

**THE MEMBERSHIP DECISIONS OF RELIGIOUS
ORGANISATIONS: EQUALITY, RELIGIOUS LIBERTY AND
FREEDOM OF ASSOCIATION**

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ABSTRACT:

The merit of a provision that regulates the membership decisions of religious organisations is typically assessed according to the right to equality and religious liberty. Although such rights are of central importance in assessing such a provision, it is necessary to also consider other relevant considerations in order to reach an informed conclusion on the appropriateness of the provision. Freedom of association is a right that is often neglected in this context. This article argues that any assessment of the merits of a provision that impacts on the membership decisions of religious organisations should have a strong focus on freedom of association considering the importance of this right.

I INTRODUCTION

The acceptability of an organisation making a membership decision according to characteristics commonly protected by anti-discrimination legislation is a complex and controversial issue. Such a decision to exclude a person on the basis of a protected characteristic will often result in the decision being labelled as an act of discrimination that should be prohibited by the State. This issue has become particularly controversial

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when the relevant organisation is a religious entity and the decisions regarding membership are made according to the person's compatibility with the organisation's religious commitments.

In these situations the standard approach to assessing the appropriateness of the membership decision is to approach the issue as a conflict between equality and religious liberty. The right to religious liberty is typically recognised as an important right given extensive recognition by international human rights instruments and must be shown substantial respect.¹ However, the right to religious liberty is not absolute and can be limited in a range of circumstances especially when it conflicts with other rights. The limitation clause in the *International Covenant on Civil and Political Rights* (the 'ICCPR') is typically quoted which holds that the '[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others'.²

The right to equality is similarly affirmed as being of great importance and receives similarly strong support under international human rights

¹ Some of the instruments that are typically relied upon to support the importance of religious liberty are the *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, U.N. Doc A/810 (10 December 1948) art 18; *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953), as amended by Protocol No 14bis to the *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 27 May 2009, CETS No 204 (entered into force 1 September 2009) art 9; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18 and the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, 36 UN GAOR, 36th sess, Supp No 51, UN Doc A/36/684 (25 November 1981).

² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(3).

instruments.³ Once it is accepted that religious liberty is important but can be limited when it conflicts with other rights such as the right to equality, attention is then directed to the specific circumstances in which the decision was made. A conclusion will then be reached about the acceptability of the religious organisation's decision on the basis of an assessment of the relative importance of the equality claim and the religious liberty claim in the particular context of the matter.⁴

Although such an approach is commonly adopted by courts, human rights bodies and individuals it often fails to adequately address the complexity of the issues raised in a consideration of the merits of a religious organisation's decision. Importantly, both the right to religious liberty and the right to equality are capable of being used to support the positions of both a religious organisation and the persons excluded from the organisation. The religious liberty claim will predictably be made by the religious organisation to support the acceptability of their decision.

³ Some of the instruments that are typically relied upon to support the importance of equality are the *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 7; *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953), as amended by *Protocol No 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 27 May 2009, CETS No 204 (entered into force 1 September 2009) art 14, Protocol No 12 art 1 and the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 3, 26.

⁴ A useful illustration of the exclusive focus on equality and religious liberty that many individuals adopt in determining how the law should resolve a controversy concerning the conduct of a religious individual or body are the submissions of individuals and organisations to government inquiries. For example, in 2017 the Senate Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill sought submissions from individuals and organisations regarding the protections, if any, that should be granted to those with a conscientious objection to facilitating same-sex marriages. There were over 400 submissions made to the Select Committee and overwhelmingly the authors of these submissions focused exclusively on equality and religious liberty in arguing for their preferred position regarding how the law should regulate those with a conscientious objection: Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill Parliament of Australia, *Submissions*

<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Same_Sex_Marriage/SameSexMarriage/Submissions>.

However, in many situations the membership decision may result in a person being excluded because of their religious beliefs. A Hindu charity, for example, may want to only employ Hindus so that the charity can more effectively address the needs of the Hindu community and also to allow the organisation to serve as a venue for Hindus to socialise and learn more about their faith. A decision by such a charity to exclude a Buddhist applicant for an advertised employment position can understandably be regarded as a discriminatory decision as it involves an adverse decision being made on the basis of a person's religion, which is a characteristic typically protected by anti-discrimination legislation.⁵

Similarly, the right to equality will be relied upon by the person excluded from the religious organisation especially when the decision is based on a ground protected by anti-discrimination legislation. However, the religious organisation will also be able to rely upon an equality claim to support their position as the right to equality protects a range of relevant grounds including religion. Article 26 of the *ICCPR*, for example, declares that '[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law ... 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* ... or other status'.⁶

⁵ See, eg, *Anti-Discrimination Act 1998* (Tas) s 16; *Anti-Discrimination Act 1996* (NT) s 19; *Equal Opportunity Act 1984* (WA) s 53; *Equal Opportunity Act 2010* (Vic) s 6; *Anti-Discrimination Act 1991* (Qld) s 7; *Discrimination Act 1991* (ACT) s 7.

