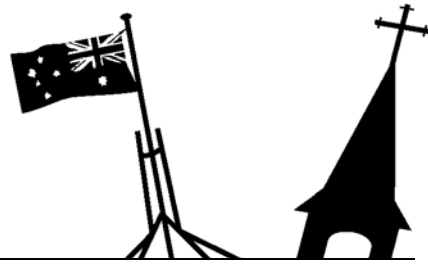


AUSTRALIAN DEMOCRATS

Discussion Paper



SEPARATION OF CHURCH AND STATE: Politics, Religion, Policy and Law in Australia

"Because religious belief, or non-belief, is such an important part of every person's life, freedom of religion affects every individual. State churches that use government power to support themselves and force their views on persons of other faiths undermine all our civil rights. Moreover, state support of the church tends to make the clergy unresponsive to the people and leads to corruption within religion. Erecting the 'wall of separation between church and state,' therefore, is absolutely essential in a free society."

Thomas Jefferson, Letter to the Virginia Baptists (1808)

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Separation of Church and State: Politics, Religion, Policy and Law in Australia

Introduction

The uneasy relationship between religious and political institutions has existed throughout Australia's history. However, there has been little debate on the intersection of religion and politics or the need for separation of church and state in recent years. Now, all that is changing.

At the top end of politics, political leaders and would be leaders on both sides of politics are now speaking publicly about their religious faith, making much of Christian values and, by implication, excluding those who practice Buddhism, Islam, Hinduism, not to mention atheists, humanists and agnostics.

The Federal Parliamentary Christian Fellowship organises regular prayer breakfasts which are addressed by invited ministers, and last year a Christian chaplain was appointed to the parliament. Peter Costello, amongst others, made a pre-election visit to the largest Pentecostal church in the country and said recovery of faith would go a long way to solving many of society's problems. The Federal Health Minister, Tony Abbott, is on the record as saying "This is a cabinet which is conscious of our Christian heritage, many of whose members are fairly enthusiastic practising members of one or other faith."

Not to be left out, the Labor Party established its own "Faith, politics and values" working group and Kevin Rudd has entered the fray calling on Christians to consider their political affiliations and remember the social justice traditions of the more traditional churches, suggesting that Jesus would vote Labor.

The Treasurer claims Australia is a secular country and encouraged Muslim states to follow the lead of Turkey in this respect. Backbenchers described the hijab as provocative and called for it to be banned.

While this debate is new and particularly divisive, notions of separation of church and state were largely ignored in the last decade during which religious schools, including Muslim schools, grew fast on big increases in Federal funding. Churches are delivering more government services than ever before and some are taking great advantage of their tax free status to compete in the private sector. There is no prohibition on the profits from fully commercial church owned operations being used to fund proselytising and forays into politics. With so little accountability and transparency in the sector it's hard to know what the money is being used for. This is making many Australians uncomfortable.

The Australian Democrats hold the view that it is the duty of governments to protect the fundamental human rights and choice of all Australians and that government should be neutral on the question of religion, neither promoting nor advantaging one religion over another or over those who ascribe to no religion at all.

Our core values are democracy, freedom, equality and tolerance. We support freedom of religion and the right of citizens to practice, or not practice a religious faith. Our ideal is a tolerant, moderate, pluralistic society, in which believers and non-believers live in harmony.

While we support freedom of religious observance we do not consider that religion should unduly influence the governance of Australian citizens and we abhor the exploitation of religion and religious difference for political purposes.

We are not saying that people of faith should not participate in politics. In a democratic society the parliament should be representative of the people and the proportion of say church-going MPs, broadly the same as that in the general public. The same should be expected in Indigenous, women, ethnic and age grouping representation.

People bring their personal values into politics and those values may indeed have roots in religious faith but, as the current talk about testing newcomers for Australian values demonstrates, there is by no means consensus as to what that means. The Prime Minister's insistence on mateship as a defining value for instance, does not resonate with many women.

Government policy should also serve the interests of its citizens and not impose decisions that serve the ideological beliefs of a minority on others.

We are not saying that churches have no role in the political process. Institutions rightly represent and advocate on behalf of people, usually those at the margins of society, and it is proper for the churches to be part of the public debate on pressing issues, indeed expressing their approval or otherwise of government policy and decisions. However, some within the churches are now saying their freedom to do this has been compromised by their engagement in government service delivery and others say there is too much presumption that churches speak for all within their respective faiths.

The Prime Minister asserts that what defines Australia as a secular state is the fact that there is no religious head of state and no religious institution running government, pointing to Iran by way of contrast.

The Democrats say secularism means much more than that. In a secular society, democracy and respect for human rights is encouraged and safeguarded. Secularism is not anti-religion and nor does it promote atheism. Secularism asserts both the freedom **of** religion, and freedom **from** religion, within a state that is neutral on matters of belief. Secularism ought to be the glue that maintains stability within diversity .

If it is agreed that governments and parliaments have a duty to protect fundamental human rights and choices, and to show religious neutrality then what principles and legislative or constitutional obligations will be necessary to achieve this?

Other questions are:

- Is there a need to spell out the relationship that ought to exist between religious organisations and the institutions of government?
- What would formal separation of church and state mean for health, education and social service delivery and should publicly funded services delivered by churches mirror public provision in being universal and non-religious?
- What, if any, limits could or should be placed on the involvement in politics of the churches?

While Australia is regarded as one of the world's most secular nations, there is in fact no clearly articulated separation of church and state in our Constitution, unlike for instance that of the US and France.

The challenges in moving to a true separation of Church and State, while upholding democratic principles, respecting the views of all citizens and treating them equally and equitably, are substantial.

This paper is a resource for the debate the Australian Democrats wish to foster on the role of religion in politics and the separation of church and state. We have not covered every complex issue, nor is this an in-depth academic treatise on the subject. Rather it is intended as a tool to facilitate discussion and to guide the Democrats on policy.

We think this is an important debate and will press for the establishment of an independently elected constitutional commission to carry it forward, facilitating a reasoned dialogue at every level.

In the meantime we welcome the contributions of and dialogue with individuals and groups interested in the issue

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Separation of Church and State: Politics, Religion, Policy and Law in Australia

Right to Freedom of Thought, Conscience and Religion

The right to freedom of religion and belief has been proclaimed in the *Universal Declaration on Human Rights* ("UDHR") which is the cornerstone of modern international human rights law.

