



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

12 February 2018

PO Box A147
Sydney South
NSW 1235
DX 585 Sydney
www.alhr.org.au

Panel Secretary
Expert Panel on Religious Freedom
c/o Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600

By email: religiousfreedom@pmc.gov.au

Dear Panel Secretary

Religious Freedom Review

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission in relation to the Panel's current Inquiry as to **whether Australian law (Commonwealth, State and Territory laws) adequately protects the human right to freedom of religion.**

About ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Table of Contents

1.	Introduction	3
2.	Summary of submissions	4
3.	Relevant materials	5
4.	ALHR’s Concerns	5
5.	What is the human right to ‘freedom of religion or belief’?	6
5.1	International Instruments	6
5.2	Freedom ‘of’ and freedom ‘from’	7
6.	How does the human right to ‘freedom of religion or belief’ intersect with other human rights?	9
6.1	Introduction	9
6.2	Is religious freedom possible without human rights?	9
6.3	Freedom of/from religion supports other human rights	10
6.4	The balancing of indivisible and interdependent human rights	10
	Rights must be balanced where they conflict	10
	Taking account of context and other values	11
	The good faith of those seeking State protection	11
6.5	Protecting and respecting the believer not the belief	12
7.	The existing legal situation	12
7.1	Lack of Australian Federal Human Rights Bill or Act	12
7.2	Australian Constitution	13
7.3	Other Commonwealth legislation	14
7.4	States and Territories	15
8.	Does Australian law adequately protect the human right to freedom of/from religion and if not, how can this be remedied?	16
8.1	Defect: the lack of a Human Rights Act or Bill of Rights to protect freedom of/from religion	16
8.2	Defect: the continued existence of blasphemy laws	16
8.3	Defect: no legal protection against religious vilification	17
8.4	Defect: the existence of religious practices which discriminate against members	18
8.5	Defect: the existence of religious practices which discriminate generally	20
8.6	Defect: the lack of protection of children’s rights in relation to religion	21
8.7	Defect: the politicisation of Christianity as the dominant Australian religion	23
9.	Conclusion	25

all believers — whether theistic, non-theistic, atheistic or other — should join hands and hearts in articulating ways in which “faith” can stand up for “rights” more effectively, so that each enhances the other. Rejecting expressions of hatred within one’s own community and extending solidarity and support across faith or belief boundaries are honourable and meaningful actions

- Ahmed Shaheed, UN Special Rapporteur on Freedom of Religion or Belief¹

1. Introduction

- 1.1 ALHR submits that the human right to freedom of religion would best be protected by a Federal Human Rights Act or Bill of Rights.
- 1.2 In practice, the beliefs and hence the activities of those of different religions will often conflict, because “each person’s religious freedom is dependent on and coextensive with everyone else’s religious freedom.”²
- 1.3 In addition, religious activities may themselves give rise to breaches of other human rights. ‘Religious’ practices often involve:
 - breaches of human rights of the group’s adherents; and
 - attempts to restrict the human rights of persons outside the religious group.

Discriminatory treatment by religious groups of children, women, LGBTIQ persons and other religious and ethnic minorities are obvious examples.
- 1.4 It is submitted that the balancing of competing rights through a human-rights-based process involving ‘reasonable accommodation’ is the best method of managing the practical problems resulting from these issues. There can be no truly free religious life without respect for the freedoms and human rights of others.³
- 1.5 Adopting a human-rights based framework will also assist religions to develop; to progress towards a situation where they respect both the rights of their own members and the rights of those outside their religion.
- 1.6 Importantly, the full title of the right is “**freedom of thought, conscience, religion or belief.**” It does not mean ‘freedom’ to follow only the majority religion or belief, and it **includes freedom ‘from’ religion.** This interpretation is confirmed by human rights courts internationally and particularly in Europe. It means freedom to:
 - choose between different religions and beliefs,
 - convert between religions and beliefs,
 - leave a religion or belief, and

¹ A/72/365 *Interim Report: Elimination of all forms of religious intolerance* (2017), par 78, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/270/09/PDF/N1727009.pdf>, accessed 26 January 2018.

² Dr Luke Beck in *Committee Hansard*, Joint Standing Committee on Foreign Affairs, Defence and Trade, Public Hearing in Sydney, 6 June 2017, p 13, at http://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/dffdc74c-afad-4a3b-8bc7-7625b8050249/toc_pdf/Joint%20Standing%20Committee%20on%20Foreign%20Affairs,%20Defence%20and%20Trade_2017_06_06_5146_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/dffdc74c-afad-4a3b-8bc7-7625b8050249/0003%22

³ Heiner Bielefeldt, A/71/269 *Interim Report: Elimination of all forms of religious intolerance - The broad range of violations of freedom of religion or belief, their root causes and variables* (2016), par 33, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/244/98/PDF/N1624498.pdf>, accessed 10 February 2018.

- hold no religion or belief - following on from the logical argument that to have freedom of something you must also be able to be free from that thing or not have that thing (as any other situation would amount to compulsory religion).
- 1.7 Freedom of religion or belief is not limited to traditional religions. It also encompasses agnosticism, atheism, secularism and other systems of belief which hold to a set of values and principles but would not traditionally be thought of as religions (see paragraph 5.2.7).
 - 1.8 It must also be recognised that while the right to believe is an absolute personal right which is exercised internally, the right to manifest or act upon one's religious belief externally so as to impact upon others is never absolute. Religious freedom does not mean freedom to visit harm upon others in the name of one's own religion. This is discussed further at paragraphs 6.48 and following, 6.5, 8.4 and 8.5.
 - 1.9 Freedom of/from religion also involves the principle of equality amongst religions. No religion should be legally privileged above any other religion, nor above secularism, as that would result in inequality, and hence lack of freedom, of religion⁴. This principle is particularly important in multicultural Australia.
 - 1.10 The situation of minor children in relation to religion also needs to be considered as a human rights issue, not least because children are not usually free to pick their own religion (or non-religion) but are subject to the religious choices that their parents make for them.
 - 1.11 Under Australia's common law legal system, "(t)he general proposition at common law is that you are free to do anything at all you want unless some law expressly forbids you from doing it."⁵ This means that the **additional question** that needs to be posed is whether there are *existing laws or practices limiting Australians from exercising their freedom of religion or limiting their freedom from religion*.⁶ This is discussed further below in section 8.

