

## CURRENT LEGAL ISSUES SERIES

Thursday, 13 October 2022

Banco Court – Supreme Court of Queensland

*Religious Freedom, Religious Discrimination and the Role of Law*

### OPENING REMARKS

The Hon Justice S C Derrington AM

#### Welcome

Good evening. It is my pleasure finally to Chair this much delayed Current Legal Issues seminar on what was, and may be once more, a topic of inquiry for the Australian Law Reform Commission - “Religious Freedom, Religious Discrimination and the Role of the Law”.

#### Background

It is somewhat ironic that the date for this seminar has fallen within a week of the latest controversy involving religious freedom and the impact of its exercise on employment. We now have a number of very modern examples – Israel Folau, Haneen Zreika, members of the Manly Sea Eagles, and Andrew Thornton – each of whose expression of faith was considered incompatible with the expectations of their position in secular life. It is fair to observe that the public and institutional response to each was markedly different.

In what is becoming an increasingly secular era, what should the role of the law be in protecting individual and institutional rights to religious freedoms?

The prohibition of discrimination on the grounds of religion and the right to freedom of religion or belief are a fundamental human rights. And they are part of a framework of human rights that are universal, indivisible, interdependent, and interrelated. From earliest historical evidence, a person’s rights arose from or were acquired through membership of a particular group, for example, a family, religion, class or community. The Hindu Vedas, the Babylonian Code of Hammurabi, the Torah, the Bible, and the Quran are some of the oldest written sources which address people’s duties, rights, and responsibilities, many of which remain embedded in

modern human rights laws. Societies had procedures for the practice of propriety and justice to ensure the welfare of their members.

The concept of asserting individual rights is a newer concept which was articulated in documents such as the Magna Carta (1215), the English Bill of Rights (1689) and the US Constitution and Bill of Rights (1791). These documents, among others, acted as a precursor to modern human rights principles. Although such documents often excluded women, people of colour and members of social, religious, economic or political groups, many drew on the principles established to promote the right to self-determination.

The modern concept of human rights became enshrined following the horrors of the holocaust and the Second World War and the birth of the United Nations. The Universal Declaration on Human Rights recognises that ‘all human beings are born free and equal in dignity and rights’ (Art 1). Among the rights recognised by the Universal Declaration and the treaties following it are the right to life, to recognition as a person before the law, to privacy and family life, and to freedom of thought, conscience and religion. The Declaration and treaties recognise that these rights are to be enjoyed without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The human rights framework recognises that some rights, or aspects of them, are subject to limitations, including where necessary to protect the fundamental human rights of others. In this, we see that there is commonality in protecting individual freedoms and rights without diminishing dignity.

The role of law is to manage the intersections of these rights and freedoms and to build a framework which ensures everybody’s rights are protected and promoted. As we have seen in our own community, this is not necessarily straightforward, but much work has already been done.

Over the past decade, Parliament has established several committees, commissioned many inquiries and reports, and drafted numerous Bills.

In 2016, a Parliamentary Joint Standing Committee was tasked to inquire into the status of the human right to freedom of religion and belief. That Inquiry produced two interim reports but lapsed prior to the final report as a result of the dissolution of Government. In 2020, a new Joint Select Committee known as the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 was established. Its Report made several recommendations to promote the protection of religious freedoms.

Separately, in 2017, then Prime Minister Turnbull appointed an Expert Panel to examine whether Australian law adequately protected freedom of religion following the enactment of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), which it will be recalled, removed restrictions that limited marriage to the union of a man and woman. Following the amendment, Parliament noted that religious bodies had raised concerns about the changes and maintained the view that marriage can only be between a man and a woman and that that view should be afforded protection.

Following extensive public consultation and receiving over 15,000 submissions, the Expert Panel released its Report in December 2018. The Report recognised the high degree of religious freedom enjoyed by Australians. The report made 20 recommendations which aimed to increase and clarify religious freedoms. The recommendations included clarifying when a marriage celebrant can decline to perform a ceremony and abolishing the offence of blasphemy. Several recommendations focussed on legislative drafting, including the use of objects clauses. The Government accepted 15 of the recommendations and agreed, in principle, with the remaining 5. Those 5 were referred to the Australian Law Reform Commission for Inquiry on 10 April 2019. However, on 2 March 2020, the Attorney-General amended the ALRC's term of reference and its Inquiry was put on hold until the *Religious Discrimination Bill 2021* was passed.

