

SHOULD ETHICAL VEGANS HAVE A BEEF WITH THE DEFINITION OF RELIGION?

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*Veganism, where adherents eschew the consumption of animals or their by-products, has seen a substantial increase in popularity in recent years. Vegans who follow the diet for moral or ethical reasons (ethical vegans) have argued in the United States, with limited success and, more recently, in the United Kingdom that they should be protected from discrimination on the grounds of their adherence to ethical veganism, contending that ethical veganism should be subject to similar protections as religion. In the United Kingdom, anti-discrimination legislation protects philosophical beliefs in addition to religion and it was recently held in a preliminary hearing in *Casamitjana v The League Against Cruel Sports* that ethical veganism falls within the ambit of the relevant statute. The authors examine the situation in the United Kingdom and the United States and conclude that, given that Australian anti-discrimination statutes only refer to religion as a protected attribute, this outcome is unlikely to be replicated since veganism is highly unlikely to meet the current definition of religion.*

And to every beast of the earth, and to every bird of the air, and to everything that creeps on the earth, everything that has the breath of life, I have given every green plant for food. – Genesis 1:30

I INTRODUCTION

Veganism has been variously described as a lifestyle, a dietary preference and a social philosophy¹ but it does not generally fit into what most people would regard as a religion. Vegans who follow the diet for moral or ethical reasons (*‘ethical vegans’*), however, have argued in the United States (‘US’) and, more recently, in the United Kingdom (‘UK’) that they should be protected from discrimination on the grounds of their adherence to veganism. They contend that ethical veganism should be subject to similar protections as religion. The recent case in the UK involving an

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1 Niccolò Bertuzzi, ‘Veganism: Lifestyle or Political Movement? Looking for Relations Beyond Antispeciesism’ (2017) 5(2) *Relations* 125, 126.

ethical vegan, Jordi Casamitjana, and his claim that he was unfairly dismissed on the grounds of his beliefs has attracted a great deal of attention. Anti-discrimination legislation in the UK protects philosophical beliefs in addition to religion. In a preliminary hearing ethical veganism was held to fall within the ambit of the relevant statute. It is doubtful that this outcome would be replicated in Australia, however, as the anti-discrimination statutes only refer to religion as a protected attribute, and veganism is extremely unlikely to fall within the current definition of religion.

II VEGANISM

Veganism is a sub-category of the vegetarian diet² in which adherents forgo the consumption and use of all products derived from animals. The Vegan Society defines veganism as ‘a way of living which seeks to exclude, as far as is possible and practicable, all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose.’³ Although it is accepted there are varying degrees of adherence to veganism (with many now choosing to use the term *plant-based* to describe their dietary preferences), a committed vegan will not consume animal flesh, dairy products, eggs or honey or use clothing made from wool, cotton or silk or products that have been tested on animals. There are many different motivations for adopting a vegan diet:

- Health or medical reasons.
- Environmental or sustainability concerns over the long term viability of current farming practices and animal husbandry.
- Spiritual or religious reasons.
- Moral or ethical reasons (due to concern for the welfare of animals or their rights).⁴

The majority of vegans choose veganism due to a combination of some or all of the preceding factors, although some vegans identify solely as *ethical vegans*. While the practices of ethical vegans in abstaining from the use of animal products may present as identical to vegans who identify as *health vegans* or *environmental vegans*, the beliefs inspiring those practices are quite different. Ethical vegans are motivated by several overlapping concerns: a belief that it is morally wrong to use or eat products made by animals, given that animals are sentient beings⁵, concerns about

2 Cramer et al, ‘Characteristics of Americans Choosing Vegetarian and Vegan Diets for Health Reasons’ (2017) 49(7) *Journal of Nutrition Education and Behavior* 561, 561.

3 ‘Definition of Veganism’, *The Vegan Society* (Web Page) <www.vegansociety.com/go-vegan/definition-veganism>.