⁶ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 26 (emphasis added). See also *International Covenant on Economic Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) art 2(2); *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) arts 1, 24; *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) arts 3, 19; *Declaration on the Rights of Persons Belonging to National or*

Any legislation or court decision that undermines the ability of religious individuals to establish organisations to serve the needs of the religious community can be understood as violating the right to equality as it will impose a detriment on the individuals that they only experience because of their religion. This position is affirmed by Iain Benson who argues that as religion is protected by the right to equality ‘placing equality and non-discrimination over against religion or placing some forms of non-discrimination (say, sexual orientation) as things more important than the religious person’s freedom against non-discrimination is an error — though an all too common one’.⁷ Similarly Thomas C Berg notes that

equality interests appear on the religious objectors’ side too. Gay-rights laws (in marriage or other contexts) may be facially neutral and generally applicable, but like other generally applicable laws their effects fall disproportionately on those religious individuals and groups — in this case, religious traditionalists — whose practices conflict with them.⁸

In addition to the need to appreciate that the right to equality and religious liberty may be able to be relied upon by both the religious organisation and the individuals excluded, it is also important to recognise that there are many other considerations in addition to equality and religious liberty that need to be considered in determining the merits of the membership decision. These additional factors may include considerations such as the right to privacy, the welfare of children, parental rights, minority rights, multiculturalism, and freedom of association. Such factors are often given

Ethnic, Religious and Linguistic Minorities, GA Res 47/135, UN GAOR, 47th sess, 92nd plen mtg, Supp No 49, UN Doc A/47/49 (18 December 1992) arts 2–4.

⁷ Iain Benson, ‘Taking Pluralism and Liberalism Seriously: the Need to Re-understand Faith, Beliefs, Religion and Diversity in the Public Sphere’ (2010) 23 *Journal of the Study of Religion* 17, 31.

⁸ Thomas C Berg, ‘What Same-Sex-Marriage and Religious-Liberty Claims Have in Common’ (2010) 5(2) *Northwestern Journal of Law and Social Policy* 206, 225.

little, if any, consideration by courts and human rights bodies in their reasons justifying their conclusions on the merits of membership decisions by religious organisations.⁹

A consideration of the importance of all of these additional factors in determining the merits of membership decisions made by religious organisations is beyond the scope of this article. The specific focus of this article is on the freedom of association, the importance of the freedom and the need for decision making bodies to more carefully consider the importance of freedom of association in reaching conclusions about the merits of the decisions of religious bodies.¹⁰

Part II of the article focuses on the substantial protections that have been provided to freedom of association under international human rights law.

⁹ Although these factors are often not considered by courts and human rights bodies there are nevertheless a significant number of cases where at least some of these considerations are taken into account by decision makers. For example, in *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518 the Court of Appeal for Ontario gave brief consideration to the relevance of freedom of association and freedom of expression in assessing the merits of membership criteria that had a disproportionate impact on gay individuals: [53]. There was also more detailed consideration of the freedom of association in related cases concerning Trinity Western University such as the decision of the Court of Appeal for British Columbia which held that the attempt to restrict the ability of the University to determine its members was a violation of its ‘fundamental religious and associative rights’: [190]. However, even when the relevance of additional rights is acknowledged the rights are often considered to be of limited importance compared to the rights of equality and religious liberty. Such an approach can be observed in the submission by the Australian Human Rights Commission to a Senate Inquiry on the related topic of balancing the rights of participants in same-sex marriages with the rights of those who have a conscientious objection to facilitating such marriages. The Commission advised that the issue ‘arguably engages other human rights, although to a much lesser extent than the rights to equality and non-discrimination and freedom of thought, conscience and belief’: Australian Human Rights Commission, ‘*Inquiry into the Commonwealth Government’s Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill*’ (25 January 2017) <https://www.humanrights.gov.au/sites/default/files/AHRC_170117_Submission_to_Marriage_Amendment_Exposure_Draft.pdf>.

¹⁰ For additional information on the ability of both religious institutions and the excluded individuals to rely on equality and religious liberty to support their position as well as on the importance of the additional considerations mentioned see Greg Walsh, *Religious Schools and Discrimination Law* (Central Press, 2015). The importance of freedom of association in the context of religious schools is also addressed in this text and material from this section has been included in this article in a modified and updated format.

Part III addresses the major justifications for why freedom of association should be understood as a right of fundamental importance. Part IV considers the harm that can often be caused by religious organisations and whether religious organisations should be supported by rights such as freedom of association considering the gravity of the harm that they can cause others to suffer. Part V assesses the claim that freedom of association can also be understood as a right that protects individuals who may be excluded from organisations and this this understanding needs to be taken into account in determining the support, if any, provided to religious associations on the grounds of freedom of association.

II INTERNATIONAL LAW AND FREEDOM OF ASSOCIATION

The need to show substantial respect for the liberty of individuals to establish and join mutually beneficial associations is affirmed by a wide range of international human rights instruments. The *Universal Declaration of Human Rights*, for example, holds that '[e]veryone has the right to freedom of peaceful assembly and association' and that '[n]o one may be compelled to belong to an association'.¹¹ Similarly the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* affirms that '[p]ersons belonging to minorities have the right to establish and maintain their own associations' and 'the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group'.¹² The *ICCPR* expands on the nature of the freedom of association emphasising the importance of the freedom but also the ability of the State to regulate the

¹¹ *Universal Declaration of Human Rights*, G.A. res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, U.N. Doc A/810 (10 December 1948) art 20(1).

¹² *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UN GAOR, 47th sess, 92nd plen mtg, Supp No 49, UN Doc A/47/49 (18 December 1992) art 2(4)–(5).

operation of associations in appropriate circumstances. Article 22 declares that

[e]veryone shall have the right to freedom of association with others ... No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.¹³

Similarly strong support for the importance of freedom of association can be found among international human rights bodies. The Human Rights Council, for example, adopted a resolution affirming the importance of freedom of association.¹⁴ In the resolution the Council emphasised the key role of freedom of association in securing ‘the full enjoyment of civil and political rights, and economic, social and cultural rights’.¹⁵ Freedom of association, the Council declared, is an essential component in a democracy providing individuals with invaluable opportunities to ‘express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances

¹³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 22(1), (2). For additional instruments that affirm the importance of freedom of association see *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953), as amended by Protocol No 14bis to the *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 27 May 2009, CETS No 204 (entered into force 1 September 2009) art 11(1); *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) art 16(1); *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) art 10(1); *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UN GAOR, 47th sess, 92nd plen mtg, Supp No 49, UN Doc A/47/49 (18 December 1992) art 2(4); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 18 December 1990, 2220 UNTS 93 (entered into force 1 July 2003) art 26(1)(a).

