

**Submission to the Australian Human Rights Commission on  
“Freedom of Religion and Belief in the 21<sup>st</sup> Century”  
By Revd James Barr on behalf of  
MIAT (Major Issues and Theology Foundation)**

The submission took the form of responses to set questions by the Commission. The questions are printed in bold below.

## **Religion and the State – the Constitution, roles and responsibilities**

This is about assessing existing legislative protection of freedom of religion and belief, and its practice and expression in Australia, as expressed in the Constitution. Within this, what are the roles and responsibilities of spiritual and civil societies and do these need to be codified in law?

Section 116 of the Commonwealth of Australian Constitution Act states that:

*The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.*

### ***The Constitution***

#### **1. Is this section of the Constitution an adequate protection of freedom of religion and belief?**

Section 116 of the Australian Constitution presents a distinctive position on the relationship of religion and government. It prohibits the establishment of any religion (as is found in various parts of the United Kingdom and some European countries) and precludes the Commonwealth either ‘prohibiting the free exercise of any religion’ or requiring a religious test for any office or trust under the Commonwealth.

It does not enjoin a ‘separation of church and state’ as it is currently understood in the United States. There the First Amendment and its subsequent interpretation in the courts has been narrowly construed to keep religion and government in rigidly separated categories.

The Australian context has evolved quite differently with the Commonwealth government funding a range of social services in health, welfare and education through religious organizations which serve charitable or educational ends. This co-operation of religion and state is an important element of Australian social structure and should be maintained.

The Constitution does not enjoin limits or constraints upon religious bodies other than those imposed on all citizens or corporations by the law of the land. The freedom of religion includes a freedom to comment on or criticize government, and participate fully and freely in political and social debate. The 'separation of church and state' as developed in Australia constrains government in its dealing with religion but imposes no restraints in the other direction. This asymmetry is an important part of the Australian context and should be respected in legislation protecting religious freedom.

## **2. How should the Australian Government protect freedom of religion and belief?**

MIAT supports legislation outlawing religious and racial vilification, but with some misgivings about the exclusions affording privileged place to artistic, educational and political discourses. (See below)

## **3. When considering the separation of religion and state, are there any issues that presently concern you?**

The assumptions and values of the United States with regard to separation of religion and the state do not apply within the Australian context. Any legislation which limits the rights of religious organizations to make social comment or to express spiritual or religious perspectives in the public sphere could be construed as 'prohibiting the free exercise of religion'. Funds supplied by government for charitable or educational purposes should not be used to support political programs but this should not preclude religious charitable or educational bodies making social or spiritual comment or engaging in advocacy activities that are not supported by government funds.

Moves by government to constrain religious charities and other bodies from advocacy activities through legislation or regulation are a concern for anyone committed to freedom of religion in Australia.

## **4. Do religious or faith-based groups have undue influence over government and/or does the government have undue influence over religious or faith based groups?**

In a healthy democracy there should be robust and respectful exchanges between faith-based groups, political parties and government. However, there are dangers of collusion and unhealthy relationships. Where political parties are funded by religious groups the relationships should be transparent. Where government funds religious groups for specific purposes there should be appropriate accounting and program audit safeguards.

There will always be grey areas in the relationship between religious bodies and government. When a Commonwealth government minister visits an Archbishop of his religious faith is this a private visit for spiritual counsel, or a matter of public interest because of the complex interactions between the minister's department and the charitable bodies of the church? When the same Archbishop makes pronouncements about the moral obligations (and related sanctions!) upon all the adherents of his religious faith (including the government minister) is he attempting to coerce or influence the government or faithfully discharging his pastoral office?

The maintenance of authentic relationships in such areas is largely a matter of individual integrity. A measure of transparency is important as a safeguard yet the privacy necessary to the spiritual life of public figures limits this to some degree.

## **5. Would a legislated national Charter of Rights add to these freedoms of religion and belief?**

The notion of human rights has a pedigree in theological reflection in the Christian tradition of the justice or righteousness of God and its implications for human beings. It is a rich and worthy concept and one of the primary vehicles through which contemporary society articulates its convictions about what is right and good for human being.

However, in the long passage from its roots in medieval theology the concept of 'right' has been set free from its foundation in a strong sense of the justice of God and is now seen as a function of the proprietorial subject, something we 'own' because of our intrinsic humanity. Rights as 'entitlements' can proliferate without a corresponding growth in capacity to meet those rights other than a growing demand upon the state as the ultimate 'rights-guarantor' in society.

Because of this some Christian groups are opposed to a Charter of Rights as it is seen as a part of the growth of rights as entitlements without necessarily providing for the capacity to meet those rights.