Article 18 of the Universal Declaration of Human Rights states: "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."

Freedom of religion has also been proclaimed in the *International Covenant on Civil and Political Rights* ("ICCPR"), the *Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief*, the *Declaration of the Rights of Children* and *International Labour Organisation Convention 111* ("ILO Convention 111").

The *Convention Relating to the Status of Refugees* requires that signatories provide refuge to persons fleeing persecution in their country of nationality for reasons of "race, religion, nationality, membership of a particular social group or political opinion".

Freedom of religion is also recognised in the Australian Constitution. Section 116 states "The Commonwealth shall not make any law ...for prohibiting the free exercise of any religion"

Freedom of religion should also be looked at in the context of other human rights. The universal declaration of human rights states that "all human beings are born free and equal in dignity and rights", that "all are equal before the law and are entitled without any discrimination to equal protection of the law", and that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

While religious organisations have been supporters of human rights, in some cases these rights are in conflict with religious doctrine or particular organisations. For example, the well documented conflict between normative religion and women's rights.

As citizens we should be entitled to expect that religious freedom will be respected along with the freedom to not have a religion, and that we will, in return, respect the dignity and rights of others and expect that we will all be equal before the law.

Religion in Australia

Because of Australia's Anglo settlement history, we are seen predominately as a Christian society and this is reflected in many of Australia's symbols and structures such as the crosses of three Christian saints on the union jack in the corner of our

flag; Christian religious references in statutory oaths and pledges; the daily reciting of the Christian 'Lords Prayer' before parliament sits, which declares ...*thy Kingdom come, thy will be done on Earth as it is in Heaven.*

The role of Christianity in Australia is still pre-eminent although our multicultural society now supports an increasingly wide range of religions and spiritualism including a variety of forms of Christianity, Judaism, Buddhism, Hinduism, Islam, Indigenous Dreamtime and Paganism, to name a few. There are also humanists, rationalists, agnostics and many others who profess no religion at all.

Census figures show that the number of Australians who nominate a religious affiliation is declining. According to the ABS, in 1901, 0.4% of the Australian community said they had no religious affiliation, but by 2001 that had risen to 16%. The proportion of people who did not even respond to the question rose from 2% to 12% during that same period. That means that in 2001, over one-quarter of all Australians did not affiliate with any religion. Rationalist societies argue that the manner in which the ABS survey question on religion is framed encourages people to nominate a religion even though they may not currently affiliate with it.

Actual involvement in church or religious activities is even lower. In a three month period, only 23% of Australian adults participated in any religious activity – and this includes going to a wedding, or funeral, visiting a burial site and prayer. Only 9% of the population attends church weekly and on an average day only 4% of Australian men and 6% of Australian women spend any time on a religious activity.

This trend away from religion appears to be continuing. The recently released *Spirit of Generation Y* study found 52% of Generation Y (young people born between 1976 and 1990) stated that they did not consider themselves to belong to, or be members of, any religion or denomination. 20% of these young people did not believe in a god, and only 19% of Gen Y was actively involved in a church to the extent of attending religious services once a month or more.

This decline in identification with and participation in organised religion has long been recognised both within traditional churches and the community more broadly. What has perhaps been less well known has been the contrasting growth of the Evangelical and Pentecostal Churches. There has been an apparent increase in attendance at Evangelical, Pentecostal and independent charismatic churches – albeit from a very low base and their overall numbers are still low (around 200 000). This increase mirrors the international situation where it has been estimated that by 2050 1 billion of the estimated 3 billion Christians in the world will be Pentecostal.

Religion at the domestic level should also be considered within the international context which, since 2001, has been overwhelmingly focused on religiously inspired terrorism. This has resulted in increased attention on the Australian Muslim community. The Australian Muslim population has been growing at a rate faster than the Australian population as a whole, However they continue to make up a very small percentage of the population. According to the 2001 census Australian Muslims numbered 281 578, with more than 1/3 born in Australia.

The attacks in New York by a cultic non-Christian religious group, often described as fundamentalist Muslim, have reverberated around the world and arguably have caused some Australians to clutch more tightly to what they perceive to be their predominantly Judaeo-Christian underpinnings. The uncertainty and fear that has resulted from these attacks and subsequent events has tempted politicians to play to religious loyalties. Inflammatory remarks by federal ministers have arguably served

to stir up fear and xenophobia, encouraging division and intensifying the fragmentation of civil society.

Historically religion has helped in emphasising human rights and drawing attention to social justice matters. However religion can also legitimise or create conflict and division within societies. While it is unsurprising and appropriate that different groups, including those with differing religious traditions, will have differing sets of beliefs and values, the broader society is ill-served when religious allegiance is manipulated and used as a political tool. This augments existing social, economic and political divisions within a society.

Political Activity by Religious Organisations

Participation in political activity by religious organisations can take many forms, from expressing positions on issues, through to the formation of religious lobby groups or overtly religious political parties. There are a range of theological and practical considerations on whether some forms of participation are detrimental to the integrity of churches, as well as problematic for democratic political processes.

Clearly religious organisations, like other groups within the community, are entitled to express their views on day-to-day social and political questions, including specific policy positions of parties. This can present problems however when the views expressed by the church hierarchy ignore the reality that a diversity of views exists within all religions, as evidenced by the debates within many churches on homosexuality, women priests, the use of contraception and abortion.

Similarly, religious lobby groups can be unrepresentative of the broad range of views and have limited accountability to the broader religious community. Specific endorsement of a narrow position can alienate some members of the church community, as well as those of the broader community who may otherwise have sympathy for a more nuanced argument.

Likewise the explicit endorsement of political candidates or political parties is problematic as there is no guarantee that the totality of policies of the individual or party, and their actions, will always be consistent with the churches views and aims.

Concerns have also been raised that the co-opting of religious organisations by government to deliver services can stifle the churches dissent against government policy.

Politics is often a matter of compromise between competing interests which can be difficult for churches when pursuing their moral positions. The cyclical nature of politics also means that too close an alignment with one side of politics means that churches may find themselves on the losing 'side'.