4 Cramer et al (n 2) 561.

5 Jan Hoole, ‘Here’s What the Science Says About Animal Sentience’, *The Conversation* (online, 24 November 2017) <<https://theconversation.com/heres-what-the-science-says-about-animal->

animal cruelty involved in current institutional farming practices and concerns about the impact the slaughtering of animals has on farmers and workers in abattoirs.⁶ Ethical veganism is, as David Mitchell notes, ‘coherent, heartfelt and spreading’.⁷

The term *vegan* was coined by Donald Watson who formed the first vegan society in 1944 in the UK.⁸ Watson became vegan as a result of witnessing the slaughtering of a pig on his family’s farm as a young boy. He subsequently eschewed the consumption of all animals and their by-products.⁹ Although veganism gained more widespread recognition and followers as part of the burgeoning animal rights movement in the 1960s and 1970s until quite recently veganism was seen as a relatively extreme alternative dietary lifestyle.¹⁰

At present, veganism is enjoying increasing mainstream acceptance and is one of the fastest-growing diets in the world. Research suggests that a vegan diet is conducive to good health, which is at odds with the general perception of vegans as pale and undernourished.¹¹ The popularity of veganism, promoted by celebrity endorsements of the diet and events such as *Veganuary*, in which people are encouraged to eat a vegan diet for the month of January, continues to grow.¹² In the UK, approximately 600,000 persons currently identify as being vegan with that number quadrupling between 2014 and 2018.¹³ In the US, over 19 million persons currently identify as vegan.¹⁴ In Australia, statistics show that 11% of the population identify as vegetarian, with an unknown proportion of that group following a vegan diet.¹⁵ During the period 2014–19, Australia had the greatest search interest worldwide for the term *vegan*.¹⁶

sentience-88047>.

6 Andrew Linzey and Claire Linzey, *Ethical Vegetarianism and Veganism* (Milton Routledge, 2018) 4–10.

7 David Mitchell, ‘Opinion: My Beef with Vegans Says More About Me Than Them’, *The Guardian* (online, 9 December 2018) <<https://www.theguardian.com/commentisfree/2018/dec/09/my-beef-with-vegans-says-more-about-me-than-them-david-mitchell>>.

8 Erik Marcus, *A Vegan History: 1944–2010* (Kindle ebook Version 1.0, 2011) Location 13 of 647.

9 Joshua Beck, ‘Why People Become Vegans: The History, Sex and Science of a Meatless Existence’, *The Conversation* (online, 19 November 2018) <<https://theconversation.com/why-people-become-vegans-the-history-sex-and-science-of-a-meatless-existence-106410>>.

10 Marcus (n 8) Location 54 of 647.

11 Monica Dinu et al, ‘Vegetarian, Vegan Diets and Multiple Health Outcomes: A Systematic Review with Meta-analysis of Observational Studies’ (2017) 57(17) *Critical Reviews in Food Science and Nutrition* 3640.

12 *Veganuary* (Web Page) <<https://au.veganuary.com>>.

13 ‘Statistics’, *The Vegan Society*, (Web Page) <<https://www.vegansociety.com/news/media/statistics>>.

14 Ibid.

15 ‘The Slow but Steady Rise of Vegetarianism in Australia’, *Roy Morgan* (Web Page, 15 August 2016) <<http://www.roymorgan.com/findings/vegetarianisms-slow-but-steady-rise-in-australia-201608151105>>.

16 Amongst 44 high-volume search regions. See ‘Vegan Search Trends’, *Google Trends* (Web Page) <<https://trends.google.com/trends/explore?date=2014-01-01%202019-12-31&q=vegan>>.

