

Bishop Danny Meagher, Australian Catholic Bishops Conference

Question on notice from Senator Grogan, Committee Hansard, Parliamentary Joint Committee on Human Rights, Inquiry into Australia's Human Rights Framework, 28 September 2023, page 14.

Question on notice

“As to that loosening, as you say, how do you interpret those words? Can you maybe flesh out for me an example about what that difference might translate to on the ground?”

Answer

The Conference argued in its submission that the International Covenant on Civil and Political Rights (ICCPR) limitation on freedom of religion, using the requirement of “necessary”, is weakened in state and territory charters. The submission referred to the Queensland Human Rights Act, which allows limitations on religious freedom if “reasonable and justifiable”. The Victorian and Australian Capital Territory charters contain similar provisions. Given that the Australian Human Rights Commission proposal recommends the Queensland Act’s approach to limiting rights, the Conference submission argued that there was a considerable weakening from the ICCPR position.

There do not, as yet, appear to be any cases in state or territory law in which religious freedom was limited under the “reasonable” test, but which arguably would not have been limited if the “necessary” test were adopted.

However, please note that the use of the term “necessary limitations” comes from decades of directives from the United Nations and expert international rights law bodies that give clear and objective guidance about what “necessary” means. It is a strict test. Compare this to the judgment in *Magee v Delaney* (2012) VSC 407 (see 63-66, 137) which holds that the term “reasonable” (or “reasonably necessary as defined in the Victorian charter) implies a ‘reasonable person test’.

Accordingly, we would argue that it is only a matter of time before a case occurs which allows a limitation of religious freedom under the “reasonable” test, which would not be allowed under the “necessary” test. We emphasise in the Conference submission that the provisions of the ICCPR should be closely followed.

Finally, we note, firstly, that a case in the European Court of Human Rights ruled that “(‘necessary’) is not synonymous with ‘indispensable’... neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’ (*Handyside v United Kingdom* (1976) I EHRR 737 at (48)). Secondly, we note that the Interim Report on *Legal Foundations of Religious Freedom in Australia* by the Joint Standing Committee on Foreign Affairs, Defence and Trade in 2017 covers this topic extensively.