Religious groups are no less prone to act out of self-interest than other groups. The churches opposition to the Labor Party's schools policy, which would have seen a small number of wealthy religious schools lose some funding, could be seen in this light. Religious organisations can act as a counterweight to the extremes of the state, particularly in contexts of growing nationalism but involvement in the cut and thrust of the political game weakens the ability of the church to serve as an exemplary community and can contribute to the further erosion of trust in religious organisations.

Historically the traditional churches in Australia have had strong social justice traditions which have made them more sympathetic to leftist political parties. Traditional churches play a valuable role in Australian society; they have traditionally provided services to the needy and lobby for social justice and equity; although this is not just the domain of religious organisations.

The Evangelical and Pentecostal Churches have attracted attention not only because some of them have very large, highly organised congregations, but also because they have funds and have begun to organise politically and in turn, be courted by socially conservative Christian politicians. Visits by state and federal parliamentarians to the congregations of some of the more well-known churches in this category have even warranted media coverage.

We have seen for the first time the establishment of what many perceive as a Christian political party in Family First, many of its candidates came from various Christian groups, predominantly Pentecostal ones. Anglican Bishop and author Tom Frame in his book *Church and State Australia's Imaginary Wall*, expressed concern about the rise of "Christian" political parties, such as Family First, because they cannot reasonably claim to represent all Christians.

Frame also goes on to say that "Christian" political parties also weaken the church's capacity to act as a distinct and exemplary community, and turn the church into a political ghetto ignored by parties unable to secure the so called "Christian" vote.

Despite the attention given to the expanding evangelical churches and the small number of Australian Muslims, most of the multitude of relations between religious organisations and the state involve the traditional Christian churches.

A preponderance of attention on these newer churches risks overlooking the currently greater influence that the older churches wield. It is only in retrospect that we will see if the apparent increase in the appeal of some churches is sustained or just an anomaly in the long-term demise of organised religion in Australian society.

Similarly it is only with time that we will see if the call to revitalise Christianity will help or hinder a cohesive, pluralist society. In the meantime increasing attention is being focused on the interface between religion, societal wellbeing and politics, with increasing concern about the encroachment of US style faith-based politics into the Australian political arena.

There is evidence that Australians are increasingly uncomfortable with the existing connections between political and religious institutions. The International Social Science Survey (1998) - Australia component found that 62% of Australians felt that the clergy should refrain from influencing government policy; 43% felt that religion should have less influence than it currently does; 31% of the community thought that churches and religious organisations had too much power already; and 77% of people thought that people with strong religious beliefs are often too intolerant of others.

The Reverend Elenie Polous from the Uniting Church, in a speech she gave at the Don Chipp Foundation seminar on *Religion Politics and other Impolite Topics* argued that the church should remain separate from political power:

Christianity should never be, or even try to be, the religion of the state. Christians are called to live on the radical edges, at the margins, with the marginalised. The closer to the centre we move, the more we risk the heart of our faith. Christianity is not meant to be a religion of power and force. It is the

religion of the poor which seeks justice for everyone. It is the faith of the humble who worship God with goodness in their hearts. Jesus rode into Jerusalem on Palm Sunday about two thousand years ago on a donkey, alone, not on a white charger with an army behind him. History has shown us that whenever Christianity has moved in to the centre of political power it has corrupted itself to become a force for hatred and violence in the world.

Religious organisations and government have different roles in a pluralistic society. While there will always be some form of interaction between the two spheres, there are risks to both the religious organisations and the democratic underpinnings of Australian society if adequate consideration is not given to the appropriate boundaries on the actions and interactions between the two.

Religious Organisations and Privileged Treatment

The not-for-profit (NFP) sector, which includes religious organisations and charities that are endorsed by the Australian Tax Office (ATO), have long received government funds and concessions. Many argue that religious organisations are privileged in Australia because of their favourable treatment under the tax system and non-requirement in many cases to provide annual reports or account for income.

Charities may be eligible for tax concessions such as exemption from income tax, deductible gift recipient status, rebates to reduce fringe benefits tax (FBT) payable, goods and services tax (GST) concessions and refunds of imputation credits. Several privileges and concessions are also available to charities at the state level, including, breaks for stamp duties, payroll tax, land tax or debit tax. These vary from state to state.

A religious organisation can also be registered as a so-called 'deductible gift recipient' (DGR). The legal meaning of the terms charity and DGR are not identical. The group of entities that can be endorsed as DGR is much broader and can potentially encompass many entities that would not qualify as charities. A DGR can receive income tax deductible gifts. To qualify as DGR an entity needs to be endorsed by the ATO and endorsement is regulated by category. Examples of categories include public benevolent institutions, public universities, public hospitals, school building funds, public libraries, registered cultural and environmental organisations and ancillary funds. DGR's are also entitled to certain tax concessions on income tax, fringe benefit taxes and goods and services tax, but the concessions available are not as far-reaching as those available to charities. Again, some concessions may also be available at state level, including breaks for stamp duties, payroll tax, land tax or debit tax and at local government, rate relief.

It is interesting to note that the Church of the Latter-Day Saints are cited in the latest BRW critique of religious tax exemptions of having approached the ATO to voluntarily offer to pay tax.

In addition to religious instruction and charitable services many religious organisations have businesses, for example:

- Sanitarium - a commercial entity which is run by the Seventh-Day Adventists, an endorsed charity for tax purposes;
- Hillsong - which generate significant profits from the sale of pop music, books, television programs and ring tones for mobile phones;
- Cornerstone Christian Community - runs a pizza chain, and turf, carpet cleaning and contracting businesses;

- Catholic Church - runs an insurance company, a mortgage broking facility, a winery, car parks and super funds; and
- Church of Jesus Christ of Latter Day Saints - runs an agricultural business.

Religious organisations can use the tax concessions outlined above to subsidise their business enterprises - subsidies not available to 'normal' businesses competing in the same market.

Because of the tax advantages religious organisations providing educational, health and welfare services have a competitive advantage in contesting government contracts.

It is also arguable whether the provision of private education and health services by religious organisations can continue to be considered charitable when religious organisations routinely charge large fees for the provision of these services and those that provide them receive substantial salaries.

In addition Ministers of Religion are able to take all their income as a fringe benefit if they so decide, leaving them completely free of income tax

Some argue that taxpayers are subsidising religions they do not believe in and that this is no different from forcing them to put money in the collection plates of churches, synagogues, temples and mosques.

