



Church and Nation Committee of the Presbyterian Church of Australia in the State of New South Wales

138 Chalmers St, Surry Hills, NSW 2010

Freedom of Religion and Belief in the 21st Century

Submission from the Church and Nation Committee representing the Presbyterian Church of Australia in the State of NSW

The Church and Nation Committee of the Presbyterian Church of Australia in the State of New South Wales is appreciative of the opportunity to make its comments on the Discussion Paper on the subject of *Freedom of Religion and Belief in the 21st Century*. Appreciation is also expressed for the extension of time granted for the submission of this paper.

The Committee delegated the drafting of sections of the submission to two persons,

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and

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The final form of the submission was approved on Thursday 29th January 2009.

Preamble

Our submission as follows does not attempt to address every single issue raised in the discussion paper but rather seeks to selectively address some key matters that we see as being significant for the Christian Church generally and the Presbyterian Church in particular. Any submission from the Presbyterian Church will not be as comprehensive as many may want for the simple reason that the church recognises the right of its individual members to hold personal views on a great many issues and areas of general interest in the community. It avoids making definitive statements on issues not specifically related to the heart of Christian belief and clearly presented within the scriptures.

Overall the Committee sees no problems with the recommendations of the HREOC's 1998 Report Article 18 although we hold reservations on the recommendation R5.1 urging the repeal of laws creating the offence of blasphemy. While recognising that the definition of that term is often unclear in modern society and while also recognising that in an internationalised media market much that can be regarded as blasphemous is commonplace, our committee feels that it is an offensive act to many people and many cultures. Consequently carefully-defined limitations should remain in legislation, whether in a specific act covering blasphemy or in another act covering offensive behaviour.

In particular, the Committee notes and supports recommendation R2.2 acknowledging the right of all religions to "... determine their own affairs within the law ..."

The Presbyterian Church and Liberty of Opinion

In 1901 the six state Presbyterian Churches came together to form the Presbyterian Church of Australia. They chose to do this on a federal model in which the respective state churches retained their separate identities but created an additional national church to manage only certain functions – namely *Doctrine, Worship and Discipline* – which were agreed to be more efficiently manageable at a national level. The area of *Government* (of and within the church) was never ceded to the General Assembly of the Presbyterian Church of Australia and remains the province of each state church.

This last-mentioned area embraces the day-to-day functioning of state-based churches generally. Each state church maintains its “Code”, a body of church rules that regulate the functioning of the organisational church. It operates within State and Commonwealth Law in the sense either that it makes rules on matters in which the State or Commonwealth have no interest, e.g. membership, management and affiliation processes, or it makes rules that enable conformity to State or Commonwealth laws e.g. trusteeship, accountability and property management. They may be seen therefore as being similar to a set of by-laws in an institution or organisation and it is clearly understood that the church operates within the confines of secular law. This implies however a mutual understanding that the State or Commonwealth will not become heavily intrusive in religious affairs.

This is understood to lie at the heart of Section 116 of the Commonwealth of Australia Constitution Act and to date there have been few problems with this relationship. We endorse the continuation of that clause in the Australian Constitution.

On the subject of the expectations that the Presbyterian Church makes of its members, this needs to be viewed at different levels.

Ministers and Elders are required to conform to the doctrinal standards of the church, which are found in the Westminster Confession of Faith read in the light of the 1901 Declaratory Statement.

Of particular significance in the Declaratory Statement are the words “*That liberty of opinion is allowed on matters in the subordinate standard not essential to the doctrine taught therein, the church guarding against any abuse of this liberty to the injury of its unity and peace.*”

Communicant members make a public statement of faith in which they commit themselves to Jesus Christ as Lord and Saviour and undertake to work for the good of His Church.

Both groups are required to acknowledge that the Scriptures of the Old and New Testaments are the supreme standard governing faith and life.

A third group of membership are *Adherent members* who become so simply by associating themselves with a local congregation. There are no formal commitments expected of such people.

The Role of the Church and Nation Committee

The NSW Church and Nation Committee of the Presbyterian Church in NSW acts for the state-based church's General Assembly and deals with the Church's relationship with the wider world of ethics, morals, government, law, civil rights, values and social attitudes. It is, among other things, specifically empowered to "*make statements on social and moral issues to appropriate authorities when Executive considers such action to be necessary*".

This is the function that we perform in presenting this submission.

Areas of Interest and Involvement

Area 3 Religion and State – Practice and Expression.

Summary

The church engages in many activities some of which involve using government money. The church recognises that governments are entitled to set accountability and performance standards for the use of such money. It is also entitled to withdraw that funding if those standards are not maintained.