2. Summary of submissions

- 2.1 ALHR submits that Australian law does not adequately protect the human rights to freedom of/from religion because there is no Commonwealth Constitutional protection of that human right and State protection is piecemeal and limited. The existing legal situation is discussed in Section 7.
- 2.2 The areas which ALHR identifies as of particular concern in Section 8 are:
 - (1) the lack of a federal Bill of Rights or Human Rights Act to protect human rights (see 8.1) and provide a structure for managing competing rights (as discussed at 6.4);
 - (2) the lack of legal protection against religious vilification as discussed at 8.3 (not to be confused with freedom to criticise the tenets of any religion, as discussed at 6.5);
 - (3) the continued existence of blasphemy laws as discussed at 8.2;
 - (4) the lack of legal protection against the imposition of anti-human rights practices upon members of some religions as discussed at 8.4;
 - (5) discrimination by religious organisations against other groups as discussed at 8.5;
 - (6) the lack of legal protection for the rights of children, as discussed at 8.6;
 - (7) the politicisation of Christianity as the dominant Australian religion, as discussed at 8.7.

⁴ See Dieter Grimm, 'Conflicts between General Laws and Religious Norms', (2009) 30(6) *Cardozo Law Review* 2369, at 2374, <http://cardozolawreview.com/Joomla1.5/content/30-6/GRIMM.30-6.pdf>

⁵ Beck, op cit, p 15.

⁶ Ibid.

3. Relevant materials

3.1 This submission draws upon our previous submission in February 2017 to the *Inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade into the status of the human right to freedom of religion or belief*.

3.2 We also refer the Panel to:

- the UN *Rapporteur's Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications*;⁷
- the 2015 *Interim Report* of the (then) Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, concerning children's freedom of/from religion (cited as Bielefeldt (2015));⁸
- the 2016 *Interim Report* of the (then) Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt;⁹
- the 2017 *Interim Report* of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed;¹⁰
- *The right to freedom of religion or belief and its intersection with other rights* by Dr Alice Donald and Dr Erica Howard, Middlesex University, for ILGA Europe;¹¹
- the Hansard transcript of the public hearing in Sydney on 6 June 2017 of the Joint Standing Committee on Foreign Affairs, Defence and Trade into the 'Status of the freedom of religion or belief';¹² and
- Office for Democratic Institutions and Human Rights, the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*.¹³

4. ALHR's Concerns

4.1 ALHR's primary concern is that Australian legislation and judicial decisions should adhere to international human rights law and standards across the spectrum. Human rights laws cannot be selectively applied. All human rights are of equal importance and human rights laws can only

⁷ <http://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>.

⁸ A/70/286 *Interim Report: Elimination of all forms of religious intolerance* (2015), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/245/07/PDF/N1524507.pdf>, accessed 10 February 2018.

⁹ A/71/269 *Interim Report: Elimination of all forms of religious intolerance - The broad range of violations of freedom of religion or belief, their root causes and variables* (2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/244/98/PDF/N1624498.pdf>, accessed 10 February 2018.

¹⁰ A/72/365 *Interim Report: Elimination of all forms of religious intolerance*, (2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/270/09/PDF/N1727009.pdf>, accessed 26 January 2018.

¹¹ *The right to freedom of religion or belief and its intersection with other rights* (2015) Dr Alice Donald and Dr Erica Howard, Middlesex University, ILGA Europe website at http://www.ilga-europe.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights.pdf.

¹² http://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/dffdc74c-afad-4a3b-8bc7-7625b8050249/toc_pdf/Joint%20Standing%20Committee%20on%20Foreign%20Affairs,%20Defence%20and%20Trade_2017_06_06_5146_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/dffdc74c-afad-4a3b-8bc7-7625b8050249/0003%22

¹³ Advisor Council of Experts on Freedom of Religion or Belief, OSCE/ODIHR, Warsaw, 2007, <http://www.osce.org/odihr/29154>. It should be noted that the Principles were adopted in Toledo "as an expressive reminder of the complex layering of civilizations that makes teaching about religion so significant. They remind us that our present is infused not only with history, but with each other's history" (page ii).

achieve their objects if they are applied completely to all human rights and with interconnection.

- 4.2 ALHR believes that the promotion of other human rights in addition to the right to freedom of 'religion', and a more nuanced view of the accommodations that need to be made between competing human rights, can assist Australian society. This more complex viewpoint teaches people how and why to challenge those aspects of their own religions which do not accord with human rights, and fosters pluralism and tolerance as a means of promoting and preserving democracy.
- 4.3 We endorse the views of the Parliamentary Joint Committee on Human Rights (**PJCHR**) expressed in Guidance Note 1 of December 2014¹⁴ as to the nature of Australia's human, civil and political rights obligations, and agree that the inclusion of human rights 'safeguards' in Commonwealth legislation is directly relevant to Australia's compliance with those obligations.
- 4.4 Generally, behaviour should not be protected by Australian law where that behaviour itself infringes other human rights because human rights are all interrelated, interdependent and indivisible. The right to express one's religious beliefs does not 'trump' other rights, such as, for example, the right to be free from discrimination, but must be considered in context.
- 4.5 Human rights also entail **both rights and obligations**. Hence in so far as we are ourselves entitled to the protection of human rights, we must also respect the human rights of others.¹⁵ **A secular democratic government should not privilege the right to act on 'religious' views above other human rights.** Where protection is desired for particular behaviour it will be relevant to what extent that behaviour reflects respect for the rights of others.

5. What is the human right to 'freedom of religion or belief'?

5.1 *International Instruments*

- 5.1.1 The right to freedom of religion or belief is reflected in:
- Article 18 of the *Universal Declaration of Human Rights 1948* (UDHR),
 - Article 18(1) of the *International Covenant on Civil and Political Rights 1966* (ICCPR),
 - Article 1.1 of the International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958*, and
 - Article 1 of the United Nations *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief* of 1981 (the '1981 Declaration').
- 5.1.2 The *Convention on the Rights of the Child* also prescribes that States parties shall "respect the right of the child to freedom of thought, conscience and religion", (article 14.1) and that the State shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child (article 14.2).
- 5.1.3 It is provided in article 2 (1) of the 1981 Declaration that "no one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or belief", and article 3 of the 1981 Declaration states that: "Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations."
- 5.1.4 Within the EU, the right to freedom of religion or belief is reflected in:

¹⁴ Commonwealth of Australia, Parliamentary Joint Committee on Human Rights, *Guidance Note 1: Drafting Statements of Compatibility*, December 2014, available at <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources> accessed 10 February 2018.

¹⁵ See generally, United Nations Human Rights Office of the High Commissioner, "What are Human Rights?" available at <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>>, accessed 10 February 2018.

- Article 9(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* 1950 (ECHR), and
- Article 10 of the *Charter of Fundamental Rights of the European Union* (EUCFR).

