



# Submission to Religious Freedom Review in Australia 2017/2018

## Objective of this review

The expert panel, under the chairmanship of the Hon Philip Ruddock, will examine whether Australian law adequately protects the human right to freedom of religion. In doing so it will

- consider the intersections between the enjoyment of the freedom of religion and other human rights
- have regard to any previous or ongoing reviews or inquiries that it considers relevant
- consult as widely as it considers necessary

It is expected to report its findings by 31 March 2018.

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## 1. Historical note on the LCA's interest in freedom of religion

Religious freedom is of great importance to Australian Lutherans. In the 19th century, a number of Lutherans left their homeland in Eastern Prussia where authorities were persecuting them for practising their faith in the way they believed was right and true. Many of them migrated to South Australia, and a lesser number to Moreton Bay. Their purpose in migrating was precisely in order to freely practice their faith without interference by the government. Those early Lutheran settlers gradually spread out from their original bases to settle in many other parts of Australia.

Today, Australian Lutherans continue to enjoy a great degree of freedom to practise their faith.

## 2. How we understand the term 'freedom of religion'

In the context of this inquiry, we underscore the following points about religious freedom:

- 1) Article 18(1) of the ICCPR explains: "This right shall include freedom to have or adopt a religion or belief of [one's] choice, and freedom, either individually or in community with others, to manifest [one's] religion or belief in worship, observance, practice and teaching." Religion includes, then, the freedom to live one's life according to one's faith, to speak to others about that faith, to convert from one faith to another and the option to reject formal religion altogether. It includes freedom to associate with others of the same beliefs, and to establish faith-based educational and other charitable institutions.
- 2) Religious freedom also includes:
  - a) Freedom to express a faith perspective in public discussions about the best way to order our society.
  - b) Freedom from inappropriate interference by governing powers in matters of faith and in church affairs, and freedom to protest should government interfere in the legitimate practice of faith.
  - c) Freedom from intolerance or unfair discrimination on the basis of one's religion.
  - d) Freedom of conscience, i.e. freedom from coercion to engage in conduct that is prohibited by one's religion, including in the workplace.
  - e) Respecting the right of parents to ensure the religious and moral education of their children in conformity with their own convictions.
- 3) Religious freedom does not entitle persons of a particular religion, or who hold to no religion, to belittle, abuse or mistreat those who hold a different set of beliefs, or who subscribe to no particular beliefs.

### 3. Why it is important that Australia upholds religious freedom

We list six reasons why religious freedom—and the freedom to practise the Christian faith in particular—is important for our nation:

- 1) The concept of universal human rights and freedoms grew out of Judaeo-Christian beliefs. The teaching that humans matter because God created them in his own image and continues to love them unreservedly underpins the assertion that all humans are born equal in dignity irrespective of any attribute or capability they may or may not possess. Christians add that God loved humans so much that God himself became human in the form of Jesus, so that we might be reconciled to God. These deeply grounded theological beliefs provide a firm basis for the establishment of human rights.
- 2) Humans are innately religious. We have always searched for truth and explored life's transcendental realities. We have long tried to live our lives in accordance with our fundamental belief systems. To prevent people from expressing their deeply held beliefs, whether religious or atheistic, and living according to them, is to deny them a central part of their human makeup. The Christian early church father, St Augustine of Hippo, wrote, "*You have made us for yourself, O Lord, and our hearts are restless until they rest in you*".
- 3) Religious faith approaches answers to existential questions that all humans ask at some stage in their lives, questions such as "Why am I here?", "How do I live a good life?", "Is this all there is?" and "Why do bad things happen?" A society that respects the freedom of its citizens allows them to seek answers to these questions, and to respond to them.
- 4) Christian faith produces good citizens who pray for and strive for the public good when their faith is lived faithfully and well. For centuries, Christians have asked God to 'Bless our land and the people who live in it. Help those in government and positions of responsibility to maintain honesty and truth, justice and peace.' Christian faith is an active faith that involves working for the good of others—in the family, at work, in our local and wider community—on every day of the week, not only on Sundays. Christians look beyond their own interests to consider the needs and wants of others.

Christians are called to be good neighbours in response to the love God has shown them in Jesus Christ, and because they want to be like him. Christianity teaches virtues that enhance community life like honesty, obedience to the law, good manners, concern for others (especially the needy and the vulnerable), responsibility, self-control, industriousness, generosity and accountability. It promotes strong marriages and families—the foundations of civilised societies—and concern for the poor, the sick, the weak and the oppressed.

