



Freedom of Religion and Exceptions in Anti-Discrimination Law: A Loose Canon

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CERTIFICATE OF ORIGINAL AUTHORSHIP

I, Kerrin Bennett, declare that this thesis is submitted in fulfilment of the requirements for the award of Master of Laws (Research) in the Faculty of Law at the University of Technology, Sydney, Australia.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

This document has not been submitted for qualifications at any other academic institution.

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ABSTRACT

Concern about religious freedom rights has emerged as one of the most prominent social and political issues of the early 21st Century in Australia. Much consternation has followed the introduction, over the past 40 years, of laws prohibiting discrimination on various grounds across all jurisdictions in Australia. The civil rights movements of the 1960s and 70s yielded positive results in prohibiting racial and gender discrimination in public life. Further developments in the past 20 years have led to the recognition of the need for prohibiting further types of discrimination, such as on the grounds of disability, age, relationship status, family responsibilities and sexual orientation. Religious bodies have enjoyed substantial conditional exceptions to a range of forms of discrimination, particularly on grounds of sex, sexual orientation and relationship status. The protection of religious freedom for organisations established for a religious purpose by way of permissibility to discriminate outstrips individual entitlements to the same freedom despite international laws stating that ‘everyone’ has the right to freedom of thought, conscience and religion. Since Australia’s change to marriage laws permitting legal same-sex marriage following the 2017 Australian Marriage Law Postal Survey, there have been increasing concerns about what anti-discrimination laws mean for religious adherents and many people believe their religious rights are being threatened. When prominent footballer, Israel Folau, had his contract terminated after making disparaging comments about homosexuality on social media, the restriction on rights to observe, practise and speak publicly about religious beliefs has been questioned. Having received the final report of the Prime Minister’s Expert Panel, the Religious Freedom Review in 2018, the parliament is now expected to take action to provide clarity through law reform.

This thesis seeks to analyse the tension between freedom of religion and the right to be free from discrimination by gaining an understanding of the principles behind religious exceptions to anti-discrimination laws. By uncovering a range of interpretive constructions about religion and religious freedom, it is possible to gain a better understanding of exactly who and what is to be protected. This process leads to a suggested framework for anti-discrimination laws that accounts for the human right to freedom of religion while protecting vulnerable groups from the most harmful forms of discrimination.

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GLOSSARY

ATO	Australian Taxation Office
ACNC	Australian Charities and Not-for-profits Commission
AHRC	Australian Human Rights Commission
APA	American Psychological Association
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
LGBTQI	Lesbian, Gay, Bisexual, Trans-sexual, Queer, Intersex
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UN HRC	United Nations Human Rights Committee