Opinion by Sarah Joseph

Freedom: the government's inconsistent approach

Our federal government is committed to promoting greater "freedom". It has appointed a "Freedom Commissioner", Tim Wilson, and has asked the Australian Law Reform Commission to conduct a freedom audit of statutory laws. Writing in January, Attorney-General George Brandis described "freedom" as the "most fundamental of all human rights". But what does "freedom" mean?

Brandis and Wilson espouse the classical "freedom from" the government, where human activity is "regulated" by voluntary interactions in the free market rather than by the state. Regulation by the state, in contrast, is portrayed as oppressive, inefficient, or too expensive.

"Freedoms from government" are extremely important. But there are other important aspects to freedom. There are practical "freedoms to" do the things that one wants to do. It is easier to do such things if one is rich, but harder if one is vulnerable or disadvantaged. "The market" does not fairly allocate such freedoms, as it pays no attention to pre-existing power relations and capabilities. Such an approach to freedom, if adopted exclusively, protects the strong but offers far less for others.

Governments must sometimes take positive steps to protect freedom. For instance, it enacts anti-discrimination law to prevent people from being deprived of opportunities on irrelevant grounds such as race or gender.

Race discrimination has dominated Australia's freedom debate thanks to the proposed amendments to the "hate speech" provisions of the Racial Discrimination Act. Certainly the current law restricts freedom of speech, especially for bigots. However, it also enhances countervailing freedoms. Speech which humiliates or intimidates on a racial basis, particularly for those battered by it for much of their lives, can seriously restrict a targeted person's perception of what they are able to do, or where they are able to go. Their freedom is practically inhibited. Yet such speech will be largely lawful if the proposed amendments are adopted, due to narrow definitions and very broad defences.

Discrimination law is just one way that governments actively protect freedom in its broader sense. Another way is via welfare payments, which prevent marginalised people from living in grinding poverty, a situation affording very little practical freedom. It will be interesting to see how the government protects this type of freedom during its time in power.

In any case, the government's narrow approach to freedom is inconsistently applied. The government does not, for example, favour the freedom to marry a same-sex partner, the freedom to die voluntarily with dignity, or freedom from random spying by a friendly foreign government. Brandis has openly supported Queensland's draconian bikie laws, which are a shocking assault on classical notions of freedom of association.

Freedoms often clash and must be balanced against one another.

A running theme for this government is that such clashes are often resolved in favour of commercial interests. For example, the Department of Prime Minister and Cabinet is tightening controls over its employees, prohibiting them from criticising government policy, even anonymously and in a private capacity, on social media. Extraordinarily, employees are expected to "dob in" colleagues if these guidelines are breached. Freedom of contract, a commercial right, is being upheld over freedom of speech. Certainly, public servants are free to quit their jobs if they want to tweet or blog more freely about politics. But that isn't such an easy choice in the real world.

Senator Richard Colbeck, the parliamentary secretary to the Minister for Agriculture, suggests that laws might be amended to ban many environmental boycotts of businesses. Colbeck denies any consequent harm to free speech, while nevertheless arguing that campaigners "should not be able to run a specific business-focused or market-focused campaign".

The government's distaste for boycotts is already evident in Brandis' astonishing reaction to the Sydney Biennale controversy. As Arts Minister, he has directed the Australia Council to cut funding to arts groups which "unreasonably" refuse corporate sponsorship. He seems to be creating a right for corporations to inflict their brands on others, or an inalienable right to sponsor, which prevails over artists' freedom of conscience. Art is not apolitical or value-free: the best is opinionated, not cowed.

Requiring recipients of government funding to be apolitical is inimical to "freedom". It leads to a skewed public sphere of debate: the privately funded have enormous freedom to express opinions while the publicly funded are muzzled.

A final example is Australia's outdated copyright laws, which fail to properly protect free speech in the digital age. For example, many "shares" on Facebook unwittingly breach copyright. Recognising this, the Law Reform Commission recommended the adoption of a more flexible defence of "fair use" to copyright infringement. The Attorney-General has indicated that he sides with copyright holders, meaning no change.

Yet Brandis is misguided if he thinks his position supports business. Google and Wikipedia could not be based here. They are based in the US, where the fair use defence encourages innovation. Current copyright law is bad for freedom, including political, social, informational, cultural and commercial freedom.

Australia's freedom debate is dominated by a narrow, inconsistently applied definition of freedom. In a development which will come to be seen as bizarre, it is disproportionately focused on the freedom to be a bigot. Real freedom is far more complex. And real freedom will be jeopardised unless that complexity is recognised and respected.

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