5.1.5 Also relevant is Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) under which “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. Article 26 is a ‘stand-alone’ right which forbids discrimination in *any law* and in *any field regulated by public authorities*, even if those laws do not relate to a right specifically mentioned in the ICCPR.¹⁶

5.2 Freedom ‘of’ and freedom ‘from’

5.2.1 The international instruments do not themselves define “freedom of thought, conscience, religion or belief,” “freedom of religion” nor “freedom of belief.” The ICCPR provides some guidance in article 18, which provides that:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which shall impair his freedom to have or adopt a religion of his belief or choice.*

5.2.2 The ICCPR also provides that:

- advocacy of religious hatred which amounts to incitement to discrimination, hostility or violence must be prohibited by law (article 20);
- everyone is entitled to equality before the law and equal protection of the law without discrimination on the ground of religion among other grounds (article 26); and
- minority groups are entitled to profess and practise their own religion (article 27).

5.2.3 The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981) prohibits unintentional and intentional acts of discrimination and defines discrimination in article 3 as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

5.2.4 Article 6 of the Declaration stipulates that the religious community's joint or shared expression of its beliefs is protected equally with the individual's right and protects manifestation of religion or belief including, but not limited to:

- worshipping and assembling, and maintaining places for this purpose
- establishing and maintaining charitable or humanitarian institutions
- practising religious rites and customs
- writing and disseminating religious publications
- teaching of religion and belief
- soliciting voluntary financial support
- training and appointment of religious leaders in accordance with the requirements and standards of the religion or belief
- observing religious holidays and ceremonies
- communicating with individuals and communities on matters of religion and belief.

5.2.5 It is generally agreed that “freedom of religion” and “freedom of belief”:

¹⁶ Australian Human Rights Commission (AHRC), *Position Paper on Marriage Equality: Marriage equality in a changing World*, September 2012, available at: < <https://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0> > , accessed 10 February 2018.

- (a) include the freedom to hold secular or atheistic beliefs as well as the right not to profess any religion or belief;
- (b) are not limited to traditional religions; and
- (c) are further divided into the right to hold or change a belief or have no belief (which is unlimited, having no impact on others), and the right to manifest one's beliefs (which, because of potential impact upon others, must be balanced against other rights).

These meanings clearly extend beyond the descriptions of 'religion' given by the Australian High Court in *The Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (1983) 154 CLR 120 (the *Scientology case*).

- 5.2.6 In relation to (a), Bielefeldt notes that no one can be genuinely free to do something unless they are also free **not** to do it, and vice versa. That is why, he says, freedom of religion or belief necessarily also covers the freedom **not** to profess a religion or belief, not to attend acts of worship and not to participate in religious community life.¹⁷ He also comments that "the scope of the right to freedom of religion or belief is often underestimated, with negative implications for its conceptualization and implementation."¹⁸
- 5.2.7 In relation to (b), the European Court of Human Rights has, like the UN Human Rights Committee, given a wide interpretation to the meaning of religious beliefs as including non-religious beliefs such as pacifism, veganism and atheism and religious or philosophical convictions or beliefs
- if they attain a certain level of cogency, seriousness, cohesion and importance; are worthy of respect in a democratic society; are not incompatible with human dignity; do not conflict with fundamental rights; and, relate to a weighty and substantial aspect of human life and behaviour.*¹⁹
- 5.2.8 References in this submission to 'religious' beliefs therefore include references to non-theistic and atheistic beliefs and philosophical convictions within the meanings given by the European Court of Human Rights. We have summarised this by referring to *freedom of/from religion*.
- 5.2.9 It must also be remembered that there is a great range of differentiation within traditional religious beliefs and organisations and that it can be erroneous to attribute any specific views to religious communities as a whole. Even amongst traditional religions, the messages and behavioural requirements are not just different but often irreconcilable²⁰ In Australia the Private Schools Directory website <http://www.privateschoolsdirectory.com.au> lists roughly twenty possible choices of religious school in addition to Catholic, Quaker, government, and non-denominational or multi-faith schools, being: Anglican, Anglican Uniting Church, Armenian Orthodox, Assemblies of God, Assyrian, Baptist, Brethren, Church of Christ, Church of England, Coptic Orthodox, Dutch Reform, Ecumenical, Free Reformed, Greek Orthodox, Hare Krishna, Islamic, Jewish, Lutheran, Pentecostal, Presbyterian, Seventh Day Adventist and Uniting Church.
- 5.2.10 Thus Bielefeldt notes that when States are designing policies against harmful religious practices, it should be borne in mind that such practices "are usually contested between and within religious communities". "Awareness of such internal diversity" he notes, "is important, to avoid stigmatizing overgeneralizations and [to] muster support from within religious communities."²¹
- 5.2.11 We consider in Section 8 whether Australian law adequately protects freedom of/from religion. We consider first how the human right to freedom of/from religion intersects with other human rights, and then in Section 7 we consider the existing legal situation.

¹⁷ Bielefeldt, op cit, par 15. See also Grimm, op cit, at 2373.

¹⁸ Bielefeldt, op cit, par 10.

¹⁹ Donald and Howard, op cit, p 2.

²⁰ Bielefeldt, op cit, par 11.

²¹ Bielefeldt (2015) op cit., par 14.

6. How does the human right to ‘freedom of religion or belief’ intersect with other human rights?

6.1 Introduction

- 6.1.1 When considering ‘religious’ freedom in the context of human rights, it needs to be stressed that manifestations of religious belief need to be considered both within the religion as well as outside the religion. That is, the infringements upon human rights which a religion places on its adherents need to be considered just as much as the infringements upon human rights which a religion seeks to place on non-believers. These issues are discussed further at subsections 8.4 and 8.5.
- 6.1.2 While it might be argued that believers ‘sign up’ to all the restrictions of a religion and willingly accept religiously-based restrictions on their human rights, such an argument ignores the possibility and importance of theological and practical reforms. Most major religions are aware of the need for theological reform, which may in some cases even be essential for the religion’s survival. Theological reform affects power structures within religions, sometimes with progressive outcomes, sometimes with retrogressive outcomes. ALHR believes that viewing religiously-based restrictions both upon believers and non-believers through a human rights lens will assist theological reform and reform of religious practices and procedures in a positive way.
- 6.1.3 Thus in the context of children’s rights to freedom of/from religion, Bielefeldt recommends that:
- Religious communities should discuss the issue of how to better ensure respect for the freedom of religion or belief of children within their teaching and community practices, bearing in mind the status of the child as a rights holder and the need to respect the evolving capacities of each child; [and]*
- ... Religious community leaders should support the elimination of harmful practices inflicted on children, including by publicly challenging problematic religious justifications for such practices whenever they occur.*²²

