POLICY AND DRAFTING ISSUES IN A RELIGIOUS DISCRIMINATION BILL

Revised 24 JULY 2019

Introduction

This paper raises and makes recommendations concerning some key policy and drafting issues for a Religious Discrimination Act (**RDA**). It is recognised that an RDA is only the first step in implementing the government's election commitments[1] in relation to the Ruddock report and its response to broader concerns about religious freedom. But it is an important first step and important to get it appropriately drafted for religious discrimination and not just follow the standard Anti-discrimination Act template.

Attachment 1 lists 21 Australian examples (with sources) of discrimination against religious people or organisations or other limitation on religious expression and freedom (numbers 1 to 17 and 30 to 34). It also includes 13 examples of similar cases (with sources) from the UK, New Zealand, Canada and the USA.

Attachment 2 sets out they key international human rights instruments protecting religious freedom which Australian has committed to implement**.**

The Typical Structure of an Anti-Discrimination Act

A typical Anti-Discrimination Act:

> (a) prohibits *direct discrimination* (where the discriminator treats the aggrieved person less favourably, by reason of the aggrieved person's religion (holding, expressing or acting on religious beliefs, and associated characteristics) in circumstances that are the same or are not materially different, than the discriminator treats or would treat a person of a different religion or a person with no religion);
>
> and also prohibits *indirect discrimination* (where the discriminator imposes a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same religion as the aggrieved person)
>
> (b) in a specified type of activity (e.g. the Sex Discrimination Act specifies the following activities where discrimination is prohibited: work as an employee or contractor or in a partnership, professional or occupational qualifications or licensing, accreditation or licensing (including where such are administered by private bodies), education, supply of goods or services or facilities, supply of accommodation, sale of an interest in land, membership of a club and administration of a law or government program)

[1] Letter from Prime Minister Scott Morrison to religious leaders 14 May 2019 e.g. to Christian Schools Australia – see https://csa.edu.au/download/letter-from-prime-minister-14-may-2019/

(c) but subject to various balancing provisions or exemptions e.g. single sex schools can discriminate on the basis of gender in selecting students, political employers can discriminate in employment decisions against persons who do not share the political opinion of the employer.

In the case of a proposed Religious Discrimination Bill, it will not be sufficient to just follow the typical template for antidiscrimination Acts. Various important issues need to be addressed. This paper sets out initial considerations for some of the issues and may be developed further later.

1. A Religious Discrimination Act needs to protect not only religious individuals but also religious associations and corporations

ICCPR Article 18 recognises that religious freedom is both individual and group-based – it is freedom to manifest religious belief individually and in community with others. Article 27 also protects the individual and communal expression of religion for religious and ethnic minorities. This communal expression is through religious groups e.g. unincorporated and incorporated religious bodies, associations, religious charities e.g. St Vincent de Paul, religious schools and educational bodies, small businesses may be operated on religious principles by religious owners with a religious motivation as an expression of their religious faith and life, but not necessarily for the purpose of advancing a religion. Even though such bodies may not necessarily be established for the purpose of advancing a religion, they may still be subjected to detrimental treatment on the basis of their religious beliefs or activities.

While only individuals can have a gender, race, sexual orientation or disability, corporations, associations and groups can have a religious belief and engage in religious activity.

Neither religious individuals nor religious groups are adequately protected under discrimination law if the RDA protects only an individual from discrimination on the grounds of religion but not a religious entity of which the individual is a part. For example, the RDA would not be effective if it prohibited a person, company or a government agency from discriminating when renting facilities, providing services or grants or funding to an *individual* on the ground of the individual's religious belief or activity but permitted discrimination on that basis against a religious association or corporation of which the individual was a member because of the entity's religious belief or activity.

Such discrimination against the association or corporation harms all the members of the association or the corporation but the individual members have no remedy if the association or corporation is not protected by the RDA. E.g. a Christian or Hindu school or religious congregation operates as an incorporated entity and is discriminated against when it seeks to hire a public school hall or private meeting room because of its religious beliefs and activities. For example it is refused the hire because of its religious nature or a condition is imposed on the hire that the body could not teach certain aspects of its religion on the premises (this happened to a church which hired a school hall during the same sex marriage postal vote).

To cover religious associations and corporations requires the RDA to have a sufficiently broad definition of religious entity which is protected from discrimination on the ground

of its religious belief and activity.[2] There is current language describing religious bodies in exemptions in Commonwealth and State discrimination law such as "a body established for religious purposes" in section 38 of the Sex Discrimination Act or, elsewhere, "a body for advancing a religion".

These existing descriptions are too narrow for the purpose of defining the religious entities which are protected from discrimination on the ground of religion by a RDA. For example some charities are formed with religious motivations and funded by religious believers but their purpose is not a religious purpose but to relieve poverty (drawing the distinction between different types of charitable purpose). Some corporations are formed with religious motivations and funded by religious believers and operated with a religious ethos to trade not for profit or commercially to provide health services or job skills training for released prisoners or at risk youth. These should be religious entities for the purposes of being protected from discrimination on the basis of their religious beliefs, expression and activities by a RDA but they do not fall within the descriptions of "a body established for religious purposes" or a "body for advancing religion".

For a broad coverage of entity type, use could be made of the GST legislation definition of entity along the following lines.

> *(1) For the purposes of the Act, an entity means:*
>
> *(a) an entity (other than an individual) within the meaning of section 184 1 of the A New Tax System (Goods and Services Tax) Act 1999; and*
>
> *(b) a non entity joint venture within the meaning of section 195 1 of the A New Tax System (Goods and Services Tax) Act 1999.*
>
> *Note: The term entity includes body corporates, body politics, partnerships, unincorporated associations or other bodies of persons, trusts and superannuation funds.*
>
> *(2) For the purposes of subsection (1), an entity is an entity regardless of whether:*
>
> *(a) the entity is for profit or not for profit; or*
>
> *(b) the entity is a religious body or organisation; or*
>
> *(c) the entity operates to make a profit or not.*

2. Provisions to Make Clear that a Corporate Entity or Group can hold and act on a religious belief and how that Religious Belief could be evidenced

The Act will need provisions to make clear to courts that corporate entities can have a religious belief. For example the Act could provide that the persons protected from discrimination under the Act include entities which hold a religious belief.

It would also be desirable for the Act to provide guidance as to how an entity which is not an individual can evidence that it holds a religious belief.

For example:

[2] Note that the category of protected religious entity will likely be broader than the category of religious entity (such as a mosque or church or religious educational institution or religious chaplaincy provider) which is allowed to positively select for members and employees who share the religion of the entity – see Balancing Provisions below.

> *(2) For the purposes of this Act, but without limiting those paragraphs, an entity may state or adopt a belief as a belief the entity holds by:*
>
> *(a) including the belief in its governing documents, organising principles, statement of beliefs or statement of values; or*
>
> *(b) adopting principles, beliefs or values of another entity which include the belief; or*
>
> *(c) adopting principles, beliefs or values from a document or source which include the belief; or*
>
> *(d) acting consistently with that belief,*

3. A Test to Avoid Artificial Claims of Religious Beliefs?

The Act could also provide a test to eliminate claims of religious beliefs which are artificial and capricious. This would screen out religious beliefs adopted as an artifice but not require the courts to otherwise test the genuineness of a person's or entity's religious belief.

