

**Rationalist Society of Australia submission
to the HREOC Inquiry into**

**Freedom of Religion and Belief
in the 21st Century.**

This is the submission of the
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Note: The RSA has tried to keep this submission to a minimum. However, it is happy to further discuss any of these issues, or other related issues raised by HREOC or by other submissions, with HREOC or its three researchers; and to appear in any public sessions or forums to debate any of the issues.

The Rationalist Society of Australia has considered the questions in the HREOC discussion paper. In this submission our central focus is on the theme that binds these questions: the importance of providing individuals with the right to choose their beliefs as a free act of mind and not imposed by another, whether family unit, established group or organisation. The exercise of choice involving the free exercise of mind empowers and enriches the life of individuals. They can not only better integrate their beliefs into their lives as a whole but they can better empathise and tolerate the different beliefs of others.

0. Preamble: A Caveat

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Universal Declaration of Human Rights: Article 18

The Rationalist Society of Australia fully supports Article 18 of the *Universal Declaration of Human Rights (UDHR)*, assuming, as all do, that it implies that the freedom to hold or change a religion or religious belief includes the freedom to hold no religious belief at all and the freedom to change to holding no religious belief. This is affirmed in R 2.3 of HREOC's 1998 report. We are, however, concerned that this laudable Article, and its successor, Article 18 of the *International Covenant on Civil and Political Rights (ICCPR)*, are being used by some citizens, in a way their creators did not intend, in order to attempt to curtail other important human rights. The *Declaration of Human Rights* itself is very clear that this must not happen:

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Universal Declaration of Human Rights: Article 30

Although most of the breaches in this regard occur in other countries, there are worrying developments in Australia.

Firstly, the “right to freedom of opinion and expression” (Article 19) is threatened and even perhaps infringed by religious vilification laws in some states and the proposed Commonwealth Religious Freedom Act.

Secondly, the right to “free education ... directed at the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms [and to promoting] understanding, tolerance and friendship among ... religious groups” (Article 26) is threatened and perhaps violated in some of the burgeoning number of “faith-based” schools in Australia.

Thirdly, the rights not to be “subjected to cruel, inhuman or degrading treatment” (Article 5) and not to be “subjected to interference with privacy, family [or] home, nor to attacks upon his honour and reputation” (Article 12) have certainly been flouted by some so-called “cults” in Australia, and even, dare we say, by people who, we hope, are on the fringes of some mainstream religions.

We ask the commission to be alert to the use of the right to freedom of belief granted by the two Article 18s to cloak a disregard of other equally central human rights. At best this might be disingenuous but at worst it could constitute a cynical exercise in manipulation of the system.

1. Freedom to believe

Do not go upon what has been acquired by repeated hearing, nor upon tradition, nor upon rumour, nor upon what is in a scripture, nor upon surmise, nor upon an axiom, nor upon specious reasoning, nor upon a bias towards a notion that has been pondered over, nor upon another's seeming ability, nor upon the consideration, 'The monk is our teacher'. Kalamas, when you yourselves know: 'These things are good; these things are not blamable; these things are praised by the wise; undertaken and observed, these things lead to benefit and happiness,' enter on and abide in them.

The Buddha: *Kalama Sutta*

We must draw a distinction between freedom of belief and freedom to express that belief. In this section, we will consider the former. Before looking at freedom to express beliefs we must ensure that those beliefs are freely held in the first place. We will argue that freedom of belief is closely tied to knowledge and choice. Some Australians are denied or have restricted access to the knowledge that would ensure their beliefs are free.

Belief is a mental state of a person, and in a liberal democracy, mental states are not subject to control by others. Even though the Catholic Church was able to get Galileo to sign a document denying a heliocentric universe, it could not invade his brain and change his belief. He continued to believe that the earth revolves around the sun. He could not express that belief but the belief itself remained free. In Australia today it is fair to say that this is still the case – anybody can believe anything they want, however idiosyncratic, fanciful or abhorrent, and it is only when they try to express that belief in ways that affect others that restrictions to their freedom may apply. The threat to freedom of belief in Australia comes from a different direction.

