

Context - Australia's international law obligations

Freedom of religion and belief

1. The main constitutional bases asserted for the Bill are set out in clause 57:

57 Main constitutional basis of this Act

This Act gives effect to Australia's obligations under one or more of the following international instruments, as amended and in force for Australia from time to time:

the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966

the Convention on the Rights of the Child done at New York 21 on 20 November 1989 ([1991] ATS 4);

the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);

the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation done at Geneva on 25 June 1958 ([1974] ATS 12);

2. The obligations under international law which are proposed to be implemented into domestic legislation (at least in part) can be divided into two categories: firstly, freedom from discrimination on the ground of religion or belief; and secondly, freedom of religion.
3. In relation to the *International Covenant on Civil and Political Rights (ICCPR)*¹, article 2(2) requires the implementation of its international obligations into domestic law.

Article 2(2)

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Freedom from discrimination on the ground of religion or belief

4. The main provisions on the freedom from discrimination on the ground of religion or belief are articles 2(1) and 26 of the ICCPR.

Article 2(1)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race,

¹ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status.

Article 26

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status.²*

5. Article 4 provides a limitation on those rights in times of public emergency.³
6. Article 20 of the ICCPR is important, in light of clause 41 of the Bill which provides statutory protection to statements of belief from claims of discrimination. It should be noted, however, that Australia has reserved the right not to introduce further legislative provisions with respect to article 20.⁴

Article 20

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

Freedom of religion and belief

7. The primary source for the right to freedom of religion and belief is provided by article 18 of the ICCPR:

Article 18

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations **as are prescribed by law and are necessary to***

² (Emphasis added).

³ Article 4 provides: 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

⁴ The instrument of ratification of the ICCPR deposited for the Government of Australia with the Secretary-General of the United Nations contained the following reservation relating to article 20: 'Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matters'.

protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

8. The HRC has remarked that:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.⁵

9. The freedom to have or to adopt a religion or belief is absolute and is not capable of being subject to limitation: article 18(2) of the ICCPR. Freedom to manifest one's religion or beliefs, on the other hand, may be subject to limitation as indicated in article 18(3) above – that is, as prescribed in law and where necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

10. The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the Religion Declaration)*⁶ is not a treaty, but is a valuable tool for interpreting the scope of article 18 of the ICCPR. The AHRC's functions include inquiring into complaints about Commonwealth acts or practices which may be inconsistent with the Religion Declaration, as well as articles 18 or 26⁷. The Religion Declaration prohibits unintentional and intentional acts of discrimination and defines discrimination in article 3 as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

11. Article 6 of the Religion Declaration stipulates that the religious community's joint or shared expression of its beliefs is protected equally with the individual's right and protects manifestation of religion or belief including, but not limited to:

- worshipping and assembling, and maintaining places for this purpose;
- establishing and maintaining charitable or humanitarian institutions;
- practising religious rites and customs;
- writing and disseminating religious publications;

⁵ Human Rights Committee (HRC), *CCPR General Comment No 22: Article 18 (Freedom of Thought, Conscience of Religion)*, UN Doc CCPR/C/21/Rev.1, 48th sess (30 July 1993) (**General Comment No 22**), [2].

⁶ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Res 36/55, UNGAOR, 36th sess, UN Doc A/36/684 (1981).

⁷ *Australian Human Rights Commission Act 1986 (Cth) (the AHRC Act)*, ss 3 (definition of 'human rights'), 11(1)(f) and 47; Human Rights and Equal Opportunity Commission Act 1986 – Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief, 8 February 1993, at <<https://www.legislation.gov.au/Details/F2009B00174>>.

- teaching of religion and belief;
 - soliciting voluntary financial support;
 - training and appointment of religions leaders in accordance with the requirements and standards of the religion or belief;
 - observing religious holidays and ceremonies; and
 - communicating with individuals and communities on matters of religion and belief.
12. Article 27, which has a relatively high degree of crossover with article 18, extends the freedom of religion and belief to minority ethnic, religious and linguistic groups.
13. Article 13 of the *International Covenant on Economic, Social and Cultural Rights*⁸ (ICESCR) complements article 18(4) of the ICCPR by providing a similar protection in relation to freedom of religion protections to education.
14. The primary protections given in article 18 of the ICCPR also apply to children under article 13 of the [Convention on the Rights of the Child \(CRC\)](#).⁹ Article 30 of the CRC extends the protections given to minority groups in article 27 of the ICCPR to the children of minority groups.
15. The right to freedom of religion and belief in employment is protected by article 5(d) of the [Convention concerning Termination of Employment at the Initiative of the Employer](#)¹⁰ where religion cannot be a valid reason for termination.
16. The *International Convention on the Elimination of All Forms of Racial Discrimination*¹¹ (ICERD) does not expressly provide for the freedom of religion and belief. However, both ICERD and CEDAW provide protection against racial and sex discrimination in the enjoyment of freedom of religion (including the freedom not to profess any or a particular faith).
17. Article 1 of the International Labour Organisation Convention concerning Discrimination in respect of Employment and Occupation (**ILO Convention C111**)¹² includes religion as a ground upon which discrimination is prohibited.