A second objection to a Charter of rights is that it places greater influence over rights outcomes in the hands of judges rather than elected legislators. The assumption behind this objection is that elected legislators are better able to reflect the will of the people than unelected judges.

The Major Issues and Theology Foundation believes the codification and clear statement of rights is important and will serve the cause of justice and improve the access of individuals to redress against large and powerful organisations in government and private enterprise which may impugn their rights.

The objection to judges determining matters of human rights we believe reflects a view of society being founded in a social contract reflected in elected representative government. An alternative view from the Judeo-Christian tradition is that society is founded on the judgment of God for the poor and powerless, and that acts of judgment - in the courts, in deliberative government and in the exercise of executive power – reflect and are grounded in the primary action of God for justice. Such a view sees the courts of the land as effective and appropriate bodies to interpret human rights under a legislated Charter of Rights.

We support the enactment of a Charter of Rights in Australia.

## ***Roles and responsibilities***

### **6. a) What are the roles, rights and responsibilities of religious, spiritual and civil society (including secular) organisations in implementing the commitment to freedom of religion and belief?**

Religious bodies themselves bear a large responsibility for the maintenance and health of a public sphere in which the freedom of religion and belief can flourish. It must also be admitted that there are religious voices of intolerance and exclusion that wish to conquer the public sphere for their own perspective.

What is sometimes forgotten in the debate about religious freedom in a secular and pluralistic society is that secularism itself grows out of a religious belief and is based in religious belief, not the rejection of religious belief. As the theologian Oliver O'Donovan writes:

*Secularity itself requires belief: Secularity is a stance of patience in the face of plurality, made sense of by an eschatological hope; forgetfulness of it is part and parcel with the forgetfulness of Christian suppositions about history. (O'Donovan, Oliver: Common Objects of Love p.69)*

While MIAT is grounded in the Christian tradition and we cannot answer for other religions, we believe that the underpinnings of secular society are deeply theological and depend on the continuing role of vital religion in the public sphere. Where some see modern secularity providing the social space for religion we would argue that the reverse is true – that religion itself provides the 'social capital', the moral sense and commitments to love and care that frame an open and accepting public square. As O'Donovan again expresses it so clearly:

*“Secularity’ is irreducibly an eschatological notion; it requires an eschatological faith to sustain, a belief in a disclosure that is “not yet” but is absolutely presupposed as the inner meaning of what we know already. If we allow the “not yet” to slide toward the “never”, we say something entirely different and wholly incompatible, for the virtue that undergirds all secular politics is an expectant patience. What follows from the rejection of belief is an intolerable tension between the need for meaning in society and the only partial capacity of society to satisfy the need. An unbelieving society has forgotten how to be secular.” (O'Donovan, Oliver: Common Objects of Love” p.42)*

The “expectant patience” that undergirds secular politics arises from religious beliefs that are held passionately but humbly, acknowledging that divine judgment has yet to reveal final truth. This virtue of humble patience, of acknowledging that the other may yet be right, is the subtle balance of a firm and vigorous belief that guides and empowers life and an openness to the future that accepts that we all still have much to learn.

Without the former conviction we leave the public space devoid of values or commitment, a meaningless *mélange* where there is no truth, only opinions. Without the latter humility we make the public space a vindictive battleground of conflicting ideologies and fundamentalisms of both religious and non-religious stamp.

The vitality of religious discourse within the public sphere is an important element of healthy secularity. This includes especially the theological exploration of the categories of interfaith dialogue, values and judgment (in all its senses of *discernment*, *decision* - including policy and government decisions- and final *determination*) and our relationship with the future.

## **b) How should this be managed?**

The use of the word ‘managed’ implies some controlling or supervising agent that in the circumstances can only be an agent of government. The interaction of religious bodies themselves must be a free and collaborative enterprise informed by the inner springs of interest in, and love for the Other, which are a part of all authentic spiritual traditions.

This concern for the Other is sometimes masked by the urge to evangelise, proselytise or condemn the Other. Interfaith dialogue does include the presentation of one's belief as truth worthy of the Other's acceptance, and it also includes critique of elements of other faith systems for their belief, ethics or practice, but such discourse can only occur within a framework of trust and respect and in a spirit of conversation and mutuality.

**7. How can these organisations model a cooperative approach in responding to issues of freedom of religion and belief?**

See the paragraph above.

