

**Address to the St Thomas More Society
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CHECK AGAINST DELIVERY

Introduction

Let me acknowledge your President Michael McAuley who has been a great friend to me. His friendship and his many acts of kindness towards me have helped sustain me in my work and for this I am most grateful.

I want to thank the St Thomas More Society for the opportunity to speak to you this evening about religious freedom.

I commend the work the society does in providing a forum for enlightened discussion about the marriage of faith and reason particularly as it applies to the law in Australia today.

My comments tonight are personal observations. I am not reflecting the views of any religious community, political party or government. They are also not the views of a theologian—they are the views of that much lowlier life form: a non-practising lawyer-cum-politician.

As a Jewish Australian I am grateful for the friendship of many Christians who have enriched my life.

Anglicans educated me at Cranbrook, where they manifest their Christian beliefs through what their headmaster Nicholas Sampson described in his speech day address last year as “loving kindness”. Through chapel services and religious education I was provided with a window onto a faith not my own.

Catholics gave me the opportunity for stewardship serving on the Board of Mercy Health and working for Australian Catholic University in a senior role where I got to know many of the leaders of the Catholic Church: archbishops, bishops, priests, heads of religious orders and prominent lay Catholics. It was here where I was also given the chance to think deeply about the future of the Church and faith in our country today.

There was not a day in my work for the Church through ACU that I didn't feel an enormous sense of honour, privilege and joy in helping advance one of the great institutions of Western Civilisation - a faith tradition that is the bedrock of our culture.

Working in a faith environment is deeply satisfying. The mission is clear. You are working for a cause much bigger than yourself and much bigger than a number on a balance sheet. In faith based institutions you see a demonstration of faith in action though the mission and identity of the institution, and in the way it manifests itself in interactions people have with one another.

Starting the day at ACU, reflecting on religious texts created what Saul Bellow described as “the achievement of stillness in the midst of chaos.” Indeed working for the church caused me to reflect more deeply on my own faith and spurred me to get involved more deeply in its communal life. From time to time I was asked as a non-Christian to reflect on something the health group or the university was planning to do. If a colleague would complain that something seemed “too Catholic” my inevitable response was always – “not Catholic enough”.

A bit of pride and confidence is what the best leaders bring to their institutions and I had the privilege of working for ACU’s Vice-Chancellor Greg Craven who is *the* outstanding educational leader in Australia today.

I am also grateful for the generous, kind Christian and other faith communities who make up my electorate, who pray for me in this challenging job they have sent me to Canberra to do. I am always grateful for their invitations to support them by attending mass and services from time to time.

And I will never forget the support of my friend Bishop (now Archbishop) Peter A. Comensoli writing public letters of support for me without hesitation when my own faith was under attack.

Although I am not a Christian, I see it as my duty to stand up for the rights and freedoms of Christians in our country, which is the key purpose of my talk tonight.

The Church and its standing in Australian culture

I believe that the maintenance of religion and religious institutions is vital to the moral ecology of our nation.

I believe religion has a particular role to play in the world in bringing meaning into people’s lives. It calls people to serve others, providing a sense of identity and a purpose to life that is larger and more enduring than fulfilling the needs of the material self. It brings people together from different backgrounds and builds a sense of community. The search for meaning in people’s lives has never been stronger than it is today.

Last year’s Study of the Economic Impact of Religion on Society attempted to measure some of the economic contributions that faith groups make to our country. Religious people who attend services contribute an extra 30.5 million hours of volunteering time to Australia each year. Being religious makes people more likely to donate money and not just to religious causes but to social good projects as a whole.

In the wake of discussions about same-sex marriage which has been a source of tension between faith groups and the LGBT community, it is perhaps important to remember that relations between the gay community and the missions of the Church were not always thus. In the early 1980s when the AIDS virus – which disproportionately affected gay men – first appeared there was great panic about people who had contracted AIDS. Many hospitals were turning HIV/AIDS patients away. But the Sisters of Charity at St Vincent’s Hospital Darlinghurst made the

decision to admit, treat and care for patients with AIDS when others refused. At a time when little was known about the virus, this was an act of great grace and courage. Over half of all the people with AIDS in Australia were treated at St Vincent's.