It is not clear if such a test is needed or desirable. Unlike a tax exemption for religious entities, the RDA does not create a direct financial incentive to generate artificial religious beliefs.

Any test to screen out artificial religious beliefs would need to be drafted carefully to avoid drawing courts into whether religious beliefs could be genuinely held based on the court's view of the likelihood or acceptability of the belief.

One possible test is that the holding of the belief must not be fictitious, capricious or an artifice. This test adopts the wording employed by Lord Nicholls in *R (on the application of Williamson) v Secretary of State for Education and Employment*.[3]

For example:

> *(1) For the purposes of this Act, a person or entity holds a religious belief, if the holding of the belief (inclusive of the person's or entities beliefs as to the actions, refusals, omissions or expressions that are consistent with, a consequence of, made in connection with, based upon, constitutive of, supporting of, or a corollary of that belief) is not fictitious, capricious or an artifice.*

Religious associations and corporations may need protection from discrimination in slightly different specified areas of activity than religious individuals' e.g. religious associations and corporations are not employed like individuals although they may be invited to tender to provide goods and services and they are contracted to perform work or provide services. They are not educated like individuals, but they may be supplied with goods or services or facilities or accommodation or educational services, they may be the subject of licensing and accreditation programs, they may acquire an interest in land, and will be the subjects of administration of government laws and programs, licensing and benefits. In all of these areas they may be subject to religious discrimination.

[3] [2005] UKHL 15, 22.

4. Defining religion

Religion could be defined using the test adopted by Mason ACJ and Brennan J in Church of the New Faith v Commissioner of Payroll Tax as (paraphrase) a belief in a supreme being or beings with canons of conduct set by the being to be observed by humans in this life.

5. Making it clear that religious discrimination includes requiring a person to affirm or support or act on a view or practice which is contrary to their religious belief or duty

One of the primary ways in which courts applying the European Convention on Human Rights have limited the scope of religious freedom protections is to hold that to require from a person an affirmation or action that is contrary to a sincerely held religious belief is not discrimination.[4] This proceeds from a narrow view of religious freedom that it is a freedom only to believe and pray and not to manifest the religion in practice in life through what the believer will do or will refuse to say or do on the basis of religious belief.

Religious persons or entities should not be required to express or support views which are contrary to their genuine religious beliefs. A Muslim should not be required to say the Lord's prayer or a Christian to praise the Prophet Mohammed, nor either of them to affirm that gender is self-determined if their religious belief is that God made humans male and female.

Nor should religious persons or entities be required to engage in acts which are contrary to their genuine religious beliefs, *but this latter principle about required acts (as opposed to required expression or affirmation of views) needs some balancing provisions – see below.*

A helpful case in this regard is *Lee v Ashers Baking Company Ltd,*[5] in which a bakery company owned and operated by a Christian married couple refused to supply a cake with the iced message "Support Gay Marriage" on it. The cake had been requested by Mr Lee (a gay man) for a political meeting in favour of gay marriage. The bakery supplied customers of all sexual orientations without distinction and would have refused to put this message on a cake regardless of the sexuality of the requesting customer. It was the message, not the customer's sexuality, they objected to, because of their religious convictions about marriage. The customer found another bakery to make the cake but with the support of the Northern Ireland Antidiscrimination Commission took the case all the way to the Supreme Court of the UK. The Supreme Court held that there was no discrimination against Mr Lee on the grounds of his sexuality (as the bakers would have refused to create that message for any customer). The Supreme Court held that the bakery owners' right to freedom of religion and freedom of speech meant they could not be compelled to express or support a view with which they profoundly disagreed:

[4] E.g. *Eweida, Ladele, Chaplin and Macfarlane v United Kingdom* European Court of Human Rights (Fourth Section) 15 January 2013 https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22ladele%22],%22documentcollectionid2%22:[%22CHAMBER%22],%22itemid%22:[%22001-115881%22]}

[5] [2018] UKSC 49 https://www.supremecourt.uk/cases/docs/uksc-2017-0020-judgment.pdf

> *The bakery could not refuse to provide a cake - or any other of their products - to Mr Lee because he was a gay man or because he supported gay marriage. But that important fact does not amount to a justification for something completely different - obliging them to supply a cake iced with a message with which they profoundly disagreed. In my view they would be entitled to refuse to do that whatever the message conveyed by the icing on the cake - support for living in sin, support for a particular political party, support for a particular religious denomination.*[6]

In this decision, the UK Supreme Court demonstrated a characteristically liberal concern for the value of individual conscience.

The RDA should provide that religious discrimination includes requiring, or making a benefit conditional upon, a religious individual or a religious entity having to:

> (a) express or support a view, practice or action which is contrary to their genuinely held religious belief; or
>
> (b) act in a way which is contrary to their genuinely held religious belief, unless:
>
> > (i) in the case of a requirement imposed by law the requirement is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others and (based on the Siracusa Principles) no lesser limitation on religious freedom would achieve that objective or
> >
> > (ii) in the case of a requirement imposed by an employer on an employee during work hours or an educational institution on a student during education hours, it is necessary to ensure the effective operation of the workplace or educational institution and (based on the Siracusa Principles) no lesser limitation on religious freedom would achieve that effective operation.

This principle should be absolute in the case of required expression or support of a view, practice or action contrary to a genuinely held religious belief (para (a) above).

Where what is required of a religious individual or entity is an act (going beyond expression of a view) which is contrary to their genuinely held religious belief, that requirement may be imposed in limited circumstances using a balancing of other rights and interests as set out above.

As an example of requiring an act contrary to religious belief, if an employee's religious beliefs required prayers at set hours of the work day and the employer forbade that at a certain hour because it was necessary for the effective operation of the workplace to have that employee engaged in work at that hour then the requirement would not be unlawful discrimination, but if the employer could have arranged work operations to allow the employee to pray at that hour, it would be unlawful discrimination.

[6] Ibid Lady Hale's joint judgment at para 55.

As another example, if the law required a health professional to make an effective referral for an abortion or a pharmacist to stock and sell RU486 and doing so would be an act contrary to the person's religious beliefs, the law could require that act but only if it was necessary to protect public health or the rights and freedoms of others and no lesser limitation on the religious freedom of the person would achieve that goal. In practice, this may turn on whether there were other practically available health care providers who would make the abortion referral or dispense RU 486. If there were others, then it would not be necessary to require the person with the religious conviction to do so and the requirement would be religious discrimination against that person. If the person with the religious conviction was the only person practically available to provide that service in the area, then the requirement would not be discriminatory against that person

6. "Exemptions" or Balancing Provisions Need Careful Thought and some of the standard template antidiscrimination Act provisions should not be copied into a RDA without revision

6.1 General – It is not religious discrimination for religious individuals and some religious entities to act in good faith in accordance with their religious beliefs

All Discrimination Acts have exceptions or balancing provisions to manage the interaction with competing interests. In a Religious Discrimination Act one obvious balancing provision is that certain religious entities such as those *which teach or model the religion or religious way of life or which promote or advance the religion or a religious purpose* should be able to act in good faith in accordance with their religious beliefs without being subject to religious discrimination claims. This includes but is not limited to selecting and preferring as employees, volunteers and members, persons who share and live out the beliefs and practices of the religion. This is a freedom of association as well as a freedom of religion point. So a Muslim association or school which models or teaches a form of Islam should not have to admit as a member or hire as an employee a person who does not share or live out the relevant Islamic beliefs or practices. A Christian chaplaincy provider should not have to hire, train and provide non-Christian chaplains. And the National Secular Society (a group formed to promote atheism) should not be forced to hire religious persons. In these cases the collective associational freedom of those who voluntarily associate in the religious entity to choose to join with others of a particular religion (or atheism) and not join with those of different views prevails.

