Religious education in Australia

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Introduction

Modern Australia is a plural, multi-cultural, multi-faith society comprising approximately 22.5 million people. While early religious traditions include the 40,000 years of Australia’s Indigenous culture and brief contacts with Islam via Indonesia in the last 300 years, today, through English-European settlement, more than half of Australians identify as Christian. At the 2006 census, 63.8% of Australians identified themselves as Christian, 2.1% as Buddhist, and 1.7% as Muslim. A small percentage (2.4%) of the population indicated that they adhere to another religion; 11.3% did not specify; and 18.7% indicated that they practice no religion, up from approximately 16% at the 2001 census. Australia’s governmental and political structure—a constitutional monarchy combined with a federal parliamentary democracy—which comprises a federal, six state, and two territorial governments—affects the place of religious educational freedom within this plural context.

In addition to this introduction, this chapter contains three parts. The first outlines the place of religion within the Australian legal and constitutional structure. The second part examines the accommodation of religion in government (public or state) and non-government (private) schools, using the State of South Australia as a representative example. The final part offers some brief concluding observations.

Legal context: the Australian Constitution and religion

With no official state religion, relations between the Commonwealth Government and “religion” are governed by s116 of the Australian Constitution, which provides that:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

The courts narrowly construe “freedom of religion” and the notion of an interfering law; indeed, historically, judicial pronouncements on s116 make it clear that laws regulating matters
that have “nothing at all to do with religion,” and laws (for example, criminal statutes) that may impact on aberrant religious practices in particular instances but do not “discriminate against religion generally” are not covered by the immunity in the provision.

This narrow interpretation of religious freedom is balanced, though, by a broad interpretation of the concept of “religion” itself. In Church of the New Faith v Commissioner of Pay-Roll Tax (Vic), the High Court set out several indicia for determining whether a set of beliefs or practices constitutes a “religion”:

[whether] the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses[; … whether] the ideas relate to man’s nature and place in the universe and his relation to things supernatural[; … whether] the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance[; … whether,] however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups[; … and perhaps whether] the adherents themselves see the collection of ideas and/or practices as constituting a religion.14

The threshold for classifying a particular set of beliefs or practices as a “religion,” in order to invoke the protections of s116, remains relatively low.

Further complicating the protection of religion, unlike all other Western liberal democracies, Australia has no national Bill of Rights (constitutionally-entrenched or otherwise). Campaigns and community debate, however, about a possible future enactment of one have been prevalent over the last decade, and some States and Territories (most notably Victoria and the ACT) have passed Bill of Rights-style legislation containing reference to freedom of religion.

Given the paucity of protection, and against the restrictive approach taken to s116, it comes as no surprise that there has been limited judicial analysis of the impact of s116 on primary and secondary education. In the only case to address that issue, Attorney-General (Vic); Ex rel Black v Commonwealth (the DOGS case) the High Court of Australia held that Commonwealth funding of Non-Government schools does not constitute “establishing [a] religion” for the purposes of s116.

Education in Australia

General

Education at the primary and secondary levels in Australia may be very broadly categorized as either “government” or “non-government.” The majority of non-government schools in Australia are Catholic, although schools representing many other faiths, denominations, and philosophies—including Lutheran, Anglican, Uniting, “Christian,” Islamic, Jewish, Greek Orthodox, non-denominational and secular (Montessori, Waldorf/Steiner, and other) are also in operation nationally. In 2009 there were 9,529 schools operational across the country: 6,802 government schools, and 2,727 non-government schools, catering to around 3,484,000 full-time students and around 23,300 part-time students.

Funding for government schools comes primarily from state governments, with the Commonwealth government providing supplementary assistance. Non-government educational institutions are predominantly privately funded, though they receive some public funding, primarily from the Commonwealth government. Australian students generally begin school with a
kindergarten or preparatory school year, and then undertake 12 years of primary and secondary schooling; ten years of schooling is generally the minimum, although there is some variation in this and in school starting and leaving ages from state to state.28

**Religious education in Australian government schools: the example of South Australia**

South Australia provides a broadly representative example of Australian state government approaches to religious education in government schools. As such, this section is confined, unless otherwise noted, to South Australian legislation and regulations.29 Provision for religious education in South Australian government schools is made by Section 102 of the Education Act 1972 (S.A.):

102—Religious education

1 Regular provision shall be made for religious education at a Government school, under such conditions as may be prescribed, at times during which the school is open for instruction.