III THE CASAMITJANA CASE

Jordi Casamitjana was employed by the League Against Cruel Sports in 2016. He had previously worked for the organisation from 2004 to 2007. Shortly thereafter, he discovered that the pension fund used by the League invested in pharmaceuticals and tobacco companies, some of which conducted testing on animals. Believing that this was antithetical to the stated mission of the organisation for whom he worked and to his own deeply held beliefs as an ethical vegan, he campaigned for a change to the pension fund. Although his employers acceded to this request, the pension fund they subsequently chose resulted in lower returns for employees. Casamitjana claimed that when he drew other employees attention to this fact via an all-staff email, he was sacked.¹⁷ Although his employer stated that he was dismissed for misconduct – which had nothing to do with his vegan beliefs – Casamitjana brought an action against his employer them alleging that he had been dismissed because of his veganism. Casamitjana argued that ethical veganism constituted a philosophical belief and, as such, his dismissal qualified as discrimination contrary to the relevant provisions of the UK's *Equality Act 2010* ('the UK Act'). In a hearing in January 2020 to determine the preliminary issue of whether ethical veganism was a philosophical belief, Employment Judge Postle held that it met the established criteria and therefore constituted a protected characteristic under the Act.¹⁸

Religion or belief is one of the nine protected characteristics covered by the UK Act. The definition of belief according to s10(2) of the UK Act is 'any religious or philosophical belief'. In the 2005 decision of *R (Williamson) v Secretary of State for Education and Employment* ('Williamson'),¹⁹ Lord Nicholls considered the section in the context of a religious belief, noting that

when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements ... The belief must be consistent with basic standards of human dignity or integrity ... The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied.²⁰

17 Amanda Erickson, 'This British Man Says He Was Fired for Being Vegan, Which He Believes Was Discrimination', *The Washington Post* (online, 5 December 2018) <https://www.washingtonpost.com/world/2018/12/05/this-british-man-says-he-was-fired-being-vegan-which-he-believes-was-discrimination/?utm_term=.827f7707276d>.

18 The respondents conceded that ethical veganism was a philosophical belief, although the Employment Judge went on to consider the issue before them to ensure that the concession had been reasonably made on the available evidence.

19 [2005] 2 AC 246.

20 *Ibid* [24].

Lords Nicholls went on to state that

Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to the freedom to hold and manifest their beliefs as the theist. For the purpose of this guaranteed freedom, these beliefs are placed on an equal footing. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs.²¹

The 2010 decision of the Employment Appeal Tribunal in *Grainger plc v Nicholson* ('*Grainger*'),²² considered the section and the definition of philosophical belief in the context of a worker who alleged discrimination on the grounds of his belief in catastrophic climate change. The claim had been brought under the *Employment Equality (Religion or Belief) Regulations 2003* which prohibited discrimination in employment on the grounds of religion or belief.²³ Belief was defined in Paragraph 2(1) of the Regulations to mean 'any religious or philosophical belief'.

In *Grainger*, the Tribunal held that to establish a protected philosophical belief, it must be established that the belief must:

- be genuinely held;
- be as to a weighty and substantial aspect of human life and behaviour;
- attain a certain level of cogency, seriousness, cohesion and importance;
- be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others; and
- not be an opinion or viewpoint based on the present state of information available.²⁴

The Tribunal held that belief in catastrophic climate change was capable of meeting the criteria and could therefore be considered a philosophical belief.

Casamitjana identifies as an ethical vegan, as distinguished from someone who adopts veganism purely for health or environmental reasons. He was able to provide ample evidence to demonstrate to the satisfaction of the court that he lives his daily life in accordance with his beliefs and that much thought went into his decision to abide by ethical vegan principles.²⁵ For example, he showed that this personal

21 Ibid [24].

22 [2010] IRLR 4 (EAT) ('*Grainger*').

23 *Employment Equality (Religion or Belief) Regulations 2003* (UK) para 3.

24 *Grainger* (n 22) [24].

25 See also Caroline L Kraus, 'Religious Exemptions: Applicability to Vegetarian Beliefs' (2001) 30 *Hofstra Law Review* 197, 222.

philosophy ‘affects every aspect of his life’²⁶ and informs his ‘career and employment’.²⁷ It was also established that his belief is genuinely held.

