FOREWORD

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Religion has always mattered to many people. For some, it represents a vital private sphere to be defended (if necessary) against state intrusion. For others, it has goaded the believer into confronting injustice in society or seeking converts. Others again have concerns about the impact on their sense of security of people professing strong adherence to a faith system that is alien in some way. In each category, the reasons for belief may be contestable, but its reality is what counts.

Religion can be confronting to believers and nonbelievers. It takes a myriad of forms. And the voices of those without a religious affiliation also press to be heard in any debate. Add to this the signs of the global religious revival that Paul Babie discusses in his contribution.

Law too can be ubiquitous in its demands for attention. Therefore it is inevitable that the interaction of law and religion will continue to attract serious academic reflection. Because law and religion intersect in ways that vary over time and place, it is equally natural that the constitutional, historical and cultural backgrounds through which the issues present themselves will differ markedly in different countries and different eras. Lessons can undoubtedly be learnt from elsewhere but often they are lessons about what to avoid.

According to Marion Maddox, Australia's arrangements are regarded in the international religion-state literature as a model of minimalist regulation, and praised for avoiding the rigidities of more heavily regulated systems. If this situation can continue to walk hand in hand with a strong commitment to freedom of speech and religion, and respect for multicultural differences, then we truly are a lucky country.

This Forum discusses such diverse topics as Islamic banking, education funding, employment discrimination, religious vilification, terrorism law, animal slaughter and Sharia family law. Many Australians see it as a great advantage that these issues can be addressed on their particular merits without the overlay of any church or other religious establishment, or a body of sharply intrusive constitutional dogma.

Given our minimalist constitutional milieu operating in a soundly working liberal democracy, I venture to offer a framework for addressing the sorts of

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issues discussed in this Forum. Some of the questions are 'political' but the need for academic legal input at every level will be obvious to all. My checklist places the onus of persuasion upon the shoulders of the believers who want greater accommodation. But it does not suffer the common fallacy of treating 'secular' arguments about sexual lifestyle, the environment etc as privileged over 'religious' arguments on the false premise that they are value-free in contrast with the views of religionists.

My suggested framework calls upon those concerned with the practical interface of law and religion to consider the following questions:

- What are the areas where people of faith truly believe that they need greater accommodation to profess, practise and propagate their beliefs ?
- Is there anything approaching consensus within the governing groups of the relevant faith system for a particular way forward?
- What religious and other values lie behind the claim for greater accommodation and any popular resistance to it?
- What values held important by all involved in the debate would be hindered by giving greater accommodation?
- Can win–win solutions be devised with the assistance of legal scholars like our contributors?
- Is this a field where there is room enough for a divergence of views and practices?
- Or is it a particular area in which the majority can justifiably brook no exception?

In short, is plurality of practice desired, feasible, justifiable and achievable?

Armed with answers to these questions in particular areas, we may be better equipped to engage in the political trade-offs and decision-making that, in this liberal democracy, we bring to play for all manner of equally difficult issues. Using such a pathway may not avoid conflict but it may bring the true matters in issue (or not in issue) into sharp and more manageable focus.

Ann Black and Kerrie Sadiq's paper 'Good and Bad Sharia: Australia's Mixed Response to Islamic Law' illustrates some of these processes in action. They point out that (in Australia) there is no united Muslim view on some matters and little press for change in others; that existing and mooted changes for greater accommodation of Islamic banking appear acceptable mainly because politicians have recognised that it will benefit Australia's economy (that is, coincide with a materialistic world view that enjoys widespread public support); that some aspects of Sharia law are certain to be non-negotiable in Australia (for example, rules of evidence that discriminate against women); and that more work and informed debate may be needed before engrafting those aspects of Islamic family law that pose no real threat to widely practised Australian values. On the latter point, we should remember that Australian law now reflects a remarkable degree of tolerance for alternative lifestyles that, for what it is worth, are themselves viewed with hostility and alarm by many religionists.

A similar analysis could be applied, for example, to debate about permitting the practice of avoiding stunning animals destined for slaughter for meat, in order to meet Jewish and Islamic beliefs. This topic is addressed by Alex Bruce. Australia's current crisis about the export of live animals to the Middle East and to Indonesia will doubtless work itself through such a prism of considerations. On the one hand are the claims of religiously-motivated believers for access to meat that they can consume. On another hand are the claims (religious and secular) of groups concerned about animal cruelty, and/or pushing legitimate but highly contestable agendas about the relationship between animal and human life. And then there are the 'economic' arguments in which much will be advanced about the needs of primary producers and Australia's balance of payments.

Patrick Parkinson's contribution reminds us that opposition to accommodating religious views (whether mainstream or not) can stem from the vigorous and at times intolerant propagation of alternative models of what is good – this is inevitable. However, a nation that seeks to operate a level playing field should not fall into the trap of privileging non-religion over religion any more than the converse. Once again, rational discourse requires underlying values to be exposed, listened to and, if at all possible, accommodated. Judges are not necessarily the best equipped to make the hard calls and judicial rulings can come at too high a price. Pragmatism as well as principle operates here. Tertullian's aphorism about the blood of the martyrs being the seed of the church continues to promote conduct that society cannot ignore, whatever its sympathies for the believers.