2 The regulations shall include provision for permission to be granted for exemption from religious education on conscientious grounds.

Beyond this enabling provision, the content and conduct of religious education in government schools is provided for by the *Education Regulations 1997* (S.A.) ("the Regulations") which are made under the Act.30 Among other things, the Regulations provide for the establishment of standing committees31 and school-specific Religious Education Committees,32 and for the development of course modules for distribution to schools.33 Most significantly, they also provide for the conduct of both “religious education” and “religious seminars” in schools.34

1. Religious education classes

“Religious education” classes (known in some other states as “general religious education”)35 as referred to in the regulations are Society and Environment-style classes (in some jurisdictions this might be referred to as Social Studies or Civics). Teachers are responsible for the design of their curricula,36 and may (but need not necessarily) use the modules provided to them.37 All curricula must be consistent with the South Australian Curriculum Standards and Accountability Framework, and must also be “inclusive of all students within the learning group.”38

The Department of Education policy document on the subject makes clear that the aim of such religious education is “[not] to bring about commitment to any set of beliefs.”39 Rather, the aim is to enable students to develop a sensitive understanding of the presence and influence of religion in life and society and of the variety of beliefs by which people live: religious, non-religious and traditional … Through religion studies, students should gain a greater respect and empathy with the beliefs of others as well as a capacity to develop their understanding of what they themselves believe.40

2. Religious seminars

The “religious seminars” (known in some other states as “special religious education”)41 for which the regulations provide are more overtly religious or catechetical in content and style and are
envisioned as sessions that may be attended by students of a particular faith or denomination. These sessions are voluntary and require the informed consent of parents, which may be withdrawn at any time. They may be held for up to one half-day per school term (Australian schools operate on four terms), and are taught or run by a nominated member of the relevant local congregation, though teachers must also remain present. Their conduct, moreover, must be endorsed by school Governing Councils, and informed by the decisions of the school-specific Religious Education Committee, if one exists.

3. Other religious activities in government schools

Beyond the religious education classes and religious seminars, two other types of religious activity may exist in government schools: student clubs and Christian Pastoral Support Workers (C.P.S.W.).

Student clubs (religious and otherwise) are held during non-instructional time, and may be organized by staff and/or volunteers; the principal’s permission is required for their formation, and informed parental consent is required for student participation once again.

The C.P.S.W. program is a further optional program that may be initiated within Government schools. C.P.S.W. are employed by local Christian ministers’ associations, inter-church councils, or other ecumenical groups representative of the local religious community; they operate in the school with the status of volunteers, and as such may not be referred to as “chaplains” or anything else that suggests some sort of formal training or professional status within the school.

According to the policy document, C.P.S.W. have two main roles: to “support the school in its aim to be a safe and supportive learning environment,” and to “link families to community resources and services.” These roles allow for the provision of short- or longer-term support to students, staff, or other community members (though students require informed parental consent before undergoing any longer-term personal assistance), and for the provision of general information about local support and service groups, religious and otherwise. They explicitly preclude any sort of proselytizing, the exclusive advertisement of any particular religions or religious activities, and the setting up of school activities that might discriminate in some way on religious grounds.

Religious education in Australian non-government schools

Currently

As might be expected, the scope for religious education in non-government schools is greater than the scope for the same in government schools. All curricula in non-government schools must conform to the South Australian Curriculum Standards and Accountability Framework, but beyond this, the intensity and purpose of religious education may be determined by the individual school, and will vary depending on the faith or denomination (if any) of the particular school.

As noted above, the Commonwealth provides the majority of any public funding to non-government schools. Currently, provision of such funding is made pursuant to the Schools Assistance Act 2008 (Cth.). This Act provides for both recurrent funding (calculated by reference to enrolments and a complex set of other criteria) and capital funding for non-government schools with significant proportions of indigenous students, and funding for targeted programs including the “Literacy, Numeracy and Special Learning Needs” program, the “Country Areas” program, and the “English as a Second Language” program.

As a prerequisite to funding, non-government schools or non-government school bodies (where they exist) must sign funding agreements that accord with the School Assistance Regulations.
These agreements place a number of conditions on funding, including requirements for school performance and transparency, grant acquittal and reporting, and monitoring and evaluation. The agreements also stipulate the uses to which funds may be put: recurrent grant funds, which are most material to the present discussion, may be used for “teaching and ancillary staff salaries … professional development of teachers … curriculum development … [and] maintenance and general operation.”