Propagating of religious beliefs

18. The propagating of religious beliefs to others has been recognised as guaranteed by article 18(1), while subject to the limitations in article 18(3). The HRC has stated that:

For numerous religions... it is a central tenet to spread knowledge, to propagate their beliefs to others and to provide assistance to others. These aspects are part of an individual's manifestation of religion and free expression, and are thus

⁸ Opened for signature 16 December 1966, 993 UNTS (entered into force 3 January 1976).

⁹ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹⁰ Adopted 22 June 1982, C158 (entered into force 23 Nov 1985), art 5.

¹¹ Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

¹² Adopted 25 June 1958, C111 (entered into force 15 Jun 1960).

*protected by article 18, paragraph 1, to the extent not appropriately restricted by measures consistent with paragraph 3.*¹³

Conscientious objection

19. While the ICCPR does not expressly refer to a right of conscientious objection, the HRC has observed that, in the context of military service, such a right can be derived from article 18.¹⁴
20. In the context of the termination of pregnancy, treaty bodies have stated that conscientious objection by health professionals should be regulated to ensure that it does not inhibit access to services, including in emergencies and by referral to alternative health providers.¹⁵
21. The World Health Organization Safe Abortion Guidance recommends that health professionals who claim conscientious objection should be required to refer the person to another provider so that access to lawful abortion services is not impeded.¹⁶

Religious schools

22. Article 24 of the ICCPR extends to children freedom from discrimination on the grounds of religion or belief. Freedom from discrimination is also found in article 2 of the ICESCR, article 2 of CRC and article 5 of the ICERD. As noted, the **ILO Convention C111** includes religion as a ground upon which discrimination is prohibited.¹⁷
23. A religious body under the Bill includes a religious educational institution.¹⁸ The HRC has commented:

*The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.*¹⁹

¹³ HRC, *Views: Communication No 1249/2004*, 85th sess, UN Doc CCPR/C/85/D/1249/2004 (21 October 2005) [7.2] (**Sister Immaculate Joseph v Sri Lanka**); see also European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion*, Council of Europe, 30 April 2019 [112]-[113].

¹⁴ HRC, *General Comment No 22*, [11].

¹⁵ Committee on Economic, Social and Cultural Rights (**CESCR**), *General Comment No 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC/22 (2 May 2016) [11] – [21], [41] – [43]; Committee on the Elimination of Discrimination against Women (**CEDAW Committee**), *General recommendation No 24: Article 12 of the Convention (women and health)*, 20th sess (1999) [11]–[14]; Committee on the Rights of the Child, *General Comment No 15: on the right of the child to the enjoyment of the highest attainable standard of health* (art 24), UN Doc CRC/C/GC/15 (17 April 2013) III [B]; CEDAW Committee, *Concluding observations on Italy*, UN Doc CEDAW/C/ITA/CO/7 (24 July 2017) [41](d), [42](d); CEDAW Committee, *Concluding observations on Croatia*, UN Doc CEDAW/C/HRV/CO/4-5 (28 July 2015) [30](a), [31](a); Office of the United Nations High Commissioner for Human Rights, *Practices in adopting a human rights-based approach to eliminate preventable maternal mortality and human rights*, UN Doc A/HRC/18/27 (8 July 2011) [30].

¹⁶ WHO, 'Safe abortion: technical and policy guidance for health systems' (Guidelines, 2nd ed, 2012) [3.3.6], [4.2.2.5].

¹⁷ ILO Convention C111, art 1.

¹⁸ The Bill, subclause 10(2).

¹⁹ General Comment 22, [6].

24. It has been stated that the State may be obliged to tolerate separate schools if that is necessary to respect the religious and philosophical convictions of parents.²⁰ This does not go so far as to require that religious schools be exempt from non-discrimination laws when acting in accordance with their own faith.

