

**AUSTRALIAN COUNCIL FOR THE DEFENCE OF
GOVERNMENT SCHOOLS**

PRESS RELEASE 924

Religious Liberty Comes at a Price

For the moment the Religious liberty issue has been shelved by a Parliament that should not be dealing with religious matters under Section 116 of the Constitution.

Prime Minister Morrison has been **shamed by the moderates on his own side**. Labor played the chess game well, forcing Morrison to pull the highly contentious Religious Privileges bill from the senate list. It's now unlikely now to see the light of day before the election. It is best left dead and buried. But there are two problems.

First, **for those living in NSW**, religion remains off the list of protected attributes under anti-discrimination law. Most other states and territories include religion as a ground upon which one cannot discriminate, but not NSW. This should be fixed.

Second, as Australian Christian Lobby CEO, Martyn Lies, points out in a video message to disciples, **section 38 of the Sex Discrimination Act** still allows fundamentalist schools across the country to discriminate against LGBTI kids and teachers if they claim such discrimination is necessary to protect 'the sensitivities of their adherents'.

The debate over the Religious Discrimination bill has done two very interesting things.

1. It has crystallised into public view divisions *within* religious communities, and the need for religious liberty as a basic human right.
2. It also highlighted the basic differences between public and private schools, leading commentator Waleed Aly to note that, if private schools take public money, they should not be allowed to discriminate between children.

1. Religious Rights

The Morrison government had been vigorously lobbied by fundamentalist religious groups. But not all Christians interpret their religion in the same way. Not to mention the Islamic, Sikh, Hindu and Buddhist faiths.

Anglican archbishop of Melbourne Phillip Freier in the Sydney Morning Herald of February 14 at <https://www.smh.com.au/national/few-christian-schools-want-to-discriminate-there-s-a-better-way-forward-20220213-p59w0b.html>

Commented [Ma1]:

Commented [Ma2R1]:

wrote, "People of faith, and Christians in particular, need not rush into believing that we need legislative authority to ensure our freedom to practise our faith." And he goes on, "Is there a way forward that can satisfy all fair-minded people? Yes, and I proposed it in 2020: **a charter or bill of rights** that could replace the current piecemeal approach to anti-discrimination." He also said:

There were no winners from the accelerating train wreck of the federal government's attempt to pass a religious discrimination bill last week, except perhaps gay and transgender children who won support from the House of Representatives for extra protection in an amendment to sexual discrimination legislation.

Because the debate was hijacked by the religious schools issue, Christians were construed as people with a burning desire to discriminate.

Dangerously, the bill highlighted – and perhaps exacerbated – deep divisions because the farther edges of its advocates and opponents distrust each other so vehemently. I believe the broader community favours protecting both religious faith and sexual identity from discrimination, but more people are now seeing them as utterly incompatible – which need not be so.

It was all sadly predictable. And while it may be inelegant to say "I told you so", I did predict it. In March 2020 I wrote in The Age that [Australia did not need such legislation](#) because many of the recommendations of the Ruddock committee – appointed by the government in 2017 to consider the issue – could be achieved by amending existing anti-discrimination law.

I still believe that people of faith, and Christians in particular, need not rush into believing that we need legislative authority to ensure our freedom to practise our faith. We have lived for a long time in Australia without such legislation, and managed times of tension without the intervention of government. Indeed, these times of tension – it might be argued – have been managed well precisely because government has not been involved.

Is there a way forward that can satisfy all fair-minded people? Yes, and I proposed it in 2020: a charter or bill of rights that could replace the current piecemeal approach to anti-discrimination.....

A bill of rights provides a context in which freedoms are defined and balanced, not privileging one particular group over another. It is the safest and most comprehensive approach to secure freedom of conscience, of which religious freedom is a part....

DOGS COMMENT

Philip Freier seems to forget that we already have a Bill of Rights Religious Liberty clause in our Australian Constitution. But, no religious institution taking public money in Australia at the moment wishes to go there. Why? Because back in 1981, in the DOGS case, the High Court agreed with the religious school defendants that religious schools were not religious but educational institutions and the words ‘any religion’ in Section 116 only meant ‘a particular’ religion. The religious schools do not want to lose one penny of their public money!

Which brings us to the second point.

