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## Deadlock on religious freedom is a shambles

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By **PAUL KELLY**, EDITOR-AT-LARGE

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The progressive transformation of Australia has brought the Liberal and Labor parties into fundamental conflict on the philosophical but practical task of reconciling religious freedom with protecting LGBTIQ rights from discrimination.

The grand mythology before, during and after the same-sex marriage debate that this advance had no implications for religious freedom is now exposed — the conflict is undisguised, the deadlock in the federal parliament is a national embarrassment and the hopes for a rational settlement have been damaged.

Parliament has now broken for the year. The upshot is that religious schools in Australia are threatened in the discharge of their mission and LGBTIQ students promised by Scott Morrison and Bill Shorten to have guaranteed legal protections are still denied. The situation is a shambles. This ludicrous stalemate has no precedent in our history.

It exposes the paralysis, poison and lack of goodwill in our politics. The year should not have ended this way. Father Frank Brennan, a member of the Ruddock review into religious freedom, called in on Wednesday to try to mediate between Liberals and Labor, left the building nauseated. “There was no prospect of reasoned dialogue to reach an agreement,” he told Inquirer.

Thursday’s tactical mayhem over asylum-seekers and anti-terror encryption laws

illustrated the disrepute that stamps this minority government parliament, but the Wednesday deadlock over religion and gay rights had earlier demonstrated this sad reality.

There is one certainty — the issue will be resolved in the political arena by a compromise deal under the Morrison government early next year or by imposition under a Shorten government based on a Labor-Greens-progressive parliamentary majority.

It is tempting to think the Liberal-Labor deadlock is merely about different legal interpretations or disputes about the most preferable mechanism to reconcile the stakeholders. Tempting but false, since this conflict is about competing world views. It is a conflict between how Australia resolves secular and religious norms. Are religious schools to be allowed to teach marriage is a union between a man and a woman or insist all students attend chapel or propound traditional biblical narratives — or will the state impose censorship on such teaching and activity by saying it discriminates against LGBTIQ students who must have legal resort against discrimination? There is an alarming scenario — that the conflict is unresolved until the election and triggers a descent into inflamed emotion and prejudice.

This must not be allowed to happen. The stakes for both Morrison and Shorten are high.

The Prime Minister was keen to cut a deal to honour his Wentworth by-election pledge but would not sell out religious freedom. The Opposition Leader was keen to be constructive, made gestures to the churches but made clear that for Labor the cause of LGBTIQ students and “discrimination against kids” was the No 1 issue.

The deadlock has opened up the blame game. Both sides agree LGBTIQ kids must be protected and both propose their own bills. The real difference is rival views on how religious institutions have their mission preserved.

On display are many of the dynamic and traumatic elements changing our country. Witness the historic shift of Labor into a progressive party that puts a premium on

minority rights; the ineptitude of the Liberals across several years in their quest to protect religious freedoms and their latest tactical failure on this front; the demoralisation of the churches over the sexual abuse scandals and their reduced influence in the nation; the hypocrisy of the Catholic Church that can run an effective campaign to get more money from government but cannot run a campaign to defend its religious mission; and the vicious lack of goodwill across the parliamentary divide that diminishes the parliament and nation.

Attorney-General Christian Porter said Labor's uncompromising stance was "an extraordinary and unprecedented incursion on religious freedom in this country". He said Labor's position "would outlaw all practices of a teaching and instructive nature in all religious organisations that anyone considered to be discriminatory". The Attorney-General said the effect of Labor's amendments extended far beyond classrooms into the heartland of religious faith — "into churches, synagogues, mosques and temples nationwide".

"I think under what Labor are doing it would be discriminatory and open to complaint at the human rights to teach Adam and Eve." Porter, for the record, said he was speaking as a lawyer since he was not a religious person.

Shorten said: "I get that all sides of politics genuinely, I think in most cases, want to remove discrimination off the law books. I also understand the importance a lot of people feel that religious faith should be able to be taught in schools. I don't see these two goals as irreconcilable."

But the Opposition Leader rejected the government's position. He said its amendments to protect religion "replaces one form of discrimination with another". He accused the Prime Minister of seeking to "weaponise this dispute" and "proposing a mechanism which will lead to greater division in the community".

Labor rejects completely the central amendment proposed by the government to protect religious freedom. This is an amendment to the Sex Discrimination Act saying it is not unlawful to engage in teaching activity if that activity "(a) is in good faith in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or

creed; and (b) is done by, or with the authority of, an educational institution that is conducted in accordance with those doctrines, tenets, beliefs or teachings”.

The government says this amendment is essential to protect religious education. Labor says it will make discrimination against gays even worse. Morrison said the government’s proposals were “uncontentious principles”. Shorten released a legal opinion from Mark Gibian SC saying of the government’s core amendment that it “has the potential to permit discrimination against students in schools, both direct and indirect”. Shorten took his stand on this legal advice, saying Morrison’s position “doesn’t solve anything”.

Liberal senator Amanda Stoker told the Senate this core government amendment was “utterly non-negotiable in a free society”. She said it was extraordinary “that a simple amendment stating that it is not unlawful to teach the doctrines of a religion in good faith is so abhorrent to Labor”. Stoker said Labor’s real agenda had been exposed. It was “to gut religious schools of their foundation” and that constituted “an assault on freedom that should disturb all Australians no matter their political views”.