Before passing to such a threat, it is worth noting that in spheres where the liberal democratic rule of law is not paramount, such freedom of belief is indeed vulnerable. Where a person is physically or psychologically in the power of others, mind control techniques, popularly called 'brainwashing', can in fact force people to change their beliefs. This was vividly illustrated in George Orwell's seminal novel *1984*. Such conditions exist in many totalitarian countries and may even exist in a liberal democracy like Australia, in small enclaves in exclusivist and separatist organisations, such as religious cults. We will discuss this in Section 4.

To return to our main argument: for a belief to be free, it must be the result of a conscious decision to believe and for there to be a decision there must be a choice. If someone exists in a social environment where only one belief about a particular issue is available, let alone promoted, then his or her belief can hardly be said to be free. If you do not know, there are other plausible alternative beliefs you do not really have a choice. You are just following the only path open to you.

Article 18 of the *International Covenant on Civil and Political Rights*, which is one of the foundations on which freedom of belief rests, emphasises choice as an important element of freedom of belief (emphasis added):

(1) ... This right shall include freedom to have or to adopt a religion or belief of his **choice**,

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his **choice**.

Choice implies a range of options from which one can be selected. If we are talking about belief, this can only mean a range of beliefs. So if we are to have freedom of religious belief, people must be presented with a range of religious choices, especially during childhood and adolescence when most people solidify their religious commitments. They need to have adequate knowledge of the various religions and of non-religious approaches to life from which they can choose. Belief can only be free when it is the result of free choice between viable options. If we are committed to freedom of belief and freedom of religion, we must make such knowledge available.

In Summary: To promote freedom of belief is not simply to promote absence of coercion; it is also to promote presence of choice.

We believe that this can only be accomplished by introducing courses in comparative religion in schools, at a level appropriate to the age of the children. Only institutions that are committed to thus promoting freedom of belief should be eligible for taxpayer support. Taxpayers should not be obliged to contribute to institutions that do not promote freedom in this way. Institutions would be free not to introduce such courses, but if so, they would not attract government funding. And they would still be free to run courses promoting their own beliefs in parallel.

Recommendation One: *Courses in comparative religion should be developed and introduced into all government schools in Australia.*

Recommendation Two: *The introduction of such courses should be a condition of government funding to non-government schools,*

2. Freedom not to believe.

Let there be no compulsion in religion.

Qur'an Sura 2.256 (Yusufali trans)

Freedom of belief and freedom of religion must include the freedom not to believe and the freedom not to belong to a religion. This freedom is not, however, extended to the citizens of many Muslim countries including Saudi Arabia, Somalia, Qatar, Yemen, Iran, Sudan, Afghanistan, Mauritania and Pakistan where apostasy or denying one's Muslim religion is punishable by death. This is in clear breach of ICCPR Article 18.

Although there is no unambiguous warrant for this custom in the Qur'an, and it seems to be contradicted by the passage cited above, adherents to the practice find support in the Hadith or traditionally collected sayings of the Prophet. But many scholars reject this line of thought and place the Prophet's actions in this respect solely in the context of the politics of the time, when the enemies of Islam were trying to undermine his supporters' resolve and drastic action was

needed. According to this view, in today's world, apostasy should not be seen as a capital offence or even a crime at all.

One trusts that Muslims in contemporary multicultural Australia are of the latter persuasion. As advocates of human rights, Australians of all faiths must be concerned for the fate of the citizens in the countries we have listed. But approaches to change these laws in these countries by organisations such as the Rationalist Society of Australia, or even by the Australian government, are likely to fail. If the situation is to be changed, it is really only the Muslim organisations and individuals in Australia who would have any influence with the countries in question. It is only when fellow Muslims call these archaic and barbaric practices into question that the perpetrators may be led to think about and even reconsider what they are doing. Change in matters such as this must come from within the Muslim world and Australian Muslims living in a land that values and promotes humanistic values and human rights are ideally placed to take a stand on this matter.

