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**FIRST NATIONAL CONGRESS OF THE INTERFAITH  
ASSOCIATION OF AUSTRALIA**

MACQUARIE UNIVERSITY, TUESDAY 19 NOVEMBER 1996

**AUSTRALIAN INTERFAITH & ITS PROBLEMS**

The Hon Justice Michael Kirby AC CMG

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Australians are fortunate to live in a society where the practice of different religious faiths is respected - as is the practice of no religious faith. Our Constitution and our traditions combine to guarantee freedom *of* religion and also freedom *from* religion.

We have not achieved a perfect collection of laws for the defence of religious liberty. To some extent we have done no more than to rely upon the tolerance inherited from the past and the indifference which exists at present. The advent of new

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\* Justice of the High Court of Australia. President of the International Commission of Jurists.

communities and the introduction of different, minority religions, in greater numbers than previously, present Australian society with new challenges. They will require fresh legal responses; from the branches of Executive Government and administration, from the courts and from the legislature.

The list of problems for religious liberty in Australia surely include:

1. The achievement of an appropriate harmony between the pluralistic society and the growing number who are proponents of fundamentalist religions and who may not accept the basic premise of tolerance and respect for the opinions of others;
2. The precise definition of religious practices which will not be accepted even by a tolerant multicultural community. Thus, obviously, *suttee* (the burning of the widows of orthodox Hindus) would not be tolerated. Nor female circumcision. But what of discrimination against women in the priesthood? Against priests or teachers in religious school on the ground of sexual orientation? Or of marriage on the part of priests? Such cases present difficulties of line-drawing between the right of members of religion to hold and practice their views and the right of general society to uphold causes of abiding importance to it;

3. The continuance of public ceremonial observances in the Christian tradition has accompanied many of our core institutions - including Parliament and the courts. It seems likely that these (like the earlier religious broadcasts) will soon adapt to a multicultural society. It is likely that the Lord's Prayer at the daily opening of Parliament on sitting days will give way to the more neutral and universal invocation of the Deity or to the secular removal of prayers altogether. Oaths in court may also give way to a universal, secular promise to tell the truth, to the breach of which the law of perjury will apply. Naturally, there will be traditionalists who will resist these changes. But change seems inevitable, in time, as a reflection of the ultimate badge of religious liberty - religious diversity, the right to change religion and the right to have no religion at all and even to propagate opinions hostile to religion;
  
4. If the Crown survives in Australia, and in other countries of the Commonwealth of Nations where the Queen is Head of State, I think it is likely that moves will be taken before long to remove from the *Act of Settlement* the offensive provision against the Sovereign of the United Kingdom - or his or her spouse - being or becoming a member of the Roman Catholic faith. Although this has not presented any hint of a practical problem until recently, the provision is clearly objectionable in principle. The Sovereign's religious liberty, like that of her subjects, should be a matter of

conscience and should be separated from the role of Head of State. In this enlightened time even Kings and Queens should have the right of religious freedom, including the freedom to have no religion. The provision finds its explanation in history which anyone who troubles to read it will understand. But the symbolism is inappropriate and should be reformed;

5. A marked increase in friction on religious grounds arises from the greater ease of travel today. When Christian and Moslem communities lived in little villages in Bosnia they could live together in relative peace. Introduce the train, the motor vehicle and the jumbo jet and the world is presented with new sources of tension. Modern means of travel have facilitated the influx to Australia of many new religious groups. Their presence will test our commitment to religious liberty and to the wider cause of multiculturalism. Already we have seen in Australia reflections of far-away conflicts between religions and faiths of communities in their lands or origin. With passing time these conflicts tend to fade. But they can be acute. Thus, every clash between Orthodox and Catholic Ukrainians in Kiev sends a ripple to their communities in Australia akin to that felt in earlier times by descendants of the two communities in Ireland. The recent revival of ethnic diversity and tensions in Central and Eastern Europe and the former States of the Soviet Union promise

reflections in Australia which we should have legal means to redress;

6. With declining participation by the community in the older Christian religions and growing secularism, it seems likely that pressure will mount upon governments and legislatures in Australia to revise and curtail the privileged position of churches and their institutions in town planning, rating and taxation. The broad definition given by the courts to "religion" will accelerate these moves. It seems likely to me that the courts will see fresh challenges to the constitutionality of public funding of religious schools. In harmony with the more recent rights-based notions of High Court authority arguments may be addressed to the Court to change the restricted view of s 116 of the Australian Constitution taken in 1981. The decline in religious preparation in most denominational schools in Australia raises a question as to the justification for a wholly separate system of education which is almost wholly publicly funded. Such separation of the community along religious lines and in impressionable youth may be seen by some as antithetical to the principles of tolerant diversity and multiculturalism; and
7. The increasingly complex and controversial question of morality presented for example by modern technology, require answers of an Australian legislature today which

must be given without the assurance of an accepted and recognised moral code or universally respected authorities able to pronounce on such questions. In earlier times, the major Christian churches could present the answers. Today their answers, when offered, are challenged. Many of their perceptions or morality (eg on gender and sexual orientation issues) seem to be out of line with community values in Australia. These developments, without changes on the part of the churches, may tend increasingly to marginalise them, at least so far as law-making is concerned. Judges too can no longer refer to religious views on moral questions for fear of offending the principles of secularism and multiculturalism. But if religion is removed what is to take its place in expressing the accepted moral code of society that lies behind many laws?

Many in the traditional churches in Australia believe that the best course for them, and their adherents, is to hold fast to traditions, established legal rights and old conventions of pre-eminence. More thoughtful advocates of the religious cause urge a reconciliation with the diverse multicultural society that Australia is today. Thus, Dr Bruce Kaye remarks:

"The legal framework within such the Australian community operates has traditionally been secular and non-preferential. Recent changes in the character of society in the direction of a more manifestly multicultural community puts a question-mark against traditional ways of thinking on the part

of Christians in relation to their position in the community. The increasingly secular community attitudes which the Christian Church are faced with drives home that point. Recent rulings in the High Court only served to confirm the secular distanced position of the law in Australia in relation to religion in general and Christianity in particular. Such circumstances combine to create for Christianity in this context questions of social and political attitudes which inevitably apply question of thought patterns and intellectual approaches. At root, what is required is not just an adjustment of social attitudes but a rethinking of the mentality that lies behind them. In this respect, some Christian Churches in Australia are in need of a fundamental theological reinterpretation of their tradition, and their experience of multicultural secular Australia."

But in case this instruction should seem too fearsome to proponents of a religious way of life, I would suggest that comfort can be drawn from the conclusions of Professor David Little in a paper aptly titled "Religion: Source of Conflict, Source of Peace". Little concludes in words which I would echo with a bold Amen:

"In its simplest terms, my argument comes to this: when religion is pictured in strongly communalist terms, religion is a source of conflict. When religion is pictured in strongly human-rights terms, it is a source of peace. Though the picture in many areas of the world is not at the moment especially encouraging, recent developments in Ukraine, to close with one example, do go some way towards confirming the suggestion that a system of religious liberty and the separation of civil and religious identity is an important condition of peace."