The government and most religious schools do not accept Labor’s assurances on religious freedom and the legal advice on which it is premised. Porter’s public remarks reveal his view that Labor’s stance points to the grim erosion of religious education and practice rights in this country. This claim infuriates Labor, yet its priority for confronting gay discrimination over faith rights has been apparent for several years, notably during the same-sex marriage debate. Its intransigence this week reinforces the point.

The reality is that the Coalition parties and religious schools will not accept Labor’s legal position in this parliament or the next, where Labor is likely to have sufficient support from the Greens and independents to legislate its stance. The situation now evolving was apparent at the time of the legalisation of same-sex marriage — the real import of this issue was not about marriage itself but the conflict it would trigger between the secular and religious domains and how to reconcile them. It is surely impossible to deny the reality of this problem any longer given the national parliament is deadlocked on this precise issue.

Consider the current situation: the issue of protecting gay kids at schools is consigned to stalemate; the government, given this stalemate, believes no early action can be taken in relation to discrimination concerning teachers; and the government will proceed during the next fortnight to decide on a religious discrimination act in its consideration of the Ruddock report.

Morrison set out his position midweek: “No Australian frankly, because of their sexual identity or their sexuality, their faith, their race, their ethnicity, should be discriminated against — that’s my view — because of who they are. But it’s not unreasonable that if you go along to a synagogue or a temple, or you go to a church or a mosque, that someone would actually teach what that religion teaches.”

Brennan said: “Both sides agree on two principles — that no school should have the legal right to expel a gay student and that religious schools must be able to teach their faith as they see fit. Yet agreement on how to proceed is impossible.”

In the end Morrison, desperate to show his credentials on ending discrimination and alert to the coming blame game, offered Shorten a conscience vote for MPs on a private bill that Morrison was ready to move. But this had no chance. It was immediately rejected by Labor. For Labor, issues of discrimination and religion are policy matters, not conscience issues, and party discipline will apply. This is now firm ALP dogma. The tiny number of Labor MPs worried about the religious freedom issue has no option but to fall into line.

Labor deputy leader and education spokeswoman Tanya Plibersek took a tougher stand than Shorten. Plibersek denied the legitimacy of the government position, attributing the deadlock to “a very nasty campaign being run by the right wing of the Liberal Party”. Plibersek said the religious issue was being used by the Liberals to “prevent” the removal of discrimination against gay kids — that is, that the government’s real intent was to retain the discrimination just as it had wanted to retain marriage as a man-woman concept.

Insisting that “the solution is simple” and that “it’s not hard to do” Plibersek, in effect, is putting religious institutions in Australia on notice of Labor’s intentions.

The more recent Liberal-Labor conflict on this issue emerged from the Senate's November 13 referral of exemptions from discrimination for religious institutions to the Legal and Constitutional Affairs References Committee. This followed the introduction of the Discrimination Free Schools Bill 2018 by the Greens.

The extremely brief inquiry brought down a majority recommendation seeking removal of any discrimination applying to kids and teachers and prompted a dissenting report from Coalition senators. They argued the majority report would deny faith-based schools the ability to operate according to their religious belief and constituted discrimination against them.

The upshot was that Labor Senate leader Penny Wong introduced a Labor bill to honour the commitment made by Morrison during the Wentworth by-election to eliminate discrimination against gay students following the leaking of the Ruddock report.

Wong said of the bill: "If this government won't act, Labor will. Australians support this change, the parliament supports this change and the Morrison government claimed that it supports this change. Let's get this done before Christmas. Labor wants to be clear — nothing in this bill would compromise the ability of churches to continue to uphold their religious teachings."

Porter launched a frontal assault on Labor's claims, notably its proposed amendment to section 37 of the Sex Discrimination Act. He said this amendment applied to "all bodies established for religious purposes" and meant any education regarded as "discriminatory" would be unlawful — this would include instructions in churches, mosques, synagogues, Sunday schools, Bible/Koran/Talmud study sessions and the like. He accused Labor of "grandstanding without considering the legitimate concerns of faith-based schools and their families" and warned this constituency numbered a significant part of Australian society.

Porter said the only aspect of the current religious exemptions that Labor would retain was the ability to discriminate in employment. The Attorney-General's argument is that Labor's denial of religious rights went far beyond schools. It stretched into

discrimination by any religious body where that body engaged in education; that is, in places of worship. It repudiated the principle that the state does not interfere with direct religious practice.

A fortnight ago Morrison had conducted a meeting with key conservative MPs to demand their support for any agreed Liberal-Labor bill to solve the problem. He knew an agreed measure would fall short of the preferred conservative position. The conservatives agreed — provided they were allowed to help shape the government's own amendments. In the end, however, it didn't matter.

The vital event came in the Senate when Centre Alliance senators Stirling Griff and Rex Patrick made clear they would support the government's amendments to Labor's bill. Wong said: "This amendment, passed with the support of senators Griff and Patrick, would destroy the intent of the bill — that is, to remove discrimination against LGBTIQ students. Worst still, the advice is that the government's amendment which would pass with the support of Centre Alliance would worsen discrimination against LGBTIQ students."

With Labor refusing to support Morrison's proposed bill, the deadlock was sealed.

The gulf between rival world views of Labor and Liberal is significant. What sort of nation will Australia become? The stakes are high — for the LGBTIQ community and for the way religious institutions have functioned in Australia.

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