

LUTHERAN CHURCH OF AUSTRALIA

COMMISSION ON SOCIAL & BIOETHICAL QUESTIONS

Dr Robert Pollnitz's response to the Human Rights and Equal Opportunity Commission regarding their paper on 'FREEDOM OF RELIGION AND BELIEF IN THE 21st CENTURY'

For your information only - this is not an official statement of the CSBQ

15th January 2009

Secretary

Race Discrimination Unit: Education and Partnerships Section

Human Rights and Equal Opportunity Commission

Email frb@humanrights.gov.au

RE - PAPER ON FREEDOM OF RELIGION AND BELIEF IN THE 21st CENTURY

Thank you for the invitation to make a response to your discussion paper. I write to express my concern that the direction being taken by your inquiry may endanger the freedom of religion and freedom of speech that we as a community currently enjoy throughout Australia. I note that in 2008 your Commission reported to a Senate inquiry that "the rights to religious freedom and to gender equality must be appropriately balanced with human rights principles." The implication appears to be that your Commission wishes to decrease our freedom of religion and freedom of speech to further your concept of human rights and gender equality.

The new inquiry arises as a development of your 1998 report Article 18: Freedom of Religion and Belief. That report calls for the enacting of a federal Religious Freedom Act and for legislative implementation of the United Nations International Covenant on Civil and Political Rights (ICCPR). It also calls for protection and support for "non-theistic and atheistic beliefs" and for "minority and non-mainstream religions". And it also calls for the repeal of state laws against witchcraft, fortune-telling and blasphemy, for a federal "interfaith dialogue" to examine limitations on "coercive tactics" within religious groups, and for the use of ICCPR articles to end religious "discrimination".

Your current inquiry discussion paper asks a number of questions with regard to gender, sexuality and faith, all of which can be seen to imply your chosen direction. For example –

How is diverse sexuality perceived within faith communities ?

How can faith communities be inclusive of people of diverse sexualities ?

Should religious organisations including religious schools, hospitals and other service agencies exclude people from employment because of their sexuality or their sex and gender identity ?

Previously you have shown some acceptance for institutions “conducted in accordance with the .. teachings of a particular religion or creed.” However, it is not difficult to see the direction of your inquiry leading to recommendations for –

the removal of Christian churches, schools, aid and welfare agencies from anti-discrimination laws so that our churches and schools will be obliged to employ staff who overtly display contempt for our Christian beliefs;

national religious vilification laws similar to that in Victoria;

the imposition of “equal treatment” of all religions and beliefs in Australia removing prayers in parliament, holidays such as Christmas and Easter, banning carols and nativity scenes at Christmas, and generally seeking to remove any evidence that Australia has a Christian heritage.

Our religious freedom is already under threat, as shown by two cases in 2008. The NSW Wesley Mission rejected a request by two homosexual men to become foster parents, the Mission having a policy of placing foster children with traditional Mum and Dad couples in line with all the social science evidence that such placements are in the best interests of the child. Despite the NSW law providing a religious exemption, a Tribunal found the Wesley Mission guilty of discrimination, and they were ordered to change their policy and pay \$10,000 in compensation to the two men. In the second case in Victoria, their Tribunal has agreed to continue a case against a Christian group who operate a campsite and who refused to accept a booking from the homosexual group Way Out. Again despite a religious exemption in the law, the Christian group face a long and expensive court case.

Lutherans can claim to have a special interest in genuine religious freedom, since many of our ancestors migrated to Australia in the 1850s for exactly that reason. Until now Australia would have to be one of the most free nations for the holding and expressing of religious beliefs. When I read of the oppressive restrictions on Christian worship in many other nations, I am very grateful to be an Australian.

This religious freedom can be harmed if we attempt to set in politically correct legislative concrete a certain vision of society and of the place of religion within it. That is, if a right is too closely defined it may be limited or abused. Surely part of our freedom is that we can disagree with each other – with respect and without coercion, with persuasion and without incitement to hostility.

Discrimination is not an evil word – it can imply wisdom or discernment. I discriminate both when I choose what food I wish to eat and what God I wish to follow. For two thousand years the mainstream Christian churches have taught that Jesus is the one God, the one Way, the one Truth and the one Light. Others are free to disagree – and they do, some of them vigorously. Christians in Australia have shown a remarkable degree of tolerance to expressions of ridicule and contempt, as evidenced in the 1997 display of the “Piss Christ” work of art by Andres Serrano.

My reading of equal opportunity and religious vilification laws indicates that they pose numerous threats to our freedom of religion and freedom of speech. For example –

a preacher will not be allowed to read from a sacred text (the Bible or the Koran) concerning sexual immorality. A troublemaker could ask what the text had to say about homosexual acts, and then complain that the teaching was “intolerant”.

Truth will not be a defence.

a religious school (in fact any religious organisation) will be unable to require staff to respect the moral beliefs of that religion.

the current review of the Victorian Equal Opportunity Act 1995 proposes that the Commission will have wide powers to investigate possible breaches of the Act, even in the absence of a complaint, in effect becoming both the prosecutor and the judge, all without being answerable to the Government. The review also proposes giving the Commission the power to search and seize and to compel people to attend. To quote an Editorial in The Australian of the 13th January 2009 – “In 2002, evangelical pastors John Scot and Danny Nalliah were brought before the Victorian Civil and Administrative Appeals Tribunal after Mr Scot quoted excerpts from the Koran that made his congregation laugh. A judge decided that they had incited religious hatred and ordered them to apologise in full-page press advertisements. It took a decidedly superior tribunal, the Victorian Court of Appeal, to overturn the ruling .. (Victorian Attorney General) Mr Hulls should reject the proposals before him. Give the thought police an inch and they will take a light year.” I believe that the legal costs of the two pastors were around \$100,000.

Such Acts make it unlawful for a person to incite “hatred, serious contempt or severe ridicule” of a person or group. None of these terms are defined in the laws. It is not difficult to foresee an activist wishing to claim victim status for a minority making a complaint on very flimsy grounds. With respect, I believe that all persons engaged in open social discussion (including religious persons) need to be free to debate the issues that confront us as a community without fear. Genuine freedom of speech and religion are long-established principles and deserve our protection.

Please keep me on your mailing list for any further steps in your inquiry.

Yours sincerely,

DR ROBERT POLLNITZ