Likewise religious individuals would not be treated as engaging in religious discrimination by acting in good faith in accordance with their religious beliefs.

To achieve this, the Act could provide that it is not discrimination for religious entities and individuals to act in good faith in accordance with their religious beliefs. This does not mean that all such acts by religious individuals or religious entities are lawful. It simply means those acts are not religious discrimination under the RDA.

It should be noted that the associational freedom point also applies in many other contexts. If a religious entity positively selects those who believe and live out the teachings of the religion (on sexual and relationship matters) as leaders, employees or members, that is not discrimination on the grounds of relationship status or sexual orientation or other attributes under the Sex Discrimination Act and the NSW Antidiscrimination Act and Victorian Equal Opportunity Act and other State and

Territory Acts. Likewise it is not discrimination for political parties and employers to preference as leaders, employees and members those who share and live out the views of the political party. It is not discrimination on the grounds of political belief for the Greens to refuse to hire or to sack or demote a supporter of the coal industry because that is contrary to Greens policy. Some of those other contexts will be considered by the ALRC in its current reference.

6.2 There should be no or only a very limited inherent requirement or genuine occupational requirement exemption for secular organisations so that it does not undermine the Act

Other standard "exceptions" must not be copied across unthinkingly from other federal discrimination Acts. For example, many Antidiscrimination Acts have an exception allowing discrimination in hiring for a position if *an inherent requirement or genuine occupational requirement* of the position requires such discrimination. This works for disability discrimination (e.g. pilots need to have good vision so, in training and hiring pilots, discrimination against vision impaired people is justified). But it should have limited application for secular employers regarding religious discrimination. While a secular employer like a hospital might legitimately want to employ specifically Muslim, Jewish or Christian chaplains and so discriminate as to religious belief for such positions, it is difficult to think of other examples where a secular employer has a real need to discriminate on religious grounds in relation to employment.
But this type of exception for secular employers unless drafted very narrowly might undermine principal goals of a Religious Discrimination Bill.

A secular organisation might claim that it is an inherent or occupational requirement for its employees or brand representatives (expressed for example in a code of conduct) to only express or act on views (including on social media and in their own time) which promote a "safe and inclusive" workplace and society meaning only views which do not offend customers or sponsors or any member of the public (e.g. views on sexual relations, optimal family structure, or avoiding greed or the meaning of life).

If a religious employee expressed such views, even in a measured and non-derogatory manner, an inherent requirements or genuine occupational requirements exception would allow the secular organisation to discriminate against its religious employee by requiring them to keep quiet about some or all of their religious beliefs and sanctioning them if they do not. There are plenty of examples of this occurring (e.g. the Israel Folau case, the case of Adrian Smith who was demoted and lost 40% of his pay for expressing his view on Facebook that churches should not be forced to host same sex civil partnership ceremonies[7] and the case of Felix Ngole a social work student who was dismissed from his social work course because of his Facebook posts quoting the Bible about homosexuality – see Attachment 1). The RDA should not provide a vehicle for employers to do this through an inherent requirements or genuine occupational requirements exemption.

[7] *Smith v Trafford Housing Trust* [2012] EWHC 3221 (Ch)

6.3 A broad "reasonableness" defence for indirect discrimination will undermine an RDA and any reasonableness defence needs boundaries to make clear that limiting the expression of genuine religious beliefs in a way which does not incite hatred or violence is not reasonable

Standard template antidiscrimination law prohibits *indirect discrimination* where the discriminator imposes a condition, requirement or practice of broad application that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, in this case the attribute of religious belief or activity. There is a defence to indirect discrimination if the discriminator can show that the condition, requirement or practice was reasonable in all the circumstances. The use of an at large reasonableness defence risks undermining the RDA's protection of religious believers in the current climate.

As argued above, a secular organisation like Rugby Australia or a company or a local council would argue that it is a reasonable condition, requirement or practice (e.g. in its code of conduct) for its employees or brand representatives to only express or act on views (including on social media and in their own time) which promote a "safe and inclusive" workplace and society, meaning only views which do not offend customers or sponsors or any member of the public (e.g. views on sexual relations, optimal family structure, or avoiding greed or the meaning of life). The argument would be that it is reasonable and not indirect discrimination to restrict the expression of religious views which others might find offensive. If that argument succeeded, as it might if the test of reasonableness was at large, the RDA would do nothing to assist Folau, Smith, Ngole or many of the Australians covered in the examples of discrimination in Attachment 1.

To avoid that outcome, the RDA needs to put boundaries on any test of reasonableness for the purposes of the defence against indirect discrimination.

This could be done by providing that a condition, requirement or practice is not reasonable to the extent that it has the effect of directly or indirectly[8] requiring a religious individual or entity to refrain from expressing or acting on their genuine religious beliefs unless that expression or action would threaten or incite violence or hatred against a person or group of persons or would constitute a crime.

In the case of a condition, requirement or practice imposed ***by an employer on an employee***, it may be that the above formulation works for expressing or acting on a genuine religious beliefs outside the workplace and work hours but more conditions can be imposed by an employer on religious expression or action in the workplace during work hours.

For example, the Act could provide that a condition, requirement or practice imposed by an employer on an employee that has the effect directly or indirectly of requiring a religious individual or entity to refrain from expressing or acting on their genuine religious beliefs in the workplace during work hours is reasonable only to the extent that it is necessary to ensure the effective operation of the workplace and no lesser limitation on religious freedom would achieve that objective.

[8] A condition could be imposed indirectly if a government agency or private sector entity imposed a condition on a contractor or funded entity or grant recipient that it impose the condition on its employees or subcontractors.

Another way of putting boundaries around what is a reasonable, is to require that the condition, requirement or practice limits religious expression and activity no more than is necessary to achieve one of the 5 permitted objectives in ICCPR Article 18(3).

Australia's international commitment to ICCPR Article 18 applies to governments. So any condition, requirement or practice imposed directly or indirectly[9] by a government agency that has the effect of limiting religious expression or activity would have to be no more restrictive than was necessary to achieve one of the 5 permitted objectives in ICCPR Article 18(3), in accordance with the *Siracusa Principles*.

Another way of dealing with employer restrictions on employees is found in the WA Discrimination Act 1984 s.54 and the ACT Discrimination Act 1991 s.11 but these are too narrow in that they are limited to discrimination in relation to "carrying out of a religious practice" during work hours, whereas the protected activity should be expressing or acting on a religious belief during work hours.