This story is unsurprising when we look at the whole history of the church too.

Christians have pioneered many of our great social institutions in aged care, in health and social services: the Royal Flying Doctor Service, Lifeline, Barnados, and Mission Australia all began as the work of Christian men and women motivated by the gospel to love God and their neighbour as themselves. If we return to the early days of the RSPCA in Britain, it was evangelical Christians who established that organisation as well.

Our entire concept of human rights comes from what Jonathan Sacks has described as that “radical idea” at the heart of the Judeo-Christian tradition that all people are made in the image and likeness of God.

Whether we are tall or short, young or old, able to speak and walk or severely limited in our ability, our lives matter and are of equal worth. This idea is defended by the people of faith among us. When a society loses a sense of human dignity that society loses its soul. I am certainly not suggesting that it is only people of faith who care about others—that is manifestly not the case—but I am suggesting that we should be careful about pulling too far away from our moral roots.

The church continues to play an extremely important role in our culture—a role that many people respect and cherish. Many people who are not churchgoers still send their children to Christian schools. We have a Prime Minister who is open about his faith and church institutions continue to play a central role in the delivery of many services such as aged care and family support.

Difficult days for Faith communities

But unfortunately we have to be clear-eyed about the difficulties that religions face in Australia today too.

Anti-Semitism is sadly on the rise in this country with a 60% increase in attacks on Jews in Australia over the last twelve months.

In October last year, a Hindu Temple in Regents Park was set on fire during one of the most sacred times of the year for Hindus. Prayer carpets were burned. Statues of Hindu gods were destroyed. It is hard to imagine a crueller type of vandalism.

When I have consulted Muslims, Sikhs and Buddhists in my electorate about their religious freedom they have told me of people in public and private contexts asking them to remove articles of clothing that denote their religious devotion and of public libraries not wanting to stock their holy books.

While there are fewer physical threats against Christians, there is a cultural and existential threat to Christianity as people are trying to delegitimise the place of Christianity in the public square and force it off the national stage.

The public position of Christians has been weakened not just through a decline in religious observance but also a decline in the level of religious literacy and empathy for religion among the general population. The unchurched and even some people of faith have an insufficient understanding of the nuance and discernment of faith. Too often, the only thing people know about the Christian faith is what they learnt before they left primary school and what they see in news headlines.

At the heart of this is the growing hostility, at first in radical circles, but increasingly in broader circles, to the holistic view that Christians have of marriage, life and family. Properly presented Christian teachings are not threatening; but they are at odds with the zeitgeist.

Today those teachings are attacked by people with a different view, some of whom have hostility to organised religion and Christianity in particular.

The diminished public standing of the Church is not a problem created entirely by its detractors. Some of the decline in the standing of the churches and organised religion is self-inflicted: failures of leadership and moral corruption have undermined the standing of faith communities and faith leaders. The most gross of these were the systematic perpetration and cover-up of child sexual abuse which was thoroughly ventilated in the recent Royal Commission.

Among ordinary church-goers, people of faith have, at times, been unwelcoming and usurped God's role as judge by failing to take a pastoral approach to those who differ or find themselves falling short of the standards the church encourages.

But despite being sorely tested, the church has always had countless good leaders and faithful people whose lives demonstrate extraordinary virtue which contributes immeasurably to the common good.

Central tenets of Christian faith—love for the neighbour; practices of forgiveness and confession; a commitment to holiness coupled with a commitment to grace, have enriched the lives not only of faith-filled people but every one of us.

Since European settlement, Christian values have been reflected in our laws even if not explicitly stated. And yet over the years these values have been undermined.

When recently I brought faith leaders in my community together I heard things that I never thought I would hear in the Australia in which I was raised. Nowadays Christians are worried about things which they have never had to worry about previously:

- The right to quote the Bible.
- The freedom to share the message of Jesus.
- What their children are being taught about gender and sexuality.