On 26 November 2021, the Attorney-General asked the Parliamentary Joint Committee on Human Rights to inquire into, and report on, the religious discrimination legislative package which included namely the *Religious Discrimination Bill 2021*; the *Religious Discrimination (Consequential Amendments) Bill 2021*; and the *Human Rights Legislation Amendment Bill 2021*.

Since the change of Government in May, the Bills have lapsed and it remains unclear whether Prime Minister Albanese will enact a similar legislative package. The Albanese Government has said

All Australians should be able to go about their lives free from discrimination. We will seek to enhance protections in a way that brings Australians together, drawing on the bonds of our common humanity, as expressed in the human rights treaties that Australia has ratified and that Labor continues to champion.

It has committed to:

- prevention of discrimination against people of faith, including anti-vilification protections;
- acting to protecting all students from discrimination on any grounds; and
- protecting teachers from discrimination at work, whilst maintaining the right of religious schools to preference people of their faith in the selection of staff.

The media commentary of the last week displays the difficulty faced by politicians who somehow have to square the rights of religious institutions to hire according to faith with the rights of secular institutions to fire because of faith. However there is a significant body of law – both domestic and international – to help guide them in doing so.

## **Introductions**

Against that backdrop, it gives me great pleasure to introduce this evening's presenter Professor Carolyn Evans and our commentator, Professor Patrick Parkinson AM.

In reverse order –

**Professor Parkinson** is a Professor of Law at the TC Beirne School of Law. He obtained a Bachelor of Arts with first class Honours from the University of Oxford and holds a Masters degree from the University of Illinois and a Doctor of Laws from the University of Sydney. Patrick commenced his career as a lecturer at the University of Sydney and from 2018-2021, was Dean of the TC Beirne School of Law.

Patrick has researched and written extensively on family law, child protection, law and religion and the law of equity and trusts. Patrick is known for his work in protection of children and, in particular, working with churches on child protection and religious freedom issues. In 2009, Patrick was awarded a Member, Order of Australia, 2009, for service to the law and to legal education, particularly in the areas of family and child protection law, as an author, through contributions to policy reform, and to the community.

In addition to his academic role, Patrick served from 2004-2007 as Chairperson of the Family Law Council, an advisory body to the federal Attorney- General, and chaired a review of the Child Support Scheme in 2004-05. He was President of the International Society of Family Law from 2011-14. He is a serving Board Member of Christian legal think tank *Freedom for Faith*.

**Professor Carolyn Evans** has spent much of her career as a champion for social justice and inclusion. She commenced her career working as a lawyer and teacher. Having graduated from the University of Melbourne with Bachelor of Arts and Laws with Honours, she obtained her DPhil from Oxford as a Rhodes Scholar. Prior to being appointed Vice Chancellor at Griffith University in 2019, she was Deputy Vice-Chancellor (Graduate) and Deputy Provost at the University of Melbourne in 2017 – subsequent to her exceptional service as Dean of Melbourne Law School (and exceptional stewardship of the Council of Australian Law Deans – no mean feat).

Throughout this time, Carolyn authored and co-authored six books and several articles and chapters in human rights. Her book, *Legal Protection of Religious Freedom in Australia*, is a seminal work which surveys the nature and extent to which Australian law protects religious freedom and explores the intersection of law and religion. She articulates the difficulty in reconciling competing claims from those who argue religion is under attack and those who argue religion is given too much power to undermine the rights of others.

Carolyn has made significant contributions to the field of human rights and religious freedoms through her critical insights, from which no doubt you will gain great insight this evening. In her presentation, Carolyn will map the Australian legal landscape including a survey of the constitutional law, discrimination law and of course, human rights laws.

Please join me in welcoming Professor Evans.

Thank you.