Freedoms of opinion and expression

25. Under article 19(1) of the ICCPR, everyone has the right to hold opinions without interference. While freedom of opinion under article 19(1) is absolute, 'the absolute nature of the right ceases once one airs or otherwise manifests one's opinions'.²¹

26. The right to freedom of expression is contained in article 19(2) of the ICCPR which provides that this right includes:

*freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.*²²

27. Article 19(3) of the ICCPR provides that the exercise of the rights provided for in article 19(2) carries with it 'special duties and responsibilities'.²³ It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- for respect of the rights or reputations of others; and
- for the protection of national security or of public order (*ordre public*), or of public health or morals.²⁴

28. The HRC has concluded that the obligations in articles 19 and 20 are 'compatible with and complement one another'.²⁵

Other relevant rights

29. Broader human rights which are highly relevant to the Bill include:

- the right to equality and non-discrimination – which is a fundamental human right that is essential to the protection and respect of all human rights. As discussed, article 26 of the ICCPR guarantees equal protection of the law and equality before the law and requires States to prohibit and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. As well as including the attribute of religion, the phrase 'other status' has been interpreted by human rights treaty bodies to include sexual orientation;²⁶ and

²⁰ *Kjeldsen, Busk Madsen and Pedersen v Denmark* [1976] 1 EHRR 711.

²¹ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 3rd ed, 2013) (**Joseph and Castan**), 591.

²² ICCPR, art 19(2).

²³ *Ibid*, art 19(3).

²⁴ *Ibid*.

²⁵ HRC, *General Comment 34 – Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc. CCPR/C/GC/34 (12 September 2011) [52].

²⁶ HRC, *Views: Communication No 488/1992* 50th sess, CCPR/C/50/D/488/1992 (1992) (**Toonen v Australia**); HRC, *Views: Communication No 941/2000*, 78th sess, CCPR/C/78/D/941/2000 (2003) (**Young v Australia**) [10.4]. Article 2(1) of the ICCPR further requires that State parties undertake to respect and ensure to individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, without distinction of any kind, including on the basis of sex, religion, or other status.

- the right to the enjoyment of the highest attainable standard of physical and mental health – which is contained in article 12(1) of the ICESCR. States must take steps to the maximum of their available resources with a view to achieving progressively the full realisation of this right.²⁷ They must further guarantee that this right must be exercised without discrimination of any kind.²⁸ The Committee on Economic, Social and Cultural Rights (**CESCR**) has emphasised that ‘health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalised groups’.²⁹

Resolving tensions

30. It is a well-established principle of international law that human rights are interrelated, interdependent and indivisible. The Vienna Declaration and Programme of Action, adopted in 1993 by 171 states (including Australia), affirms at article 5 that:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.

31. Under international human rights law, certain human rights are absolute, and no limitation upon them is permissible.³⁰ For all other human rights, limitations may be imposed, provided certain standards are met. As noted above, the right to freedom of thought, conscience and religion, and the right to hold opinions, are absolute. On the other hand, the right to manifest one’s religion or to freedom of expression can be subject to limitations.

32. Where limitations are permissible, consideration must be given to the principles on which such limitations are justifiable. The Law Council notes that while freedoms of religion and expression are fundamental human rights and should be protected by law, they should not be protected at the expense of other rights and freedoms. There is also a fundamental right of each individual to respect for their personhood and dignity on the basis of equality. Any limitation on that must be clearly shown to be necessary and proportionate.

33. Article 18(3) of the ICCPR is important because it provides a clear limitation on the manifestation of one’s religion or beliefs. The limitation is that which applies to many other human rights and is governed by the principle of proportionality. Article 18(3) specifically refers to limiting the freedom of religion and belief to protect the ‘fundamental rights and freedoms of others.’ The HRC has provided some guidance as to the interpretation of article 18(3):

In interpreting the scope of permissible limitation clauses [to article 18], States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 16.³¹

34. Importantly, the mechanism used for determining the balance is that of proportionality, which is a well-established principle of international law embodied in the above limitation. In general, a State must only interfere with a person’s rights if it is

²⁷ ICESCR, art 2(1).

²⁸ Ibid, art 2(2).

²⁹ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* UN ESCOR, 22nd sess, Agenda item 3, UN doc E/C.12/2000/4 (11 August 2000) (**General Comment 14**), [12(b)].