¹⁴ Human Rights Council, *The Rights To Freedom of Peaceful Assembly and of Association*, 15th sess, UN DOC A/HRC/RES/15/21 (6 October 2010).

¹⁵ *Ibid* Preamble.

or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable'.¹⁶

The broad support provided to freedom of association under international human rights law places government bodies under a strong obligation to recognise the importance of freedom of association and ensure that the freedom is only limited in circumstances where it can clearly be justified. The strong support under international law for freedom of association should also be a factor taken into account by individuals and private organisations in their own assessments of the merits of membership decisions taken by religious organisations.

III THE IMPORTANCE OF FREEDOM OF ASSOCIATION

In determining the importance of freedom of association in the context of assessing provisions that may undermine the autonomy of associations it is helpful to understand the central reasons why freedom of association should be protected. The value of the freedom can be understood through considering the essential role associations can play in promoting liberty and individual fulfilment, producing just States, supporting cultural diversity and promoting the common good. The provision of these benefits will often be a significant factor against undermining the autonomy of associations in relation to their membership decisions on the basis that this might jeopardise the ongoing provision of these benefits.

¹⁶ Ibid.

A *The Promotion of Liberty and Individual Fulfilment*

Religious and non-religious organisations provide valuable opportunities for individuals to explore personal interests, increase knowledge and skills, develop their character, expand social networks, and discuss and express their opinions. As Lenta states: ‘Associational freedom is an essential part of individual freedom: associations represent the choices of their members about how to live’.¹⁷ Garnett expands on the importance of associations to individuals arguing that they ‘are not only conduits for expression; they are also the scaffolding around which civil society is constructed, in which personal freedoms are exercised, loyalties are formed and transmitted, and individuals flourish’.¹⁸ While Ahdar and Leigh warn that ‘[t]he things we treasure from civil or intermediate associations generally, and religious groups especially—new ways of thinking, the development of concepts of the good life, the inculcation of virtue, respect, loyalty, sacrifice, and so on—may be jeopardized by state conformity to public juridical norms of behaviour’.¹⁹

The United States Supreme Court addressed the importance of this aspect of freedom of association in *Roberts v United States Jaycees* (‘Jaycees’).²⁰ The case concerned whether a mentoring organisation called the ‘United States Jaycees’ should be permitted to continue as a male only organisation.²¹ The purpose of the organisations was to help young men

¹⁷ Patrick Lenta, ‘Taking Diversity Seriously: Religious Associations and Work-Related Discrimination’ (2009) 126 *South African Law Journal* 827, 832.

¹⁸ Richard W Garnett, ‘Religious Freedom and the Nondiscrimination Norm’ in Austin Sarat (ed), *Legal Responses to Religious Practices in the United States: Accommodation and Its Limits* (Cambridge University Press, 2012) 194, 225.

¹⁹ Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press, 2nd ed, 2013) 390.

²⁰ (1984) 468 US 609.

²¹ *Ibid* 612–4.

with their ‘personal development and achievement and [provide] an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and understanding among young men of all nations.’²² Although the Supreme Court ultimately did not resolve the matter in the favour of the United States Jaycees, the Court did strongly emphasise the importance of freedom of association declaring that ‘individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty’.²³

B The Development of Just States

A further reason justifying the importance attributed to freedom of association is that strong support for the freedom produces more stable, cohesive societies. As Brady states: ‘Autonomous religious groups and other voluntary associations ... play an essential role as spaces for retreat for the losers in democratic political processes, and by doing so, they help to maintain the stability of majoritarian political systems’.²⁴ Lenta similarly affirms that

²² *Ibid* 612–3.

²³ *Ibid* 619. Although affirming the importance of freedom of association the Supreme Court held that the obligation imposed on Jaycees under the Minnesota Human Rights Act to admit women into their organisation was lawful: 631. The Court relied on a range of grounds in reaching this conclusion including the large size of Jaycees, its membership criteria being limited to age and gender, the absence of any inquiry into applicants or their history, and the ongoing involvement of women in a range of activities organised by Jaycees despite the membership restrictions: 620–2.

²⁴ Kathleen A Brady, 'Religious Group Autonomy: Further Reflections About What is at Stake' (2006–2007) 22 *Journal of Law and Religion* 153, 203.

States that permit their citizens to live their lives in accordance with their deeply held convictions are more likely to attract gratitude and command support. Sensitivity by the government towards group practices is likely to engender political unity, whereas devaluing citizens' culture and beliefs is likely to be met with resentment and political dissatisfaction. Moreover, the existence of civil institutions that operate in accordance with norms at variance with those reflected in government policy may strengthen democracy by providing a competing source of values and fostering debate.²⁵

Freedom of association is also an important safeguard against oppressive States, and assists in ensuring that other valuable rights such as freedom of speech are appropriately respected. Along these lines, Gedicks argues that associations 'protect the individual freedom of their members against government encroachment by providing an effective vehicle for challenging government power'.²⁶ Similarly, Gaudron J in *Australian Capital Television Pty Ltd v Commonwealth* argued that the 'notion of a free society governed in accordance with the principles of representative democracy may entail freedom of movement [and] freedom of association'.²⁷ The United States Supreme Court relevantly held in *Jaycees* that '[a]n individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed'.²⁸ Chaput expands on this point arguing that

²⁵ Patrick Lenta, 'Religious Liberty and Cultural Accommodation' (2005) 122 *South African Law Journal* 352, 353 n 2.