Recommendation 3: Muslim organisations and individuals in Australia be asked to campaign vigorously for human rights in Muslim countries where apostasy is a capital offence.

3. Freedom to express beliefs

If any man come to me, and hate not his father, and mother, and wife, and children, and brethren, and sisters, yea, and his own life also, he cannot be my disciple.

Luke 14:26

The Rationalist Society of Australia believes there are both serious inconsistencies, if not inherent discrimination, plus significant threats to freedom of speech both in the existing state laws on incitement of religious hatred and potentially in any similar provisions in the Commonwealth Religious Freedom Act recommended in the HREOC 1998 Report.

The inconsistencies stem from the habitual but never justified coupling together of racial hatred and religious hatred in most legislative instruments, as though they are similar or two sides of the same coin. Such is case in the Victorian legislation and in Section 20 of the International Covenant on which HREOC relied to support its argument:

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

But there are stark and relevant differences between race on the one hand and religious belief on the other, and these differences are relevant to the question of protection from vilification. (We will leave aside nationality in this discussion, because it is not directly relevant to Australian internal issues).

Firstly, one is born into a race, has no choice and you cannot change it. Therefore, to disparage someone because of their race is clearly unjust and unjustified, similar to (but not the same as) making fun of someone who is congenitally blind or lame.

Secondly, race is a universal category of its own, with various subcategories. We are all one race or another and so insisting on racial justice and equality is something we all benefit from. It does not just affect one section of the populace.

Thirdly, and most importantly, the race of the persons I meet has no intrinsic relevance to the outcomes of our interactions. Whether someone is caring for me, trying to kill me, or simply ignoring me, the colour of his or her skin is immaterial. Their actual race itself does not affect me one-way or the other (although their *beliefs* about race may).

With religious belief, the situation is quite different. Firstly, your religious belief is not a given; it is, as the ICCPR is at pains to insist, a *choice*. You have, one hopes, consciously decided to hold certain religious beliefs. Therefore, you are *responsible* for them. The implication of this is that if the acting out of your beliefs is deleterious to the well-being of others, you must be able to be held accountable for them. You cannot be held accountable for your race.

Secondly, religious belief is not a universal category itself, but a sub-set of the more general category of beliefs. People have beliefs about all kinds of things, including politics, sport, art and the ultimate nature of the universe. Religious belief is just one type of belief among many, so any proposal to single out religious belief among all the others and grant it special status or special protection requires justification. Why do some people want to single out religious belief as special? There is no doubt it is significant in the lives of many people, but there are other beliefs just as significant for non-religious people. It is hard to imagine a valid argument in a secular society for singling out religious beliefs in any special way, as is proposed.

Thirdly, whereas the colour of one's skin does not of itself affect another person, so while racial vilification makes no sense, the expression of religious belief can have devastating effects on others. Over the centuries millions of people have died or suffered (and continue to) as a direct result of people holding certain religious beliefs – as they have because of political or nationalist beliefs too: religion is not on its own here – so it may be argued that negative feelings towards religion may be simply one of many legitimate human responses to the expression of religious belief in the community and in the world.

The Rationalist Society of Australia does not advocate hatred as a constructive human emotion, but if you were an African child who had been born with AIDS because a priest had told her mother the use of condoms was a sin, or a wife whose innocent husband had been killed by a religiously-motivated suicide bomber, or a woman whose clitoris has been mutilated by religious elders when she was a child, or a man prevented from contact with his children because his wife has joined an exclusive religious cult, it would be hard to deny you the right to detest the religion responsible, and or to stop you from trying to convert others to your point of view.

But once such efforts shaded over into defamation and/or incitement to violence, the law would be justified in stepping in. We already have adequate legal provisions, however, for dealing with defamation and incitement to violence in general and we do not need special laws dedicated to protecting religion from them.