6.2 Is religious freedom possible without human rights?

- 6.2.1 The first item in the Terms of Reference is consideration of “the intersections between the enjoyment of the freedom of religion and other human rights.” Those intersections can result in conflict, as discussed further below, but they can also result in benefits as overlapping rights reinforce each other.
- 6.2.2 In discussing the intersections of religious freedom with other human rights, it is important to distinguish between personal belief and religious community membership, in that “an individual has a personal sphere of religious liberty, whereas the very existence of religious communities is a public matter and has an external dimension, which means that some sort of relationship with the State is needed.”²³
- 6.2.3 Religious freedom for everyone in every religious community is effectively impossible without the support of a human rights framework, because without the existence of a standard provided by human rights, society would be likely to support only the dominant religion and would suppress other religions and secularism, as has historically occurred in societies not based on human rights.²⁴

²² Bielefeldt (2015) op cit., p22.

²³ Sylvie Langlaude, “Indoctrination, Secularism, Religious Liberty and the ECHR” (2006) *International and Comparative Law Quarterly*, 55(4), 929 at 941-942.
<https://pure.qub.ac.uk/portal/files/675413/Article%20ICLQ%20by%20Sylvie%20Langlaude.pdf>

²⁴ Bielefeldt, op cit, pars 28 to 30 and Shaheed, op cit, par 46.

- 6.2.4 Religious freedom for everyone, whether part of a religious community or of a non-religious community, is similarly impossible without the existence of a secular constitutional state or government, as Professor Grimm notes, saying that:

*The more multireligious a society, the more important it is that the state remain neutral in religious matters. A state that would take sides in religious matters would lose its capability to guarantee liberty for all religious faiths.*²⁵

- 6.2.5 It is for this reason that politicization of Christianity is, as discussed further below, particularly undesirable in modern Australia.

6.3 Freedom of/from religion supports other human rights

- 6.3.1 Freedom of/from religion has been termed a “gateway” to other freedoms, including freedom of expression and freedom of peaceful assembly and association. That is, there can be no free religious community life without respect for those other freedoms, which are closely intertwined with the right to freedom of religion or belief itself. To quote the current UN Special Rapporteur on Freedom of Religion and Belief:

*Freedom of religion or belief is interwoven with the core principles of equality, non-discrimination and non-coercion and overlaps with other rights, including the rights to freedom of opinion and expression, peaceful assembly and association, and education. It must, therefore, be understood in the context of articles 18 to 20 and be read together with core principles enunciated by articles 2 and 5 of the International Covenant on Civil and Political Rights. An abuse of one right can be an obstacle to the enjoyment of all the others.*²⁶

- 6.3.2 There are also many parallels between the treatment of free speech and the treatment of religion which in many cases support and reinforce each other (and are not in opposition, contrary to popular misconceptions), including in terms of protection of a person’s inner realm of thinking and believing (see par 5.2.1 (c)).

6.4 The balancing of indivisible and interdependent human rights

- 6.4.1 What happens where manifestations of different religions conflict and parties wish to exercise competing ‘religious’ rights or to be free from the religious practices of others? Human rights law has developed a process or set of principles by which such conflicts can be managed.

Rights must be balanced where they conflict

- 6.4.2 In general terms, no human right ‘trumps’ any other right – all are equally valuable (the principle of indivisibility) and should be protected together (the principle of interdependence).
- 6.4.3 Some rights are expressed as absolutes: the right to be free from slavery, torture, cruel or inhuman or degrading punishment or treatment, or arbitrary deprivation of life, and the right to recognition as a person in law. The protection of one’s internal beliefs is also expressed to be an absolute right as an aspect of both freedom of speech and freedom of religion (see par 5.2.1 (c)).
- 6.4.4 Subject to those absolutes, all rights must be **balanced** where they conflict so as to maximise the practice of other rights to the greatest possible extent, in ‘an atmosphere of mutual consideration’²⁷ and so as to ‘ensure that none is inappropriately sacrificed’.²⁸ This is sometimes described as a process of providing **reasonable accommodation** to other rights and other persons: ‘a fair balance needs to be struck between the rights of the individual and the rights of

²⁵ Grimm, op cit, at 2371 and 2373.

²⁶ Shaheed, op cit, par 46.

²⁷ Grimm, op cit, 2382.

²⁸ Donald and Howard, op cit, p i.

others.’²⁹ This is similar to the test of proportionate response to the harm in question which is generally used to assess whether or not legislation is too wide in its scope.

Taking account of context and other values

- 6.4.5 The balancing and reasonable accommodation tests are very much dependent upon context and cannot be used in the abstract. They may also need to call upon other rights and other values.
- 6.4.6 For example, where manifestations of different religions conflict – where both parties involved wish to exercise competing ‘religious’ rights - a balance must also be sought by reference to other rights such as the right to freedom of speech or the right not to be discriminated against, and to other values and considerations (such as reasonableness or proportionality).
- 6.4.7 The right to manifest one’s religion or belief can validly be restricted, according to Articles 9(2) of the ECHR and 18(3) of the ICCPR, if the restriction is prescribed by law and is necessary for the protection of public safety, public health or morals or for the protection of the rights and freedoms of others.

The good faith of those seeking State protection

- 6.4.8 Human rights entail **both rights and obligations**. Hence in so far as we wish the State to protect our own human rights, we must also act with *good faith* and respect the human rights of others. **Where protection is desired for particular behaviour it will be relevant to what extent that behaviour reflects respect for the rights of others** Generally, behaviour should not be protected by Australian law where that behaviour itself infringes other human rights.
- 6.4.9 In balancing the competing claims of human rights against each other, it is important to minimise any negative impact; to impinge as little as possible upon other rights. As the Special Rapporteur on Freedom of Religion or Belief has said, ‘the purpose of reasonable accommodation is not to ‘privilege’ religious or belief-related minorities, at the expense of the principle of equality.’³⁰ Therefore it will be very important to consider whether a particular expression of a human right by one person or group respects the rights of others or, conversely, causes harm or unreasonably impacts upon others.
- 6.4.10 That is, where there is a conflict between different human rights it may be necessary to limit or constrain one ‘freedom’ or right if it is mis-used or abused in a way that limits the free exercise of any human rights by other people. Where harm or unreasonable impact results from any behaviour claiming to involve ‘religious freedom’, it is generally undesirable for the State to protect such behaviour by law. As Shaheed says:

*It is also clear that the right to freedom of religion or belief does not give the individual — as a rights holder — the power to marginalize, suppress or carry out violent acts against other individuals.*³¹

- 6.4.11 This brings us again to the distinction between the right to hold or change a belief or have no belief (which is unlimited, having no impact on others), and the right to manifest one’s beliefs (which, because of potential impact upon others, must be balanced against other rights). Thus it has been held that although public and private teaching of the particular faith is seen as a primary duty for members of many religions, there are many contexts in which that teaching would not be appropriate and can validly be restricted. One such valid restriction is where the recipient is in a vulnerable position, for example due to poor health, or the teaching involves violence or brainwashing.³² The right to manifest one’s ‘religion’ or belief must be balanced

²⁹ Donald and Howard, op cit, p i.