The state should be vigilant to ensure that the religious rights of some people should not be derogated by rights demanded by others. The Constitution and State law should prevail in any such conflict.

The church expects that its right to speak out in support of high community standards will always be guaranteed.

1. The Church and Receipt of Government Money

There are occasions when the Presbyterian Church has received substantial levels of government money in order to provide services that serve both the interests of government and the Church. These include, among other things:

- financial aid and other concessions in order to run its schools,
- financial support for Aged Care facilities
- financial support for hospitals run directly by the church
- social service and advisory services.
- Chaplaincy funding
- Tax concessions for fundraising activities supporting the church's work

In each instance the church acknowledges the right of the state to impose certain appropriate expectations regarding conditions, standards of service, content and curriculum, qualifications, and supervisory/accountability obligations.

Further the committee acknowledges the right of the state to withhold funding or other benefits when those conditions are not being met.

2. Religious Views on the Separate Role of the Secular body

While this matter holds few implications directly for Presbyterians, there is concern at elements within other religious groups who may hold different views that might ultimately impinge on the right of people to hold and practice their own religious beliefs. This might happen if one group holds to the view that it regards itself as the one true religion and has somehow obtained sufficient power or influence to direct the course of government to impose laws sympathetic to such views.

Among many proponents of Islam is the view that Islam and the State are indivisible. They look forward to a day when the country will be an Islamic state and its laws and obligations will be imposed on everyone. Whether such a day will ever happen in Australia is questionable but, as evidenced from Great Britain, there is likely to be pressure to move in this direction or grant concessions to influential groups – moral pressure based on claims on “religious freedom”. The state should scrutinise and, where appropriate, resist such demands from any source, Islamic or otherwise, maintaining the view that there should be one just law for all, including that which guarantees religious freedom.

Consequently this committee expresses its opposition to any constitutional inclusion which could embrace the recognition of Islamic Law or “Shari’ah” as a parallel legal system to that which already operates in this country. Clearly, if Shari’ah operates exclusively within the Islamic community, as does our “Code”, as a set of “by-laws” subject to state law, it is unlikely to prove a problem. However if Shari’ah is in conflict with state law on any issue (e.g. polygamy, physical violence), state law must prevail.

This concern would also extend to any other attempt to impose a parallel or alternate legal system in this country, e.g. Aboriginal law.

3. The Church and the State’s Obligation to maintain Community Standards.

From time to time the State’s legal framework seeks to embrace recognition of certain practices that it sees as being acceptable to community standards. Some of these cannot be condoned by the Christian Church. These matters have included abortion, gay marriage, drugs and alcohol law, gambling and prostitution.

The church has vigorously opposed these activities and can be expected to continue to do so.

The Presbyterian Church recognises that sometimes there is a demand and a need for parliaments to make laws that bring such activities under some form of regulation and control. However it reserves its right - and believes that that right should be protected by constitutional law - to oppose publicly those laws or aspects of them without any kind of penalty. Furthermore churches should not be obligated in any way to recognise or tolerate such practices within their own domains, e.g. schools, hospitals, marriage celebration.

Area 1 Evaluation of 1998 HREOC Report on Article 18: Freedom of Religion and Belief.

Area 2 Religion and State – the Constitution, roles and responsibilities

Area 5 The interface of religious, political and cultural aspirations

Area 7 Religion, cultural expression and human rights

Summary

The principal idea of this area of the submission is that, in a civil and free society, citizens must have legal freedom to present their beliefs to fellow citizens who do not hold the same views.

Citizens must also accept that other citizens will present their beliefs and arguments to them in turn. A civil and free society accepts that its members hold beliefs and ethical values (including atheistic beliefs) dear, and should be free, in good faith, to try to persuade others to change their minds.

Faith communities ought not to be coerced on issues of gender equality, sexual practice and orientation, and matters of like kind.

1. Introduction

The opening paragraph of Article 18 of International Covenant on Civil and Political Rights reads

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.

It also provides in paragraph 3 that

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.

These paragraphs treat a difficult question in a civil society: the extent to which laws ought to restrain the manifestation of religious beliefs, along with observance, practice and teaching of others. This is the major area of concern addressed in the current submission.

2. No freedom from neighbours: Love of Neighbour a basic tenet of Christian belief

In the opening chapters of the Holy Scriptures, the question is asked 'Am I my brother's keeper?' (Genesis 4:9) and the implicit answer suggested by the context of that question is 'Yes'. Thus from the very opening of the Christian scriptures, believers are considered responsible not just to refrain from interfering or harming their neighbours but to act for their good.