³⁰ See the Law Council’s *Policy statement on Human Rights and the Legal Profession: Key Principles and Commitments*, May 2017, [19].

³¹ HRC, *General Comment No 22*, [8].

proportionate to the legitimate aim pursued.³² Certain ‘permissible limitations’ have been set on freedom of expression, for example.³³

35. In the context of European human rights law, it has been said that:

*A limitation upon a right, or steps taken positively to protect or fulfil it, will not be proportionate where this is no evidence that the state institutions have balanced the competing individual and public interests when deciding on the limitation or steps, or where the requirements to be met to avoid or benefit from its application in a particular case are so high as not to permit a meaningful balancing process.*³⁴

36. It is expected that domestic legislation which aims to implement international human rights obligations will utilise the principle of proportionality as part of an assessment of the necessity of a measure in order to determine whether a limitation on a right is justifiable.³⁵

37. In the operation of article 18, a distinction has been drawn between having a religious belief and its manifestation, the first being an absolute right. The manifestation of religion or belief includes worship, teaching of those beliefs and observance of religious rituals and is not absolute ‘as such activities can interfere with the rights of others, or even pose a danger to society’.³⁶

38. Similarly, article 20 of the ICCPR, excerpted above, recognises that expression can be destructive in nature and may need to be limited.³⁷

Domestic recognition of proportionate and balanced approach

39. In further considering when limitations on human rights may be permissible, the Law Council endorses the analytical framework adopted by the Parliamentary Joint Committee on Human Rights (**PJCHR**). In general, where a provision appears to limit rights, the PJCHR considers whether and how:

- the limitation is prescribed by law;
- the limitation is aimed at achieving a legitimate objective;
- there is a rational connection between the limitation and the objective; and
- the limitation is proportionate to that objective.³⁸

40. The Expert Panel emphasised the ‘equal status in international law of all human rights, including freedom of religion’,³⁹ as well as the need for a balanced and proportionate approach.⁴⁰ It highlighted at the outset that:

³² *Handyside v the United Kingdom* [1976] Eur Court HR 5 (**Handyside v UK**), [48] and [49].

³³ See Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc A/HRC/23/40 (17 April 2013) (**Special Rapporteur Report**), [28] and [29].

³⁴ Harris, O’Boyle and Warwick, *Law of the European Convention on Human Rights* (Oxford University Press, 3rd ed, 2014) 13 (emphasis added).

³⁵ In general, a State must only interfere with a person’s rights if it is proportionate to the legitimate aim pursued. Certain ‘permissible limitations’ have been set on freedom of expression, for example. See *Handyside v UK*, [48]-[49]; and the *Special Rapporteur Report*, [28]-[29].

³⁶ Joseph and Castan, 567 [17.15].

³⁷ *Ibid*, 626 [18.72].

³⁸ PJCHR Guide, 7-9. See the Law Council’s *Policy Statement on Human Rights and the Legal Profession: Key Principles and Commitments*, May 2017, [19].

³⁹ *Ibid*, 1 (Rec 3).

⁴⁰ Expert Panel Report, 29 [1.60]; 59 [1.229]; 66 [1.260].

*Importantly, there is no hierarchy of rights: one right does not take precedence over another. Rights, in this sense are indivisible. This understanding was absent from some of the submissions and representations the Panel received. Australia does not get to choose, for example, between protecting religious freedom and providing for equality before the law. It must do both under its international obligations.*⁴¹

41. Australian caselaw has also recognised the need for a balanced approach when tensions arise between the freedom to manifest religion, and other rights. For example, in *Christian Youth Camps Ltd & Ors v Cobaw Community Health Services Ltd & Ors*⁴² (**Christian Youth Camps**), Maxwell P observed that:

*Article 18 draws a distinction between the freedom 'to have or to adopt' a religion or belief, and the freedom 'to manifest [that] religion or belief in worship, observance, practice and teaching'. Article 18 permits no limitation of any kind on the freedom to hold a religious belief. The freedom to manifest a religious belief, however, may be subject to limitations. As art 18.3 recognises, this freedom may need to be limited in order 'to protect ... the fundamental rights and freedoms of others'.*⁴³