- What they themselves will be allowed to teach about sexuality and gender to the next generation.
- The right of employees to object to participating in work-based corporate social responsibility programs that are at odds with the employee's beliefs without putting their employment at risk.
- The attacks on the right of Church institutions to preach, teach, employ (or not employ) and provide services (or not provide services) in accordance with their faith.
- The use of discrimination law as a weapon against Christians.
- The media and in particular the ABC's bias against Christians and Christian leaders.

In the broader community people of faith see decisions against people manifesting their faith which make no sense. Rugby Australia's decision to sack Israel Folau after his Instagram posts seems completely out of line given that only fines and suspensions have been given to other players whose conduct includes:

- entering an under 19s game as a spectator and pushing a volunteer touch judge knocking him to the ground.
- being arrested for possession and supply of illicit and prescription drugs.
- having a blood alcohol reading of 0.135, falling asleep at the wheel and drifting across a busy intersection endangering the lives of other road users.

And now increasingly there is a legislative attack on freedom of conscience. While there were dreadful revelations against every conceivable faith group and state government during the Royal Commission, the Catholic Church is being singled out and asked to compromise its religious doctrine. Laws are currently being debated in Victoria which will force priests to violate the seal of the confessional. Many priests including the Archbishop of Melbourne have indicated that they will go to jail rather than violate the confessional seal.

Not only is this law an attack on religious freedom but it has unintended public policy outcomes.

Like lawyer client privilege the statutory privilege that's attached to the seal of the confessional reflects the wisdom of the ages. It would be highly unlikely that removing this privilege would actually capture the wrongdoers it purports to capture, as they would simply change their behaviour as a result.

Rather than providing an avenue where the priest might encourage a child sex offender to turn themselves in to the authorities, a law mandating the violation of the seal of the confessional simply means that it will be unlikely that any child sex offender will go to a priest to confess their crimes. The end result would be to compromise a fundamental feature of the Christian faith for no practical secular benefit.

But it is on issues of life and death that conscience is most under attack.

While the current debate on abortion laws in New South Wales has rightly focussed on the sanctity of life, the particular tragedy of late term abortions and the lack of opportunity parliamentarians have had to deal with this fundamental question. There is one aspect of this debate which is fundamental but which has escaped most political commentary.

Clause 9(3) of the NSW abortion bill forces a registered health practitioner (which includes a doctor, nurse or midwife) who has a conscientious objection to abortion, to recommend another health practitioner or service that will perform the abortion to a patient who seeks an abortion. Similar provisions exist in states where Labor has decriminalised abortion.

To force a person who believes abortion is murder to become complicit in that act by recommending someone else who will perform it is an anathema to everything I stand for as a Liberal. Liberals have always valued conscience above all else. It has always been the primacy of conscience that differentiated the Liberal Party and its predecessors from Labor. Unlike Labor a Liberal is always only bound by his or her conscience for their vote in parliament. Why then have some Liberals, even those who support abortion, gone along with a law that curtails this basic freedom of conscience. Any reconsideration of the abortion law must remove this aspect of the proposed bill.

The introduction of euthanasia laws in Victoria is another indication of where our culture is going. Similar laws have only narrowly been stopped in NSW, South Australia and at the Commonwealth level, an attempted repeal of the ban on territory euthanasia laws was only narrowly defeated. Since many people do not understand the Church teaching on end of life care it is worth repeating the words of Catholic Health Australia:

Our clinicians are trained to provide effective pain management and to respect patients' decisions (or, if they are not competent, their substitute decision-maker's decisions) to forgo treatments that are too burdensome or medically futile: in doing so, our clinicians act in accordance with the needs and preferences of the patients.

[But]

Our clinicians do not and will not intentionally inflict death on patients (that is, provide euthanasia), nor intentionally assist patients or residents to take their own lives (that is, provide physician-assisted suicide).

As someone who has devoted his career in parliament to helping reduce the rate of suicide, the thought of legalised, state sponsored suicide is appalling. We need better funding for and greater awareness of the importance and value of palliative care, not euthanasia.

Religious Discrimination Act: Some issues

Given the weakened cultural position of the church in Australia, the public discussion about religion needed to be reset.

The discussion about religious freedom is essentially one about how we live together with difference and create a truly pluralist society. How we can respect people of faith and people of no faith. How we create a society where there is shared space for everyone and where we respect the conscience of the devout and those without faith.

