

# AUSTRALIA'S IMPLEMENTATION OF ITS INTERNATIONAL RELIGIOUS FREEDOM OBLIGATIONS

**DENISE MEYERSON**

**Division of Law**

**Macquarie University**

## COMMONWEALTH LEGISLATIVE PROTECTION

- International instruments ratified by Australia
- *Racial Discrimination Act 1975* (Cth): prohibits discrimination and vilification on the ground of race.
- 'Race' includes colour, descent, national origin and ethnic origin.
- Possible constitutional issues raised by RDA.
- 2-stage enforcement model under RDA.
- Functions and powers of HREOC under *Human Rights and Equal Opportunity Commission Act 1986* (Cth): these include the power to investigate violations of the right to freedom of religion and complaints of discrimination in employment based on religion.
- However, the HREOC Act does not provide enforceable remedies.
- *Workplace Relations Act 1996* (Cth): proscribes termination of employment on discriminatory grounds, which include religion.
- Heritage protection and native title legislation.

## CONSTITUTIONAL PROTECTION

- Section 116: 'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.'
- Section 116 does not apply to the States and Territories.
- Meaning of establishment: *Attorney-General (Vic) (Ex rel Black) v Commonwealth* (the *DOGS Case*) (1981) 146 CLR 559.
- Meaning of free exercise: *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116; *Kruger v Commonwealth* (1997) 190 CLR 1.

## STATE AND TERRITORY LAWS

- 6 of the 8 States and Territories have legislated to prohibit discrimination on the ground of religious belief and/or conviction, activity and affiliation. In NSW discrimination on the basis of 'ethno-religious origin' is unlawful.
- In some of the States and Territories employers are under a duty of reasonable accommodation to accommodate the religious needs of employees.
- Blasphemy is an offence in all Australian jurisdictions.
- In some of the States there is legislation prohibiting vilification on religious grounds and in NSW racial vilification linked to ethnicity is unlawful.
- The civil law is the main regulatory tool.
- *Catch the Fire Ministries v Islamic Council of Victoria* [2006] VSCA 284 raised the freedom of Christians to teach in a critical way about Islam.

## CONCLUSION