and disfavoured. No organisation should be able to immunise itself from equal opportunity legislation unless an exception can be fully justified. Rather than place heavy financial and psychic burdens on aggrieved individuals, it would be preferable to abolish the permanent legislative exception in favour of religion altogether. In lieu, I would suggest a temporary exemption that would place the onus on religious bodies to make out a fully justified case consistent with the non-discrimination principle.

The retention of an exception based on the grounds of sex, marital status and sexuality reveals a latent sexism and homophobia which skews the stated commitment to equal opportunity for all in a way that suggests intolerance and prejudice, as highlighted by *Cobaw* (involving a youth suicide prevention project targeting same-sex attracted young people). While the right of religious bodies to run schools, welfare agencies and hospitals out of a sense of charity and altruism is commendable, their desire to be excepted from universal human rights precepts and the non-discrimination principle necessarily prompts questions regarding the genuineness of that commitment. •

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ANTI-DISCRIMINATION: MARGARET THORNTON

1. *Christian Education South Africa v Minister of Education* (2000) 9 BHRC 53, per Sachs J at para 35.

2. Australian Bureau of Statistics, *Year Book Australia 2006* (2006) 376.

3. *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2004* (Cth).

4. http://www.hreoc.gov.au/frb/frb_submissions.html.

5. Commonwealth of Australia, National Human Rights Consultation Report, Commonwealth of Australia, Canberra, 2009.

6. Section 116 of the Constitution is limited to restraining the exercise of Commonwealth power.

7. *Sex Discrimination Act 1984* (Cth), s 37; *Anti-Discrimination Act 1977* (NSW), s 56(a) – (c); *Equal Opportunity Act 2010*

(Vic), s 82(1); *Anti-Discrimination Act 1991* (Qld), s 25(2); *Equal Opportunity Act 1984* (SA), s 50(1) (a) – (ba); *Equal Opportunity Act 1984* (WA), s 72; *Anti-Discrimination Act 1998* (Tas), s 52; *Discrimination Act 1991* (ACT), s 32; *Anti-Discrimination Act 1992* (NT) s 51(a) – (c).

8. *Sex Discrimination Act 1984* (Cth), s 38; *Age Discrimination Act 2004* (Cth), s 35; *Anti-Discrimination Act 1977* (NSW), s 56(d); *Anti-Discrimination Act 1991* (Qld), s 25(1) ('Employing persons of a particular religion to teach in a school established for students of the particular religion' cited as an example of a genuine occupational requirement; *Equal Opportunity Act 1984* (SA), s 50(1) (c); *Equal Opportunity Act 1984* (WA), s 66(1) (but not race, impairment or age; s 73(1); *Anti-Discrimination Act 1998* (Tas), s 51; *Discrimination Act 1991* (ACT), s 33; *Anti-Discrimination Act 1992* (NT) s 51(d).

9. EOA (Vic) s 82(2).

10. *Church of the New Faith v Commissioner of Pay-roll Tax* (1983) 154 CLR 120 (*Scientology Case*).

11. *OW & OV v Members of the Board of the Wesley Mission Council* [2010] NSWADT 293.

12. Ibid. The earlier decisions were *OV v QZ (No 2)* [2008] NSWADT 115; *Members of the Board of the Wesley Mission Council v OV & OW (No 2)* [2009] NSWADTAP 57; *OV & OW v Members of the Board of the Wesley Council* [2010] NSWCA 155.

13. *Cobaw Community Health Services v Christian Youth Camps Ltd (Anti-Discrimination)* [2010] VCAT 1613.

14. See *OW & OV v Members of the Board of the Wesley Mission Council* [2010] NSWADT 293 [19].

15. *Scopes v State*, 154 Tenn 105, 1927.

16. (1998) EOC 92-928 (HREOC).

17. This is the case with Title IX of the American Civil Rights Act, which prohibits sex discrimination in educational institutions, including employment. There is a religious exception, but it is expressed narrowly. Codified as Title 20 USC, Chapter 38, Sections 1681-1688.

ANTI-DISCRIMINATION: PATRICK PARKINSON

1. See generally, Neil Rees, Katherine Lindsay & Simon Rice, *Australian Anti-discrimination Law : Text, Cases and Materials* (2008); Beth Gaze & Rosemary Hunter, *Enforcing Human Rights: An Evaluation of theNewRegime*(2010).