- 5) Christian churches and other religious organisations contribute greatly towards the quality of life of people in our society in Australia and overseas. The world would be a much poorer place without that contribution. Persons of genuine religious faith shape good citizens through their congregations and schools; they care for elderly and needy people through their aged care and social welfare arms, and they perform many other benevolent works for the benefit of society. They often do this in partnership with governments, providing a social cohesion, volunteer spirit and service mentality that government on its own is unable to provide. A great majority of the volunteers who serve Australian society and function as the 'glue' that keeps us together as a nation are people who are motivated by their belief in a loving God.
- 6) Religious freedom is associated with our well-being. While some claim that religion causes division and conflict, there is much social science research that shows that people are healthier and their societies are stronger when religious observance is part of their everyday lives. Faith is a source of hope, particularly in the face of adversity. A society without hope rapidly disintegrates. Faith has also inspired many leaders, thinkers and artists to great insights and heights of achievement. Their achievements have improved the security, health, knowledge and pleasure of millions.

## **4. The intersection between freedom of religion and other human rights in Australia**

### **a) Freedom of expression**

Lutherans recognise the importance of freedom of expression particularly because of their role in the Reformation in Western Europe in the 16<sup>th</sup> century, when critique of religion was essential to the reform of the church and society at large. Our particular church community has its origins in the late medieval era and the birth of the modern era in the Renaissance, and we continue to believe that vigorous and challenging debate on important matters helps us all become more self-aware, more mature, more resilient and more responsible members of society.

We believe that Australians should respect the right of citizens of all religions and none to respectfully express their opinions in the public square. In our liberal democracy they should enjoy the right to work peacefully together with like-minded others to influence public policy. We must strive to retain the ideal of informed, calm and courteous debate, and be willing to get along with those with whom we disagree. This has long been a valued hallmark of what it means to be Australian, a mark of our multi-cultural society which our politicians frequently and publicly like to praise.

Our lawmakers have the responsibility, of course, to enact just laws that place sensible limits on this freedom of expression, but we urge them to be cautious about suppressing it unduly. We hope that any amendments to existing laws will prevent similar incidents to those we have recently seen, such as the appearance of Hobart Catholic Archbishop Julian Porteous before Tasmania's Anti-Discrimination Commission simply for expressing a traditional view of marriage and family life within his diocesan school community.

## b) The right to life, safety and security

The right to hold to one's beliefs does not entail the right to threaten the life, safety or security of fellow others in society who do not share those beliefs.

Religion may not be used as an excuse to justify violence. Governments have the duty to defend the safety and security of all citizens, of whatever belief, from all forms of violence that may be perpetrated by others, including those who hold extreme religious (or anti-religious) beliefs.

The LCA encourages the practice of peaceful and respectful dialogue, reasoned discussion, and the accommodation of differences in ways that allow us to live in a peaceful and harmonious society. We look to the various levels of government to assist us all to realise and maintain these conditions so that all may live well together and without coercion or imposed uniformity of belief.

## c) Faith-based organisations and anti-discrimination law

Successive Australian governments at all levels have understood the need for faith-based organisations such as religious schools, health and social welfare services to preserve their core identities. Therefore successive Australian governments have provided them with exemptions from specific aspects of anti-discrimination law. Faith-based organisations preserve their religious character and integrity by, for example:

- reserving key leadership positions for committed believers,
- engaging in regular worship,
- writing into position descriptions the requirement to behave in a manner consistent with the ethics of the organisation,
- and in the case of some schools, creating an enrolment policy that prioritises students with the same faith background.

Some people say that these exemptions for faith-based organisations enable them to discriminate unfairly against potential employees, clients, patients or students. They call for their removal, particularly from organisations that receive government funding. The existing exemptions, however, serve a legitimate purpose. Such exemptions enable us to distinguish between what is lawful discrimination and what is not. It ought not to be unlawful, for example, to make certain legitimate distinctions between persons when pursuing a lawful enterprise such as operating a single-sex or faith-based educational institution, a political party or a women's shelter. The government funds a whole host of social initiatives that further legitimate purposes. Some of these are faith-based. Others are not. We refer to the submission to this review that has been submitted by the organisation 'Freedom for Faith' for further discussion on this point.