2. The Basic Difference between Public and Private Schools

The very rationale for having private schools is that they can discriminate, not only on the basis of ability to pay for an education, but on other grounds such as religion over which a child has no control.

Waleed Aly, in the *Sydney Morning Herald* of February 10, finally came to the conclusion that the DOGS and others arrived at when faced with the intractable religious and educational problem – the voluntary solution.

If your belief means that much to you, you put your money where your mouth is. That is the essence of religious liberty. He wrote, in part...

There’s a solution to the discrimination billbalancing act – but it comes at a price

There’s a point in Labor’s statement outlining its amendments to the religious discrimination bill that captures why this whole episode has been such a mess. Addressing the flashpoint dispute over religious schools’ right to exclude gay or transgender students, shadow attorney-general Mark Dreyfus says, “changes need to be made to protect all children”. He then asserts that “we can do this while still ensuring that religious schools are able to conduct themselves in accordance with the teachings of their faith”.

Except that raises an obvious question: what if they believe the teachings of their faith require them to exclude these kids in order to maintain their religious values? Can they “conduct themselves in accordance with” that?

The new bill would allow schools to reject students on the basis of their sexuality or gender identity.

Here, distilled, is the insoluble problem at the heart of this legislation. The rights that Dreyfus wants to realise fully and simultaneously are, at the margins, in a zero-sum relationship. The moment this bill gives primacy to religious freedom, some discrimination in some cases inevitably follows. The moment it gives primacy to non-discrimination, there will be cases where some religious teachings – even if very much in the minority – are being suppressed.

In those cases, as we saw last week at Citipointe Christian College, there is no middle ground that leaves all parties satisfied. Someone wins, someone loses.

That's why, for all the talk of "balancing" rights that surrounds this bill, there is ultimately no satisfactory balance to be struck that doesn't violate something that someone regards as inviolable.

....schools exclude and expel people all the time on the basis of their behaviour, their geography, their faith, their gender, or even their intelligence. Everyone might have a right to education, but we've never required individual schools to teach whoever turns up. We see this difference in the fact that no one seems especially bothered that a religious school could exclude students of a different faith, but the equivalent in a hospital would be scandalous.

Demanding schools violate their religious convictions is more analogous to requiring a Catholic hospital to perform euthanasia or a hypothetical Jehovah's Witness hospital to provide blood transfusions. Ultimately then, we're back to absolutes.

Which makes me wonder if this is all necessary. Because beneath the political debris there's an assumption we should question: that these issues are best resolved through legislation. Are they? What if there were non-legislative ways of responding to this that were more elegant and less bludgeoning than what we've witnessed? And hereabouts I return to the Citipointe case as something that might just show a different way.

Citipointe, you'll recall, ultimately rescinded the "contract" that required its students to comply with the school's views on gender and sexuality, merely a day after its principal released a video pledging to stand firm.

It was a stunning turnaround, no doubt with several causes. But among the least acknowledged is that the Queensland government had signalled it would review Citipointe's government funding. I'd be stunned if that didn't play a part. And it is a lever that every government can pull. So let me suggest – in the spirit of a thought-starter – that governments pull it, rather than reach for legislative

prohibitions. Especially given schools like Citipointe are, by all accounts, the rare exception among religious schools.

It is a highly contentious thing for a government to force a religious school to contravene its religion by force of law. But a government is well within its rights to insist that any school that accepts government money must meet certain minimum requirements, non-discrimination among them.

You could even legislate that much if you really had to. But this approach immediately asks the school whether it is prepared to put a price on its principles. If so, we can conclude those principles were not as absolute as we were led to believe. And if not, then the school can proceed under its own financial steam, unable to accuse the state of having forced it to violate its conscience.

At that point, the lost funding simply becomes, by the school's own lights, the cost of its virtue. And for a school that wants to be so devoted to certain values and principles, there should actually be something beautiful in that.

DOGS COMMENT:

Waleed Aly concludes that there is no balance to be struck that doesn't violate something someone regards as inviolable,

In his own roundabout way, he has finally arrived at the DOGS voluntarist position

- 1. public funding for public schools only and**
- 2. religious liberty depends upon separation of religion from the state and believers putting their money where their beliefs lie.**

LISTEN TO THE DOGS PROGRAM

855 ON THE AM DIAL: 12.00 NOON SATURDAYS

<http://www.3cr.org.au/dogs>