7. Application to the States and Territory governments, direct inconsistency with State and Territory laws and exemption for acts done in direct compliance with prescribed statutory provisions

7.1 Application to government acts and practices

The RDA should bind the Crown in right of the Commonwealth, a State and Territory as most of the Sex Discrimination Act does. Religious discrimination by government agencies at all levels of government can create as many problems for religious individuals and entities as religious discrimination by individuals and private sector entities. It should expressly extend to the provision of government funding, benefits and grants, licences and permits, and also in respect of the awarding of government contracts and tenders.

The RDA should extend to the administration of State and Territory government programs in those States and Territories which do not provide at least the same level of protection against religious discrimination as the RDA (currently NSW and SA but also jurisdictions which in the future might remove or reduce their protection against religious discrimination).

7.2 Federal RDA must be expressed to override State and Territory laws which are directly inconsistent

The RDA should override State and Territory laws which are *directly* inconsistent with it. The RDA can include a concurrent operation provision for State and Territory Anti-discrimination Acts so that in general they continue to operate concurrently with the federal RDA. But it must be made clear that if the State or Territory Act does not protect religious freedom to the same extent as the federal RDA, the federal RDA prevails to the extent of that inconsistency.

For example, if the federal RDA provides that employers can't require their employees to refrain from expressing or acting on their genuine religious beliefs in the workplace during work hours in specified circumstances but the State or Territory Act provides that

[9] See note 5

employers may do that, then the State or Territory Act is closing up an area of liberty left open by the federal Act and there is a direct inconsistency. In any employment litigation concerning that the employer should not be able to rely on the State law to justify the employer's actions where the federal law made them unlawful.

A second example is if the federal RDA provides that it is not religious discrimination for religious entities to positively select for and prefer in employment people who live out the religion but the State Act does not give that freedom or only gives it to a narrower class of religious entity (e.g. the State law does not give the freedom to positively select to religious charities like St Vincent de Paul). If a person brought an action for discrimination under the State law against the religious charity, the charity should be able to use the federal RDA provision as a defence because the federal right to positively select for religious compatibility overrides the State law to the extent of the inconsistency. **However, this result needs to be made explicit in the drafting of the federal RDA.**

7.3 Limited exemption for acts done in direct compliance with prescribed statutory provisions

While the RDA should apply to religious discrimination by federal, State, Territory and local government, there may be particular cases where it is not appropriate for the Act to apply to acts authorised by statute. There should not be a blanket exemption for all acts done under statutory authority as government may easily discriminate against religion without justification. But an exemption or balancing provision should exempt acts which are done in direct compliance provisions of a statute of the relevant jurisdiction *which are prescribed by regulation* - for example functions and powers in national security and intelligence agency statutes might be prescribed. There is a precedent provision in section 40(2B) of the Sex Discrimination Act:

> *Nothing in [the anti-discrimination prohibition] applies to anything done by a person in direct compliance with a law of the Commonwealth, or of a State or Territory, that is prescribed by the regulations for the purpose of this subsection.*

The author is available for further discussion of any of the above issues and comments are welcome.

Mark Sneddon, Executive Director, Institute for Civil Society marks@i4cs.com.au

Formerly Crown Counsel (Advisings) to the Attorney-General of Victoria and Premier's Office

Adjunct Professor of Law, Monash University (opinions do not represent Monash University)

Institute for Civil Society
PO Box 2107 | Camberwell West | VIC 3124
ABN: 46 611 668 243
Australian Registered Charity

ATTACHMENT 1: EXAMPLES OF CASES OF RELIGIOUS DISCRIMATION AND RELIGIOUS FREEDOM INCURSIONS

1) *Perth wedding photographer who did not refuse service to a gay couple was taken to the Equal Opportunity Commission purely for saying he had a conflict of belief*

In 2018 Jason Tey was approached by a same sex couple who wanted him to photograph their children. He agreed to do so, but also revealed he had a 'conflict of belief' on the issue of same sex marriage which related to his religion, and that the couple might be more comfortable hiring someone else. He describes himself on his website as 'A Christian Photographer based in Perth'.

One of the mothers of the children subsequently brought a complaint to the Western Australian Equal Opportunity Commission, demanding he admit the alleged discrimination and publish an apology on his website and social media pages for two months. He refused to do so. The matter was escalated to the State Administrative Tribunal – a court of law.

'We were prepping for next stage – a hearing before a judge at the WA State Administrative Tribunal – when we were contacted by her lawyer,' Jason told Inside Imaging. 'They said they realised that even if she won, it wasn't likely to change my beliefs.'

He said the complaint should have been rejected well before it came to the stage of a court hearing. 'It's taken up seven months of my life. Now it's over it's a good thing.'[10]

2) *Australian university student suspended for making a classmate feel "unsafe" because he said he would show love to a gay friend but not agree with their lifestyle.*

"Andrew" (a pseudonym) is a student at a large Australian university. He is also a Christian. That is what he told a classmate who spoke to him regarding their struggles with anxiety. He offered to pray for them, with their permission, which they granted.

Shortly thereafter, during a conversation to which the same classmate was a party, Andrew was challenged with the question, "What would you do if your friend was gay?" His response included statements to the effect that he would show love to them, but would not necessarily agree with what they were doing. Andrew was suspended from the university for at least one semester pending a review and had official disciplinary action recorded on his transcript for allegedly making his classmate feel unsafe. Lawyers affiliated with the Human Rights Law Alliance were able to represent Andrew in his negotiations with the university, ultimately securing a reversal of the decision which enabled Andrew to return to his studies without detriment.[11] This was a time consuming and stressful process for Andrew who felt his university course and future career were in peril. See also the video of the similar story of Joshua (a university student suspended for praying).

See https://www.youtube.com/watch?v=rZbq7kc2rrY&t=16s

3) *Australia: Sacking for saying it's OK to vote No in SSM plebiscite*

In Canberra a young woman contractor to Capital Parties used a filter on her Facebook page that it was OK to vote no in the 2017 SSM plebiscite. The business owner sacked her and said she

[10] https://www.insideimaging.com.au/2019/jason-tey-discrimination-case-abandoned/
[11] http://www.hrla.org.au/university

did so because the contractor's views expressed on Facebook showed she was a bigot and homophobe.[12]

The Fair Work Ombudsman investigated but could not determine whether the sacked worker was a contractor (who would have had no rights under the Act) or an employee so it terminated its investigation.[13] The worker may have had recourse under the ACT Anti-discrimination Act (again subject to the contractor point) if her views were based in religious conviction but would have had no protection if the events took place in NSW or SA.

4) Australia – Sacking for Expressing Biblical Views on Instagram

Rugby player Israel Folau was sacked by Rugby Australia and the Waratahs for Instagram posts paraphrasing part of the bible warning that people who engaged in a wide range of behaviours were destined for Hell unless they repented, that Jesus Christ loved them and wanted them to turn to him and be saved. Rugby Australia's disciplinary panel founds this was a serious breach of its Code of Conduct which merited the termination of Folau's multi-year $4 million contract. Folau has brought proceedings under s.772 of the Fair Work Act for unlawful termination. He could not have brought proceedings for discrimination under the Fair Work Act because those provisions do not apply to conduct in NSW or South Australia because those States do not protect against religious discrimination.

5) Australia: Sacking for Expressing Traditional Religious Views

"Ryan" was the General Manager of a digital services agency in Victoria, which he grew substantially in sales, revenue, staff and operational maturity over a two-year period. The team Ryan recruited under his leadership included members of the LGBTIQ community.