²⁶ Frederick Mark Gedicks, 'Toward A Constitutional Jurisprudence of Religious Group Rights' (1989) *Wisconsin Law Review* 99, 158.

²⁷ *Australian Capital Television v Commonwealth* (1992) 177 CLR 106, 212.

²⁸ *Roberts v United States Jaycees* (1984) 468 US 609, 619, 622.

[m]ediating institutions such as the family, churches, and fraternal organizations feed the life of the civic community. They stand between the individual and the state. And when they decline, the state fills the vacuum they leave. Protecting these mediating institutions is therefore vital to our political freedom. The state rarely fears individuals, because alone, individuals have little power. They can be isolated or ignored. But organized communities are a different matter. They can resist. And they can't be ignored.²⁹

C The Protection of Cultural Diversity

Social diversity is also promoted through an appropriate respect for freedom of association as it protects the ability of minorities to form organisations where they can socialise with other members of the minority group, meet the common needs of members, and cooperate in addressing threats to their community. Religious organisations are significant institutions that support social diversity through providing essential services to individuals within and outside of the religious community especially spiritual activities, charitable works, the provision of education, and events where adherents and non-adherents of the religion can socialise.

On the important role that freedom of association plays in promoting diversity the Supreme Court held in *Jaycees* that '[a]ccording protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity, and in shielding dissident expression from suppression by the majority'.³⁰ Similarly, Lenta argues that associations should not always be expected to 'conform to public

²⁹ Charles Chaput, 'Building a Culture of Religious Freedom', *Public Discourse: Ethics, Law and the Common Good* (Online), 27 July 2012

<<http://www.thepublicdiscourse.com/2012/07/6013>>.

³⁰ *Roberts v United States Jaycees* (1984) 468 US 609, 622.

principles, including non-discrimination, when those principles clash with the convictions of members, and the state should refrain as far as possible from interfering with the internal affairs of associations. This is what the protection of diversity requires'.³¹ While De Freitas asserts in the specific context of religious organisations that '[w]hen appointments by, and membership to, religious associations are not carried out in accordance with the wishes of a collectivity of persons believing in the same core views on reality, existence, and purpose, then we find some or other negative effect countering the eternal pursuit of an ideal attainment of diversity'.³²

D The Promotion of the Common Good

Many associations make an important contribution to the common good through providing individuals with training and opportunities for volunteering so they can effectively assist others in the community in need. These associations have extensive social benefits including helping the recipients of the charitable work, assisting the members of the organisation develop valuable character traits (such as compassion and altruism), expanding social networks and promoting good will throughout the community. The operation of religious charitable associations in Australia, for example, has a long history. Anglicare Sydney observed that 'Christians in Australia have organised themselves into faith-based charities since 1813 with the establishment of the Benevolent Society in Sydney. District nursing services followed in 1820, followed soon by a

³¹ Lenta, above n 17, 126. Although the promotion of diversity is a significant benefit of appropriately protecting freedom of association, the importance of respecting diversity is considered in greater detail in the subsequent section of the chapter addressing the promotion of multiculturalism.

³² Shaun de Freitas, 'Religious Associational Rights and Sexual Conduct in South Africa: Towards the Furtherance of the Accommodation of a Diversity of Beliefs' (2013) 3 *Brigham Young University Law Review* 421, 427–8.

wide range of services from maternity hospitals to palliative care'.³³ Similarly, the Catholic Archbishop Julian Porteous reported that there are

6,600 people employed through our 63 member organisations and 500 different services which cared for 1.1 million people in 2010. The St Vincent de Paul Society is the largest and most extensive volunteer welfare network in the country, four times larger than the Salvation Army. ... [T]here are 66 Catholic hospitals, with 8,900 beds. The Catholic Church manages 19 public hospitals and 47 private hospitals, with 20 of these opening in the last 20 years. ... In Church-owned aged care facilities there are 21,458 residential aged care beds. ... Across Australia the Catholic Church operates eight dedicated hospices with palliative care services. ... Catholic homes for the elderly manage 5,393 retirement and independent living units and serviced apartments for seniors and low income residents. In the education sector 29% of all children in Australia are educated in our 1,690 Catholic schools. There are 1,238 primary schools, 340 secondary schools, 95 primary/secondary schools combined, and 17 special schools. These Catholic schools employ 58,979 staff, 43,778 lay teachers and specialist staff, 14,836 general staff, 365 religious. In the area of overseas disaster relief and development aid Caritas Australia is the fourth largest development agency in the nation, with the smallest margin spent on administration costs — only 12 cents in every dollar, compared with 31 cents as the next best. Through agencies such as Catholic Mission and many religious congregations, the Catholic Church in Australia is the largest provider of trained personnel for the developing world.³⁴

In addition to the practical benefits organisations provide through the services they deliver to their members and the wider community, many organisations make important contributions to developing social capital within a State. Social capital was defined by Robert Putnam as the '[f]eatures of social life—networks, norms and trust—that enable

³³ Anglicare Sydney, Submission No 153 to the Commonwealth Attorney-General's Department, *Inquiry Into The Consolidation of Commonwealth Anti-Discrimination Laws*, 1 Feb 2012, 12.