This positive Christian duty finds expression in the teaching of Jesus Christ as he frames the two great commandments

Matt. 22:37-40 Jesus replied: "‘Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment. And the second is like it: ‘Love your neighbour as yourself.’ All the Law and the Prophets hang on these two commandments."

In Christian practice it is not enough to merely to leave others alone - refraining from harming them, as in the Buddhist ethic ("*...a state that is not pleasing or delightful to me, how could I inflict that upon another?*" Samyutta Nikaya v. 353; or "*Hurt not others in ways that you yourself would find hurtful.*" Udana-Varga 5:18.) Instead the Christian ethic requires believers to engage with others for their benefit.

This sacrificial responsibility to help others covers a wide range of things, and has spawned in history many commonplace features of 21st century life (e.g. labour laws, hospitals, schools and the like). The duty to love neighbour also includes the duty for believers to tell the gospel of Jesus Christ – to attempt to persuade others to the Christian religion.

3. The great gift to others of knowing and loving Christ

Within the framework of a duty to do what will help others, the Holy Scriptures teach that Christians have a duty in love to tell others about him. Thus he commissioned his first disciples as ‘fishers of men’ (Matthew 4:19) and to make disciples of all nations (Matthew 28:18-20.) In the Christian religion, to know and follow Christ Jesus is ‘eternal life itself’ (John 17:3) and to share that knowledge with others is a privilege and responsibility laid upon all.

4. Persuasion through presenting Christian truth

The manner in which Christians attempt to persuade others is through presenting the truth of the ‘gospel’ or ‘good news’ about Jesus Christ. It is about taking the initiative to preach or proclaim the truth to others and it also involves being ready to give a ‘defence’ for Christian faith when challenged. Thus Christian life has always involved a robust willingness to develop dialogue with others, but as a robust dialogue develops, Christians are commanded to always treat others with ‘gentleness and respect’ (1 Peter 3:15).

5. A willingness to be challenged by others who believe differently

The corollary to this precept of loving others, is the willingness to be loved by them. Christians accept that others, including those of non Christian and atheistic faith, have a loving duty to attempt to persuade Christians to change their minds and to cease being Christians. Christians are encouraged in this context, ‘Do not be frightened. But in your hearts set apart Christ as Lord. Always be prepared to give an answer to everyone who asks you to give the reason for the hope that you have.’ (1 Peter 3:14)

6. Christians believe that faith has necessary ethical outcomes

As part of a duty to love others, Christians accept from Scripture a responsibility to not only speak to our ‘neighbours’ about obvious ‘faith’ questions but also ethical questions. Christians must be willing to challenge others who teach or behave in unethical ways. Likewise Christians must expect to be challenged about their own teaching, behaviour and

ethics. Christian life and faith has always been seen as holistic. It goes beyond merely faith or ideological commitments to embrace conduct. Jesus commanded his followers to ‘make disciples... teaching them to *obey* everything I have commanded you’ (Mathew 28:19,20.)

7. A civil and free society must permit ethical debate

It is never pleasant to be challenged by someone else on the basis of alleged unethical or immoral behaviour, but in a civil and free society, citizens must be willing to challenge and be challenged in this way. Christians believe that in the first course these challenges happen privately and discreetly but where others do not listen and the importance of the matter demands it, sometimes a challenge must be made in public.

8. Telling others they are wrong in thought or practice is not hatred

In particular as moral and religious values change in our society and become more diverse, all citizens must be willing to speak and be spoken to about difficult issues.

These issues cover the full range of belief and practice, including sexual values and practice, political values and practice, religious values and practice, Of course, these are three areas which are very personal and where most people feel very deeply, but robust discussion must be permitted about them without accusations of vilification. A person who challenges or attempts to persuade another about their beliefs and behaviours (including those relating to sexual, political and religious life) should not be simplistically treated by law the same way as someone acting out of hatred.

9. Governments ought to provide a context where the freedom to challenge and persuade others is honoured.

One important role of Government is to provide a legal framework that honours the freedom of its citizens to interact with each other, sharing ideas, challenging and attempting to persuade others. It is vital that persons of all religious faiths, including those of atheistic belief, have the right to exercise this freedom. There ought not to be legislation (including Constitutional amendments) that curtails that freedom. Legal provisions ought to make clear that a citizen’s right to challenge another person’s values and beliefs, and to persuade them to change those values and beliefs, is protected.