While some religious organisations provide annual reports and accounts on their Government funded services and some other activities, the reality is that religious organisations are subject to very little, if any, accountability and transparency. Therefore it is unclear how much of tax payers money and government funds are used to cross subsidise the advancement of religion, the lobby power and political influence of religious organisations.

At a time when the private sector has become increasingly accountable and the public sector has had to lift its game, the not-for-profit sector has largely been flying under the radar.

Indeed it was the introduction of the GST, and the arguing of the Australian Democrats, that saw the ATO for the first time take a formal and professional approach to the not-for-profit sector to smooth the GST implementation and reporting regime. But it is still not enough.

Despite its size and contribution to the economy, the ATO and Treasury have no idea what the charitable or not-for-profit sector is worth or how many organisations operate in it. Nor do they know how much tax is foregone each year.

In the Department of Treasury's annual Tax Expenditures Statement, the cost of exemptions for religious, scientific, charitable or public educational institutions is left blank. The same is true of the amount of tax expenditure on the deductibility of charitable entertainment.

There is currently no real scrutiny or follow up mechanism in place which controls the activities of charities once they are registered as such with the ATO. Without this scrutiny, they can easily develop commercial enterprises without losing their status and the associated benefits. The Tax Expenditure Statement 2005 again does not indicate how much these exemptions are worth.

One problem lies with the definition of charity, which at the moment enables charities to undertake business activities and still receive tax concessions.

One of the objectives of the Government is to provide competitive neutrality.¹ Yet in numerous submissions made to the Charities definitions Inquiry 2001 and the Industry Commission Inquiry 1995, it was pointed out that the provision of tax concessions to charities - especially where they conduct a business competing in the same market - contribute to a distortion of competition in that marketplace. The Government has done nothing about this.

This is concerning at a time when the range and scope of the goods and services now provided by not-for-profits is increasing and because many government services are being outsourced and run by the not-for-profit sector.

At a minimum the Government should revisit the activity-based definition of charities and various tax concessions so that the competitive neutrality can be restored and transparency and accountability established.

Another problem is that the legal organisation structures adopted by not-for profits vary considerably, which means there are different levels of reporting, regulation and compliance required of different entities. For example, not-for-profits, including religious organisations, are not legally required to report to donors, service recipients or an independent auditing body. While some do, very few not-for-profits are **required** to submit an annual or financial report, and they are not required to account for where donated monies are spent.

As David Marr observed:

.....Hillsong church has as much right to be mixed up in politics as Frank Lowy and Westfield. And journalists like me have as much right to analyse - perhaps even denounce - what Hillsong is up to as we have to analyse the impact the big end of town property developers are having on Labor politics. One difference here, of course, is that Lowy has to pay tax, pay dividends and publish his accounts. Brian's faith-based enterprises don't pay tax, don't have shareholders and never need to tell the world what happens to their mountains of cash. The greatest privilege Australia extends to its churches is the right to keep all their money to themselves and to keep it hidden.²

In Canada, the Canadian ATO equivalent set an upper limit on expenditure that designated charities can spend on advocacy.

The Democrats argue that the current regulatory system is inappropriate for such a large and diverse sector. It is time Australia introduced something similar to the Charities Commission in the UK or the newly established Charities Commission in New Zealand to properly regulate the sector; or, introduced a rationalised national regulatory regime.

Influential segments of the NFP sector are unlikely to want greater regulation, and may have lobbied heavily against it. Given the number of inquiries and policy papers written on this area over the last ten years, the lack of political action could be explained by a connection between influential members of the sector and politics,

¹ www.finance.gov.au

² Marr, D, *Are Moral Values the New Politics?*, paper presented at NSW Fabian Society, 22 June 2005, p4.

and help explain why the government, although aware of the need for better governance, is loathe to address reform, other than in a piecemeal way. There is no way of really knowing.

In their submission to the Charities Inquiry, the Australian Catholic Bishops Conference said the following:

The Church favours neither legislation to establish a broader definition of 'charitable organisation', nor the establishment of a Charities Commission akin to the Charity Commission operating in the United Kingdom.³

Surely greater transparency and accountability is in the best interest of all Australians.

Religious Organisations Providing Public Services

Religious organisations have always played a role in social welfare provision in Australia, through providing assistance to the poor and needy where governments have failed. But it has been argued that this role has changed in recent years with their increased involvement in direct service provision that was formerly the province of government.

The relations between church and state in respect to education started in the early 1800s with the colonies funding the Anglican clergy to establish schools.⁴ Public schools were established in the 1870s with the states passing legislation that established the principle of education being "universal, secular and fair".⁵ The principle of fairness is challenged somewhat with religious and independent schools receiving 70.1% of the federal general recurrent grants for only 27% of the students, with the federal government now arguing that it has greater responsibility for private schools.⁶ Recent changes in federal government schools funding formulations have also contributed to a rapid rise in the growth of smaller Christian and Islamic schools operating in the outer-suburban areas of capital cities⁷.

In recent years there has also been an increased push for more religious presence in government schools. The number of school chaplains operating in government schools is on the increase and provision in primary schools is growing rapidly. In June this year four government MPs proposed funding for full-time chaplains in government schools to lift religious standards and values and mentor and counsel students. In the recent Queensland election campaign, Peter Beattie pledged \$3 million for state schools to hire chaplains, arguing that chaplains were useful in "helping to address students' spiritual and emotional needs". Chaplains are currently Christian based and there are few requirements for them to have any formal qualifications for working with young people.

³ <http://www.cdi.gov.au/submissions/279-CatholicChurchinAustralia.doc>

⁴ Perkins John 2006, *Creating a better Australia*, Secular Party of Australia [online], <http://www.secular.org.au/CreatingSecularism.html>.

⁵ Perkins John 2006, *Creating a better Australia*, Secular Party of Australia [online], <http://www.secular.org.au/CreatingSecularism.html>.

⁶ Department of Education, Science and Training, *States Grants (Primary and Secondary Education Assistance) Act 2000*. Report on Financial Assistance Granted to Each State in Respect of 2004.

⁷ Samantha Maiden, *Courting true believers*, *The Australian*. 10/09/2004.

