

Religious freedom and the secular state

by Rod Benson

In September last year the Australian Human Rights Commission ([AHRC](#)) launched a [review](#) of freedom of religion and belief in Australia (hereafter FRB). This is a major project involving a process of written submissions, workshops, public hearings and stakeholder meetings, culminating in a report to be presented to the federal government some time in 2010.

Background to the review

The review builds on a 1998 HREOC [report](#) titled *Article 18: Freedom of Religion and Belief*, and the 2004 [report](#) *Religion, Cultural Diversity and Safeguarding Australia*, released by the (then) Department of Immigration and Multicultural and Indigenous Affairs. These followed moves by the Hawke Government in 1988 to amend the Australian Constitution in order to “extend freedom of religion.” The resulting [referendum](#) was rejected in every state and territory and by an overall majority of 69.21 per cent to 30.79 per cent.

The 2008-9 FRB review sought responses to the 1998 HREOC report. That report had considered the implications of the *International Covenant on Civil and Political Rights 1966* ([ICCPR](#)), which came into force on 23 March 1976, and which was ratified by Australia on 13 November 1980.¹ Australia is also a party to the [First Optional Protocol](#) to the ICCPR, which provides a process for individuals who claim that their rights and freedoms have been violated to call the State in question to account for its actions. The AHRC [Discussion Paper](#), released in September 2008, reproduces the list of recommendations from the 1998 report in Appendix 1.

The objects of the current review go well beyond the concerns raised in 1998. These include identifying “the concerns and positive reactions” of religious communities and civil society organisations to Section 116 of the Australian Constitution (dealing with relationship between religion and the state); ways and means of implementing a commitment to religious freedom; the impact of 9/11 and the so-called “war on terror” on religious freedom; exploration of “the interface between religion, political and cultural aspirations”; analysis of the influence of new technologies on religious belief and behaviour; and examination of cultural rights and whether cultural beliefs impinge on human rights. The questions in the review’s online submission [template](#) expand these concerns even further.

Why this review?

In his [speech](#) launching the review, AHRC Race Discrimination Commissioner Tom Calma likened religion and human rights to oil and water – they do not naturally mix. Calma provided numerous examples of potential conflicts at the intersection of religion and belief with human rights, and observed that “We are all directly and indirectly affected by our own freedom, and the freedom of others, to practice religion and exercise beliefs and the way in which these beliefs can influence the freedom of others to enjoy their human rights.” He also indicated that “issues such as religious vilification can easily translate into racial vilification and discrimination.” These carefully moderated comments suggest to me that the specific religious freedom of Muslims, including the freedom not to feel hurt by legitimate comments critical of their religion, may be what is driving the AHRC to conduct this review.

This is confirmed by at least three public statements. First, at the launch on 17 September 2008, Laurie Ferguson, Parliamentary Secretary for Multicultural Affairs and Settlement Services, [indicated](#) that the FRB review was part of a [National Action Plan](#) initiated by the Council of Australian Governments “to combat extremism through a human rights agenda” with specific reference to “our diverse Muslim community.” This was generally taken to imply an understandable desire for the deradicalisation of Muslim fundamentalists, but has clearly been interpreted by the AHRC as a justification for the liberalisation of Christian conservatives.

Second, comments made by the Race Discrimination Commissioner at a [Senate Estimates hearing](#) (pp. 5ff in Hansard) on 23 February also indicate that the review is a project under the National Action Plan, that the AHRC does not intend to have the forthcoming report tabled in Parliament (hence ‘review’ rather than ‘inquiry’), and that “there is no

avenue for people to lodge complaints with the Commission in relation to religion and belief.” Questioned by Senator Guy Barnett, Calma revealed that:

this inquiry came about as part of the national action plan project that was initiated by the previous government to look at issues relating to Muslim Australians and how they settle into Australia ... The then minister, Philip Ruddock, released the report process in June 2007 ... and it has followed on from there.

Calma also changed his view of the significance of the simile of “oil and water” in the title and body of his launch speech. In September 2008 he observed that, like oil and water, religion and human rights may not mix. Whereas in February 2009, at the estimates hearing, the explanation for use of the simile was that “Oil overlays water like religion overlays a lot of our lives. It was with that connotation that we looked at the phrase.” Perhaps he has been reading submissions. But it may also indicate the precarious ideological basis on which the review was conceived.

Third, the FRB project had a quiet birth in late 2007 when the then Human Rights and Equal Opportunity Commission established a steering committee. This group first met on 13 December 2007 and recommended that HREOC, the Australian Multicultural Foundation, RMIT University and the Australian Partnership of Religious Organisations work together on a major national research project with a final report to be released in 2010. The research project would build on the 1998 and 2004 reports, “the preliminary findings of the state and national Muslim youth summits; and recommendations from the national conference of Australian Imams.”

Evidence of anti-religious bias

These statements suggest a bias toward a particular faith. But there is more. The FRB project also shows evidence of an anti-religious bias; or, more specifically, an apparent prejudice against Catholic and evangelical Christian faith.

At the Senate estimates hearing, Calma stated that the AHRC had no “preconceived outcomes” for the forthcoming report. That may be true. But there are clearly preconceived notions of what those outcomes should resemble, and how to orchestrate them. Speaking to [ABC radio](#) immediately after the launch of the review last year, Calma noted that the review would seek to address questions such as whether religious belief influenced public policy in Australia, and suggested that “there is a balance to be struck between the freedom to practice a religion and not pushing those beliefs on the rest of society.” Further, in the same radio interview, he claimed that there was “evidence of a growing fundamentalist religious lobby, in areas such as same-sex relationships, stem-cell research and abortion.”

These comments and allegations by the Race Discrimination Commissioner reflect the language of the 2004 *Report* mentioned in paragraph two above, which alleged that social capital could be destroyed by an emphasis on the superiority of one religion, a refusal to cooperate or interact with other faith communities, an upsurge of religious and ethnic extremism, and the encouragement of religious sectarianism (p. 73); and which found “deeply entrenched and negative attitudes towards homosexuals” among Catholic and evangelical communities (p. 94).

Similar sentiments are evident in the AHRC [Discussion Paper](#) released at the launch of the review, and which forms the principal guidance for submissions. Space prevents me from commenting on these here.

What’s next?

Submissions to the review closed on 28 February. Next come stakeholder meetings, workshops and public hearings, ahead of a report scheduled for release in 2010. There is little doubt that the AHRC will make numerous recommendations, including advocating for a bill of rights or similar legislation, measures to address religious vilification, and other examples of state intervention on religious freedom. In the meantime, if the AHRC will make available the 1500 submissions, we could all enjoy some fascinating bedtime reading.²

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Notes

1. Except for Article 41 which came into force in Australia on 28 January 1993.
2. At the time of writing a small selection of submissions is available on the AHRC’s FRB website ([here](#)); some of the best Christian submissions are available [here](#) and [here](#). My submission on behalf of the NSW Council of Churches is available [here](#).
3. Rev David Palmer, Convener of the Church and Nation Committee, Presbyterian Church of Victoria, provided valuable advice in preparation of this article but is not responsible for the conclusions reached.

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