When challenged unexpectedly at work concerning the Safe Schools Coalition, Ryan explained that, while he did not want to see anyone subject to bullying, there were elements of the Safe Schools program that conflicted with his values, including the concepts of gender fluidity and the promotion of sexual diversity. Ryan's views were not tolerated by some in the workplace and he was summarily terminated from his role for allegedly creating an unsafe workplace through his comments.

Ryan was able to achieve a substantial settlement for his termination. However, if his case was one of demotion or unfair treatment short of dismissal, the Fair Work Act would not have helped him if his views were based on non-religious grounds.[14] Even if his views were based on religious grounds he would not gave been protected under the anti-discrimination provisions in the Fair Work Act in NSW or SA because they only apply if the State anti-discrimination law protects that attribute (and NSW and SA laws do not have religious belief or practice as protected attributes, nor does any federal anti-discrimination law).[15]

---

[12] https://www.abc.net.au/triplej/programs/hack/boss-fires-worker-over-same-sex-marriage-views/8961658

[13] https://www.news.com.au/finance/work/at-work/canberra-business-cleared-of-wrongdoing-over-sacking-of-gay-marriage-no-voter/news-story/c3434191d920db49b4a4f19d035177cf

[14] http://www.hrla.org.au/ryan

[15] The current anti-discrimination laws in Australia y protect same sex oriented Australians from discrimination in every State and Territory and federally (and hence protect supporters of same sex marriage because that is a commonly associated characteristic with same sex orientation.)

But their protection of Australians who hold to traditional marriage is very patchy and incomplete. They do not protect at all Australians who support traditional marriage from a conscientious conviction not based in religious conviction (e.g. many parts of the Chinese community and others from traditional cultures and many indigenous Australians). And federal law, NSW and South Australian anti-discrimination laws do not protect Australians who support traditional marriage based in religious conviction. (The Fair Work Act anti-discrimination provisions do

6) Australia: Campaigns to have employees sacked or to force them to resign from private directorships because of perceived association with support for man-woman marriage

In Australia, a social media campaign was waged to have Mark Allaby dismissed by IBM unless he resigned as a director of another organisation (the Lachlan Macquarie Institute) that was perceived to support traditional marriage. The basis for the campaign was that Allaby's personal time role was inconsistent with IBM's commitment to workplace diversity (meaning, in context, gay rights and same sex marriage). Mr Allaby resigned the directorship. Mr Allaby had previously resigned from the Board of the Australian Christian Lobby after a similar social media campaign was waged against him when he worked for PricewaterhouseCoopers.[16]

Following this, the Australian Charities and Not-for-profits Commission acceded to a request from the Australian Christian Lobby and the Lachlan Macquarie Institute that the names and addresses of their board members be removed from the public record on the grounds that publication "could endanger public safety".[17]

A social media campaign was waged to have Dr Stephen Chavura dismissed by Macquarie University unless he resigned as a director of another organisation (the Lachlan Macquarie Institute).[18] Dr Chavura refused to resign. He is now working for another educational institution.

In the USA a similar campaign forced Brendan Eich out as CEO of Mozilla for donating his own money to a referendum campaign in favour of traditional marriage.

If Allaby or Chavura had been sacked by their employer in NSW, the Fair Work Act anti-discrimination provisions would not have assisted them because they only apply if the State anti-discrimination law protects that attribute (and NSW does not have religious belief or practice as protected attributes, nor does any federal anti-discrimination law).

7) Australia: Campaign to have a professional deregistered for her views on same sex marriage

Dr Pansy Lai was the subject of a petition, which gained 5000 signatures, circulated calling for her deregistration as a doctor due to her comments about same-sex marriage and safe schools in a No campaign TV commercial.[19] The petition was subsequently removed from the GetUp website.

---

not protect people in NSW or South Australia from employment discrimination because the FWA is subject to the same limits as the State laws in those two States). And nowhere in Australia do anti-discrimination laws protect small businesses or associations or charities or schools from detriment because they adhere to a belief in favour of traditional marriage. For example, the laws do not protect such organisations from governments discriminating against them in the provision of funding or economic benefits or licensing or permits because they support traditional marriage.

[16] Jeremy Sammut, 'Public companies are already demonstrably diverse, why sign up to extra pledges?' *The Financial Review*, 3 April 2017 http://www.afr.com/opinion/public-companies-are-already-demonstrably-diverse-why-sign-up-to-extra-pledges-20170402-gvbr92

[17] 'ACNC Moves to Withhold Charity Information' 29 March 2017 https://probonoaustralia.com.au/news/2017/03/acnc-moves-withhold-charity-information

[18] 'Gay Rights Activist Michael Barnett Turns on Christian Academic', *The Australian*, 29 March 2017

[19] Lily Mayers and Ky Chow, 'Same-sex marriage survey: Petition to deregister Pansy Lai, doctor in No campaign ad, taken down,' 4 Sep 2017, http://www.abc.net.au/news/2017-09-04/same-sex-marriage-petition-against-doctor-pansy-lai-taken-down/8869260

8) Australia: Federal public servant disciplined for expressing concern about pressure to march in gay pride parade

"Chris" served in a Commonwealth government department for a number of years without incident. Chris felt pressure from his managers and some colleagues to affirm same sex lifestyles that were contrary to his cultural convictions and heritage. Whilst happy to work with and befriend all people, Chris believed such matters to be ones of private practice and conviction.

After raising concerns about being pressured to march in a "pride" parade and his request to unsubscribe from a "pride" email newsletter, Chris was not only officially warned once by the departmental discipline unit, but placed under a further investigation for suspected breaches of public service codes of conduct. Lawyers were able to represent Chris in negotiations with the discipline unit which ultimately saw the investigation dropped and no further action taken.

Concerns remain over the nature of the policies that saw Chris disciplined.[20]

9) Australia - commercial boycotts and refusals to supply businesses because they expressed or supported the expression of a belief in traditional marriage

Coopers Brewing sponsored the Bible Society to produce a video of a civil debate between two politicians about same sex marriage. As a result, several commercial hotels announced their intention to boycotted Coopers Brewing and refused to buy their products because they believed views against same sex marriage should not be expressed. Coopers backed down and withdrew its sponsorship of that video.

The Say No to No campaign was a campaign to get Australian advertising and media industry professionals to refuse to work on No campaign communications during the same sex marriage plebiscite because such communications would always be "harmful and homophobic". 1,709 advertising professionals have committed to refuse to supply commercial services to those supporting a particular religious and political position because they disagreed with the position which was at that time the law.[21]

In late 2018 Australian popular wedding magazine "White" was forced to close after an advertiser boycott because it did not feature photos of gay weddings.[22]

In the United States of America, Chick Fil A was subject to commercial boycotting because of management's views and donations supporting traditional marriage. As part of this boycott, local governments and universities refused to allow new Chick Fil A franchise licences.[23]

In 2016 numerous companies threatened to boycott or reduce services to, and employment in, the US states of Georgia and North Carolina, after these states tabled legislation seeking to expand religious freedom exceptions regarding same sex weddings. The companies involved included

[20] http://www.hrla.org.au/chris

[21] See: http://www.saynotono.com.au; www.theaustralian.com.au/.../say-no-to no.../6311a44ccf110af29ac3813d378bdee0

[22] https://www.abc.net.au/news/2018-11-17/white-magazine-shuts-down-after-same-sex-marriage-boycott/10507630

[23] See, for example: Ian Duncan, 'UM students circulate petition to oust Chick-fil-A from campus', *The Baltimore Sun*, 20 August 2012, http://www.baltimoresun.com/news/breaking/bs-md-college-park-chick-fil-a-20120820-story.html

Disney, Intel, Coca Cola, Unilever, and others; as well as threats from the NFL and NBA to reduce or remove match scheduling, if the laws were passed.[24]

10) Australia: Vilification Complaints against publishing or preaching of standard Christian doctrine under Tasmania's very broad Antidiscrimination Act s.17 prohibiting causing offence or insult.