Religious education classes are currently taught in all government schools by visiting religious practitioners. They are generally opt-out classes which results in the vast majority of students participating during schools hours. There has been a reported push for increased religious instruction, as opposed to education, in schools.

The federal government subsidises the private hospital sector through the 30 per cent private health insurance rebate. Religious or charitable organisations run 80 private hospitals out of a total of 760 acute and psychiatric hospitals in Australia.

Church based agencies provide 30.4% of residential aged care places across Australia, receiving around \$1.56 billion a year in Commonwealth funds for those places. Church based agencies typically run palliative care and have a clearly stated opposition to voluntary euthanasia.

A number of church based organisations, for example, the Brotherhood of St Lawrence and the Salvation Army, provide employment placement services under contract with the Commonwealth Job Network system.

The details of amounts paid to these organisations, individually or collectively, are not known, the individual contracts mostly being 'commercial-in-confidence'.

In May 2006, the Treasurer, Mr Costello, was calling on the churches to become more involved in providing child care. In NSW and Victoria churches have provided preschool.

Professor Marci Hamilton, in her paper *Free? Exercise*, argued that "The United States is in the midst of the greatest wealth transfer from government to religious entities in its history." The same could be said for Australia.

Delivery of social services can be effective and respectful of religious liberty; however religious provision can mean clients are denied services available elsewhere.

For example, public and private hospitals run by the Catholic Church (which receive public funding), will not conduct vasectomies, tubal ligation or abortions, though they are legal and routine in other public hospitals. People in many parts of Australia are discriminated against by having no alternative hospital provider.

Misleading advertising by pregnancy counselling services run by religious-based organisations, often claim to provide information on all three pregnancy options but in fact provide false and misleading advice about abortion, or refuse to provide women with information about clinics and hospitals that provide terminations with the aim of dissuading them from this course of action. Again, public money is being used to provide services that suit only those who share the religious convictions of the provider.

Because no charge is made for these pregnancy counselling services, they are not considered to be engaged in trade or commerce and not subject to the Trade Practices Act, which bans misleading and deceptive advertising.

Not only does the government ignore this issue, but it has explicitly encouraged religious organisation's to tender for the new \$51 million dollars pregnancy counselling initiatives and denied clinics and hospitals that provide terminations any involvement in the program, justifying this on the spurious assumption that those services would be biased towards abortion!

The question of whether religious groups should be providing public services that governments could arguably be providing is complex, and some would argue it would be almost impossible to reverse many of the moves from government to not-for-profit and private sector organisations.

At a minimum, if religious organisations receive government funding to provide a service there should be a requirement that services and information cannot be denied.

Democracy, Secularism, Morality and the Role of the Church

In a representative democracy in which the people rule themselves collectively through a majority voting system, absolute primacy must be accorded to the individual voter and their elected representative, in other words no other body/organisation should have a higher importance than the individual (through their representative) in determining policy and law.

While it is not essential for a democracy to be secular, historically the two notions have been closely aligned, due to increased religious plurality in democratic societies as a result of freedom of religion and a focus on tolerance and equality.

As nations become more pluralistic, the dominance of a singular religion within the government structures becomes increasingly untenable. Regardless of the level of their religious belief, it is unacceptable to many within the nation to have policy and laws based on religious beliefs.

Churches are not, by and large, democratic organisations, nor do the underpinnings of religion always sit comfortably with democratic traditions. Religion is a phenomenon which ties its members to a specific view of the world and their place within it. It demands observance to a set of clearly defined imperatives as a condition for their membership to the religion - at the core of which is the supremacy of the authority of the divinity; the supernatural. For many adherents to a religion, democracy is not sacrosanct as the divinity and its representatives are owed the ultimate allegiance.

At the same time as some criticise the rise of the religious right, there are others who claim that liberal secularism has gone too far and squeezed out the voice of religion, particularly the Christian church. They claim that liberal secularism can't protect society against moral and ethical decline and they blame it for most of what they see as the ills of modern society: sexual permissiveness, homosexuality, the decline in birth rates and increase in divorce, crime and so on.

Catholic Cardinal Pell is one such critic and told the American Acton Institute for the study of Religion and Liberty.

But think for a moment what it means to say that there can be no other form of democracy than secular democracy. Does democracy need a burgeoning billion-dollar pornography industry to be truly democratic? Does it need an abortion rate in the tens of millions? Does it need high levels of marriage breakdown, with the growing rates of family dysfunction that come with them?

'Does democracy (as in Holland's case) need legalised euthanasia, extending to children under the age of 12? Does democracy need assisted reproductive

technology (such as IVF) and embryonic stem cell research?

'Does democracy really need these things? What would democracy look like if you took some of these things out of the picture? Would it cease to be democracy? Or would it actually become more democratic?

Cardinal Pell argued that democracy is not a good in itself. Its value is instrumental and depends on the vision it serves. He further argued that certain elements could be removed from a society while still remaining democratic – a notion he and others have called democratic personalism.

The question arises, however, from these deliberations: what authority would be responsible for determining that which should be prohibited? Given that the development of laws by a democratically elected government is fundamental to democracy, it would seem incompatible to have an external authority superseding such decisions.

What Cardinal Pell and others are getting at, is that religion is both an indicator of morality and necessary to instil ethics into democracy and a country's citizens – a position some of our politicians seem to support.

Peter Costello has been quoted as saying, for example, "that a recovery of faith would go a long way" to solving many of our society's problems. The Prime Minister, too, has publicly argued for the societal benefits of religiosity, claiming that "the Christian religion is the greatest force for good in this nation".

However Associate Professor Philip Cam, from the University of New South Wales, said "that the whole idea that morality depends upon religion and if you don't have religion you can't have morality, is a complete nonsense. And the whole of the history of western thought speaks against it, beginning, I might say, with Socrates."

While many Australians may believe that high rates of religious belief mean lower rates of crime, violence, promiscuity and abortion, there is no evidence to support such a position.

A 2006 study which looked at social indicators such as murder rates, abortion, suicide and teenage pregnancy across countries found that "higher rates of belief in and worship of a creator correlate with higher rates of homicide, juvenile and early adult mortality, STD infection rates, teen pregnancy and abortion in the prosperous democracies."⁸

The US, which has a high degree of religious faith also had the highest rates of homicide, abortion, STD infection and teenage pregnancy. The least religious or most secular countries - Japan, France and Scandinavia - had the lowest rates of violent crime, juvenile mortality and abortion.

