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Appeal to clarify religious standing

KATHERINE TOWERS THE AUSTRALIAN MAY 23, 2014 12:00AM

THE extent of religious freedom in modern Australia will be tested by the High Court after a Christian group last week launched an appeal against a landmark Victorian court decision which, for the first time, elevated anti-discrimination laws over the right to religious freedom.

The appeal will be closely watched by human rights, religious, academic and minority groups across the country, as it will have wide-ranging ramifications on the extent of religious freedom in Australia and the operation of religiously motivated groups in the community. Associate professor in law and religion at the University of Newcastle Neil Foster welcomed the appeal, warning that without High Court clarification of the issue, religious groups — which often provide care to the most vulnerable people in society — might be forced out of the community.

“That will be bad, not just for religious people, but also for those vulnerable persons in our community who are cared for by religious groups, often when others will not do so,” he said.

Describing the case, *Christian Youth Camps v Cobaw*, as one of the most important law and religion decisions handed down in Australia in recent years, Associate Professor Foster said the High Court needed to clarify the extent of religious freedom in Australia and how those freedoms sat within the framework of an individual’s right to be free from discrimination.

“We should not be elevating freedom from discrimination above all other human rights as the most important,” he warned.

The original appeal decision last month by a majority full bench of the Victorian Court of Appeal narrowed religious rights in the state after it ruled that a camp site run by Christian Youth Camps had breached anti-discrimination laws by refusing to allow a support group for same-sex youth to use the site.

Christian Youth Camp argued that it did not discriminate against the group because of the sexual orientation of the individual members but because the group was advocating homosexual behaviour, which was contrary to its beliefs and doctrine.

It argued that under religious exemptions in the state’s Equal Opportunity Act, it was within its rights to discriminate against something contrary to its beliefs.

But the court ruled that discriminating against homosexual behaviour was the same as discriminating against individual homosexuals, which is illegal under the act.

Professor Foster said while the details of the Victorian Court of Appeal decision involved an anti-discrimination spat between a Christian group and a homosexual support group, the ramifications from the decision were widespread and had a “major detrimental impact” on religious groups that provide services to the community. “(The Court of Appeal decision) sends the wrong message about religious groups not being able to operate in accordance with their religious beliefs,” Professor Foster said. “It cannot be a good thing to tell these groups that if they want to operate in the community, they effectively have to adopt a non-religious perspective, which denies the very reason for their existence.

“The narrow reading of the exemptions given by the majority decision in the Victorian Court of Appeal will, if applied in other areas, end up squeezing religiously motivated groups out of the public sphere altogether.”

In the grounds for appeal, Christian Youth Camps argues that the finding that its discrimination against a group advocating homosexual behaviour was akin to discriminating against an individual homosexual, was wrong.

It says it didn’t discriminate against the actions of the support group or the individuals involved but discriminated against the “syllabus” and teaching to be given at the camp”.

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