³⁰ Interim Report of the Special Rapporteur on Freedom of Religion or Belief A/69/261 (2014) cited in Donald and Howard, op cit, pp 15-16, accessed 10 February 2018 at <<http://www.ohchr.org/Documents/Issues/Religion/A.69.261.pdf>>.

³¹ Shaheed, op cit, par 46.

³² Donald and Howard, op cit, pp 8-9.

with the right of others to be free from interference with one's own 'religion' or belief or to be free from any 'religion' or belief.

- 6.4.12 Similarly, it may be necessary to limit 'religious' protests and vigils in the vicinity of abortion clinics in the interests of protecting the rights of clinic patients and staff, and to avoid public disorder.³³

6.5 *Protecting and respecting the believer not the belief*

- 6.5.1 Following from the principles above, proponents of intolerant religions which in practice restrict human rights cannot, therefore, expect tolerance for the expression of their beliefs nor State protection for their actions. Their right to hold whatever belief system they wish to hold in private can be respected. Their 'right' to act on that belief system depends, however, upon the impact it has on others. Donald and Howard describe this principle as '**respecting the believer rather than the belief**'.³⁴ Similarly, Bielefeldt notes that 'freedom of religion or belief protects believers rather than religion or belief'.³⁵
- 6.5.2 Freedom of/ from religion should not involve State protection of the various truth claims, teachings, rituals and practices of all religions or belief systems (or no belief systems), both because of the distinction that needs to be made between personal belief (which can be respected) and 'religious' practices (which must be subject to the 'harms' or 'impact' test) but also because to do so would be impossible in practice. Even amongst traditional religions, the messages and behavioural requirements can, as mentioned above, be irreconcilable.³⁶
- 6.5.3 Similarly, it is important to note that freedom of/from religion does not restrict the free speech rights of people to criticise the tenets of a religion. "[C]riticism of religion, religious leaders or doctrine is not a violation of the right to freedom of religion or belief" notes Shaheed.³⁷ This is one of the reasons that the offence of blasphemy is inconsistent with the human right of freedom of/from religion.
- 6.5.4 **Lastly, freedom of/ from religion does not give any person or organisation the right to be exempt from anti-discrimination law. Rather, freedom from discrimination and freedom of/from religion (as fully understood in a human rights framework) support each other. This is discussed further below.**

7. *The existing legal situation*

7.1 *Lack of Australian Federal Human Rights Bill or Act*

- 7.1.1 Despite Australia having been a founding member of the United Nations and one of only eight nations involved in the drafting of the *1948 Universal Declaration on Human Rights*, today Australia is alone amongst first world democratic nations in not itself having any federal Human Rights Act or Bill of Rights. Australia's Constitution does not specifically protect any human rights. It has at the most been held to provide only a limited and implied right to free political communication. In 2017 Australia was elected to the United Nations Human Rights Council yet, to date, this seems to have provided the Federal Government with no motivation to move towards the adoption of a federal Human Rights Act or a Bill of Rights.
- 7.1.2 Australia has signed and ratified both the *1966 International Covenant on Civil and Political Rights* and the *1966 International Covenant on Economic, Social and Cultural Rights* over four decades ago, and has since ratified all seven core international human rights law treaties and some of the Optional Protocols. However, Australia has not enacted enabling legislation which enshrines all the basic universally recognised human rights and freedoms in local law. At the

³³ See Donald and Howard, op cit, p 10.

³⁴ Donald and Howard, op cit, p 17.

³⁵ Bielefeldt (2015), op cit, par 13.

³⁶ Bielefeldt, op cit, par 11.

³⁷ Shaheed, op cit, par 46.

Federal level, the Australian Government has passed a number of laws prohibiting specific types of discrimination, such as the *Sexual Discrimination Act* and the *Racial Discrimination Act*. But such legislation provides only a piecemeal approach to human rights law, and, as a result Australian law generally lacks the central human rights concept of the fundamental right of all persons to have their human dignity respected.

- 7.1.3 Many Australians have the mistaken belief that just because Australia is an affluent, multicultural and developed country, its citizens' human rights are properly and fairly protected. They are not. The common law does not fill the gap. Australia's abysmal record in relation to refugee rights and its cruel treatment of boat-arriving asylum seekers provides a case in point.
- 7.1.4 The common law has historically been concerned with protection of property rights and generally offers a very inadequate protection for human rights. In 2008, then Chief Justice Spigelman identified a limited number of common law principles of statutory interpretation or 'rebuttable common law presumptions' which could loosely be regarded as constituting a "common law bill of rights."³⁸ However, generally those principles and presumptions can be overridden by parliament through statute. In this way the common law has been significantly diminished and weakened by the development of the Doctrine of Parliamentary Supremacy and the Commonwealth Parliament's ability and desire to override human rights standards for policy purposes.
- 7.1.5 A carefully-crafted Bill, Charter or Act could provide appropriate safeguards against statutory incursions upon beneficial freedoms, particularly if it were to be constitutionally entrenched (there are various models which could be adopted and we would be happy to discuss this with you further if desired). But without such legislation, we are reliant upon the federal government of the day to protect our freedoms as it thinks fit, and have little redress where it fails to act or infringes our freedoms. Adopting human rights principles would enshrine those principles "beyond the reach of political expediency."³⁹
- 7.1.6 The adoption of Human Rights Acts in Victoria and the Australian Capital Territory is generally understood to have been successful, not to have opened the 'floodgates' to litigation, and to have resulted in improvements in legislation and policy.⁴⁰ The ambit of these Acts is modest as they do not overrule inconsistent legislation.⁴¹

7.2 Australian Constitution

- 7.2.1 Section 116 of the Australian Federal Constitution states that:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

- 7.2.2 As Dr Luke Beck has explained⁴², the way in which section 116 was phrased was not the result of careful deliberations. It was "a rough copy and paste" from the United States Constitutional

³⁸ The Honourable J J Spigelman AC Chief Justice Of New South Wales, "The Common Law Bill of Rights," First Lecture in The 2008 McPherson Lectures: Statutory Interpretation & Human Rights, University Of Queensland, Brisbane 10 March 2008, accessed 9 May 2017, <http://www.aph.gov.au/DocumentStore.ashx?id=c190ac6b-aa39-4bab-97a4-c2aab8b899f9>

³⁹ Lucia Osborne-Crowley, "A bill of rights to rein in the rogues", *The Saturday Paper*, 24 October 2015.