The other question of course is 'whose moralities?'

The Reverend Elenie Polous from the Uniting Church, in a speech she gave at the Don Chipp Foundation seminar on *Religion Politics and other Impolite Topics*, noted that morals or values differ between religions and within religions, she stated that:

⁸ G. Paul. Cross-national Correlations of Quantifiable Societal health with popular religiosity and Secularism in the prosperous Democracies. *Jnl of Religion & Society*. 2005

"the influence of the Christian religious right in Australian politics is not new but that in the hands of a socially conservative, absolutely committed neo-liberal economic rationalist, this influence has insidiously been allowed to work its way into the frontline of Australian politics. Conservative Christian evangelicalism has come full circle – from providing the conditions under which the individualism so necessary for the growth of market capitalism could flourish to becoming the servant of a rampant free market ideology that is actually contrary to traditional Christian values."

The Secular Party of Australia believes that separation of church and state is necessary because it will help to bring about a global ethic that is based on universal morals⁹.

It has been argued that secularism arose not to meet the needs of non-believers but as a response to conflicts between intensely held faiths. Religiously inspired civil wars are a too common feature of human history. In order to manage the conflicts that arose in multicultural and multi-religious societies and to avoid state-sanctioned religious persecution, it could be argued that an emphasis on freedom of worship has emerged as an integral part of maintaining social order.

Secularism allows differences to be acknowledged and accommodated. This is not the same as saying that secularism is blind to moral concerns. All societies make moral distinctions. All societies decide what is so wrong that it should be considered illegal and subject to punishment.

In theocratic societies in which religion dominates the governance structures, religion is seen as the source of moral values and therefore the basis of determining right and wrong. Without the moral absolutism of a singular dominant religious viewpoint, societies must generate resolutions between various viewpoints on moral issues. Identifying unacceptable behaviours is a core focus of such a dialogue, whether or not they are religious practices.

While secularism may support equality of treatment of religions, this is not the same as saying that all behaviours or practices are equal – simply that they cannot be judged solely on religious grounds. Attacking secularism as valueless is an attempt to distract from absolutist viewpoints.

Religion and Politics

The question of religion and politics is not the same as the question of church and state, although the two are linked.

People bring their personal values into politics and those personal values may indeed be religious ones. Citizens with particular religious beliefs, practices and values are members of the broader society and in a democratic society are entitled to participate in the political process. Similarly churches as representative bodies of a section of the community are entitled to voice their perspectives.

A secular electorate generally has no objection to private religious beliefs: people either rightly or wrongly regard religion as a positive influence on moral values. However, while people with religious beliefs are entitled to express those beliefs, they cannot expect them to have greater validity than other views simply because they are

⁹ Secular party aims, 01/05/06

founded in religious belief. Nor can they expect that a democratic, secular society will be comfortable if religious grounds are used as the basis for political decision making and religious entities are accorded a privileged position within the political realm. Religion is perhaps more visible now in Australian politics than it has been for thirty years.

Federal Health Minister Tony Abbott, is on the record as saying that one of the significant, largely unacknowledged, phenomena of recent Australian politics is "the Catholicisation of the Coalition". He is also on record as saying that there are four "pretty serious Catholics" sitting around the cabinet table: himself, the Defence Minister, Brendan Nelson, the Trade Minister, Mark Vaile, and the Workplace Relations Minister, Kevin Andrews. And that "this is a cabinet which is conscious of our Christian heritage, many of whose members are fairly enthusiastic practising members of one or other faith".

In 2005 the Parliamentary Prayer Network hosted a two-day conference in the Great Hall of Parliament House a conference on the theme of "Prayer, Nations and Government" and which included church services. Another takes place in October 2006. The guest speaker at the 2005 conference was Texan prophet Cindy Jacobs who believes that Christians must take over the world through its governments, exhorts Christians to train their children for martyrdom on the mission field in the final clash of civilizations and has prophesied that Australia will become a theocracy. This is not to suggest that her views are necessarily shared by the organisers but neither did they distance themselves from her remarks.

Religious convictions have influenced government policy, legislation and decisions making in various ways. We have seen a number of government appointments that have blurred the boundaries between church and state. The ill-fated appointment of Archbishop Peter Hollingsworth as Governor General and more recently, the appointment as chairman of the so-called Fair Pay Commission of a man who declared that God would guide him in making minimum pay conditions are examples.

The gay marriage ban legislation in 2005 was a response of direct lobbying from the conservative religious groups, and both major parties were prepared to turn their backs on a significant number of gay and lesbian voters even though the rest of the population is not affected in any real sense by gay marriage. In 2006, the ACT parliament passed legislation to allow civil unions, the wording of which was painstakingly worked through with the Federal Attorney General. Not satisfied, the government quashed the legislation.

Education Minister, Dr Brendan Nelson, endorsed the teaching of intelligent design in schools and more recently, the current Education Minister, Julie Bishop, supported the development of a religious narrative for history teaching. This year the Queensland government tried to change their Education Act to make religious education in schools 'opt in' rather than 'opt out' and to broaden the definition of what can be taught in religious education to include "religious and other beliefs". This was met by a scare campaign suggesting that cults would have access to children. The federal government said they would withdraw commonwealth funding if the changes went through and the Queensland government withdrew them.

The lengthy debate on overturning the ministerial veto on the abortion drug RU486 had very strong religious overtones.

The more religious those in the parliament are, the more likely the parliament is to have scant regard for the separation of church and state and the more likely to base

decisions on religious or theological grounds - grounds that will be incomprehensible to many who are non-religious or who hold a different faith.

Religiously motivated government policy-making, whether based on sincere religious ideology or as a concession to religious constituents, can ignore the great diversity of views that exist within all religions and the community as a whole. It also runs the risk of making superficial responses to complex social phenomena.

Similarly religious justification alone is not sufficient to argue for or against policy or law. A position should be argued on grounds that are acceptable to all Australians whether they have religious beliefs or not. In a democratic society, parliamentarians are accountable to the broader community, not just those who share their particular religious views.