So it is patently clear that laws proscribing racial intolerance and laws proscribing vilification of religion are totally different. The former is acceptable and justifiable. The latter is highly suspect and problematic.

Religious belief affects our lives, sometimes beneficially, but, as I have shown, sometimes with devastating effects. When we are affected in the latter way, or if we have a concern for others we

see being affected in this way, we must be allowed to express our hatred of, contempt for, or revulsion against those religious beliefs and use ridicule as part of our response. It may not be laudable to do so, and our psychologist may tell us these are not healthy emotions to indulge in, but they are common human foibles and should not be the subject of legislation.

There is no other sphere of human endeavor that is exclusively shielded or insulated from the consequences of its behavior by legislation or proposed legislation in this way. And the irony is that some of the most virulent examples of incitement to hate occur in the sacred texts of our two biggest religions, which are exempt from the scope of the legislation.

Let's face it, if religious belief were universally beneficent in its impact on people, no-one would even think of being negative about it, but unfortunately this is not the case and religion must take responsibility for itself and stand up and be counted in the marketplace of ideas.

Recommendation 4: *repeal existing laws or those sections of existing laws that prohibit vilification of religion.*

Recommendation 5: *abandon similar prohibitions proposed for inclusion in federal legislation.*

4. No Freedom to Abuse Rights

All mind control operates under the guise of self-control.

Joel Kramer & Diana Alstad: *The Guru Papers*

The Rationalist Society of Australia is concerned about the number of pernicious cults that operate in Australia under the protection of our commitment to freedom. Such cults employ well-known mind-control techniques such as Milieu Control (e.g. Exclusive Brethren) and Confession (e.g. Scientology) to maintain a hold over their adherents. We do not advocate banning such organisations, but there is need for much greater knowledge in the community of the scope of these techniques and their effects so that people are forewarned and forearmed. We propose an awareness campaign be instituted to alert the public to the nature of such techniques.

Recommendation 6: *The government, after consultation with religious, atheist and cult-awareness groups, mount an awareness campaign setting out the dangers of mind-control techniques and the difference between organisations that use them and religions which have an open and free approach.*

Recommendation 7: *Federal and state governments should withhold financial assistance in any form to organizations which use mind control techniques on their followers, and/or, do not uphold their human rights as set out in the Universal Declaration of Human Rights.*

5. Separation of Church and State: Section 114

George Reid [Premier of NSW]: I suppose that [public] money could not be paid to any church under this Constitution?

Edmond Barton [Convention Leader & later first Prime Minister]: No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.

Second Federal Constitutional Convention, 1897-8

The inquiry asks for comment on Section 114 of the Australian Constitution. We believe the important implication of this section was intended by the founders to be clear separation of church and state. The United States Constitution contains a similar section and in that country it has been interpreted by the courts to mean just that. In the United States, the boundary between the religious and the civil has been kept very clear. But in Australia, this Section has been given an extremely narrow definition by the High Court under Sir Garfield Barwick, with only Justice Lionel Murphy dissenting. This meant a confused blurring of the lines in this country and has had a disastrous effect on public education. We believe Section 114 should be amended to create a clear division between the realms of church and state.

For a full discussion of this issue, see Helen Irving: “Same difference? Separation of Church and State in the United States and the Australian Constitutions” in *Separating church and state: keeping God out of government*. Proceedings of the conference organised by ANSA, CAHS & RSA, 18-19 June, 2006. Available from RSA, PO Box 1312, Hawksburn, VIC 3142. Prof Irving concludes:

My conclusion, however, is that the High Court got it wrong when they concluded that section 116 was not intended as a broad statement of separation of church and state, and they got it wrong in suggesting that ‘establishment’ was intended to have a narrow meaning.

[For a discussion of the effects of the High Court decision in education, see Jane Caro: “How God is killing public education: Indoctrination v education” in the same publication.]

Recommendation 7: *Section 114 should be amended to make clear the intention of the framers of the Australian Constitution to clearly separate church and state and to preclude the payment of public money to churches and their affiliates.*

END OF SUBMISSION