When the same-sex marriage legislation was presented to Parliament a number of religious freedom protections were sought via amendments to the Same-Sex Marriage Bill. I voted for all the religious freedom amendments but ultimately all were unsuccessful. Perhaps realising that religious freedom would be better protected at a less emotive time than in conjunction with the introduction of same-sex marriage legislation, the Coalition Government commissioned the Ruddock Review to examine how religious freedom could be best protected in Australia.

The Ruddock review recommended a Religious Discrimination Act because:

A broad range of stakeholders expressed concern that not all Australian jurisdictions prohibit discrimination on the basis of a person's religious belief or activity. Stakeholders expressed a broad range of concerns about their ability to manifest their faith publicly without suffering discrimination. This includes, for example, their ability to hold and communicate views based on religious understandings, the ability to wear religious symbols and dress in educational or employment settings, and to access goods and services and generally engage in public life without fear of discrimination because of their religion.

In addition the review found that [existing Commonwealth law does] "not provide comprehensive protection at the federal level against religious discrimination".

Other Parliamentary committees have found that religious freedom has been read down in the context of other protected attributes and a Religious Discrimination Act is needed to ensure religion is given equal protection.

Following the Ruddock Review, Prime Minister Morrison has promised to introduce a Religious Discrimination Act.

The Attorney-General, Christian Porter, has been consulting colleagues and religious groups about the Bill. The Government's intention is to release a draft for public consultation before the parliament resumes next month.

At the same time, the Government has also asked the Australian Law Reform Commission to inquire into religious exemptions to discrimination laws across Australia. That inquiry is considering among other things the exemptions to religious schools and other bodies in relation to the admission of students and the employment of staff.

In light of the decline in religious freedom I have outlined above, I support moves to introduce a Religious Discrimination Act at the Commonwealth level because it should provide some improved level of security for people of faith. However, any such legislation will not be an unfettered benefit, it will have pros and cons and we need to be alive to the cons.

I want to make a few comments about what I see as the necessary contours of any Religious Discrimination Act as we prepare to see the draft Bill.

While based on the other discrimination acts, a Religious Discrimination Act should be a different sort of piece of legislation in some important ways. There are three reasons for this.

First, the nature of religion is different to race, sex, age or disability in how it shapes a person's life.

Unlike other protected attributes religion is about more than just identity. The nature of being male, old, black or disabled may mean that you have certain experiences in common with others that share that attribute but they are derived from a state of being.

However the nature of being a person of faith is different because religion provides a moral and ethical framework, ordained by God (or whatever Supreme Being a person might believe in) and a series of related practices by which they should live. These help guide people not only about their identity but about the meaning of their life. Religions are not just philosophies. To the genuine believer religious doctrines, practices or commands are not suggestions. When a Hindu decides not to eat beef they are not like a vegetarian choosing to be vegetarian because they don't like meat. They are not eating beef because they believe that the cow is a sacred animal.

Second, religion is different to other protected attributes because it is inherently communal.

Unlike other protected attributes religion often requires practices to be done in concert with other people in order for the actions to be religious. Therefore unlike other protected attributes religion does not just require the protection of the individual believer but the religious institution, be it a church, or an organisation established by people from a religious community. It may be for purposes of education, social welfare, health or aged care, but it is a way in which a group of believers come together to put their beliefs into action.

Third, unlike when the Race and Sex Discrimination Acts were introduced, a Commonwealth Religious Discrimination Act would not be the first word in Australian religious discrimination law.

The legislation should therefore take into account developments in case law both in Australia and abroad which have seen courts and tribunals undermine the intent behind the original legislation. We have seen cases in which religious freedoms have been confined by courts in ways which make the freedom of individuals to manifest their faith in a manner not inconsistent with the criminal law impossible; or cases which restrict the right of religious institutions to preach, teach, employ (or not employ) and provide services (or not provide services) in accordance with their doctrines.

The Religious Discrimination Act must be robust enough to address these problems.