Is there Formal Separation of Church and State in Australia?

In 1789, the Bill of Rights was adopted and a form of separation of church and state was instituted in the U.S. The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” This has been referred to by some as the *separation doctrine*. This states that the government is prohibited from establishing or sponsoring a religion as well as from restricting religious liberty. Under this doctrine religious beliefs and practices are not to be prohibited. Citizens are free to worship and believe as they choose. Based on liberal philosophy, the separation doctrine argues the state is to remain neutral among religions, as well as between the religious and the non-religious. On this account, religion is thought of as something which concerns citizens’ *private* lives; but it should be left out of the *public* realm. It is not so clear cut in Australia.

On 28 February 2006, the Prime Minister in response to a question referring to a motion Democrats Leader Senator Allison moved calling on the Government to consider ways of achieving a true separation of church and state, said:

What the separation of church and state means in this country is that there is no established church...we don't have the Anglican Church as the official state religion, that's what it means.¹⁰

The Prime Minister’s response, suggests that he is unwilling to entertain the idea of separation of church and state beyond the notion of the absence of an established church as an official religion, as in Iran. It is interesting to note his reference to 'this country', which indicates he might accept that it has a different meaning elsewhere. Although many Australians have a vague belief that the Constitution provides for separation of church and state, this is not the case.

The 1897 Federation speech of Australia's first Prime Minister, Edmund Barton, suggests an intention on his part that there would be a distinct separation of church and state.

The whole mode of government, the whole province of the state is secular. The whole business that is transacted by any community, however deeply Christian, unless it has an established church, unless religion is interwoven expressly and professedly in all its actions – is secular business as distinguished from religious business.

¹⁰ Associated press, 2 March 2006.

He went on to say

In these colonies where state aid to religion has long been abolished, the line of demarcation is most definitely observed.

And although Section 116 of the Constitution of Australia is consistent with the principal of the separation of church and state, compromises at the time resulted in it simply stating that the Commonwealth cannot

- create an official religion,
- impose any requirement to engage in religious observation,
- prohibit the free exercise of any religion or
- impose religious qualifications for public office.

The boundaries of Section 116 were tested in 1981 in a case brought before the High Court by opponents of government funding for church schools. One of the Judges, Justice Sir Ronald Wilson said:

"The facts is that s116 is a denial of legislative power to the commonwealth and no more... the provision cannot answer the description of a law which guarantees within Australia the separation of church and state"

The other judge, Justice Sir Ninian Stephen said that s.116:

"...cannot readily be viewed as a repository of some broad statement of principle concerning the separation of church and state, from which may be distilled the detailed consequences of such separation."

Professor George Williams writes in *Human Rights Under the Constitution* "Section 116 embodies four distinct guarantees. However, neither individually, nor collectively, do these limitations on Commonwealth power amount to requirement of separation of church and state."

Anglican Archbishop, Peter Hollingworth, responding to criticisms of his appointment as Governor-General by the Prime Minister, said prior to his appointment:

Those who have raised [the question of separation of church and state] have confused the Australian Constitution with the US Constitution. The only 'separation' that applies here in Australia is to do with those pertaining to the Executive, the Legislature and the Judiciary of the Commonwealth itself. There is not a clear cut separation between church and state as is the case in the US tradition.

A formal separation of church and state does not guarantee that repressive religious ideology will not permeate the political system, as demonstrated by the United States. However, there are several consequences of not formalising the separation of Church and State in the Constitution that act to weaken recognition and support for religious tolerance and pluralism.

The first is that government action that draws religion into state policy or service delivery cannot be challenged legally because the High Court has determined that there is no separation between church and state. There is no way an organisation or citizen could go to court and challenge the advancement of religion by government or the inappropriateness of a religious organisation providing a discriminatory service.

Secondly there is nothing to prevent religious organisations being publicly subsidised to advance religion or to use that subsidy to build powerful lobby groups and exert influence. That influence is likely to be even less the subject of scrutiny because of the recent changes to the *Electoral Act* that allow the amount of anonymous donations to increase substantially. Lack of separation fails to protect the rights of minority religions within a society.

Finally, lack of separation diminishes the neutrality of the Government and the perception that Government should act in the interests of all its citizens, regardless of their religion convictions.

There is support in Australia for a separation of church and state. A survey conducted by Newspoll in February 2006 found that only 45.9% of Australians believed that there was not a law separating church and state. When survey respondents were asked if they would support the introduction of such a law, only 36.5% disagreed, with 47.7% in favour, the remainder unsure.

Situation in Other Countries

Very often the debates about the separation of church and state proceed as if there were only two extremes – complete separation in which the government has no involvement with religion or religious organisations in any way, versus a situation in which the government and church are indistinguishable. The debate should however be more nuanced than this and, even in countries where a *prima facie* separation is prescribed, in its practical application the degree of separation varies significantly depending to some extent on the interpretation taken.

While the relationship between the church and state is often recognised formally within a country's constitution or laws, such legal provisions may cover a variety of topics including, but by no means limited to, the establishment or identification of a state church, including financial support for that church; the degree of restriction or endorsement of the practice of religion (whether a particular religion or religion generally); the extent of government funding for church run services such as schools and hospitals; the requirement for explicit manifestations of religious belief and observance and the legislation of religious dogma.

France has arguably the most clear legal separation of church and state of Western countries, with the passing of legislation in 1905 which cut funding of all religious groups – mainly stipends to clerics - and declared all religious buildings built before 1905, the property of the state and local governments. The government allows religious organisations to use these buildings at no expense provided that they demonstrate continuous use of the buildings for worship purposes. By law, all public schools in France are secular and do not offer any religious education. However, private schools of particular faith are permitted and can be subsidised by the government as long as they agree to follow the same curriculum as the public schools and do not make participation in religious education compulsory or discriminate on the basis of religion. The government recently passed controversial legislation outlawing the wearing of conspicuous religious symbols in public schools, including Muslim headscarfs, Christian crucifixes and Jewish skullcaps. The critical aspect of the French legislation is that the government no longer recognises any religion as a participant in any form of government, and that religion is considered a private matter.

The Italian government implemented a policy to allow its citizens to avoid subsidising religious organisations with which they chose not to be affiliated. Citizens can opt for a percentage of their taxable income to be donated to the charity or cause of their choice.