2. Equality Bill 2009 (UK). Schedule 9, cl 2. For an analysis, see Daniel Boucher, *A Little Bit Against Discrimination?* CARE, London (2010).

3. Avril Ormsby, 'Government loses Equality Bill faith proposals', Reuters, Available: http://uk.reuters.com/article/idUKTRE60P1KJ20100126, 26 January, 2010.

4. These submissions were made to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament which was asked to examine the exemptions to EEO legislation in the light of Victoria's Charter of Rights and Responsibilities Act 2006. See e.g. the views of the Equal Opportunity and Human Rights Commission in oral submissions to the Scrutiny of Acts and Regulations Committee: Inquiry into Exceptions and Exemptions in the Equal Opportunity Act, Parliament of Victoria, 4 August, 2009, transcript. Available: www.parliament.vic.gov.au. See further, Patrick Parkinson, (2010) 'Christian Concerns about an Australian Charter of Rights' 15 *Australian Journal of Human Rights* 83. For the Committee's options paper, see Exceptions and Exemptions to the Equal Opportunity Act 1995: Options Paper, Parliament of Victoria, Melbourne, 2009. Available: www.parliament.vic.gov.au/sarc/EOA_exempt_except/default.htm#options_paper.

5. Section 351, Fair Work Act 2009. This section contains some exemptions, and treats as lawful anything which is lawful in the State in which the person accused of discrimination lives. The effect of this is that s.351 has more symbolic than practical effect. See Belinda Smith, 'Fair and Equal in the World of Work: Two Significant Federal Developments in Discrimination Law' (2010) 23 *Australian Journal of Labour Law* 199.

6. Some grounds for discrimination are 'asymmetrical', that is, they only prohibit discrimination against a person with a particular characteristic, not against a person who does not have that characteristic - for example, disability discrimination aims to protect only those who have a disability, and does not outlaw discrimination because of an absence of disability.

7. See e.g. Margaret Thornton, 'Excepting Equality in the Victorian Equal Opportunity Act' (2010) 23 *Australian Journal of Labour Law* 240. See also the discussion and proposals for a sunset clause on permanent exemptions in Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality*, September 2008 available at http://www.hreoc.gov.au/legal/submissions/2008/20080901_SDA.pdf at p.160ff.

8. For different viewpoints on these issues, see Reid Mortensen, 'A Reconstruction of Religious Freedom and Equality – Gay, Lesbian and De Facto Rights and the Religious Schools in Queensland', (2003) *Queensland University of Technology Law and Justice Journal* 332; Carolyn Evans and Leilani Ujvari, Non-discrimination Laws and Religious Schools in Australia, (2009) 30 *Adelaide Law Review* 31..

9. Homosexual practice is here distinguished from sexual orientation, which may or may not involve sexual activity.

10. *Ladele v London Borough of Islington* [2009] EWCA 1357. See also *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880; [2010] IRLR 872.

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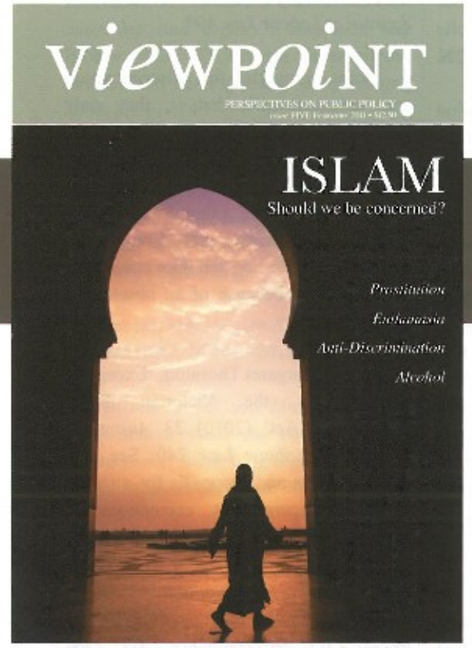

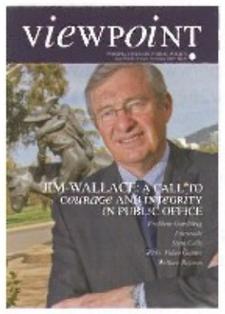

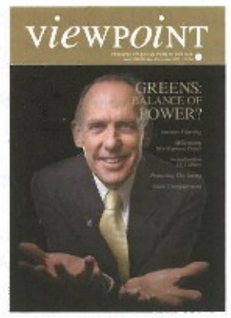

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