In Tasmania, a non-Catholic transgender person complained that a booklet outlining the Catholic position on same-sex marriage distributed by a Catholic Archbishop to parents of Catholic school students was offensive and insulting. The Anti-Discrimination Commissioner determined there was a possible violation of section 17 and took up the complaint.[25] The matter proceeded to conciliation without success and was eventually abandoned 8 months later by the complainant.

This is not an isolated incident. In Tasmania, subsequent complaints were made under the same law by a person who was not gay against Presbyterian Minister Campbell Markham and street preacher David Gee for expressing the standard Christian teaching on homosexual relations and on marriage was sinful which was said to be insulting and offensive to gay people.[26] Again the Anti-Discrimination Commissioner determined there was a possible violation of section 17 and took up the complaints. After 6 months of failed attempts to conciliate, the complainant dropped the complaints.[27]

11) Australia: Victorian Education Department Ministerial Direction and Departmental Policy severely restricted students' religious freedom in Victorian schools

A Ministerial Direction MD141 – Special Religious Instruction in Government Schools - was made on 14 May 2014 under the Education and Training Reform Act 2006 (Vic). These purported to relate to regulating the 30 minutes per week of religious instruction that may be delivered by accredited providers in government schools: However, in an extraordinary overreach seemingly based on the fear or hostility towards religion of the Departmental policy makers, the Direction and accompanying Departmental Policy:

- Prevented the distribution or display by any person (including students) of any material at a school if that material had the effect of promoting any particular religious practice, denomination or sect. This would effectively prevent one student from showing or handing out to another student a Bible, Koran, Torah, or verses from these or other sacred texts, religious books, pamphlets, poetry, pictures, videos etc, or having on their desk or locker a diary with a Bible verse or religious image on it. It would even seem to have prohibited students advertising that a student religious group is meeting.
- Restricted the permitted activities of student-initiated religious groups in schools to personal prayer and excluded for example study or teaching based on the Bible or Koran or other specific religious text. This policy seems to take the requirement in the Act that *education provided in a government school must be secular* and change it into a

[24] https://www.forbes.com/sites/annafields/2016/03/23/disney-is-boycotting-homophobes-and-so-should-you/#290bc5fb6d19

[25] Dennis Shanahan, 'Catholic bishops called to answer in anti-discrimination test case', *The Australian* (online), 13 November 2015 <http://www.theaustralian.com.au/nationalaffairs/state-politics/catholic-bishops-called-to-answer-in-anti-discrimination-test-

[26] https://www.themercury.com.au/news/tasmania/antidiscrimination-commission-to-hear-complaint-over-hobart-preacher-campbell-markhams-blogs/news-story/faf220e76fb3281419182fd1892df5a1

[27] https://www.theaustralian.com.au/nation/politics/case-dropped-but-clerics-fight-on-for-free-speech/news-story/d752270abdd83e45901569e5254d68e6

requirement which is not in the Act that *any activity of students in a government school must be religion-free.*

12) Australia - Queensland Education Department encourages school principals to take action on student evangelism

The Queensland Education Department conducted a review into the "Godspace" religious instruction materials used by Christian volunteers who were approved to deliver religious education in government schools. The report conceded that evangelism is not explicitly prohibited by legislation nor referenced in the Religious Instruction policy but nevertheless stated that:

The department expects schools to take appropriate action if aware that students participating in religious instruction (RI) are evangelising to students who do not participate in their RI class, given this could adversely affect the school's ability to provide a safe, supportive and inclusive environment for all students.

According to The Australian newspaper, the Education Department regards "evangelising" as "preaching or advocating a cause or religion with the object of making converts to Christianity".

Examples cited include giving Christianity-themed Christmas cards and Christmas tree decorations and making beaded bracelets to give to friends "as a way of sharing the good news about Jesus."[28]

13) Australia - Pub cancels meetings by Christian group in beer garden

In November 2017 the licensee of the Rose Hotel in Chippendale (Sydney) apologetically informed a Christian group that they could no longer hold their monthly meetings – called Theology on Tap – in the pub's beer garden because some patrons had complained that same sex marriage was being discussed and had threatened not to return if the meetings continued. It is understood that the licensee offered the group a private room instead.[29]

14) Australia – use of Darebin Council facilities during no campaign

During the same sex marriage plebiscite, the Darebin Council put forward a draft motion which, had it been passed, would have allowed proponents of the yes campaign to use the Council's facilities and services free of charge during the campaign but would have prohibited the no campaign from using council facilities. The council also announced its intention to write to churches and religious groups to warn them about the consequences of campaigning against same sex marriage. Ultimately, the Council did not pass the motion, having been warned that they were on shaky legal grounds. However, it is very concerning that a local council as a public authority would consider introducing such a blatantly discriminatory measure.

[28] Rebecca Urban, 'Jesus Unwelcome in Schoolyard Crack Down' *The Australian*, 27 July 2017 https://www.theaustralian.com.au/national-affairs/education/junior-evangelists-targeted-in-schoolyard-crackdown/news-story/e719eabc9778e812fd390bd2736

[29] Miranda Devine, 'Yes Voters Vilify Christians to the Bitter End' *The Daily Telegraph*, 5 November 2017 https://www.dailytelegraph.com.au/rendezview/yes-voters-vilify-christians-to-the-bitter-end/news-story/88c2b6ed2282f9ce97f14384108629d3

15) Australia - Catholic Society students vilified and attacked for support of no campaign at Sydney University

During the same sex marriage postal plebiscite, a group of students from the Catholic Society set up a table on a Sydney University campus with placards saying "it's OK to Vote No" in order to give the no campaign some coverage on a university campus. Video footage showed the group being vilified, abused and threatened, physically attacked and their property damaged over a number of hours.[30]

16) Australia – University of Sydney Union threatens to deregister Evangelical Union

In 2016 the University of Sydney Union threatened to deregister the Sydney University Evangelical Union if it did not remove a declaration of faith "in the Lord Jesus Christ as my Saviour, my Lord and my God" as part of membership on the basis that union regulations required that membership of clubs and societies be equally accessible to all. Fortunately, following consultation with several faith-based groups on campus the USU agreed to amend union regulations to "allow faith-based declarations as a condition of membership and executives" of faith-based groups on campus.

