

## **Equal Opportunity (Miscellaneous) Amendment Bill 2006**

### **Christian Leaders' Briefing sponsored by Festival of Light Australia**

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#### **KEYNOTE ADDRESS BY ARCHBISHOP HEPWORTH**

**Richard Bunting (SA Chairman, Festival of Light Australia):** It is my pleasure to introduce Archbishop John Hepworth. He supervises 41 bishops in 39 nations as the international leader of the Traditional Anglican Communion (known in Australia as the Anglican Catholic Church) - half a million people worldwide. Not many people know that it is headquartered here in Adelaide. John, please come and give us an international and historical perspective on the Equal Opportunity (Miscellaneous) Amendment Bill 2006.

**Archbishop John Hepworth:** It is good to be with you! I could say, "Here we go again!" I was ordained 38 years ago, and the brawls about these kinds of things were raging when I was ordained - and they have never stopped. I dream of having a ministry in some dreamy medieval place with cathedrals and obedient people and beautiful music - but it didn't happen then and it doesn't happen now. Whenever I dream a medieval dream of a peaceful ministry, one of my clergy says, "Yes - but they didn't have flushing toilets then!"

I'm extremely concerned. I want to give you what I think is the process those opposing us have been running for the last 40 years or so. To understand the process is actually to be empowered. Processes are at different stages in different countries, so we can actually see the future. In five years' time in Adelaide this is probably the next stage that will happen.

Many nations have come out of an essentially Christian constitution or a constitution informed by Christian principles - almost the whole of the Western world and a good deal of the East. The explosion of the British Empire, and of course the Portuguese and the Dutch and so on, meant that various versions of the Christian vision were being globally exported over the past 500 years. And as nations moved towards independence, so their principles of law, their philosophy of the individual, their philosophy of the relationship between religion and politics and between the institutional church and the state (and those two were not always the same thing) - these complex relationships whereby people can live together in harmony and prosperity and peace - were woven together in largely similar ways.

Thus in the past, what was criminalised was very largely what was sinful. And since what is sinful generally creates harm and evil for our fellow human beings as well as our relationship with God, this was entirely a wise way of making law.

It would have been ludicrous for a nation that set religion on something of a pedestal through education, perhaps endowment of the church, through charitable institutions of hospitals and orphanages and all that, ludicrous for the state to do that on the one hand and to legislate for the opposite.

To have legislated for the opposite would have undermined the whole educational and charitable enterprise that has been such a feature of Christendom for the past 1500 years. And so naturally, activity and law-making came to be synchronised.

We are now indulging in a process of removing that synchronisation - deliberately, carefully, and stage by stage.

The first stage in the process, that has become a fairly well-worn process in the West, is the process of decriminalisation - things that have been made criminal acts, not just in the area of sexuality but perhaps in the area of literature and the arts, so for instance violent pornography was once criminalised universally because violent pornography not only harmed the individual's relationship with God but harmed society at the level of the family, at the level of human relationships and at the level of the state.

A state that had become sexually debauched was usually a weak state. As one of my African priests - African clergy are very inelegant but they are always very right - said, "If I'm a soldier and another soldier jumps on top of me in the trench, Bishop, I want to know what he's doing and what he's not going to do!" Wise words from the field of combat - there are many levels of why this was done.

The agitation was first, simply to decriminalise: “We’re not advocating it, but it is so wrong for people to go to jail for what they’re doing in the privacy of their own home!” Haven’t we all heard that, over and over?

And what has been fascinating, in countries like Australia, is that whilst some things have been decriminalised, other things that happened in the home have been criminalised. It hasn’t been consistent. So we’ve discovered new things to be criminal but without any relationship to that basic philosophical enterprise so well established in the West.

And so with decriminalisation, things that once one could be taken before the courts for, one no longer could - but at that stage, the state wasn’t exactly advocating these things.

The next stage is an advocacy by those who wanted things to be decriminalised, for those things to be legalised. That is, the state begins to pass laws which give these things status before the law. So one decriminalises homosexual relationships, but then you have an almost immediate demand that the state recognise and regulate these relationships - which moves them out of a grey and dark area into an area of positive advocacy by the state.

Now it’s one thing to say, “Now I think what you’re doing is really nasty, but I’m not going to report you to the police,” but another thing to be invited to the wedding and to front up with a present. Gradually, a whole range of activities have been regulated. They have been taxed, and a semi-legal establishment has been created to police the new laws - almost never the law courts, because the courts under our philosophy of law must look to precedent when making judgements. Judges ask, “What have we inherited that tells us how to judge this present situation?”

What was set up was a totally new set of law courts that had no precedents whatsoever but the advocacy of what is new. I was involved in these debates in university many years ago. We supposedly couldn’t trust the judges - “men who were steeped in patriarchy” etc. We actually couldn’t trust the women judges “steeped in patriarchy” either - so even when we got women judges, we still couldn’t trust the courts. We couldn’t trust them with these new laws such as equal opportunity laws which were going to transform society into a different way of thinking about each other.