International examples of limitations placed on freedom to manifest religion

42. Human rights jurisprudence provides specific examples of the application of the proportionality principle in determining whether limitations on rights are justified.
43. At a straightforward level, *JP v Canada*⁴⁴ demonstrates that article 18 is not an unqualified, blanket right free from limitation. In that case, the HRC found that the refusal to pay taxes on the grounds of conscientious objection fell outside the scope of protection of the article.
44. Article 26 was applied by the HRC in *Ross v Canada*⁴⁵. Ross, a teacher in New Brunswick in Canada, published a number of books and pamphlets containing controversial religious opinions including writings that Judaism fundamentally threatened the Christian faith.⁴⁶ Ross was removed from teaching in a Canadian school because he had made similar statements in the school context to those expressed in his writing outside school. After numerous complaints were filed against Ross and extensive litigation in Canada ensued, Ross submitted a communication to the HRC claiming a breach of his rights under articles 19 (freedom of expression) and 18 (freedom of religion and belief). The Committee agreed with Canada that Ross's rights under the ICCPR had not been violated.⁴⁷ Canada defended its action partly by reference to its duties under article 20 (obligation to prevent and punish expressions of racial or religious hatred).⁴⁸ The Committee concluded that the restrictions imposed on Ross were for the purpose of protecting the 'rights and reputations' of persons of Jewish faith, including the right to have an education in the public school system free from bias, prejudice and intolerance. The Committee also found that the restrictions placed on Ross were legitimate 'for the purpose of protecting the 'rights or reputations' of persons' who were the object of the religious opinions and Ross's rights had not been violated.⁴⁹

⁴¹ Ibid, 13 [1.37].

⁴² [2014] VSCA 75 (**Christian Youth Camps**).

⁴³ Ibid, [190] (Maxwell P).

⁴⁴ HRC, *Views: Communication No 446/91*, 43rd sess (7 November 1991) (**Dr JP v Canada**).

⁴⁵ HRC, *Views: Communication No 736/97*, 70th sess (26 October 2000) (**Ross v Canada**).

⁴⁶ Ibid.

⁴⁷ Ibid, [12].

⁴⁸ Ibid, [6.2]–[6.4].

⁴⁹ Ibid, [12].

45. In *Eweida and Others v UK*⁵⁰ a Council Registrar objected to being required to officiate at civil partnership ceremonies and a Relate Counsellor objected to being required to offer psychosexual counselling to same-sex couples. The Local Authority had a policy which aimed to secure the rights of others which are also protected under the Convention such as those who are same sex attracted. Both had their employment terminated. Claims alleging discrimination on the basis of religion were brought in the UK and in the European Court of Human Rights. Both the domestic courts and the European Court rejected the case, with the latter finding that, 'State authorities therefore benefitted from a wide margin of appreciation in deciding where to strike the balance between [the employee's] right to manifest his religious belief and the employer's interest in securing the rights of others'.⁵¹

46. *Gatis Kovalkovs v Latvia*⁵² concerned a case where a prisoner complained he was required to practise his religion in the presence of other prisoners. The European Court of Human Rights found at that:

*In the circumstances where the prison authorities, on at least one occasion, offered the applicant the use of separate premises for performing religious rituals and the applicant refused that offer without any apparent reason, the balance between the legitimate aims sought to be achieved and the minor interference with the applicant's freedom to manifest his religion has clearly been achieved.*⁵³

47. In *Francesco Sessa v Italy*⁵⁴ the European Court of Human Rights considered a case where a local court had set a case down for hearing on a date which coincided with a Jewish holiday and refused to adjourn it to a later date. The Court said that it:

*... considers that [the restriction on the freedom of religion] was prescribed by law, was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice and the principle that cases be heard within a reasonable time.*⁵⁵

48. To take one example from the national level, in the case of *Bull & Bull v. Hall & Preddy*, decided by the UK Court of Appeal in 2012, the Court held that laws prohibiting discrimination on grounds of sexual orientation were a 'necessary and proportionate intervention', to protect the rights of others. In reaching this decision, the Court affirmed at paragraph 65 that:

*No individual is entitled to manifest his religious belief when and where he chooses so as to obtain exemption in all circumstances from some legislative provisions of general application.*⁵⁶

⁵⁰ [2013] Eur Court HR 37.

⁵¹ Ibid, 106, 109

⁵² European Court of Human Rights, Application No 35021/05, 31 January 2012.

⁵³ Ibid, [67].

⁵⁴ European Court of Human Rights, Application No 28790/08, 3 April 2012.

⁵⁵ Ibid, [38].

⁵⁶ *Bull & Bull v. Hall & Preddy* [2012] EWCA Civ 83, 65.