17) Australia – calls to rename Margaret Court Arena

Tennis greats Billie Jean King and Martina Navratilova publicly called for Australian Open organisers to rename Margaret Court Arena because of Margaret Court's public views on homosexuality and same sex marriage.[31] While we would not support restrictions on this type of speech, it gives occasion to reflect on the inherent biases in some anti-vilification laws. Would these comments amount to vilification of Margaret Court on the basis of her religious belief if she was reasonably insulted or offended by them? Flipping the example, would it be vilification if Margaret Court was homosexual and publicly critical of religious conservatives who opposed homosexual sexual relations and some of those conservatives then called for the renaming of the arena because of her comments?

18) *Northern Ireland, Ashers Bakery Company*, run by a Christian couple, was found liable for discrimination because it refused to bake a cake for a political group with the iced slogan "Support Gay Marriage".

Ashers led evidence that it had never refused to supply a person on the grounds of their sexual orientation and did not do so in this case but refused only because it would not disseminate or be associated with the message on the cake. The Court of Appeal held that the sexual orientation of the person who ordered the cake was irrelevant and the refusal to provide a cake with that message on it amounted to discrimination. The Supreme Court of the United Kingdom held that the bakery owners' right to freedom of religion and freedom of speech meant they could not be compelled to express or support a view with which they profoundly disagreed. The Supreme Court also held there was no

[30] Miranda Devine, 'Yes Voters Vilify Christians to the Bitter End' *The Daily Telegraph*, 5 November 2017 https://www.dailytelegraph.com.au/rendezview/yes-campaigners-show-their-true-colours/news-story/6ad4b71806c4c610329a1cb7dcaa43b2

[31] Sam McPhee, 'Billie Jean King and Martina Navratilova call for Margaret Court Arena to be renamed – saying they would refuse to play on it due to her 'homophobic' comments' *The Daily Mail*, 12 January 2018

discrimination against Mr Lee on the grounds of his sexuality (as the bakers would have refused to create that message for any customer).

19) UK: Loss of Charitable Status by Charities Implementing Religiously-Based Policies in Adoption and Fostering

In the United Kingdom, the Charities Commission for England and Wales removed the charitable status of 19 Catholic adoption and foster agencies because they preferred not to adopt or foster to same-sex couples. The charities were found to have objects contrary to public policy which could not be charitable and so they lost their concessional tax status. This caused these agencies to close down or transfer their operations to secular operators as they were no longer exempt for the purposes of tax. [32] Gay couples were always able to obtain foster and adoption services from other providers so this closure of adoption and fostering services penalised relinquishing parents who wanted married couples or Catholic upbringing but did nothing to improve services for gay couples. The Scottish Charities Commission came to the opposite conclusion partly on the basis of the religious freedom rights of the relinquishing parents and the Scottish Catholic charities.

20) NZ: Loss of Charitable Status by Charity Advocating for Traditional Marriage

In New Zealand, Family First was deregistered by the Charities Board because of its commitment to traditional marriage which no longer could be regarded as a public benefit:

> The Board considers that Family First has a purpose to promote its own particular views about marriage and the traditional family that cannot be determined to be for the public benefit in a way previously accepted as charitable. Family First has the freedom to continue to communicate its views and influence policy and legislation but the Board has found that Family First's pursuit of those activities do not qualify as being for the public benefit in a charitable sense.[33]

The matter has been litigated over several years.

21) UK: Liberal Democrat leader Tim Farron forced to resign because of his Christian convictions on same sex marriage

Tim Farron the former leader of the UK Liberal Democrats felt compelled to resign in June 2017 when journalists kept pursuing him over his views as a Christian on same sex relationships, gay marriage and abortion, as these persistent questions overshadowed his attempts to advocate the party's platform. In his resignation speech he said:

> To be a political leader – especially of a progressive, liberal party in 2017 – and to live as a committed Christian, to hold faithfully to the Bible's teaching, has felt impossible for me.
>
> I'm a liberal to my fingertips, and that liberalism means that I am passionate about defending the rights and liberties of people who believe different things to me.
>
> There are Christians in politics who take the view that they should impose the tenets of faith on society, but I have not taken that approach because I disagree with it – it's not liberal and it is counterproductive when it comes to advancing the gospel.

---

[32] *Catholic Care (Diocese of Leeds) v The Charity Commission for England and Wales 2009* UKFTT 376 (GRC) (01 June 2009) available at http://www.charity.tribunals.gov.uk/decisions.htm. An English judge later reversed and remanded this decision. See The Yorkshire Post, 'Catholic Adoption Society Wins Ruling on Gay Parents', *The Yorkshire Post* (Online), 17 March 2010 <http://www.yorkshirepost.co.uk/news/main-topics/local-stories/catholic-adoption-society-wins-ruling-on-gay-parents-1-2567726>.

[33] https://charities.govt.nz/assets/Uploads/20170821-Family-First-of-New-Zealand-deregistration-decision.pdf

> Even so, I seem to be the subject of suspicion because of what I believe and who my faith is in.
>
> In which case we are kidding ourselves if we think we yet live in a tolerant, liberal society.
>
> That's why I have chosen to step down as leader of the Liberal Democrats.[34]

22) UK: Refusal to allow successful Christian foster parents to foster new children because of their traditional views on sexuality and marriage

In *Johns v Derby County Council* 2011, the English High Court supported a local council decision that a Christians couple with traditional views on sexual ethics, who had successfully fostered many children, would not make suitable foster carers because they would not be open to promoting a homosexual lifestyle.[35]

23) UK: Demotion in employment with salary cut because employee expressed moderate personal views about religious freedom

In the UK, Adrian Smith placed on his Facebook page a comment (in response to a BBC news item) that he did not think that churches should be compelled to host same-sex civil partnership ceremonies. He did not make a comment against same sex partnerships. He was accused by his employer, a housing association, of "gross misconduct" and threatened with dismissal. Because of his long service, he was only demoted. However, he lost 40% of his salary. His breach of contract action was successful in the High Court [36] Briggs J said that he could not envisage how Smith's "moderate expression of his particular views about gay marriage in church, on his personal Facebook wall at a weekend out of working hours, could sensibly lead any reasonable reader to think the worst of the Trust for having employed him as a manager."

24) UK: Balliol College bans Christian Union from having a presence at fair for new students

In 2017 the student leaders at Balliol College, Oxford University would not permit the college's Christian Union to have a stand at the annual "freshers' fair" due to their concerns that a Christian presence at activities for new university students risked "potential for harm to freshers" and that they wanted the fair to be a safe space.[37] (The Balliol Christian Union had not been accused of engaging in any discriminatory behaviour.) The student body that banned the Christian group cited the "damaging" historic influence of Christianity on marginalised communities and the use of Christianity "in many places as an excuse for homophobia and certain forms of neo-colonialism" as a reason to prevent it from holding a stall. A backlash ensued and it has since been decided that the Christian Union will be able to attend future fairs.

25) UK: student expelled from social work course for views on homosexuality

---

[34] https://www.theguardian.com/politics/2017/jun/14/tim-farron-quits-as-lib-dem-leader; https://www.libdems.org.uk/liberal-democrat-leader-tim-farron-resigns

[35] *Johns v Derby County Council* [2011] EWHC 375 (Admin).

[36] *Smith v Trafford Housing Trust* [2012] EWHC 3221.