**8. How well established and comprehensive is the commitment to interfaith understanding and inclusion in Australia at present and where should it go from here?**

Other lands have developed cultures of dialogue and toleration either through several competing and alternative religions in the culture or through long cohabitation and awareness of a variety of religions in a stable community. Given the cultural dominance of Christianity in Australia and the roots of our art, law and social mores in Western (Christian) culture, we do not have a well-developed culture of interfaith dialogue. Christian leaders need to take the lead in listening humbly to other faiths, building trust and understanding until we are able to meet on a more equal basis.

**9. How should we understand the changing role and face of religion, nationally and internationally?**

A temptation is to read the local religious situation too much against the international context. We need to honour and develop the life of our Australian religious communities in their distinctive values and histories.

Some years ago in discussion with a Muslim leader in Victoria I asked about the training of clergy. He replied that it was much easier now that Muslims had a local seminary and didn't need to see people to the Middle East for study. When I asked where the local seminary was located he replied, "In Penang!"

Just as ethnic relations can be influenced by conflicts from far away and prejudices from long ago, religious communities are affected by what is happening in other lands. While this is a necessary part of their identity and religious practice we also need to foster a connection with the Australian context and the Australian community (in its cultural diversity).

## **Religion and the State - practice and expression**

The emergence of a multifaith Australia has brought issues regarding religious expression to the fore in debates, politically and culturally. This area is about balancing the expectations of faith-based organisations with civil society organisations.

**1. What are some consequences of the emergence of faith-based services as major government service delivery agencies?**

The Christian churches of Australia have developed over their history a range of not-for-profit agencies which have furthered the churches mission had served the Australian community. These agencies have worked primarily in the areas of health, education, community welfare and international aid. Over the years these agencies have accumulated capital generation by generation and have become significant 'social locations' of the values of social care, compassion and action for justice.

A distinct element of Australian history has been the way in which these organisations have benefited from government patronage and support. Perhaps alone of Western democracies, Australia has seen a significant partnership between government and the not-for-profit sector. Church-based agencies have represented a significant part of the not-for-profit sector engaged in these partnerships.

In countries such as Germany and parts of Scandinavia where churches are established and the State collect revenues on behalf of the church there are significant flows of funds from the State to the church. These funds are deployed in a variety of purposes including the religious purposes of the church, programs of aid and development, and other purposes. In Australia the situation is such that no government funding is used for religious purposes and appropriate management and "Chinese walls" are built into Australian not-for-profit religious activities.

The risks attending these relationships are that either the government agenda of social care distorts or influences the religious identity or agenda of these bodies, or that the religious agenda of these bodies distorts or influences the proper interest of the government in service delivery, or compromises the rights of clients.

As discussed in section 2 above (The Constitution) the role of religious groups in delivery government services is well established in Australia. Religious groups bring special resources to their work of social service, education and health care such as cultures of compassion and commitment, capacity for volunteering, and connections with local communities.

However the potential for misunderstanding or confusion of purposes suggests that research in Australian should be focused on the issues of *governance* and *mission* in religious organisations that works as agent of government in delivery of services. This research would help:

1. clarify how such organizations understand their mission and core purposes;
2. assess what governance frameworks and practices inform clarity of purpose and action for the leaders and staff of the religious organization delivering services in the general community;
3. define the implied 'social contract' involved when government and religious bodies work together towards common ends.

## **The interface of religious, political and cultural aspirations**

This area is seeking to research and map the current relationships that exist between religious, political, cultural and indigenous groups and what they seek to achieve. It is about describing the interaction of these groups within contemporary Australian society.

## **1. How would you describe the interface between religion and politics and cultural aspirations in contemporary Australia?**

We believe there is currently some confusion at the interface of religion, politics and cultural aspirations in Australia. The assumption that Australia is a 'secular society' is often interpreted to mean that religion has little or no authority to speak in the public sphere. When religious leaders (of different persuasions) do speak their comments are sometimes fundamentalist or insensitive or are reported so as to emphasise any cultural insensitivity.

Religious leaders tend to be conservative on cultural issues such as artistic standards, censorship and issues of bioethics. Some religious commentary is ill-informed and out of touch. This contributes to a cultural bias which perceives 'religion' of most persuasions as out of date, conservative and irrelevant to modern society.

Within some religious bodies there is a belief that religion has nothing to do with politics, and some politicians suggest that religious leaders have little authority to speak on social issues beyond a narrow spectrum of personal morality.

These expectations can form a self-perpetuating system of interlocking cultural attitudes. Central to overcoming such attitudes is for religious groups and leaders to engage more effectively and respectfully with each other and the social issues they wish to address and to promote dialogue in which issues are engaged with understanding, appropriate framing and adequate research.

## **2. How should government manage tensions that develop between aspirations?**

We question the assumption that the 'tensions that develop between aspirations' need to be 'managed' in an active way by government.