Ethical veganism was held to be a belief as to a weighty and substantial aspect of human life and behaviour, impacting as it does on ‘the relationship between humans and other fellow creatures’.²⁸ Employment Judge Postle also held that ethical veganism attains a certain level of ‘cogency, seriousness, cohesion and importance’.²⁹ Few people would argue that the right to choose what one consumes is not worthy of respect in a democratic society, particularly given that the right to bodily integrity is protected in law. Ethical veganism does not conflict with the fundamental rights of others as it does not, as was noted by Employment Judge Postle, require ‘non-vegans to behave in a particular way’.³⁰ The final component (i.e. that ethical veganism is a belief and not an opinion or viewpoint based on the present state of information available) was also held to be met with Employment Judge Postle noting that ethical veganism ‘carries with it an important moral essential’, which is ‘founded upon a long-standing tradition recognising the moral consequences of non-human animal sentience’.³¹ Ethical vegans follow this practice due to ‘deeply held moral and ethical beliefs with the strength of traditional religious beliefs’.³²

While the issue of whether Casamitjana was unlawfully dismissed from his employment has yet to be determined,³³ the decision that ethical veganism is a protected belief has moved the law significantly forward in relation to legal protection for vegans in the UK.³⁴ The legal ramifications of the decision are not necessarily directly applicable elsewhere, largely due to the relatively wide definition of the exemption in the UK Act. However, the attention paid to the case and the growing popularity of vegan diets, suggest that this issue is one that is likely to arise in the future.

26 *Casamitjana v The League Against Cruel Sports* [2020] UKET 3331129/2018 [10], [17]–[18], [20]–[22] (‘*Casamitjana*’); Clive Coleman, ‘Sacked Vegan Claims Discrimination in Landmark Case’, *BBC News* (Web Page, 3 December 2018) <<https://www.bbc.com/news/uk-46385597>>.

27 *Casamitjana* (n 26) [10]; Jordi Casamitjana, ‘Help an Ethical Vegan Who Was Dismissed by an Animal Welfare charity’, *Crowd Justice* (Web Page) <<https://www.crowdjustice.com/case/help-a-discriminated-ethical-vegan/>>.

28 *Casamitjana* (n 26) [35].

29 *Ibid* [36] & [37].

30 *Ibid* [19].

31 *Ibid* [34].

32 Donna Page, ‘Veganism and Sincerely Held “Religious” Beliefs in the Workplace: No Protection Without Definition’ (2005) 7 *University of Pennsylvania Journal of Labor and Employment Law* 363, 404.

33 Note: the parties decided to settle the case after this article was accepted for publication.

34 The same protection does not extend to vegetarians. In *Conisbee v Crossley Farms Ltd* [2019] UKET 3335357/2018, Employment Judge Postle held that vegetarianism was not a philosophical belief capable of protection under the UK Act.

IV IS VEGANISM A RELIGION?

In Australia, all state discrimination statutes that prohibit discrimination based on religion do not include philosophical belief in the statutory provision. For an argument similar to Casamitjana's to be successful in Australia, on the current state of the law it would be necessary for ethical veganism to fit within the definition of a religion. Although no cases have yet been heard on the issue of the status of ethical veganism in Australia, it has been raised in the US with mixed success. As with the UK statute, the wording of the relevant anti-discrimination legislation in the US is key.