⁴⁰ See for example the case studies at: <http://www.humanrights.vic.gov.au>.

⁴¹ But see Bill Swannie, "Rights without remedies," Law Institute of Victoria, *Staying Informed*, 1 June 2017 at <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/June-2017/Rights-without-remedies>

⁴² *The Foundations of Section 116 of the Australian Constitution: An Historical and Conceptual Analysis*, Ph D Thesis, University of Sydney, <https://ses.library.usyd.edu.au/handle/2123/14597>, accessed 26 January 2018.

First Amendment with the addition of a clause prohibiting enforced religious observances; “a historical accident, really, not careful consideration.”⁴³

*The framers of the Constitution described that provision as providing a safeguard against religious intolerance and as preventing any infringement of religious liberty by federal law. Each of the four concepts employed by section 116 is readily understood as being about preventing religious intolerance on the part of the Commonwealth. Religious establishment, the first concept used by 116, or granting official imprimatur or playing favourites among religious beliefs, is intolerant because it frames those who are not members of the favoured religion as outsiders and not full members of the community. The second concept used by 116 is imposing a religious observance, and that has a similar effect, as well as being an attempt to compel conformity to favoured religious practices. Prohibiting the free exercise of religion, the third concept employed by 116, is explicitly the suppression of religious practices. And the final concept employed by section 116, imposing a religious test for public office, necessarily penalises individuals who did not adhere to favoured religious beliefs or who adhere to disfavoured religious beliefs by denying them access to public office.*⁴⁴

- 7.2.3 The operation of s 116 might protect rights to / from religion to some extent - by restricting the powers of the Commonwealth to legislate in a way that would privilege one religion over others and over freedom from religion - but that was not, says Dr Beck, the general purpose for which it was included in the *Constitution*. The section was a pragmatic response to concerns raised by a minority denomination.

*In the late 1890s, various Protestant denominations pursued a campaign to secure what they called a ‘recognition’ of God in the Constitution. As a result of that campaign, the Australasian Federal Convention of 1897–8 agreed to insert the words ‘humbly relying on the blessing of Almighty God’ in the constitutional preamble. At the same time, the small Seventh Day Adventist denomination pursued a counter-campaign seeking to prevent any recognition of God in the Constitution and, instead, the inclusion of a religious freedom provision. The Seventh Day Adventists were concerned that the religious words of the preamble might give rise to an implied power to make laws on the subject of religion. They were particularly concerned that the Commonwealth might be empowered to enact national Sunday closing laws, which they objected to since they observed Saturday as the Sabbath and found oppressive since they wished to work on Sundays.*⁴⁵

- 7.2.4 The effect of section 116 has been read narrowly by the High Court and does not explicitly create a personal or individual right to religious freedom.⁴⁶ Professor Williams notes that the section does not affect State law.⁴⁷

7.3 **Other Commonwealth legislation**

- 7.3.1 The *Human Rights and Equal Opportunity Commission Act 1986* provides the statutory schema for the Commission to consider allegations that an act or practice of the Commonwealth is inconsistent with any human right as defined in section 3 of HREOCA (Part II Division 3) and allegations of discrimination in employment or occupation based on the grounds of religion (amongst others) (Part II Division 4).

⁴³ Beck, op cit, page 27.

⁴⁴ Beck, op cit, pages 16 to 17.

⁴⁵ Luke Beck, “When Is An Office Or Public Trust ‘Under The Commonwealth’ For The Purposes Of The Religious Tests Clause Of The Australian Constitution?” (2015) *Monash University Law Review* (Vol 41, No 1) 17 at p 18, <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/2.pdf>

⁴⁶ See Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (ALRC Interim Report 127), par 4.21.

⁴⁷ Professor George Williams in *Committee Hansard*, Joint Standing Committee on Foreign Affairs, Defence and Trade, Public Hearing in Sydney, 6 June 2017, p 1.

- 7.3.2 The Commission is also empowered to consider allegations of unlawful discrimination under the *Disability Discrimination Act 1992 (Cth)*, *Racial Discrimination Act 1975 (Cth)* and *Sex Discrimination Act 1984 (Cth)*. While the anti-discrimination legislation does not specifically include the ground of discrimination on the basis of religion, courts have found that the term ‘ethnic origin’ (a prohibited ground of discrimination under the *Racial Discrimination Act*) covers persons discriminated against on the ground of Judaic or Sikh beliefs.⁴⁸
- 7.3.3 At the same time, exemptions that permit religious organisations to discriminate on the basis of religion are contained in the *Sex Discrimination Act*, being:
- section 23(3)(b), which provides that accommodation provided by a religious body is exempt from s 23(1) making it unlawful to discriminate against a person on the basis of a protected attribute in the provision of accommodation;
 - section 37, which exempts the ordination or appointment of priests, Ministers of religion or members of any religious order and accommodation provided by a religious body from the effect of the SDA; and
 - section 38, which exempts educational institutions established for religious purposes from the effect of the SDA in relation to the employment of staff and the provision of education and training, provided that the discrimination is in ‘good faith in order to avoid injury to the religious susceptibilities of adherents of that religion’.⁴⁹
- 7.3.4 The *Fair Work Act 2009 (Cth)* protects workers from discrimination on the ground of their religion in the following ways:
- section 153 provides that a modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee’s religion;
 - section 195(1) lists discriminatory terms in enterprise agreements including those terms that discriminate against an employee on the basis of their religion;
 - section 351(1), which relates to the General Protections division of the Act, provides that any adverse action taken against an employee on the basis of a protected attribute or characteristic is prohibited; and
 - section 772(1)(f) provides that a person’s employment may not be terminated on the basis of a protected attribute, subject to exceptions in s 772(2)(b).⁵⁰

7.4 States and Territories

- 7.4.1 Section 14 of the *Charter of Human Rights and Responsibilities 2006 (Vic)* and the *Human Rights Act 2004 (ACT)* include protection for religious freedom, but only to the extent that those Acts can be enforced.⁵¹ Those Acts do not overrule inconsistent legislation.
- 7.4.2 The Constitution of the State of Tasmania alone amongst State constitutions provides a limited basis for freedom of/from religion, providing in section 46 that:

(1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

⁴⁸ See *King-Ansell v Police* [1979] 2 NZLR cited approvingly in *Miller v Wertheim* [2002] FCAFC 156, and *Mandla v Dowell Lee* [1983] 2 AC 548. See also *Jones v Scully* (2002) 120 FCR 243, 271-273 [110]-[113], *Jones v Toben* [2002] FCA 1150, [101], *Jeremy Jones v Bible Believers Church* [2007] FCA 55, [21] and *Silberberg v Builders Collective of Australia Inc* [2007] FCA 1512, [22].