The tensions themselves need to be identified by civil society (which we believe includes religious groups). It may be that government can encourage the development of interfaith and intersectoral processes resources (such as interfaith councils and programs, partnerships between community, private and government sectors, or programs to foster better relationships between faith groups and the media).

One of the key means of addressing any 'tensions between aspirations' is to directly engage the aspirants who experience the tension.

## **3. How do you perceive gender in faith communities?**

### **4. Do you believe there is equality of gender in faith communities?**

### **5. What do you think should be the relationship between the right to gender equality and the right to religious freedom in Australia?**

MIAT is committed to gender equality with all communities, including religious communities. Equality of gender clearly differs between faith traditions, but in general it is hard to avoid the conclusion that in many faith communities women are discriminated against or restricted in their roles and freedoms to varying degrees.

The persistent determination of many religious communities to treat men and women differently we believe reflects the ancient traditions and beliefs that are the core of those religions. Here the 'right to freedom of belief' collides with the 'right to gender equality'.

Although we believe in the full equality of men and women in every area of life, we accept that the right to freedom of belief is more foundational to the human person than rights of a political and economic nature, provided that persons have true freedom to associate and dissociate in Australian society. Thus a woman who is part of a religious community that refuses equal recognition to her gender should be free to remain within that community and work for justice and equality or leave it and identify with other communities where the rights of women are respected. The pull of religious identity is such that many choose the former path and some will take the latter.

We recognise that this is not always possible where concepts of apostasy, other social pressures or interlocking constraints at cultural, communal and relational levels confine women in oppressive situations.

We believe that the fundamental right to choose one's religious belief is primary and should be the foundation for addressing the lack of equality and acceptance that is experienced in some religious communities around issues of gender or sexual orientation.

## **8. Is there a role for religious voices, alongside others in the policy debates of the nation?**

There is a vitally important role for religious voices in the policy debates of the nation. There are cogent reasons for valuing a carefully considered religious perspective in many policy issues:-

1. Religious perspectives reflect some of the deeply held beliefs and outlooks of significant communities within Australian society. Those perspectives arise from real communities engaging with contemporary issues.
2. Where religious views have been deliberated by scholars, spiritual leaders and specialist lay people with technical skills in the field under discussion, they can reflect a high degree of integration of ethical, technical, philosophical and theological expertise.
3. Religious bodies have often been the greatest advocates for the poor and powerless and agents of social change both in our societies and overseas. The abolition of slavery in Britain and the United States, the Jubilee 2000 program to remit Third World Debt and the Micah Challenge to halve world poverty as measured by specified indicators by 2015 have all grown out of the Christian religious tradition. The Grameen Bank working with the poor around the world has arisen from within the Islamic community. Religion is a powerful force for social transformation and is important for the national policy debate.
4. As John D Caputo and Jacques Derrida identified in the late 1990's, religion is moving back into the social and political mainstream. The age of a necessarily ever-increasing secularism is over. From the Islamic world to Orthodox Russia we see cultures and countries in renewed engagement with religious perspectives. Those perspectives should also be engaged in Australia. If Australia is unable to engage its own religious voices in policy debate how will we understand the dynamics of our neighbours, and of our enemies?
5. As we argued above, the concept of a healthy secular society is itself undergirded by religious values – of both 'eschatological patience' and a positive moral engagement with society. While the religious voice is always only 'one among others' it contributes an important note without which we find the idea of truth weakened and an ungrounded relativism emerging as the social horizon.

Although we are committed to the role of religion in the policy debates of the nation we also recognise that:-

6. Religious voices can be strident and not humble, assured of a truth that excludes the perspectives of others and arrogantly dismisses alternate perspectives.
7. Some religious voices seem deranged and disordered. A false respect for religion can lead to failure to expose illogical or ridiculous positions for what they are. Religious communities themselves have primary responsibility for identifying and criticising the cranks and the crooks amongst us.
8. Religious bodies are themselves political actors with interests and biases that may be reflected in their policy positions. Such interests need to be transparent and the policy debate needs to be robust so any such distorting influences can be engaged and accounted for.
9. Religious voices will themselves conflict and therefore sometimes be confusing, but as the media often gleefully inform us, even our political leaders within the one party do not always agree. Religion does not speak with one voice for it reflects the enormous diversity of human beings. Even within a single Christian denomination there are various voices calling for attention. The tendency is to dismiss the 'colour' and variety of religious voices rather than see this as a positive expression of the diversity of the Australian community and see in the patient, respectful and thoughtful dialogue of difference a means of strengthening not only debate and its policy outcomes, but the processes which build cohesion within and between communities.