

## Chapter 8

# Religious Freedom under the Victorian Charter of Rights

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## I Introduction

Religious freedom is the ultimate test of a society's willingness to recognise human rights. This is because religion has the potential to challenge the authority of the state like no other claim on human life. The relationship between law and religion has typically been characterised in jurisdictional terms – the dual authority of church and state, the citadel of conscience, the relative independence of religious associations, or the clash of normative systems of value.<sup>1</sup> In each (potentially different) characterisation, religion points to what Rowan Williams calls 'graded levels of loyalty': a claim that the state's authority, what it can properly demand of its citizens, is confined.<sup>2</sup> Freedom of religion – a right manifested just as much in association with others and corporately as it is individually – is fundamental to a free and just social order.

The *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) were proclaimed to be enactments that would protect the rights of all persons, whatever their gender, age, disability, income, background or religion.<sup>3</sup> Among those rights, the Charters were meant to protect the right of each person to 'freedom of thought, conscience, religion and belief', including 'freedom to have or to adopt a religion or belief of his or her choice' and 'freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private'.<sup>4</sup> And yet, many people of religious

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1 See, eg, SD Smith, 'Discourse in the Dark: The Twilight of Religious Freedom?' (2009) 122 *Harvard Law Review* 1869 and the exchange between Chief Justice Beverley McLachlin and Professor Jean Bethke Elshtain, 'Freedom of Religion and the Rule of Law: A Canadian Perspective' and 'Response', in D Farrow, (ed), *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (McGill-Queen's University Press, 2004).

2 R William, 'Secularism, Faith, and Freedom' in *Faith in the Public Square* (Bloomsbury, 2012), p 29.

3 Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1289 (Rob Hulls, Attorney-General).

4 *Human Rights Act 2004* (ACT) s 14; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 14.

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