A *United States*

The definition of religion has never been authoritatively determined by the US Supreme Court, however, several lower-level courts have considered the question.³⁵ In *United States v Seeger* ('*Seeger*')³⁶ the court concluded that religion should include any sincere belief that is 'based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent' and that 'occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption.'³⁷

In *Welsh v United States* ('*Welsh*')³⁸ the Court found that a conscientious objector (who did not view his beliefs as religious) could nevertheless qualify for an exemption based on religious belief if his 'opposition to war stem[med] from ... moral, ethical or religious beliefs about what is right and wrong' and if 'these beliefs ... [were] held with the strength of traditional religious conviction' and 'impose[d] upon him a duty of conscience to refrain from participating in any war at any time' thus 'occupy[ing] in the life of that individual a place parallel to that filled by ... God in traditionally religious people.'³⁹

The context in which these definitions were applied must be kept in mind. Both involved claims for exemptions from military service during the Vietnam War and technically only applied to the relevant statute. The definitions from both *Seeger* and *Welsh*, however, have influenced latter definitions.

35 Boris I Bittker, Scott C Idleman and Frank S Ravich, *Religion and the State in American Law* (Cambridge University Press, 2015) 331.

36 380 US 163 (1965).

37 Ibid 176.

38 398 US 333 (1970).

39 *Welsh v United States* 398 US 333, 340 (1970).

Other US courts have taken a different approach. In *Malnak v Yogi*⁴⁰ and *Africa v Commonwealth of Pennsylvania*⁴¹ Adams J outlined three indicia to determine whether a particular set of beliefs and practices constitute a religion:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognised by the presence of certain formal and external signs ... that may be analogised to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organisation, efforts at propagation, observance of holidays and other similar manifestations associated with traditional religions.⁴²

More recently Judge Brimmer in *United States v Meyers*⁴³ outlined a more extensive list of five indicia, with the fifth containing a further ten sub-indicia. He determined that religion involves:

- ultimate ideas;
- metaphysical beliefs;
- moral or ethical system;
- comprehensiveness of beliefs; and,
- accoutrements of religion (including a founder, prophet, or teacher, important writings, gathering places, keepers of knowledge, ceremonies and rituals, structure or organisation, holidays, diet or fasting, appearance and clothing and propagation).

While neither Adams or Brimmer required that all of their indicia be present for a set of beliefs and practices to constitute a religion, absence of a significant number of the indicia would make it unlikely that the beliefs and practices under consideration be deemed as such.⁴⁴

In *Friedman v Southern California Permanente Medical Group* ('Friedman'),⁴⁵ Friedman had been offered a permanent position of employment as a computer contractor at the defendant's premises but he was required to be vaccinated against mumps as a condition of his employment. Friedman refused the vaccination as the vaccine had been grown in the yolk of a fertilised chicken egg. This case was heard under the *California Fair Employment and Housing Act of 1959*, which prohibits discrimination on the grounds of religious creed, which is defined to include

40 592 F 2d 197 (3rd Cir, 1979); for a discussion of *Malnak v Yogi* see Sarah Barringer, 'The New Age and the New Law' in Leslie Griffin (ed), *Law and Religion: Cases in Context* (Aspen Publishers, 2010) 11.

41 *Africa v Commonwealth*, 662 F 2d 1025 (3rd Cir, 1981).

42 Ibid 1035.

43 906 F Supp 1494 (D Wyo 1995), *aff'd*, 95 F 3d 1475 (10th Cir, 1996).

44 See *United States v Meyers* 906 F Supp 1494, 1503 (D. Wyo 1995).

45 *Friedman v Southern California Permanente Medical Group*, 102 Cal App 4th 39, 69 ('Friedman').

any traditionally recognised religion as well as beliefs, observances, or practices which an individual sincerely holds and which occupy in his or her life a place of importance parallel to that of traditionally recognised religions.⁴⁶

The plaintiff argued that veganism held a place in his life that was akin to religion. In applying the definition of religion from the Act the California Court of Appeal first identified the current confused state of the meaning of religion in us case law.⁴⁷ The Court concluded that the best option was to ‘utilise the objective analysis enunciated by the Third, Ninth, Eighth, and Tenth Circuits in *Africa*, *Wiggins*, *Alvarado* and *Meyers*’.⁴⁸ As such, the Court held that veganism was not a religious creed but a personal philosophy and lacked the three indicia of a religion. Unlike a religion the court found that veganism was not ‘comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching’.⁴⁹ Ethical veganism also did not address ‘fundamental or ultimate questions’, and, while the court noted that lack of formal or external signs of religion was not determinative, it did take the lack of ‘teachers or leaders, services or ceremonies, structure or organisation, orders of worship or articles of faith, or holidays’ into account.⁵⁰