In contrast to France's separation of church and state, national religions in some countries, such as Greece and Finland, are afforded special legal position in their respective constitutions. Greece goes so far as to ban proselytising of religion other than the Greek Orthodox Church. The special status given to the state approved religions entitles them to special treatment. For example, the Greek government, under the direction of the Ministry of Education and Religion, pays for the salaries and religious training of clergy, and finances the maintenance of Orthodox Church buildings. In Finland, the two state approved churches can levy an income tax on their members and every Finnish company as a part of Corporations Tax. This tax is collected by the state.

The United Kingdom strictly speaking does not have a separation of church and state. The Church of England is the established Church. The reigning monarch is head of both the Anglican Church of England and the State. Major changes to doctrine, liturgy, or structure of the Church of England must have parliamentary approval and senior Church of England clerics are accorded automatic membership of the upper house of the national government. State funded religious schools are common and, since 1988, the school syllabus must provide religious instruction and religious ceremonies, which in the absence of specific identification otherwise, must be wholly or mainly of a Christian character.

As mentioned previously, the formal relationship between church and state is open to interpretation and disagreement and in some countries is very much a contested notion. In the United States in particular legal challenges around policy and legislation that intersects with controversial moral issues and direct church-state issues such as funding for faith based initiatives are common. Court rulings in the past several decades have refined the boundaries of the church-state interface in the United States however, it continues to be in a state of flux.

The relationship between church and state has also undergone transformation in other countries. Sweden ended its state church system in 2000. Norway is investigating changing its constitution in this area. After three years consideration a State-Church Panel has recommended formal separation and the Norwegian government has commenced a nationwide consultation process calling on submissions from 2,500 people and groups, including every congregation and city in the country.

A way forward

The Australian Democrats consider that the growing influence of religion on public policy, particularly the neo-conservative religious right, the transfer of major government services predominately to the religious sector and the lack of transparency and accountability required of religious organisations democracy, freedom, equality and tolerance. We say that without greater separation of church and state, governments are less able to fulfil their duty to treat all citizens equally and to remain religion-neutral.

We acknowledge that there are many complexities and ambiguities to be considered in finding an appropriate delineation of roles and responsibilities and that, for equal

treatment and religious neutrality to be achieved, practical and workable principles will be needed.

Recent Australian history has seen little debate on the way in which religion and politics intersect or the separation of church and state. However, thanks to a steady shifting of ground over the last decade or so and provocative pronouncements more recently by political leaders, now seems a good opportunity to start a real debate on the need for and ways of separating church and state. Other countries like Norway are doing this. It is time that Australia followed suit.

Improving transparency and moving to a true separation will strengthen our democracy and better respect the views of all citizens and treat them more equally.

It is important that the debate does not add to division in Australian society. To avoid this, an independently elected constitutional commission could be established to facilitate reasoned dialogue at every level. It is unlikely that this government will initiate such a process unless there is public demand and unless secularists, the clergy, members of minority religions, academics, politicians and other interested parties come together to encourage it to do so.

The Democrats initiated this discussion paper in the hope of generating interest in reform and we have listed the following as policy options that might be pursued and that might serve as starting points in that debate.

- Change the constitution to clearly state that there is a separation of church and state **and/or** implement formal legislative separation of church and state.
- Implement a Bill of Rights or a Human Rights Act
- Conduct a referendum for a republic.
- Make changes to the legal structure, tax arrangements, regulation and funding with respect to religious organisations to ensure greater equity, accountable and transparency. Options could be:
 - Remove "advancement of religion" from the definition of a charity or otherwise change the definition to exclude charities that are religious organisations/churches;
 - Remove tax concessions on activities that are not for religious purposes, including the provision of goods and services that are provided by the private sector (i.e. providing government funded services, or business related activities) by developing a more objective activities-based test for the Not-For-Profit sector. This would have two advantages: it weeds out those Not-For-Profits which are facades for trading or financial commercial operations and it would harmonise the legal tests applicable to entities generally.
 - Promote the establishment of a charities commission (like in the UK and NZ) - the role of the charities commission should be to oversight the registration and monitoring of activities of all charitable organisations in Australia with an income over a specified limit, OR introduce a formally constituted and separately resourced division of ASIC to regulate the sector.

- Address the fragmentation of the Not-for-Profit sector, so that multiple laws that currently apply are streamlined.
- Establish a single specialist legal structure for Not-for-Profit entities with reporting obligations similar to their for-profit counterparts (the UK experience in reforming their Not-For-Profit sector could apply to Australia).
- Require Not-For-Profits to register with the regulator and to submit annual audits and provide specified financial and operating reports.
 - Income and expenditure of charitable organisations should be publicly available (perhaps on the commission's website).
 - Require religious organisations to put in tax returns and reconcile their expenditure on 'good works' in the community with their incomes.
- Apply the \$30,000 fringe benefit cap to individual members of religious organisations. Presently they can take all their income as a fringe benefit if they so decide and be completely free of income tax.
- Establish a charter of mutual obligations on charitable religious organisations.
- In those cases where religious groups receive taxpayer funds to provide social services, they could be required to agree to run secular programs, not use monies for religious worship, instruction or proselytisation and drop all forms of religiously based discrimination from their hiring policies.
- Consider implementing the Italian policy where citizens can opt for a percentage of their taxable income to be donated to the charity or cause of their choice. In Italy 0.8% is allocated in this way when citizens submit their income tax returns.
- Promote symbolic measures (removal of union jack from flag, removing religious references from statutory oaths and pledges, abolishing parliamentary prayers)
- Require that religious related activities within government facilities, including school chaplains, are funded by religious organisations.
- Make religious education classes opt in
- Provide secular, ethics classes as an alternative for those students who opt out of religious education

The following questions might be a good starting point for thinking about the issues and providing feedback:

- What relationship is appropriate between religious authorities and the State in a democratic secular society?

- Does the absence of separation of church and state impact on democracy and the principles of equality, freedom and tolerance?
- What benefits over and above other organisations should religious organisations receive?
- Should religious organisations provide government services?
- Should religious organisations be fully accountable if in receipt of government funds and concessions?
- What should be the formal extent of separation of church and state in a democratic secular society?

Your feedback is welcome.

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