⁴⁹ See Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (ALRC Interim Report 127), par 4.48.

⁵⁰ *ibid*, par 4.45.

⁵¹ Swannie, *op cit*.

(2) No person shall be subject to any disability, or be required to take any oath on account of his religion or religious belief and no religious test shall be imposed in respect of the appointment to or holding of any public office.

7.4.3 However the provision is not entrenched and could be overridden by other State legislation.⁵²

7.4.4 State legislation which prohibits discrimination on the basis of religion includes the *Equal Opportunity Act 1995* (Vic), the *Anti-Discrimination Act 1991* (Qld), the *Equal Opportunity Act 1984* (WA), the *Discrimination Act (ACT) 1991*, and the *Anti-Discrimination Act 1996* (NT). The *Anti-Discrimination Act 1977* (NSW) prohibits discrimination on the ground of "race" which also includes ethno-religious background. However many of these laws include religious exemptions. For example Section 84 of the Victorian *Equal Opportunity Act 2010* exempts:

discrimination by a person against another person on the basis of that person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or general identity if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion.

7.4.5 State legislation which prohibits behaviour that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race and/or religion includes the Victorian *Racial and Religious Tolerance Act 2001*.

8. Does Australian law adequately protect the human right to freedom of/from religion and if not, how can this be remedied?

By holding legislation and behaviours up to the standard of international human rights it is possible to identify discriminatory practices and failures to protect human rights.

8.1 Defect: the lack of a Human Rights Act or Bill of Rights to protect freedom of/from religion

8.1.1 Most of the issues relating to freedom of/from religion identified below would be solved or substantially improved by the introduction of a Commonwealth Human Rights Act or Bill of Rights containing a 'freedom of thought, conscience, religion and belief' provision (especially if the model adopted were to overrule inconsistent Federal, State and Territory legislation).

8.1.2 It should be noted that under a Human Rights Act or Bill of Rights, competing rights would be balanced and assessed in the manner described in sections 6.3 and 6.4. The scope of freedom of/from religion would not be set in advance but would be identified and dealt with in context as particular issues arose. As Donald and Howard note:

*The proportionality analysis – the balancing act - is highly contextual and fact-specific and precludes making abstract determinations about competing rights or the outcome of any specific case.*⁵³

8.1.3 Failing such legislation, in the following paragraphs we have suggested potential remedies on an issue-by-issue basis.

8.2 Defect: the continued existence of blasphemy laws

8.2.1 As mentioned above, anti-blasphemy laws are inconsistent with the human right of freedom of/from religion and restrict free speech in the context of religion. In Australia, State laws against blasphemy amount to State protection of Christianity above other religions, effectively enforcing religious observance. This is inconsistent with the human right of freedom of/from religion. Legislation should not privilege the followers of one religion or belief against another, or discriminate between 'religions' or beliefs. Any protection or restriction should be 'generic'.

⁵² Professor George Williams, op cit.

⁵³ Donald and Howard, op cit, p i.

- 8.2.2 The Special Rapporteur notes that blasphemy laws are associated with the politicization of religion and stifle free discussion about religion:

When governments restrict freedom of expression on the grounds of ‘insult to religion’, any peaceful expression of political or religious views is subject to potential prohibition. In practice those laws can be used for the suppression of any dissenting view in violation of international human rights standards protecting freedom of opinion and expression and freedom of religion or belief... such laws have a stifling impact on the enjoyment of the right to freedom of religion or belief, not to mention the ability to engage in healthy dialogue and debate about religion.⁵⁴

- 8.2.3 It has been suggested that the federal parliament could exercise the external affairs power and in conjunction with section 109 abolish the law of blasphemy throughout all of Australia in the same way that the federal parliament exercised its power under the external affairs power in conjunction with section 109 to abolish the criminality of same-sex consensual activity.⁵⁵

8.3 Defect: no legal protection against religious vilification

- 8.3.1 As the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, notes in his Interim Report of 2017, throughout the world there is a growing “climate of intolerance” driven by rising xenophobia and nativism against those perceived to be ‘different’ or ‘foreign’ which

is also increasingly desensitizing the general public against incitement to discrimination or violence and other dangerous practices, such as stereotyping and stigmatization based on religion or belief or other characteristics.⁵⁶

- 8.3.2 The concept of intolerance against persons based on their religion or belief has been repeatedly identified, says Shaheed, as an obstacle to the full enjoyment of the right to freedom of religion or belief.⁵⁷ State authorities, he notes, have a duty to protect individuals and groups against discrimination and other acts that violate the rights of persons based on their religion or belief.⁵⁸ Legislation may thus be required to protect against discrimination and vilification which is purportedly justified on the basis of religion, in order to allow all groups a ‘free’ space in which to practice their own religion, or to not practice any religion at all.
- 8.3.3 No ‘freedom’ can be truly experienced in the absence of safety. If one feels unsafe, for example because of hate speech against one’s religious group, one’s own freedoms are being unreasonably restricted and, conversely, it is justifiable to restrict the behaviour which is unreasonably impinging upon one’s own freedoms.

- 8.3.4 It should be noted, says Shaheed, that

the United Nations has adopted several tools for promoting the right to freedom of religion or belief by way of combating various forms of intolerance perpetrated against persons on the basis of their religion or belief, including Human Rights Council resolution 16/18 and its implementation mechanism, the Istanbul Process, and the Rabat Plan of Action. Those tools provide a common platform from which Member States may address domestic concerns and common challenges related to religious and other forms of intolerance despite diverse geographic, legal and political contexts, and offer more concrete means for translating into domestic practice protections offered by articles 18 to 20 of the International Covenant on Civil and Political Rights.⁵⁹

- 8.3.5 Commonwealth legislation does not provide protection against vilification on the basis of religion (although, as mentioned in paragraph 7.3.2, ethnicity may cover some religions), and

⁵⁴ Shaheed, op cit, par 28.

