

Religious freedom in a 21st century pluralist society

I am very pleased to have the opportunity to be here today, and conscious that I'm in the presence of many people with a wealth of knowledge and experience in interfaith dialogue that goes well beyond mine.

As much as anything else, I'm here to learn.

My role at the Australian Human Rights Commission is fairly new, and I'm fairly new to it. I advise the Human Rights Commissioner, Edward Santow, on freedom of religion, which is one of the raft of rights the Commission is charged with monitoring in Australia.

I hope to speak with as many of you as possible about how you think this right is respected, or otherwise, in Australia today.

I also have a connection with Bendigo that encompasses both family and religion—my grandfather, The Reverend William Nellor, grew up here and had his first posting as a curate at what is now St Paul's Cathedral. If there are any older Anglican priests among us, you might remember Bill Nellor.

Having said that, I'm a Roman Catholic Christian with a deep interest in a wide variety of religious traditions, and an equally deep interest in how religion fits into contemporary, diverse, pluralistic, and secular societies like Australia.

I'm also interested in the role human rights might play in answering that question, and particularly the right to freedom of religion.

The first, and to me very obvious, point to make is that if you're going to have a multicultural society then you're going to want to value freedom of religion very highly—because a multicultural society is also a multi-*faith* society.

In Australia, of course, we still have more than 60 per cent of people identifying with a religious tradition—whether that be one of the Christian traditions, at 52 per cent; Islam at 2.6 per cent; Buddhism at 2.4; Hinduism at 1.9; Sikhism at 0.5; or Judaism at 0.4.

The interesting trend, I think, is not just the rise of those ticking the 'no religion' box in the census, but the increasing diversity of faith traditions represented.

There are, broadly speaking, two possible responses to this diversity.

The first is the 'levelling' response: we can try to cope with cultural and religious diversity by rubbing it out as far as possible from the public sphere.

We saw an example of this recently in the Canadian province of Quebec, where it was announced that face coverings would be banned for anyone receiving or providing a state service.

The justification given for this policy was 'state neutrality'.

But is this likely to be the *effect* of the policy? Canada's Human Rights Commissioner, Marie-Claude Landry, thinks not. She pointed out that 'a handful of women have been told to choose between their religious

beliefs and their healthcare; between their religious beliefs and their public transportation; between their religious beliefs and their education. These are choices that no democratic state should impose on its citizens.'

A similar question arose recently in Victoria, when a Christian school said that a five-year-old Sikh boy, Sidhak, was not allowed to enrol unless he removed his patka.

The justification, again, was the need to create a 'level playing field'.

I should stress that I don't personally think there was anything necessarily mean-spirited or even intolerant about the school's decision—you might disagree with me about that—but I do think it betrayed a fundamental misunderstanding of what a 'level playing field' means.

As many of you will know, the Victorian Civil and Administrative Tribunal recently determined that the school's policy was discriminatory.

What VCAT did *not* say was that no religious community can set up a school that caters solely to members of its own community. (That's a whole other debate.)

But they did say that it is 'not reasonable to accept enrolment applications from students from non-Christian faiths only on condition that they do not look like they practise a non-Christian religion.'

And there VCAT has highlighted, I think, the problem with certain ways of understanding words like 'neutrality' or a 'level playing field'.

It's a confusion of the idea of 'equality'—which is a good thing—with the idea of 'homogeneity'—which is an entirely different thing.

In a diverse, multicultural society, is the only way to maintain cohesion to make everyone look the same in public spaces?

The alternative to the 'levelling' option is what we might call the 'embracing' option, according to which we welcome diversity, we celebrate it, and we encourage communities and traditions to share their cultural and religious heritage with the communities around them.

If we take this option then I think we're going to want two things. The first is a robust habit of interfaith dialogue, which is why the Faith Communities Council of Victoria, and the Bendigo Interfaith Council, and all the other interfaith networks represented here today, and events such as these, are so important.

And the second is a robust understanding of the importance of freedom of religion.

So how is freedom of religion respected in Australia today?

Well, in 2014 the Australian Human Rights Commission surveyed the community on this question and found that generally speaking, freedom of religion is perceived as being reasonably well protected.

But certain threats remain:

There is, for example, a constant presence of anti-semitism in Australia. It rises and falls, but it's always there. In the most recent statistics, the Executive Council of Australian Jewry recorded in one year 210 anti-Semitic incidents, including physical attacks, verbal abuse, harassment, vandalism and property damage. Worryingly, the number of physical attacks in this period was up by 50 per cent from the previous year.

Australia's Muslim communities also report rising levels of negative attention. In September 2014 an Islamophobia Register was launched, where Muslims could report incidents of abuse and discrimination. 243 verified incidents were logged in the first 14 months of operation.

Calls to 'Ban the Burqa'; opposition to planning applications for mosques; verbal abuse of visibly Muslim people, particularly women, in public places; and anti-Muslim sentiments expressed at the highest levels of public life, including in the federal parliament, affect all Muslims—and they add up to a genuine threat to religious freedom in Australia.

Another area of concern for some religious people is that changing social attitudes on sexuality and gender may have an adverse effect on the rights of religious communities to maintain their traditional stances on these matters. The debate about extending civil marriage to all couples, regardless of sex, sexual orientation, gender identity or intersex status is the current focal point of these concerns.

The Australian Human Rights Commission has a very clear position that marriage *should* be extended to all. But the Commission has also been very clear that there is an important distinction between religious and civil marriage, and that no religious minister—no priest, imam, rabbi or

other religious leader—should be required to solemnise a same-sex marriage if it contravenes their faith.

And in fact every piece of proposed legislation for marriage equality in this country has insisted on just that.

The Commission has pointed out a number of times to government that freedom of religion or belief has only limited protection in Australian federal law. Our current federal law, for example, prohibits discrimination on the basis of a person's race or gender but not their religion.

That means that if, for example, a landlord refuses to rent a property to a Muslim Indian woman because she's Indian, this is likely to count as unlawful discrimination; if she's refused because she's a woman, this is also likely to be unlawful; but if she's refused because she's a Muslim—or a Christian or Hindu or Sikh—it is not.

Now, some state and territory laws do protect against religious discrimination, but we should at least acknowledge the incongruity in our federal law, and ask whether religious discrimination should be unlawful.

There may be room for further positive protections for freedom of religion in Australian Commonwealth law. But the Australian Human Rights Commission—and particularly the Commissioner, Edward Santow—does not want to prescribe a particular approach to religious communities. At the moment what we're doing is listening: we're aiming at holding a roundtable of religious leaders next year, and we're currently consulting with a number of different religious representatives.

I've been opposing that view of multiculturalism that says we need to create a 'level playing field' by scrubbing religious diversity and difference out from the public sphere. But we do need something to bring us all together—some guiding concept around which we can all gather. I believe that the idea of human rights—and its close association with the idea of human dignity—can play that role.

When the United Nations Declaration on Human Rights was put together in 1948 there was strong support from religious communities, in part because the Declaration affirmed something that they had been insisting on for thousands of years: that, in the words of the preamble, 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace.'

That's the kind of multicultural Australia I think we should be aiming for, and I think that an emphasis on human rights, freedom of religion, and committed interfaith dialogue will be essential to achieving it.

So thank you very much for having me here today, and I look forward to continuing the conversation.

12th November 2017

Daniel Nellor

[Keynote speech at the 2017 Victorian Interfaith Networks Conference
@ Ulumbarra Theatre in Bendigo]