And therefore we needed to put people in charge that were committed to the new ways. And so we now have the Equal Opportunity Tribunals and all manner of other tribunals that have semi-legal powers. They can punish people. They can demand that people appear before them. They can conduct proceedings that look like trials, but without any of the protections that one has when before the courts where one is confident of being judged against the standards of one’s civilisation. No more! And in many cases, appeals to the courts have been banned. So if you are up before the Equal Opportunity Tribunal here, you can only appeal to the courts on a matter of law - you can’t appeal because they’re wrong.

If you’re wrongly convicted of murder, you can appeal all the way to the High Court of Australia and hope that somehow the evidence will be looked at in a new way and your innocence will be protected. The whole system is designed to recheck and check again the evidence. But before these semi-legal tribunals, you cannot appeal because they’re wrong; only because they’ve applied the law wrongly.

The truth is never subjected to somebody else’s scrutiny. I’ve just said on Radio Life FM that South Australia is now transferring the Vatican to the Equal Opportunity Tribunal in Adelaide. It will be the only infallible body actually resident in Adelaide!

So the second stage is legalisation. The third stage of the process is criminalisation. Usually 20 or 30 years after you decriminalise something, if you are confident enough you can make the *opposite* a criminal offence. Instead of homosexual acts being criminal offences, *criticising homosexuals for doing it* will be a criminal offence. That stage has been reached in many places, and we’re seeing tinges of it in South Australia.

The fourth stage, which few have dared to reach yet - but there is one “shining example” in Scandinavia - is where you actually entrench the new behaviour in your constitution. And that means if you break these new taboos, you are subjected at least theoretically (and I never trust my liberal opponents to ever only go as far as theory - most things I’ve dreamed of them doing they have actually done) to prosecution for

breaking the constitution, which of course leads you to the whole pathway of potential treason. You cease to be a citizen of the state by refusing to accept its constitutional arrangements.

Now that of course is famously what China has done with Christians. It has constitutionalised the marginalisation of Christian people. So it's not only Scandinavia and homosexuality - it has happened in many communist countries. It is still the case in Vietnam too, where the constitution, whilst guaranteeing freedom of religion, also gives the state the sole right to regulate it. It's sleight of hand.

Now the Equal Opportunity (Miscellaneous) Amendment Bill would take us a further stage in South Australia. It throws us a few sops - such as you can still refuse to employ somebody in your school on the grounds of their sexual preference, but not on the grounds of their sexual activity. If somebody is living in a homosexual relationship and you really don't want that person on the staff of your school, you can only exclude them once they've declared they're homosexual, because it is the only concept we're allowed to use. We can't use the behaviour. Catch 22.

Apart from that singular exception it will be almost impossible for any of us to teach what Christianity has always taught about sexual behaviour, even in our pulpits or in our schools, without running the risk of a complaint being made to the Equal Opportunity Commission and ourselves being the defendants. That's the threat. It is taking decriminalisation a very important stage further.

My reading of the Equal Opportunity (Miscellaneous) Amendment Bill is that it is more severe than the vilification laws in Victoria. It's far more embracing of every aspect of our lives.

It's an attempt, I think, to regulate dissent - and we now have to regard clear Christian teaching in South Australia as a form of dissent - it's an attempt to silence a group of people who have debated too well these past 35 years. I'm ancient enough to remember a certain meeting in the Glenelg Town Hall which I think was almost the beginning of Festival of Light. It was over 30 years ago - I was a junior curate in a parish in Glenelg and was dragooned to speak at this meeting. I got into terrible trouble for it, too! We've been at it for this long, and we've been effective. But the government does not want a debate based on basic philosophical principles - it would prefer that there was no debate at all on anything. Much of the government's media management is designed to prevent debate and maximise announcements.

The challenge is to recreate debate. But if we cannot speak our point of view based on our evidence - that is, the clear teaching of Scripture, the tradition of the church over 2000 years, and the tradition of democracy that spans almost the same length of time - then the other side of the debate, which is that the preferred methods of sexual congress are those preferred by that side of modern politics - cannot be challenged, because our arguments have been silenced.

Now I hasten to add as a footnote that this new enlightenment does not render legitimate every form of sexuality. There are some taboos which have been recently created which are much more vigorously enforced than the old taboos. They are not logical in the least - we have been fighting a government that encourages underage people into sexual activity of all manner of kinds and we're not allowed to debate that, either. So some things are being heavily criminalised at the same time as we are being criticised for saying that other things are wrong. There's no logic.

Now the final thing is this - I think it's crucially important - we are also being saddled with the argument that Islamic preachers are terrible and the things they say are absolutely terrible, therefore preachers need to be controlled lest they vilify society. Now let's think about this. Christianity has gone through cataclysmic changes while it grappled with its place in relation to freedom in the world. At crucial moments, such as the Reformation, the end of the Dark Ages, the end of the Roman Empire, Christians have had to rethink their attitude to personal freedom, the nature of the state, the nature of state power. And they have done this with overwhelming openness and a very substantial body of literature that is classical in civilised history. And most recent is the document on the church in the modern world of the second Vatican Council, in which the Catholic Church grappled with religious freedom, pluralism, multiculturalism and all that, and charted the pathway in which the church could remain true whilst tolerating certain forms of dissent that were not beyond the gospel.