Secular non-government schools usually eschew specifically religious education in favor of broader cultural, social, and historical studies subjects. The majority of religious non-government schools appear to advocate a values-based approach to religious education, with a greater or lesser focus on evangelism or proselytism, depending on the individual school. Perhaps the greatest single difference between such schools and government schools is the religious backdrop to instruction, and the corresponding intensity of explicitly religious activities (chapels, devotions, prayers, etc.) in non-teaching time during the day.

Curriculum framework documents and statements, thus, speak variously of: “[deepening] students’ understanding of the [Catholic] Tradition and [developing] an appreciation of its significance in their lives, so that they may participate effectively in the life of the Church and wider society[;]” and “[allowing] students to reflect on issues of [Lutheran] faith and life in an open and sensitive environment … [and teaching] that faith is more than just head knowledge or classroom learning but involves relationships and serving one another[;]” and “embed[ding] the heritage and traditions of the Anglican Church … [as well as providing] a broad base in Religion and Spirituality[;]” and “provid[ing] a broad perspective of Jewish history through the festivals, laws and customs and the significance of the various Jewish festivals … [and exposing students] to the full range of Jewish experience[;]” and “[helping] students grow in their [Islamic] faith and appreciate the need to engage in life in a positive constructive way, showing respect to others and interacting with generosity and love.”

The future

The Commonwealth’s “Education Revolution,” which has seen a progressive overhaul of educational funding arrangements in accordance with the identification of education as a Commonwealth government policy priority over the last several years, may have a minimal impact on religious education. Among other things, this “Revolution” aims to modernize schools and provide for universal early childhood education. Most relevantly, for present purposes, it also contains provision for a National Education Agreement in two parts: (i) between the Commonwealth government and all state governments as part of the Council of Australian Governments’ (C.O.A.G.) Intergovernmental Agreement (I.G.A.) on Federal Financial Relations and aimed at streamlining administration of relevant Commonwealth funds and services; and (ii) a National Curriculum, overseen by a national body—the Australian Curriculum and Reporting Authority (A.C.A.R.A.)—established for the purpose.

Two key documents, the “Melbourne Declaration” on Educational Goals for Young Australians and A.C.A.R.A.’s “Shape of the Australian Curriculum” inform the development of the new curriculum, which will be developed in successive stages. English, mathematics, sciences, and history curricula are scheduled for completion by 2011; geography, languages and arts curricula by 2012; and the remaining areas identified in the Melbourne Declaration (including civics, citizenship, health and IT) by 2013. While the key documents contain no specific reference to religion or religious education, beyond that to development of tolerance and respect for religious diversity, once the national curriculum is prescribed by regulation it appears that compliance by non-government schools will become a further condition of funding.
Concluding observations

Operating within a pluralistic environment, the Australian polity allows a robust educational experience at the primary and secondary levels. In the case of Government schools, funding is secured largely from the States, although with some Commonwealth supplementary assistance. Non-government educational institutions are predominantly privately funded, though, as with their Government counterparts, they receive some public funding, primarily from the Commonwealth Government. The Commonwealth provides both recurrent and capital funding, as well as funding for targeted programs, on the basis of a series of conditions regarding school performance and transparency, grant acquittal and reporting, monitoring and evaluation, and permissible uses of funds in many cases. The scope for religious education in non-government schools is nonetheless greater than that for government schools.

The variety of styles and intensities of religious education in government and non-government schools and the diversity of schools available to students and parents, allows for positive individual choice of either secular or religious values-based education.

Notes

4 This figure is divided amongst denominations as follows: Catholic 25.8%, Anglican 18.7%, Uniting Church 5.7%, Presbyterian and Reformed 3%, Eastern Orthodox 2.7%, other Christian 7.9%.
8 For the sake of clarity, “State” will be used in this paper to refer to both States and Territories, which include New South Wales, Victoria, Queensland, South Australia, Tasmania, Western Australia, Northern Territory and Australian Capital Territory.
10 Commonwealth of Australia Constitution Act 1901 (“the Australian Constitution”). See generally Tony Blackshield and George Williams, Australian Constitutional Law and Theory: Commentary and Materials


12 Church of the New Faith v Commissioner of Pay-Roll Tax (Vic) (1983) 154 CLR 120.

13 (1983) 154 CLR. 120.