## d) Freedom to exercise conscience

Freedom of religion and belief also entails the freedom to be guided by one's conscience, in both private and public life. The concept of the role of the individual conscience in performing this function has its roots in theology and Christian ethics. Of course, the conscience is not exclusive to people of faith. In the course of their work or wider public life, any person with strong convictions on a particular matter may receive requests from employers, customers, clients or patients that conflict with those convictions. No person, by virtue of their human dignity, ought to be coerced to engage in conduct that is prohibited by their deeply held convictions, whether religious or secular, except in the most serious cases – for example where someone's life is at stake.

### i) Same sex marriage

The recent change to the Marriage Act by which the marriage of same sex couples became legal in Australia has brought to the fore questions about the

right to exercise one's conscience according to one's religious beliefs. The LCA, for instance, still follows its long established doctrine which until recently was aligned with that of the Marriage Act, that marriage is the union of a man and a woman. The change in the law does not effect a change in the doctrine of the church. We hope that Lutherans will be able to continue to practice that belief without impediment, just as we would not seek to disrupt or prevent those who can now legally get married from doing so.

We hear reports, however, from other countries, of cases in which Christian marriage registrars have been dismissed for refusing to conduct same sex marriages, and Christian business people who declined requests to apply their artistic skills (in cake decoration, floristry and photography) for same sex weddings have been sued for "wrongful discrimination". Some have been forced to apologise and pay compensation. Other cases are still being argued before the courts. Further, some organisations have been denied their 'corporate conscience' and forced to close because of their beliefs regarding traditional marriage. We hope that our government, through this review and other means at its disposal, prevents such cases from occurring in Australia.

## ii) Medical practice

Freedom of conscience has also come up in recent times in the medical arena in relation to the termination of human lives. Some Australian states are in the process of introducing legislation making it compulsory for medical practitioners who oppose abortion and physician-assisted suicide for reasons of religion or conscience to refer patients to practitioners who are not opposed to them. We believe it is unfair to require a medical practitioner, against his or her conscience and contrary to the spirit of medical practice, to be complicit in the taking of human life.

Responsible doctors encourage patients presenting with requests for abortion or physician-assisted suicide firstly to consider alternatives to killing. The medical principle of 'do no harm' is long-established and must be upheld in order to retain public trust in the medical profession.

For the sake of public confidence in the medical profession, doctors should be allowed to continue to observe the 'do no harm' principle by distancing themselves from activities they consider harmful. The conscientious objection of doctors in rural and remote areas to being involved in the procurement of abortion or physician-assisted suicide is unlikely to unfairly restrict access. Where abortion is legal, it can only be performed safely in cities or large towns where there is suitable medical backup in case of complication. Should physician-assisted suicide be legal, the preliminary physical and psychiatric assessments required will also need to be done where specialists are available, most likely in major towns and cities.

## e) Freedom to apply religious law

To what extent should religious groups within society be free to apply their own religious law within their specific communities? Are there matters that religious courts, separate from the state judicial system, ought to be allowed to rule on? Is it ever appropriate for the state to intervene to prevent religious groups from applying religious laws?

In Western societies like Australia, the state tends to leave religious institutions free to govern their own affairs. Reflecting its secular status, the Australian government does not have a department for religious affairs, whereas our neighbouring countries in SE Asia generally do. Australians are accustomed to thinking that 'church matters' are separate from 'worldly matters'. This has certain benefits, as well as certain risks. Churches must be open to scrutiny and scrupulous in administering their affairs in the

world, including ecclesiastical discipline. The Royal Commission into Institutional Responses to Child Sexual Abuse has demonstrated this convincingly and painfully. The lessons learned from that Commission will permanently change the face of Australian institutions that deal with children, including those conducted on a religious basis.

So while religious authorities in Australia exercise ecclesiastical discipline upon clergy, individual members or groups and organisations within the faith community, e.g. in relation to ungodly personal conduct or departing from the Confessions of the Church, their behaviours must also remain open to, and in compliance with, the laws of the state. Religious institutions and their members in Australia do not expect, let alone force, outsiders to comply with their special ecclesiastical rules. All citizens, religious and non-religious, are subject to state laws, but only those within religious communities are voluntarily subject to particular religious rules.

We agree that the government has the right to expect religious communities to operate within the law, and that they may not inflict harm, particularly in ways that contravene the laws of the land. That is a rare clear instance of the legitimate limitation of religious freedom.

Submitted by:

The Office of the Bishop  
Lutheran Church of Australia  
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