³⁴ Julian Porteous, 'Christianity's essential role in civilising our society' 25(3) *AD2000* 1, 10.

participants to act together more effectively to pursue shared objectives ... [s]ocial capital, in short, refers to social connections and the attendant norms and trust'.³⁵ The World Bank adopts a similar definition stating that

[s]ocial capital refers to the institutions, relationships, and norms that shape the quality and quantity of a society's social interactions' and explains the importance of social capital stating that '[i]ncreasing evidence shows that social cohesion is critical for societies to prosper economically and for development to be sustainable. Social capital is not just the sum of the institutions which underpin a society – it is the glue that holds them together.'³⁶

Associations are a major source of social capital within a State as they play a key role in building and strengthening social networks between individuals. The social capital created by associations, including religious associations, is not only created between the members of the association, but also between members and others in the community assisted by the organisations. A failure to provide adequate legal protections so that associations can manage their membership and the conduct of their members has the potential to impair the various benefits that associations provide to the community, undermine their objectives and culture, and, in the worst case, cause associations to disband. On the importance of providing appropriate legal protections to associations Woolman states that

[w]ithout the capacity to police their membership policies, as well as their internal affairs, associations would face two related threats. First, an association would be at risk of having its aims substantially altered. To the extent the original or the current *raison d'être* of the association matters to the extant members of the association, the association must possess the ability to regulate the entrance, voice

³⁵ Robert Putnam, 'Tuning in and Tuning Out: The Strange Disappearance of Social Capital in America' (1995) 28(4) *Political Science and Politics* 664, 664–5.

³⁶ World Bank, *What is Social Capital* (2011) <<http://go.worldbank.org/K4LUMW43B0>>.

and exit of members. Without built-in limitations on the process of determining the ends of the association, new members, existing members and even outside parties could easily distort the purpose, the character and the function of the association. Second, an association's very existence could be at risk. Individuals, other groups or a state inimical to the beliefs and practices of a given association could use ease of entrance into and the exercise of voice in an association to put that same association out of business.³⁷

E The Protection of Religious Liberty and Equality

Freedom of association is also an essential aspect of ensuring that the rights to religious liberty and equality are adequately protected. The relevance of freedom of association to the protection of the right to religious liberty is recognised by a range of international human rights instruments and bodies. The *Universal Declaration of Human Rights*, for example, declares that '[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, *either alone or in community with others and in public or private*, to manifest his religion or belief in teaching, practice, worship and observance'.³⁸ The European Court of Human Rights addressed the relevance of freedom of association to religious liberty in *Hasan and Chaush v Bulgaria*, in which the Court held that the Bulgarian government had inappropriately intervened in a leadership dispute among Bulgarian Muslims.³⁹ The Court held that the protection of the associational dimension of religious liberty is essential to ensuring that the religious liberty of individuals is appropriately respected stating that

³⁷ Stu Woolman, 'On the Fragility of Associational Life: A Constitutive Liberal's Response to Patrick Lenta' (2009) 25 *South African Journal of Human Rights* 280287.

³⁸ *Universal Declaration of Human Rights*, G.A. res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, U.N. Doc A/810 (10 December 1948) art 18 (emphasis added).

³⁹ *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 55 [125].

the autonomous existence of religious communities is ... at the very heart of the protection which [the right to religious liberty] affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected ... all other aspects of the individual's freedom of religion would become vulnerable.⁴⁰

The important role that religious organisations play in protecting an individual's right to religious liberty was affirmed by the Supreme Court of Canada in *Loyola High School v Quebec (Attorney General)*.⁴¹ The case concerned whether an exemption should be granted to a Catholic school to allow it to teach about Catholicism and other religions from a Catholic, rather than a neutral, perspective.⁴² McLachlin CJ and Rothstein and Moldaver JJ declared that the

individual and collective aspects of freedom of religion are indissolubly intertwined. The freedom of religion of individuals cannot flourish without freedom of religion for the organizations through which those individuals express their religious practices and through which they transmit their faith.⁴³

Similarly, freedom of association plays an important role in ensuring that the right to equality is adequately protected. Many individuals with characteristics typically protected by anti-discrimination legislation form associations to allow them to cooperate in addressing common concerns faced by members. This importance of freedom of association to the protection of the right to equality is appropriately recognised under

⁴⁰ Ibid [62]. See also *Sindicatul "Păstorul Cel Bun" v. Romania* (European Court of Human Rights, Grand Chamber, Application No 2330/09, 9 July 2013) where the Grand Chamber held at [137] that '[i]n accordance with the principle of autonomy, the State is prohibited from obliging a religious community to admit new members'.

⁴¹ [2015] SCC 12.

⁴² *Loyola High School v Quebec (Attorney General)* [2015] SCC 12 [26]–[27].

⁴³ Ibid [94].

international human rights law. The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, for example, explicitly affirms that '[p]ersons belonging to minorities have the right to establish and maintain their own associations'. Similarly Article 27 of the *ICCPR* declares that in 'those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, *in community with the other members of their group*, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'⁴⁴ Such a provision is clearly aimed at ensuring that a range of minority groups that will often suffer from discrimination are able to create supportive organisations to help them ensure that their right to equality is effectively safeguarded.