10. It is not inherently coercive to attempt to persuade another person to change their belief.

Any legal provisions which enshrine a right to ‘freedom from coercion which would impair religion or belief’ or a right to ‘freedom not to hold a particular religion or belief’ (see R2.3 in the Recommendations of HREOC’s 1998 report) must explicitly honour a right to attempt to persuade others through robust discussion. It is not coercive to engage and challenge others about their false beliefs (including atheistic beliefs), nor does it infringe their right not to believe. In a civilized society we honour the rights of others to hold or not hold beliefs and values, and we do so in part by accepting their right to engage and challenge us about our beliefs and values.

The Presbyterian Church honours the responsibility of Governments not to infringe on a citizen’s conscience. Our own constitutional documents insist that the church ‘disclaims... intolerant or persecuting principles and [also insists on]... the liberty of conscience and the

right of private judgement, declaring in the words of the Confession that "*God alone is Lord of the conscience*". (Presbyterian Church of Australia, Declaratory Statement 1901, clause 6.)

It would be a substantial infringement of the right of freedom of conscience if citizens were prohibited from challenging others about their beliefs (including atheistic beliefs). Any limitation on a citizen's right to persuade and challenge others should only apply where a citizen is promoting violence and serious civil disorder.

11. Exemption from any proscription of religious vilification.

Any Act which proscribes religious vilification must explicitly protect a citizen's right to challenge another person's faith and values. In the recommendations of the HREOC in its 1998 report (R5.3) an exemption was proposed for acts done 'reasonably and in good faith' in three specified situations (see the three 'dot points' in R5.3). One possibility is for the Commission to consider removing these three proposed qualifications, so that the exemption simply protects 'all acts done reasonably and in good faith.'

12. This submission is in sympathy with mainstream religious faith in Australia

Within various faith communities in Australia (for example within significant parts of mainstream Christianity and Islam) there is an acknowledged duty, as a matter of conscience, for followers of those faiths to engage and challenge others about their religious and ethical values. In addition there is an acceptance of the right of persons outside those faith communities to engage and challenge persons within those faith communities about the religious and ethical beliefs of those communities.

13. In Australia there are different values held by different communities (including faith communities) about sexual ethics and gender equality.

Within various faith communities in Australia (for example within mainstream Christianity and Islam) there are deeply held ethical values about sexual practice and orientation, and gender equality. It is a basic issue of conscience within those communities that they be free to practice and express those views within their faith communities without the imposition by the state of a different set of values, whether under the provisions of 'anti-discrimination' legislation or otherwise.

14. Faith communities must be free to express their own values about sexual ethics and gender equality.

Within faith communities in Australia there is a widespread acceptance of the right of persons outside those faith communities to engage and challenge persons within those faith communities about their ethical values on issues such as sexual practice and orientation and gender equality. However that right to engage and challenge values within faith communities ought not be coercive.

14. Faith communities must be free to be consistent with their own values

Faith communities ought to be free to expect their leaders and members to act consistently with their own faith community's values on such issues. Any coercion of faith communities

on these issues would likely impose on faith communities a fundamental inconsistency with their own religious values.

It would be a serious infringement of the religious freedoms of Australians for faith communities to be coerced on issues such as 'equality of gender' (e.g. a new 'right' for both men and women to be appointed to leadership within those faith communities), 'sexual practice' (e.g. a new 'right' of a leader or member of a faith community to engage in 'immoral' sexual activity such as adultery or fornication), 'sexuality, or sex and gender identity' (e.g. a new 'right' of a leader or a member of a faith community to engage in same sex relationships), or to coerce the faith community on any moral/ethical values and practices of like kind.

Conclusion

Any proposed legislation concerning religious freedoms should acknowledge and protect the right for citizens to engage and challenge and attempt to persuade others about religious and ethical values.

The right to freedom to hold or not to hold religious belief (including atheistic belief) is not a right to freedom from being engaged and challenged and attempted to be persuaded by others about religious beliefs and ethical values.

Faith communities ought not be coerced on issues such as 'equality of gender', 'sexual practice', 'sexuality, or sex and gender identity' and other moral/ethical values and practices of like kind.

A Final Comment

The state's fundamental role in the area of religious freedom is that of a guarantor of human rights and this includes the right of individuals and groups to maintain religious beliefs and practices, or, for that matter, to hold no religious beliefs at all. Included also is the right to expound such views in a sensitive manner and to seek to convince others of the truth of our views. Those views are precious to a large body of people in Australia, indeed worldwide, and limitations should not be imposed without good reason, the most likely conceivable reason being that the religious practices of some may limit the rights of others, whether religious or not.

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