The 2012 case of *Chenzira v Cincinatti Children’s Hospital Medical Center* (*Chenzira*),⁵¹ also involved a refusal to be vaccinated. In *Chenzira*, the plaintiff was employed by the medical centre as a customer service representative. Her employer required all employees to be vaccinated for influenza but Chenzira, a vegan, objected to being vaccinated because the vaccine was formulated with animal products. Ms Chenzira brought an action against the hospital on the grounds that she was being discriminated against as a result of her veganism, which she argued constituted religious discrimination under both Title 7 of the *Civil Rights Act of 1964* (US) and Ohio State anti-discrimination legislation.

The defendants brought an action to dismiss the plaintiff’s claim on the grounds that veganism was not a religion but rather a dietary preference or social philosophy.⁵² The plaintiff argued that her beliefs were moral and ethical ones, which are ‘sincerely held with the strength of traditional religious views in accordance with *United States v Seeger* and *Welsh v United States*’.⁵³ Noting that in ‘the context of a

46 *Establishing Religious Creed Discrimination*, 2 CA ADC § 11060.

47 *Friedman* (n 45).

48 *Ibid.*

49 *Ibid* 70.

50 *Ibid*; See also Page (n 32) 397.

51 (SD Ohio, No 1:11-CV-00917, 27 December 2012).

52 *Ibid.*

53 *Ibid.*

motion to dismiss, [the court] merely needs to determine whether [the] plaintiff has alleged a plausible claim',⁵⁴ the Ohio Federal Court has held in the case of *Chenzira*, at the very least, it was indeed plausible that Chenzira subscribed to veganism with 'a sincerity equating that of traditional religious views' and could come within the terms of the Act.

B *Australia*

In Australia, the legal definition of religion was determined by the High Court in *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* ('*Scientology Case*').⁵⁵ While the Court unanimously determined that Scientology is a religion, the definitions of religion applied by the three judgments varied. As a result, like the US, Australia does not have a definitive legal definition of religion.

Further, as noted above, anti-discrimination statutes use the term 'religion' and do not extend out to protect philosophical beliefs. For ethical veganism to qualify as a religion for the purposes of anti-discrimination legislation, veganism would need to fit within the current definition of religion.

While the *Scientology Case* case has been criticised for not having clear dicta, the definitions outlined in the three judgments have been influential both in Australia and around the world.⁵⁶ The widest definition was given by Murphy J. In his definition:

any body which claims to be religious, whose beliefs or practices are a revival of, or resemble earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible ... or a physical invisible God or spirit, or an abstract God or entity is religious ... Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious.⁵⁷

Wilson and Deane JJ followed the indicia approach from the US listing five indicia which they considered relevant for determining whether or not a given set of beliefs were a religion, these were:

- the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses;
- the ideas relate to man's nature and place in the universe and his relation to things supernatural;

54 Ibid.

55 (1983) 154 CLR 120, 128.

56 See Ian Ellis-Jones, 'What is Religion?' (2008) 13 *Local Government Law Journal* 168; Pauline Ridge, 'Not-for-profit Law and Freedom of Religion' in Matthew Harding (ed) *Research handbook on Not-for-Profit Law* (Edward Elgar, 2018) 284, 292–3.

57 *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120, 151.