[37] https://www.theguardian.com/education/2017/oct/09/anger-as-oxford-college-bans-christian-group-from-freshers-fair; http://www.telegraph.co.uk/education/2017/10/10/oxford-college-bans-harmful-christian-union-freshers-fair/

Felix Ngole was expelled from his social work course (and hence from the profession of social work) by a Sheffield University panel for expressing the view in Facebook posts in September 2015 his genuine religious belief that homosexuality is a sin, mainly by quoting the Bible.[38] He appealed to the High Court and lost in October 2017. Deputy High Court judge Collins Rice J said: "Public religious speech has to be looked at in a regulated context from the perspective of a public readership. Social workers have considerable power over the lives of vulnerable service users and trust is a precious professional commodity."[39] Ngole appealed to the Court of Appeal which in July 2019 overturned the High Court decision, found the university panel had told Ngole he could not express his religious beliefs rather than discussing with him the manner of expression and hence had not implemented the relevant code in its hearings. The Court of Appeal remitted the matter for re-hearing before a new university panel which will occur almost 4 years after the Facebook posts.[40]

26) UK: Government moves to refuse accreditation to private religious school because of inadequate promotion of homosexuality and gender reassignment

In the UK independent religious schools are under threat of deregistration for failing to conform their teaching on sexual issues to progressive agendas. OFSTED, the body responsible for school-assessment, visited Vishnitz Jewish Girls School in 2017. The school passed all academic and facilities tests of OFSTED but failed their school-assessment on one issue alone - the inadequate promotion of homosexuality and gender reassignment (the promotion of which is contrary to orthodox Jewish beliefs). Several faith schools face similar threats of closure.[41]

27) Canada: Tertiary graduates denied the right to practise their profession by delegated government power because their tertiary institution had adopted a covenant of orthodox religious values relating to sex and marriage.

In British Columbia, Trinity Western University required their students and staff to sign a community covenant which included a promise to abstain from sexual activity, unless it was between a husband and wife.

Due to this, the British Columbia College of Teachers voted to refuse accreditation to all teaching graduates because they might discriminate against LGBTI students. After many years of litigation, the Supreme Court of Canada upheld the right of Trinity graduates to be accredited in 2000.

Subsequently, Trinity Western has sought to open a law school. Four Provincial (State) Law societies decided to refuse accreditation to the planned law school and program of Trinity Western University on the grounds that the community covenant of the university was discriminatory, not on any grounds relating to the quality of the curriculum or faculty of the law school. The effect of the decision would be to deny graduates of the law school the right to practise law in those Provinces. Two of those Provinces reversed the decision. In the other two provinces, ligation about the decisions has been through the Provincial Courts. The Supreme Court of Canada held that it was discrimination on the grounds of sexual orientation to make students and faculty sign the community covenant and that the religious freedom

[38] https://www.theguardian.com/uk-news/2017/oct/27/christian-felix-ngole-thrown-out-sheffield-university-anti-gay-remarks-loses-appeal

[39] *R (on the application of Ngole) v University of Sheffield* [2017] EWHC 2669 (Admin).

[40] *R (on the application of Ngole) v University of Sheffield* [2019] EWCA Civ 1127

[41] http://www.dailymail.co.uk/news/article-4694610/School-faces-closure-refusing-transgender-issues.html

rights of Trinity staff and students had to give way to the need to prevent discrimination on the grounds of sexual orientation.

28) Canada – guidelines for federal funding for summer jobs program requires applicants to express respect for abortion

In December 2017, the Trudeau Government announced new guidelines for groups and organisations intending to apply for funding from the Federal Government for the Summer Jobs Program for students. Applicants for funding are required to check a box on an electronic form acknowledging that they respect "individual human rights in Canada." Those rights encompass women's reproductive rights, including the right to access safe and legal abortions. The application guidelines explain that the stipulation covers both the job activity and the core mandate of the organisation applying for the funding. If the box is not checked the application cannot be submitted.

29) Canada – failure to support gender transition is child abuse

In 2017 the Ontario legislature legislated to classify a failure by parents to support their child in identifying as, and transitioning to, a different gender as a potential form of child abuse which would enable the state to remove the child from the parents under a child protection order.[42]

Five other recent Australian examples have been provided by the Human Rights Law Alliance (https://www.hrla.org.au/) from their cases (names changed). Other examples are being collated.

30) Jared is a GP. An anonymous complaint was made to the medical board by someone who was not a patient. Jared's crime was that he had posted orthodox Christian beliefs and scientific facts about sexuality and gender issues Jared is currently fighting an investigation by the medical board and may lose his ability to practise medicine.

31) Chris and Mary are loving Christian parents who made an application to foster children between the ages of 0 -5 with a fostering agency. They were rejected as "unsafe" as foster parents because of their orthodox Christian views on sexuality and gender.

32) Dan is a teacher. Dan posted links to articles about homosexual marriage leading up to the marriage postal vote. Dan was reported to the Department of Education who subjected Dan to a long investigation which was only terminated when he obtained legal help.

33) Barry is a tertiary lecturer. Barry was disciplined for responding to blasphemy by asking students "Oh, do you know Jesus? Because I do". Barry has been officially warned by his employer not to share his religious beliefs and has been threatened with discipline and termination. He is getting legal assistance to ensure his job is protected.

34) Clara is a mental health counsellor. She lost her teaching qualification when a progressive political activist reported her Christian views on sexuality and gender that

[42] http://www.theblaze.com/news/2017/06/05/new-law-allows-government-to-take-children-away-if-parents-dont-accept-kids-gender-identity/; https://genderidentitywatch.com/2017/07/20/the-supporting-children-youth-and-families-act-of-2017-canada/

had been shared on social media videos. Despite the fact that Clara has never had a complaint from anyone, she has been stripped of her livelihood.

ATTACHMENT 2: Some Relevant International Declarations and Conventions on Religious Freedom

Relevant provisions of the applicable international declarations and conventions include the following.

Universal Declaration of Human Rights 1948 (UDHR)

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.

International Covenant on Civil and Political Rights (ICCPR)

Article 4 No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

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.

Article 27

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 their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The ICCPR was ratified by Australia on 13 August 1980. Australia acceded to the First Optional Protocol to the ICCPR with effect from 25 December 1991.

Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief (Religion Declaration)

Articles 2 & 3

These provisions prohibit any act or practice of intolerance or discrimination on the grounds of religion or belief by any person in any capacity whatsoever.

Articles 4 & 7

These place obligations on States to take positive measures to counter intolerance and discrimination on the ground of religion and belief.

Article 5

Freedom to impart religion or belief to one's children – children have a right of access to a religious education that is consistent with the wishes of their parents.

Article 6

Religion and belief in practice – provides a list of minimum freedoms, including freedom to teach religion and belief and freedom to establish and maintain appropriate charitable institutions and freedom to assemble and worship.

This Declaration has been declared to be a "relevant international instrument" for the purposes of the Australian Human Rights Act 1986 (Cth).

Convention on the Rights of the Child

Article 28

Provides for education to develop the child to his or her fullest potential, but this article is not to be construed so as to "interfere with the liberty of individuals and bodies to establish and direct educational institutions ..."

Convention against Discrimination in Education

Article 5(b)

" … it is essential to respect the liberty of parents ... firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as ... approved by the competent authorities and secondly, to ensure ... the religious and moral education of the children in conformity with their own convictions ... "