The associational rights of individuals are also often protected by legislation and government bodies. Under the *Anti-Discrimination Act 1977* (NSW), for example, a registered club established with the object of providing benefits to a particular race is able to exclude persons not of that race from becoming members of the club.⁴⁵ A similar protection is also provided under the Act to registered clubs where membership of the club is only available to a particular gender.⁴⁶ The *Equal Opportunity Act 2010* (Vic) provides protection for the employment decisions of political parties permitting an employer to 'discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment'.⁴⁷

⁴⁴ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 27 (emphasis added).

⁴⁵ *Anti-Discrimination Act 1977* (NSW) s 20A(3).

⁴⁶ *Ibid* s 34A(3).

⁴⁷ *Equal Opportunity Act 2010* (Vic) s 27.

In addition to these protections specified in anti-discrimination legislation specific exemptions from the operation of anti-discrimination provisions are also often granted to organisations. The New South Wales Anti-Discrimination Board, for example, granted an exemption from the *Anti-Discrimination Act 1977* (NSW) to an arts organisation to allow them to consider the race of the applicants in making employment decisions so that they could employ Indigenous staff members.⁴⁸ A similar commitment was also demonstrated by the Victorian Civil and Administrative Tribunal, which granted an exemption from the *Equal Opportunity Act 1995* (Vic) to allow a gay club to refuse entry to persons who did not identify as homosexual males so that the club could preserve its distinct identity and create an environment where it could meet the needs of its patrons.⁴⁹ Such exemptions demonstrate an understanding by these bodies that both the establishment of associations and the ability to manage the membership of these associations is often an important aspect of ensuring that the right to equality is adequately protected.

IV THE HARM THAT CAN BE CAUSED BY RELIGIOUS ORGANISATIONS

Although it is important to acknowledge the various benefits that can be provided through freedom of association, it is also necessary to note that not all organisations make a positive contribution to society with some organisations being particularly harmful to the common good. In relation to religious associations, Hamilton notes that although religious

⁴⁸ Anti-Discrimination Board of New South Wales, *Current section 126 exemptions* (7 October 2014)

<http://www.antidiscrimination.justice.nsw.gov.au/adb/adb1_antidiscriminationlaw/adb1_exemptions/exemptions_126.html>.

⁴⁹ *Peel Hotel Pty Ltd (Anti Discrimination Exemption)* [2007] VCAT 916; *Peel Hotel Pty Ltd (Anti Discrimination Exemption)* [2010] VCAT 2005.

organizations ‘have the capacity to contribute to increasing social justice ... [and that] [r]eligious organizations can be an important challenge to government... it is simply willful ignorance to believe that they are always benign contributors to society’.⁵⁰ Religious organisations, Hamilton argues, are ‘no different than large corporations. The whole range of destructive behavior can be seen in both: fraud, extortion, misappropriation of funds, lying, deceit, covering up scandals like child abuse or doctoring financial records for the sake of the organization's image, and the list goes on’.⁵¹ Bilchitz expands on the possible harmful impact of religious organisations in the context of discrimination arguing that

discrimination may undermine the very social cohesion of society ... associations such as the Nazi party and exclusionary religious groups may lead to a sense of solidarity amongst members but may be extremely harmful to the project of creating a tolerant, egalitarian, multi-cultural community. A liberal society has a very strong interest in ensuring that the associations that develop within it create an ‘overlapping consensus’ in favour of values such as dignity, equality and freedom. In turn, allowing discrimination to continue unabated in religious communities may ultimately undermine efforts to create a wider political community founded upon equality and that values diversity.⁵²

It is clearly the case that many individuals have suffered grave physical, psychological, financial and sexual harm from individuals belonging to religious organisations. Although the harm that may be experienced by exclusionary membership decisions of religious organisations will often be on the lower end of the scale of gravity it will still typically involve the individual excluded suffering significant injury to their emotional

⁵⁰ Marci A Hamilton ‘Church Autonomy Is Not a Better Path to “Truth”’ (2006-2007) 22 *Journal of Law and Religion* 215, 223.

⁵¹ *Ibid* 215–6.

⁵² David Bilchitz, ‘Should Religious Associations Be Allowed to Discriminate?’ (2011) 27 *South African Journal of Human Rights* 219 222, 240.

wellbeing and dignity. Further, in some rare situations a person excluded from a religious organisation may suffer grave harm from the membership decision. Such a result can be seen in *Strydom v Nederduitse Gereformeerde Gemeente Moreleta Park*,⁵³ which involved a Christian arts academy that dismissed a music teacher when it was discovered that he was living in a same-sex relationship.⁵⁴ The judge found that ‘his dignity was impaired when his contract was terminated on the basis of his sexual orientation. ... [H]e suffers from depression and was unemployed due to the publicity his case has resulted in. He also had to sell his piano and house’.⁵⁵

The harm that may be caused by membership criteria that can exclude individuals with protected characteristics from religious organisations was also addressed by a number of Canadian courts in relation to the membership requirements of Trinity Western University (‘TWU’). TWU is a Christian university that requires its staff members and students to commit to a ‘Community Covenant’, which is a code of conduct based on an evangelical Protestant understanding of Christian faith and ethics. The Community Covenant states that in

keeping with biblical and TWU ideals, community members voluntarily abstain from the following actions:

- communication that is destructive to TWU community life and inter-personal relationships, including gossip, slander, vulgar/obscene language, and prejudice
- harassment or any form of verbal or physical intimidation, including hazing
- lying, cheating, or other forms of dishonesty including plagiarism
- stealing, misusing or destroying property belonging to others

⁵³ [2009] 4 SA 510.

⁵⁴ Ibid [6].

⁵⁵ Ibid [25], [33].