14 Ibid [174].


17 Attorney-General (Vic); Ex rel Black v Commonwealth (1981) 146 CLR 559, [653] (Wilson J), [612] (Mason J).

18 “Primary” schools correspond approximately to U.S. elementary schools, typically catering for students from Reception to Grade 6 or 7.

19 Secondary schools typically cater for students from Grade 7 or 8 to Grade 12 or 13.

20 Sometimes referred to as “state” or (in contrast to the United Kingdom) “public.”

21 Variously referred to as “independent,” “religious,” “church,” or “private,” depending on the particular school.


24 Or, expressed differently: 6,414 primary schools, 1,439 secondary schools, and 1,261 combined primary-secondary schools (excluding special schools): Australian Bureau of Statistics, above no. 28, 9.


27 In 2008 the Commonwealth Government provided $6.1 billion to non-government schools, with state governments providing $2.2 billion: Department of Education, Employment and Workplace Relations, above no. 32, 12.

28 Ibid.

29 It is noted that, while the relevant legislative provisions of other states’ Acts are broadly similar, they differ in detail, and the following discussion should be read with this in mind. Relevant similar legislation in other Australian states and territories includes the Education Act 2004 (A.C.T.), Section 29; the Education Act 1990 (N.S.W.), Sections 32–33; the Education Act (N.T.) Section 73; the Education (General Provisions) Act 2006 (Qld.), Section 76; the Education Act 1994 (Tas.), Section 34; the Education and Training Reform Act 2006 (Vic.), Section 2.2.11; and the School Education Act 1999 (W.A.), Sections 69, 71. For an older, though still informative, detailed overview of the area, see Graham Rossiter, Religious Education in Australian Schools (1981). For further discussion, see Marisa Crawford and Graham Rossiter, “The Nature of Religious Education in Public Schools: The Quest for an Educational Identity,” in Panorama: International Journal of Comparative Religious Education and Values 5 (1994), 77.

31 Education Regulations 1997 (S.A.) Section 78. The Standing Committee on Religious Education in Government Schools is composed of departmental, ecumenical, parent organization, and tertiary education course representatives, and is charged with advising the Minister on various matters concerning religious education in schools.

32 Education Regulations 1997 (S.A.) Section 79. The school-specific Religious Education Committees are composed of not more than two teachers, not more than two parents from the school council, and not more than four local clergy. These Committees are established by the head teacher or principal of the school, in consultation with the school council, and are charged with advising and assisting the head teacher or principal “in such matters concerning religious education in the school as the head teacher and the committee shall determine.”

33 Education Regulations 1997 (S.A.) Section 80. Pursuant to Section 81, only persons registered as teachers may teach the classes.

34 Education Regulations 1997 (S.A.) Sections 81(1), 81(2).


36 Department of Education and Children’s Services, above n. 36, 1.

37 For an informative discussion on the uptake of similar modules in government schools generally (and nationally), modules, and student experiences with these Religious Education classes, see Graham Rossiter, “Finding the Balance: Religious Education in Australia” (2010), <www.iarf.net/REBooklet/Australia.htm>, December 6, 2010.

38 Department of Education and Children’s Services, above no. 36, 1.

39 Ibid.

40 Ibid.

41 See, e.g., above no. 41.

42 Department of Education and Children’s Services, above no. 36, 1.

43 Ibid.

44 Ibid.

45 Ibid.

46 Ibid., 2.

47 The program is the result of a contract between the Minister for Education and Children’s Services and the Heads of Churches State Schools Ministry Coordinating Group (S.M.G.), but it does not preclude the initiation by other faith groups of volunteer programs in schools. See ibid.

48 The school may not use its “global funding” to contribute to C.P.S.W.’ salaries, although the School Governing Council may choose to contribute financially to the local Employing Group, if the support of the school community for such an action is forthcoming. See ibid., 7.

49 Ibid.

50 Ibid.

51 Ibid., 6.

52 Ibid., 7.

53 As with the discussion of government schools, examples in this discussion of non-government schools will also be drawn from South Australia.


55 See above no. 33, and accompanying text.


57 Department of Education, Employment and Workplace Relations, above no. 32, 12–13.
Schools Assistance Act 2008 (Cth.), Parts 4, 5.

Schools Assistance Act 2008 (Cth.), Part 4, div. 9.

Schools Assistance Act 2008 (Cth.), Part 6.

See above no. 62, 4.

Ibid.

Above no. 62, 14.


Above no. 62, 27.