When religious freedom is in conflict with other rights, consideration should be given to a legislative articulation of how the courts might balance these freedoms. My colleague Senator David Fawcett who has done some serious thinking on these issues has mentioned, in the context of parliamentary debates and reports, the concept of the *Siracusa Principles* which provide that in applying a limitation on a right “a state shall use no more restrictive means than are required.” A balancing task is then performed by courts to find a way which both rights can be best preserved.

Some words of caution about faith and the law

I understand the desire of the government and faith communities for a Religious Discrimination Act. A Religious Discrimination Act provides the potential for positive rights not to be discriminated against on the basis of religion rather than exemptions from the operation of other laws. It will provide specific protections for people and complete the patchwork of Australia’s discrimination laws.

Having said that, let me offer some words of caution for faith groups.

A Religious Discrimination Act will inevitably hand more power to the courts. Dealing the Courts into the determination of religious doctrines will be a likely consequence of a religious discrimination law. In the case of *Christian Youth Camps v Cobaw Community Health Services*, the Victorian Court of Appeal had to decide what the doctrine of the religious community was and also whether the employee’s conduct conformed with that doctrine. In that case, Christian Youth Camp’s description of its doctrine was not accepted. Asking Judges who may have limited knowledge about a faith tradition to be making doctrinal or theological decisions they are not equipped to make, is a troubling road to be going down.

Many people of faith would not want secular courts determining the doctrine of the faith community and may wonder whether this is an unacceptable encroachment on the separation of church and state. But a Religious Discrimination Act will make such occurrences more frequent.

Secondly, I think President John F. Kennedy put it well when he said “the rights of man come not from the generosity of the state, but from the hand of God.” By acceding to a Religious Discrimination Act religious organisations are also acceding to the ever tightening grip that international human rights law is having on our society.

Religious freedom at law in Australian law will not come to its citizens from the hand of God but rather from Article 18 of the International Covenant on Civil and Political Rights as interpreted by domestic and international courts and discredited bodies like the UN Human Rights Council. These bodies are having a greater grip on Australian law. In my view it is unhealthy for one of the world’s oldest continuous democracies one with an independent and incorruptible judiciary to be lectured to by bodies whose culture and history and ethos are completely different from our tradition.

At its root, human rights are about the Judeo-Christian idea of the dignity of the human person. But the corruption of that idea by the human rights industry is something else altogether.

A certain sort of person goes to work in the human rights industry. They are the sort of person who wants to use the law as a political weapon. They do so by bypassing the democratic process and achieving their goals through the courts or international bodies. They do not want to stand for election to public office but they are happy to cloak what are essentially political decisions about the balancing of rights with legal notions.

The remedies that a Religious Discrimination Act will provide will be complaints lodgement and conciliation with the Human Rights Commission and redress in Fair Work Australia and Federal Circuit Court, Federal Court and High Court.

The result will be that judges and the Human Rights Commission, whose former presidents include Gillian Triggs and Marcus Einfeld, will have a greater say on crucial questions relating to the protection of the rights of people of faith.

Churches in Australia have traditionally opposed giving more power to unelected judges. Adverse and unintended consequences have occurred for people of faith under those human rights instruments as introduced from time to time across the world. No one should assume that judges and the Human Rights Commission will be any more sympathetic to issues of concern for faith communities than the Parliament is. Indeed the judiciary and human rights lawyers are drawn from a narrow pool of practising lawyers and as a consequence their values set may reflect a narrower range of experiences and concerns than one might find in Parliament.

I think we also should be cautious about expanding the Commission to include a Religious Freedom Commissioner whose role, other than being a paid advocate, is unclear. That person's appointment would not be by faith communities but by politicians and given the diversity of religious practice it would be particularly bad if such an office was seen to become the one source of truth about religious practice in Australia. I would hate to see a Commissioner being asked questions about religion that are currently referred to Bishops, clergy, Imams and Rabbis.

It is also worth noting there has been some discussion about the need for a Religious Freedom Act rather than a Religious Discrimination Act. Both the Religious Discrimination Act and the Religious Freedom Act would provide positive rights for people of faith. But I take a Religious Freedom Act to be a law which would see religious freedom override any other law. While this might have some initial appeal it would in effect be a back door bill of rights which religious communities have always been right to oppose.