- the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance;
- however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups; and
- the adherents themselves see the collection of ideas and/or practices as constituting a religion.⁵⁸

Further, they considered that:

no one of the above indicia is necessarily determinative of the question whether a particular collection of ideas and/or practices should be objectively characterised as ‘a religion’. They are no more than aids in determining that question and the assistance derived from them will vary according to the context in which the question arises.⁵⁹

Finally Mason ACJ and Brennan J defined religion as:

belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, although canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.⁶⁰

All three judgments determined that the Church of Scientology was a religion. The Australian definition has been adopted by a number of jurisdictions and notably in the case *R (Hodkin) v Registrar of Births, Deaths and Marriages* (‘Hodkin’).⁶¹ Lord Toulson considered the definitions from *Church of the New Faith* before determining that religion is:

a spiritual or non-secular belief system held by a group of adherents, which claims to explain mankind’s place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system.⁶²

In *Registration decision: the Jedi Society Incorporated*⁶³ the New Zealand Charities Registration Board considered both the definitions from *Church of the New Faith* and *Hodkin* concluding that the definition in *Hodkin* was ‘a useful modern reading of *Church of the New Faith* and confirms that this case is still current in terms of the law’s

58 Ibid 174.

59 Ibid.

60 Ibid 136.

61 *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2014] 1 All ER 737 (‘Hodkin’).

62 Ibid 752.

63 *Registration Decision: The Jedi Society Inc (JED49458)* (Charities Registration Board, Decision No 2015-2, 14 September 2015).

definition of religion.⁶⁴ Within Australia the *Scientology Case* has only been directly applied a handful of times. In *RSSB Australia Pty Ltd v Ross*⁶⁵ Emerton J concluded that Radha Soami Satsang Beas ('RSSB') was a religion that meets both the definition proposed by Mason ACJ and Brennan J and that proposed by Deane and Wilson JJ.⁶⁶ Presumably given Murphy J's definition is the widest of the three the beliefs and practices of RSSB would also satisfy that definition.

There has been a small number of other cases where the Court has applied the definitions from the *Scientology Case* more briefly or indirectly. For example, the court has referred to the *Scientology Case* to confirm that:

- religion has a broad meaning for the purposes of Australian law;⁶⁷
- that religious belief includes the manifestation of that belief;⁶⁸ and,
- that the term religion does not include no religion.⁶⁹

Unlike the US, Australian courts have not been prepared to include non-religious beliefs such as those espoused in *Seeger* and *Welsh* within the legal definition of religion.

V DISCUSSION

As Latham CJ pointed out in *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth*:⁷⁰

almost any matter may become an element in religious belief or religious conduct. The wearing of particular clothes, the eating or the non-eating of meat or other foods, the observance of ceremonies, not only in religious worship, but in the everyday life of the individual – all of these may become part of religion.⁷¹

64 Ibid [28].

65 (2017) 224 LGERA 224.

66 *RSSB Australia Pty Ltd v Ross* (2017) 224 LGERA 224, 231.

67 *Lebanese Moslem Association v Minister for Immigration & Ethnic Affairs* (1986) 11 FCR 543, 556; *North Coast Environment Council Inc v Minister for Resources* (1994) 55 FCR 492, 509–10.

68 *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* (2014) 50 VR 256, 391–2, 403–4; *Minister for Immigration and Multicultural Affairs v Darboy* (1998) 52 ALD 44, 50–1.

69 *Dixon v Anti-Discrimination Commissioner of Queensland* [2005] 1 Qd R 33, [19]. However, Douglas J went on to confirm that:

the question whether there has been discrimination against an atheist, for example, on the basis of religion is not, in my view, answered simply by the assertion that the attribute of religion does not include an absence of religion. What one must focus on principally is whether there has been discrimination either direct or indirect on the basis of that attribute.

70 (1943) 67 CLR 116.

71 Ibid 124.

There is, of course, no bar to a vegan diet being recognised as a religious practice where it is part of a religion. Dietary restrictions are a common feature of religious belief and practice. Abstaining from eating pork and shellfish products by Jews and fasting during Ramadan for Muslims springs readily to mind. Jains follow one of the more extreme dietary religious practices. As well as abstaining from eating meat they also refrain from eating eggs, gelatine and anything that grows underground (e.g. potato, carrot and garlic).⁷² As discussed above, however, vegans may adopt a vegan diet or lifestyle for a variety of reasons independent of what has traditionally been recognised as a religious belief.