In other words, Christianity has endured a vast process of rethinking its place in the world against challenges the world has given it about personal freedom, knowledge, enterprise, the state, the economy.

The simple word is that Islam hasn't yet started to do this. And we ought to be saying very clearly - that until there has been an open and thorough process which is agonising, of rethinking a whole raft of things including its fundamental scriptural documents in the light of the experience of being humans and living under God - until Islam is prepared to do that, it cannot claim to be considered in relationship to Christianity. Christians have struggled with these issues and indeed over centuries have adjusted and changed.

Many of us were profoundly moved when the late Pope, in his year 2000 Holy Year address, apologised to a whole range of people whom his church had offended in history. He apologised to the Jews. He apologised to the Protestants - that "we really wouldn't have burnt you if we had thought more deeply". I think that's a rather beautiful thing for a Pope to say. We're waiting for the British Prime Minister to say the same thing to the Pope, but we've waited in vain for Mr Blair to be equally generous! And many other times we have not only thought these things through, but we have sought to make good for the times when we have been evil.

And that is in fact the only way a human can stand before God - sinful, but repentant. And we need to remind people of that in this debate. It is an easy and cheap shot for the government to compare you and me in our pulpits with a mad mullah standing up in favour of female mutilation and the killing of adulterers. The Lord actually told us something about killing adulterers, and we stopped doing it in those first years when the church was new. We have ever since then sought to hate the sin, and tolerate the sinner.

**Question** (inaudible) about whether religious freedom is protected by the Australian Constitution.

**Archbishop Hepworth:** You reach a stage where in fact even the genius of those who drafted the Australian Constitution didn't think far enough ahead. The Constitution presumes a whole raft of basic human deficiencies while trying to think ahead. The famous phrase of Alfred Deakin here in Adelaide, in what is now St Mark's College where the famous table on which the Constitution was drafted still sits in the Senior Common Room - Deakin said to a reporter there, "The Constitution which we seek to prepare is designed for generations unborn and as yet unknown." His mind was not on the present - he was a most exceptional politician.

The High Court has always sought to uncover new freedoms in the Constitution. That tends to work both ways - but generally it works for us and generally that's a fair interpretation. We have some people on the High Court now who would not share that view of the Constitution and it's the nature of High Courts and Supreme Courts that the philosophy of the judges which tends to be the philosophy of those who appoint them tends to be reflected in their judgements.

Courts are political. Even though they are a separate institution, they are part of the institution of doing politics, of us living as a society. I don't find a lot of comfort in the possibility that laws such as the amended Equal Opportunity Act will be declared unconstitutional. Because while the Constitution tends to prevent the state from interfering in religion in Australia - and that was an inheritance from the bitter experience in the "Old Countries" - the Constitution does not in fact entrench human freedom beyond that of common law.

Common law is the way that the courts interpret our freedoms. And what we've really got here is a battle between the parliaments of Australia who are establishing non-legal tribunals to look after certain laws and removing them from the jurisdiction of the courts, and the battle for the courts to win back their jurisdiction. That's a cataclysmic and titanic battle, and neither side is winning.

At the moment the courts have not felt powerful enough to take on government and tribunals. The tribunals feel they have popular sentiment behind them - "Now everybody's in favour of women being equal, aren't they - and the frantic mullahs should be controlled a bit, and if that extends to frantic Catholic priests well, you know, that's a good thing too!" That's the nature of public opinion in Australia - brilliantly manipulated our opponents.

**QUESTION** [inaudible] about what to do about the Equal Opportunity (Miscellaneous) Amendment Bill.

**Archbishop Hepworth:** If you get hold of the bill, put a few red lines through the most dreadful sections and make an appointment to see your local state MP. Say, “Do you really intend to vote for this? This is what it’s going to do to my priest or pastor. I can’t live in a state like this!”

This bill is actually a sufficiently large incremental step for MPs to squirm - that’s the first thing. The second thing is that we ought to be urging Labor MPs to demand a conscience vote.

Every generation has to fight for the faith. Every generation accepts the challenge, or doesn’t. We either fight this one or let it go, and the church gradually disappears - it won’t be the first time the church has gradually disappeared from an apostate city.

The call is ours - whether we fight this or not; whether we say, “This is the line in the sand!” Once it’s beyond this, there’s very little point fighting the next stages - they will flow on. We need to make that absolutely clear.

But governments are still a little open to ridicule and pressure. If enough people pressure MPs, they’ll get the message. But we’re dealing with a pretty brazen mob, and those of us who have experienced the sex education fight know that the thickness of the skins of SA Members of Parliament is almost unequalled in history.

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