

27th March 2015

To The Australian Law Reform Commission,

The Maronite Catholic Society Youth would like to put forward the concerns below regarding the Issue Paper, *Traditional Rights and Freedoms –Encroachments by Commonwealth Laws (IP 46).*

The *first principle* is that no law which interferes with freedom of religion is justified if it forbids the religion to teach their faithful which options in life are permissible, and which are not, according to their faith, provided they do not urge unlawful action.

The *second principle* is that no law which interferes with freedom of religion is justified if it requires the believer to take a step which positively offends the believer’s conscience.

That is, in too zealously seeking to avoid discrimination, there is a danger of actually discriminating against the freedom of citizens to hold and practise their religion.

In respect of freedom of religion, we would suggest, first, that the decision in *Krygger v Williams* [1912] HCA 65, as quoted in the ALRC Issues Paper, would not be followed today by the High Court. Simply, the reasoning cited is specious. That was a decision of Griffith CJ and Barton J alone. The statement of Griffith CJ that: “To require a man to do a thing which has nothing at all to do with religion is not prohibiting him from a free exercise of religion”, was *obiter*, as his decision was made on the basis that to train was not the same as to fight, which was also the *ratio* of Barton J’s decision.

The stated *obiter* of Griffith CJ is specious in that the question is not whether the act has to do with religion, but whether religion speaks to the act. The free exercise of religion may obviously involve forbidding actions which are not themselves religious: for example, adultery is not a religious activity, it has “nothing to at all to do with religion”. Yet, every major world religion forbids adultery, while the civil law does not. Further, in *R v District Court of the Queensland Northern District* (1968) 118 CLR 488 at 492 [10], Barwick CJ with whom Taylor J agreed, specifically refrained from agreeing with Griffith CJ’s reasoning.

The result of this error is that it obscures the extent to which religious freedom also involves the right of the believer to refrain from acting in a way which is not unlawful.

Of course freedom from unlawful discrimination is a fundamental human right. That principle, rightly applied, actually urges us to defend the freedom of religions and religious schools to teach their lawful doctrines.

To baldly state that principle is to beg the question of *which* discrimination is unlawful, and which should be allowed by the law when there are conflicts between fundamental human rights. For example, is it discrimination for a casting director searching for someone to play Queen Elizabeth in a production to refuse to audition males? It is not, because not every discrimination is unlawful. We are allowed to discriminate within the limits of the law, as we do in choosing which friends to invite to dinner.

The principle of freedom from discrimination militates in favour of allowing religious schools to teach their religious beliefs concerning sexual activity: is it seriously suggested that religious schools should be *forbidden* to say that extra-marital activity is not countenanced by their religion? They are simply telling the adherents of their faith which activities they may choose, in accordance with their beliefs. This by no means entails inciting the faithful to hate people of different religions. Further, some religions allow polygamy, while others do not. Aside from the fact that polygamy is unlawful in Australia, how does it discriminate against polygamists or anyone else for religions and religious schools to state that they do not allow polygamous marriages?

In sum, *it is impossible to logically and humanely defend forbidding religious organisations from teaching their faithful which options in life are permissible, and which are not, according to their faith, provided they do not urge unlawful action, least of all upon the grounds of freedom from discrimination.*

Similarly, referring to paragraph 3.25, the Victorian law would appear to be unjust and should be restricted, and if possible abrogated. There is no basis for urging a doctor to take positive action to do something which infringes the doctor’s conscience. For example, say a woman comes to a doctor wishing to abort her child because she believes the child will be a female, and she only wants male children. To apply sanctions to the doctor who refuses to give her the name of a physician who will abort her female foetus would be to coerce the doctor. It cannot be seriously suggested that a woman or any patient in today’s age cannot find another doctor: if they can find one doctor, they can find another.

To sum up, in our submission, in answer to Question 3–1 (“What general principles or criteria should be applied to help determine whether a law that interferes with freedom of religion is justified?”) it should be recognised that:

The first principle is that no law which interferes with freedom of religion is justified if it forbids the religion to teach their faithful which options in life are permissible, and which are not, according to their faith, provided they do not urge unlawful action.

The second principle is that no law which interferes with freedom of religion is justified if it requires the believer to take a step which positively offends the believer’s conscience.

We hope these submissions are given due considerations.

Regards,

Maronite Catholic Society Youth