Veganism, particularly ethical veganism, may very well hold a place akin to or parallel to that of religion in a person's life. Certainly, this is what Friedman argued in the *Friedman* case. The difficulty with this argument is that 'parallels, by definition, never meet.'⁷³ While ethical veganism may hold a place similar to that of a religion it lacks many of the features traditionally associated with religion and required by most legal definitions. It lacks belief in or some kind of connection with a 'supernatural being, thing or principle'⁷⁴ or 'divine, superhuman or controlling power'⁷⁵ or 'relationship with the infinite'.⁷⁶ It also lacks many of the external trappings associated with religion such as a religious text, leaders or services and rituals.⁷⁷ Finally ethical veganism does not see itself as a religion.⁷⁸ While the lack of any one of these factors is not in and of itself decisive, cumulatively they make it extremely unlikely that an Australian court would recognise ethical veganism as a religion for the purposes of anti-discrimination law.

VI CONCLUSION

It seems clear that veganism will not fall within the definition of religion. Therefore, it would not be protected by anti-discrimination statutes as they currently exist in Australia. As noted above, this may not be the case for a vegan who follows the diet as a part of a commitment to a recognised religion. The unfairness of this situation has not gone unnoticed by some commentators, including Page, who notes:

72 Amy Shah, 'Jain Food Struggles in America', *HuffPost* (online, 1 December 2016) <https://www.huffpost.com/entry/jain-food-struggles-in-am_b_8961854>.

73 *Barralet v Attorney General* [1980] 3 All ER 918, 924 (Dillon J).

74 *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120, 136 (Mason ACJ and Brennan J).

75 *Syndicate Northcrest v Anselem* [2004] 2 SCR 551, 576 [39] (Iacobucci J).

76 *Hodkin* (n 61) 752.

77 *United States v Meyers* 906 F Supp 1494 (D. Wyo 1995), *aff'd*, 95 F.3d 1475 (10th Cir. 1996).

78 *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120, 174.

it is arbitrary to say that a vegan who is affiliated with an organised religion must be given protection while a vegan who holds the same beliefs though internally derived does not deserve the law's protection.⁷⁹

The distinction exists because the law protects discrimination based on a person's religion, not based on specific manifestations of that religion. Many religious practices have secular equivalents which are not protected in the same way as their religious counterpart. It is the motivation for the practice which attracts protection – not the practice itself. Indeed, the manifestation of religious beliefs may be abrogated by law, for example, to protect the human rights of others. Religious belief on the other hand is protected absolutely.⁸⁰

Whether the protection of anti-discrimination legislation should be extended to ethical vegans in the future is beyond the scope of this paper – although it is an issue that is likely to arise in the future given the increasing number of vegans (and therefore, presumably, the number of ethical vegans) and concerns about discrimination against those who practice veganism.⁸¹ It also raises a more fundamental question about the basis upon which the law protects the manifestations of a person's fundamental beliefs and practices. With a growing proportion of the Australian population rejecting religion,⁸² more and more Australians are likely to seek meaning and rules for living in non-religious belief systems. The basis upon which the law protects actions based on a person's fundamental beliefs may need to be re-examined. Parallel lines, by definition, may never meet, but those lines can certainly occupy an equivalent role in a person's life.

79 Page (n 32) 407.

80 Renae Barker, *State and Religion: The Australian Story* (Routledge, 2018) 36–41.

81 See Oscar Horta, 'Discrimination Against Vegans' (2018) 24(3) *Res Publica* 359.

82 '2016 Census: Religion', *Australian Bureau of Statistics* (Web Page, 27 June 2017) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/7E65A144540551D7CA258148000E2B85>>.