- sexual intimacy that violates the sacredness of marriage between a man and a woman
- the use of materials that are degrading, dehumanizing, exploitive, hateful, or gratuitously violent, including, but not limited to pornography
- drunkenness, under-age consumption of alcohol, the use or possession of illegal drugs, and the misuse or abuse of substances including prescribed drugs
- the use or possession of alcohol on campus, or at any TWU sponsored event, and the use of tobacco on campus or at any TWU sponsored event.⁵⁶

The provision requiring community members to abstain from ‘sexual intimacy that violates the sacredness of marriage between a man and a woman’ has been the central issue of concern in the cases heard by Canadian courts.⁵⁷ The appropriateness of the membership criteria of TWU was recently considered by the Canadian judiciary when TWU sought accreditation for its law school. The law societies of British Columbia, Ontario and Nova Scotia ruled that they would not accredit the law degree due to the membership provision concerning sexual activity

⁵⁶ Trinity Western University, *Community Covenant Agreement* <<http://www.twu.ca/student-handbook/university-policies/community-covenant-agreement>>.

⁵⁷ *Trinity Western University v British Columbia College of Teachers* [2001] SCR 772, 811–6. The implications of the membership criteria were first significantly considered by the Canadian courts in the context of an application by TWU to have its education degree fully accredited. The British Columbia College of Teachers declared that it would not approve the degree as the University appeared to follow discriminatory practices due to the restrictions on sexual activity that it required its members to accept. However, the Supreme Court of Canada in *Trinity Western University v British Columbia College of Teachers* [2001] SCR 772 held that the decision to not approve the degree was invalid on the grounds that it failed to adequately consider the various rights involved especially the right to religious liberty: 774–6. The relevant provisions in this case were contained in an earlier version of the ‘Community Covenant’ which was referred to as a ‘Community Standards’ document. This document required members to commit to refraining from practices that were considered to be biblically condemned including ‘drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage and take every positive step possible to avoid divorce’: *ibid* 785 (the phrase ‘homosexual behaviour’ was underlined in the judgment).

which would prevent those with legal qualifications from TWU practising in those jurisdictions.⁵⁸

The essence of the position adopted by the law societies was that the provision is discriminatory as it has a particularly harmful impact on gay individuals by requiring all members of TWU to commit to abstaining from sexual activity except in the context of a heterosexual marriage.⁵⁹ In upholding the decision of the Ontario law society to deny accreditation, the Court of Appeal for Ontario held that the provision ‘is deeply discriminatory to the LGBTQ community, and it hurts’.⁶⁰ The Court further affirmed the submission of a gay rights organisations that argued that the ‘Covenant is a document that discriminates against LGBTQ persons by forcing them to renounce their dignity and self-respect in order to obtain an education ... LGBTQ persons applying to TWU, or who come out while at TWU, will experience the stigma of not belonging and other destructive effects of regulating queer sexuality’.⁶¹

These cases support the understanding that religious organisations may cause significant emotional, dignitary and, in some cases, serious

⁵⁸ *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518 [7]–[10].

⁵⁹ See, eg, *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 [92]–[125].

⁶⁰ *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518 [119].

⁶¹ *Ibid* [118]. The decision by the British Columbia law society to deny accreditation was overruled by the Supreme Court of British Columbia: *Trinity Western University v Law Society of British Columbia*, 2015 BCSC 2326 with the Court’s finding upheld on appeal by the Court of Appeal for British Columbia: *Trinity Western University v The Law Society of British Columbia*, 2016 BCCA 423. The same decision was reached in Nova Scotia with the law society’s decision overruled by the Supreme Court of Nova Scotia: *Trinity Western University v. Nova Scotia Barristers’ Society*, 2015 NSSC 25 and affirmed by the Nova Scotia Court of Appeal: *The Nova Scotia Barristers’ Society v Trinity Western University*, 2016 NSCA 59. Trinity Western University has declared that it plans to appeal the decision of the Court of Appeal for Ontario to the Supreme Court of Canada: Trinity Western University, ‘Trinity Western University Law School Receives Positive Ruling in British Columbia’ (1 November 2016) <<https://www.twu.ca/news-events/news/trinity-western-university-law-school-receives-positive-ruling-british-columbia>>.

psychiatric and physical harm to individuals within and outside of their organisations.⁶² However, the possibility that religious (and non-religious) organisations may harm others is the key reason why freedom of association and freedom of religion are not absolute rights. Religious organisations can legitimately be regulated, and even abolished, if it is necessary in order to protect the rights of others. Although the failures of many religious organisations have been profound, these failures should not be understood as undermining the support that freedom of association provides to religious institutions especially considering that the freedom can be limited when necessary to protect the welfare of others.

V FREEDOM OF ASSOCIATION AS AN INDIVIDUAL AND COLLECTIVE RIGHT

An alternative criticism of an attempt to rely on freedom of association to support the autonomy of religious groups is that their membership decisions can often be regarded as violations of freedom of association rather than as acts that are protected by the right. Religious organisations will often contain members committed to substantially different theological positions who are in conflict with each other on a range of issues including the religious identity of the organisation, spiritual practices and membership criteria. Any adverse action taken against members or applicants to join the organisation can be met with claims by those adversely affected that the action violates their freedom of

⁶² For further resources exploring the harmful impact that discriminatory practices can have on individuals, see, eg, Ilan H Meyer, 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence' (2003) 129 *Psychological Bulletin* 674; Vickie M. Mays, 'Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States' (2001) 91 *American Journal of Public Health* 1869.