The history of bills of rights around the English speaking world, including in Victoria, is that they have done little to assist faith communities and indeed their interpretation has weakened not strengthened the position of faith. In addition, special protection for religious communities would undoubtedly lead to claims for special protection for other interests. This is happening already. Inspired by the proposal for a Religious Freedom Act, media interests are already talking about a Media Freedom Act to

protect the media from the operation of national security laws in a submission made to the Parliamentary Joint Committee on Intelligence and Security's current review of national security laws. And I am sure the sectoral contagion will not stop there. This would take us into extremely dangerous territory, which would serve no one.

Beyond the Law

The final point I want to make is to return to where we started. To paraphrase the late former Chief Justice of Australia Sir Harry Gibbs, religious freedom 'guarantees may provide protection to human liberties but in the end freedom depends on the willingness of the community to defend it.'

The great challenge before us is actually less a legal one, than a cultural one. The law is important as it regulates a society that provides space for religion to function, but the most important challenges ahead are those that will take place between neighbours, in schoolyards, around watercoolers and in the media.

Australia began life as a Christian nation. English law applied in the colonies and in England there was an established church. The Rev Richard Jonson was the chaplain to the first fleet and was charged with improving the public morality of the colony.

While Australia has a Judeo-Christian foundation, many of the things that would have been seen as givens a generation ago have been let go or abandoned in a fairly short period of time.

The challenge is not to hide behind legal protections but to be a reminder to all people of the goodness, beauty and truth of faith and to offer an alternative in a culture that could risk forgetting life, light and justice for all if it walks too far from its moral foundations and heritage.

Flourishing faith communities make our country stronger.

I don't want to see an Australia where Christian communities feel marginalised. Christian values and ethos have been fundamental to Australia and an Australia where Christianity no longer has an important role to play is an Australia whose future is bleak.

I want to see religion not only existing in the hearts and minds of individuals, but continuing to fulfil an important social and cultural function.

One important way to rebuild the place of the church in our culture is through the education of the next generation.

Special Religious Education classes in NSW provide religious instruction in public schools for children whose parents wish them to attend classes in their own faith tradition. In these classes they learn the important universal values our faiths teach us. In many schools if the children do not attend these classes they don't do anything during this period. In other schools, secularist ethics classes have commenced as an alternative to special religious education. This is a real lost opportunity for faith communities and for the children.

Instead, religious communities should come together and create a study of religions course for students not attending special religious education. We are living in a time where more Australian families have no faith tradition and yet the most recent Pew Centre study into religious affiliation tells us that the world is becoming more religious. If children are not exposed to religious traditions and have an understanding of them then their ability to understand and navigate our world will be limited.

At the same time if they do not understand some of the Judeo-Christian roots of our own civilisation then the country will ultimately change in ways we would not want. Ethics is not a replacement for religion. A study of religions course could improve the religious literacy of the country and create greater understanding which is vital to a truly pluralist Australia.

This is just one idea of a small work that could proactively build religion back into our culture at a time when it is being forgotten. Faith groups will no doubt have many other ideas. Faith communities should work together to create initiatives that seek to re-sanctify the culture and to demonstrate what the church's deepest commitments are, by painting a richer vision of faith than what is seen through the secular telling of religion's story.

I am reminded of the many people in my electorate doing this in small ways already.

- Christians who have walked away from the income that comes with a senior role in a top bank, in order to work in the charitable sector.
- The Thornleigh Community Baptist Church and their legal advice service for families who need legal support.
- The Hornsby Cathedral Parish's weekly dinner for the homeless.
- The Palliative care service being run just outside my electorate at the SAN hospital which provides 24 hour palliative care and enables people to spend more time at the end of their life at home with their loved ones.
- A Christian school established specifically with the aim of integrating children with disabilities.

One of the important things faith communities can do is to try to set positive agendas rather than seeking protection and suing for peace. Tonight I would like to encourage faith leaders, both religious and lay, to continue rising to this task, regardless of what legal changes are or are not made.

Over generations and centuries your faith has endured, not because of the judgement of courts but because of the good, life-giving work you have done which inspires and builds our community in countless ways.

That will ultimately offer more protection for faith in this country than any law ever could.