association.⁶³ Bilchitz uses the example of a gay Anglican priest who is dismissed from his position because of his sexuality to explain how the right to association can be used to support different positions. Bilchitz argues that the example

demonstrates the difficulty for the state of avoiding taking sides in such a dispute as well as the clash between the freedom of association of differing groups *within* a religious association. If it were to uphold the dismissal of the priest, it would respect the freedom of association of those who believe that a gay priest may not hold a position within the Anglican church. If it prevents the dismissal, it would be defending the freedom of association of gay Anglicans to belong to the church and hold leadership positions therein. In such circumstances, the question is not one of simply defending the freedom of association of a religious grouping ... there is a rather an internal clash within the group. Courts thus are required to decide upon whose side they should intervene. Both the presumption of equality, and the harmful nature of discrimination ... require the state to favour the group against which discrimination is being perpetrated.⁶⁴

Although the State intervening to limit an organisation's ability to exclude individuals may be justifiable in a range of situations, allowing individuals to rely on the freedom of association to justify a law that requires an organisation to include or retain a person involves a distorted interpretation of the freedom of association. As the United States Supreme Court stated in *Jaycees*: 'There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire ... Freedom of association therefore plainly presupposes a freedom not to associate'.⁶⁵ Michael McConnell makes a similar argument in an educational context:

⁶³ Bilchitz, above n 52, 230.

⁶⁴ *Ibid* 230–1.

⁶⁵ *Roberts v United States Jaycees* (1984) 468 US 609, 623.

Individual teachers who deviate in theory or practice (or both) from the teachings of the community should not be allowed to use litigation to pressure the community to accept alternative versions of how its beliefs should be taught and exemplified. The rights of such individuals to withdraw and pursue their own beliefs and lifestyles must be respected, but such protection does not include the right to erode religious autonomy and authenticity by coercing the religious community to structure itself and its understanding of how (and by whom) its beliefs should be taught in a manner that is at odds with those beliefs.⁶⁶

To show appropriate respect for freedom of association the State should as far as possible avoid intervening in the internal disputes of religious groups and allow the religious adherents to determine for themselves membership decisions and other issues relevant to the organisation. The resolution of these issues could involve a range of outcomes including some adherents of the religious group deciding to alter their views on issues such as membership, the religious group agreeing to formally divide, or the individuals who disagree with the current position of the religious group leaving the religious group and joining another religious community or establishing their own religious association. On the appropriateness of the last option Spinner-Halev argues: ‘The proper liberal response surely is not that the state should pressure or force the group to change its practices, but that the disgruntled members should leave the group and form or join another’.⁶⁷ Similarly Aroney warns that ‘if any individual can decide whether he or she qualifies for membership

⁶⁶ Michael McConnell, ‘Fernández Martínez v Spain—Written Comments of Third-Party Interveners—Chair for Law and Religions of the Université Catholique de Louvain and the American Religious Freedom Program of the Ethics and Public Policy Center’ <<http://religiousfreedomnews.org/wp-content/uploads/2013/01/Third-Party-Comments-in-Fernandez-Martinez-v-Spain-Final.pdf>> 4–5.

⁶⁷ J Spinner-Halev, ‘Liberalism and Religion: Against Congruence’ (2008) 9 *Theoretical Inquiries in Law* 533, 566 quoted in Ahdar and Leigh, above n ! 390.

of an organisation, no organisation will be able to maintain its distinctive identity'.⁶⁸ Ahdar and Leigh expand on this point:

Freedom to associate with others of like mind necessarily involves freedom to exclude people who do not share the beliefs in question. In a liberal society, those so excluded are free to join other religious groups (or to form their own group) and so this should not be seen as harmful. On the contrary: if the state were to prevent exclusivity through its non-discrimination laws, this would amount to denial of a basic aspect of religious liberty. Paradoxically, perhaps, exclusive societies add to the diversity of society.⁶⁹

VI CONCLUSION

A restricted approach focused exclusively on the rights to equality and religious liberty is often taken in assessing the merits of membership decisions made by religious organisations. Although such rights are of fundamental importance they are not the only factors that should be considered in evaluating the conduct of religious organisations. Freedom of association is one of the additional rights that should be considered and which will normally be of central importance in assessing the merits of membership decisions. International human rights instruments appropriately affirm both the importance of this right and that it can justifiably be limited when necessary to protect the rights of others. Such strong support of freedom of association is justified considering the important role that associations play in promoting liberty and individual fulfilment, acting as a safeguard against oppressive States, supporting cultural diversity, contributing to the common good and protecting religious liberty and equality. Any proposal that may limit the autonomy

⁶⁸ Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33(1) *University of Queensland Law Journal* 153, 184.

⁶⁹ Ahdar and Leigh, above n 19, 360.

of religious organisations regarding their membership decisions should be closely examined to determine the impact that it may have in undermining the ability of that organisation and other religious and non-religious organisations to continue to make these valuable contributions.

Religious organisations have undeniably been responsible for causing many individuals to suffer grave physical, psychological, financial and sexual harm. However, the possibility that religious (and non-religious) organisations may harm others is the key reason why freedom of association and freedom of religion are not absolute rights. Religious organisations that harm others can legitimately be regulated or abolished if this is necessary to protect the rights of others. Although the real potential for harm from religious organisations needs to be acknowledged, freedom of association should still be understood as being an important right to consider when assessing the conduct of these groups considering the many benefits that are provided to the community by religious organisations and the adverse impact that a failure to respect freedom of association can have on these religious organisations. Although the right to equality and religious liberty are of central importance to any assessment of the membership decisions made by religious organisations it is essential to also consider other rights, such as freedom of association, so that an informed conclusion can be reached on the merits of the conduct of religious organisations.