⁵⁵ Beck, op cit, p 20.

⁵⁶ Shaheed, op cit, par 5.

⁵⁷ Shaheed, op cit, par 7.

⁵⁸ Shaheed, op cit, par 34.

⁵⁹ Shaheed, op cit, par, par 51.

State legislation is not consistent. This is a matter that is easily remedied by expansion of the Commonwealth *Racial Discrimination Act*.

- 8.3.6 It should be emphasized that an offence of vilification on the grounds of the religion of the vilified group or person would not include criticism of religious beliefs or tenets, only vilification of persons or groups on the basis of their religious adherence. It would protect the believer, not the belief (see section 6.4).
- 8.3.7 In addition to legislation, leadership by federal politicians against those who vilify religious groups would go a long way towards remedying this defect. Shaheed echoes his predecessor's recommendation that political and religious leaders, as well as civil society organizations, should:
- actively support and encourage an atmosphere of religious tolerance;
 - help to build societal resilience against manifestations of religious hatred;
 - refrain from using messages of intolerance or expressions which may incite to religious violence and manifestations of collective religious hatred", and
 - speak out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.⁶⁰
- 8.3.8 Unfortunately, Australian federal politicians are often the very people responsible for such vilification, particularly by identifying non-Christian religions as giving rise to national security issues.
- 8.3.9 Governments should do their utmost, says Shaheed
- to ensure that programmes implemented in the name of protecting national security are not, in fact, targeting, stigmatizing or profiling particular religious or belief communities and that they do not have a disproportionate and negative impact on them.*⁶¹
- 8.3.10 Bielefeldt notes that governments often refer to
- 'broad and unspecified "security", "order" or "morality" interests in order to curb religious criticism, discriminate against minorities, tighten control over independent religious community life or otherwise restrict freedom of religion or belief, often in excessive ways'.*⁶²
- 8.3.11 It is no doubt against the background of such practices that the Gilbert and Tobin Centre for Public Law raised concerns about the effect of s 80.2C of the *Criminal Code* (which creates the offence of 'advocating terrorism') on freedom of religion, arguing that it and similar sections limits the capacity of individuals to express religious views which might be radical and controversial.⁶³

8.4 Defect: the existence of religious practices which discriminate against members

- 8.4.1 Many religions involve restrictions on the human rights of the adherents, including in relation to marriage and divorce requirements and the right to freedom from arbitrary interference with family matters (UDHR Article 12). Thus, the right to marry and to found a family expressed in Article 16 of UDHR is clearly breached by the Catholic Church, for example, in relation to its own priests and nuns.⁶⁴ Restrictions also apply as to eligibility to be a religious leader, with many religions restricting the role of women within the particular religion.

⁶⁰ [A/HRC/25/58](#), para. 62, quoted at Shaheed, op cit, par 45.

⁶¹ Shaheed, op cit, par 42.

⁶² Bielefeldt, op cit, par 16.

⁶³ Australian Law Reform Commission, op cit., par 4.85 and following.

⁶⁴ It should be noted that mandatory celibacy is in fact a late development in church practice, and has never been implemented uniformly within the Catholic church: Kim Haines-Eitzen, "How did celibacy become mandatory for priests?" *The Conversation*, 27 March 2017, at <https://theconversation.com/how-did-celibacy-become-mandatory-for-priests-75031>

- 8.4.2 Generally, the approach in Australia has been to leave religions to regulate themselves, and indeed to provide them with exemptions to continue their practices, even when the practices involve discrimination and would otherwise be illegal. However without Australia having a human rights framework or process which might encourage religions to identify and rectify areas in which their practices do infringe human rights, it is likely that change will be slow.
- 8.4.3 Difficulties can arise in a number of religions where there are differences between State requirements in relation to such matters as divorce, and religious requirements. These restrictions overlap with the civil law and may in practice restrict the ability of a person to remarry, or affect the status of their children.⁶⁵ In this way the refusal of one party to participate in a religious divorce, or one party unilaterally divorcing the other under religious law without civil law protections, may be a human rights issue.
- 8.4.4 An example of the legislation to overrule religious restrictions is the recent proposal in India to make illegal the Islamic 'triple talaq' or unilateral divorce of a woman by her husband. The bill renders the talaq void, in whatever form it is given, and gives the woman the right to claim a subsistence allowance for herself and minor children as well as to seek custody of her minor children.⁶⁶
- 8.4.5 In orthodox Judaism a religious divorce is required before a person can remarry, and the final religious dissolution of a marriage is brought about either through the death of a spouse or by the formal delivery of a divorce document, known as a *Gett*, by the husband to the wife. Where the husband fails to take this step, the Jewish court does not have the power to compel him to act and nor, it would seem, does the Family Court. This is a matter which can readily be remedied by an amendment to the *Family Law Act*, following the 2001 recommendations⁶⁷ and perhaps with the addition of sanctions to avoid the situation where neither a religious nor a civil divorce can be obtained because of the recalcitrance of one party.⁶⁸
- 8.4.6 One recommendation made in the context of Islamic divorce in Britain is that there should be an information campaign instructing Muslim women how to proceed with marriage in ways that are Islamically valid and which at the same time provide them with all available religious protections in relation to divorce: for example, to inform them that parties to a Muslim marriage contract (which is a civil contract) may enter legally binding stipulations whereby the wife is given the right to divorce herself or a clause is included in the *nikah* to accept the civil court as the forum for divorce.⁶⁹
- 8.4.7 Another worthwhile recommendation made in the context of the impact upon children's rights is that States should provide appropriate training for family court judges and officials involved in family conflict resolution "in order to ensure that the religious orientation of parents or legal

⁶⁵ Talya Faigenbaum and Nussen Ainsworth, "The complex world of religious divorce", *Law Institute of Victoria, Staying Informed*, 2 October 2017 at <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/October-2017/The-complex-world-of-religious-divorce>

⁶⁶ FP Staff, "Triple talaq bill to be tabled in Rajya Sabha today", *Firstpost* online, 3 January 2018 at <http://www.firstpost.com/india/triple-talaq-bill-to-be-tabled-in-rajya-sabha-today-noisy-showdown-likely-as-narendra-modi-govt-dares-opposition-4284843.html>

⁶⁷ Faigenbaum and Ainsworth, op cit, referring to *Family Law Council, Cultural-Community Divorce and the Family Law Act 1975: A Proposal to Clarify the Law* (2001)

⁶⁸ See generally Amanda Williamson, "An Examination of Jewish Divorce Under the Family Law Act 1975 (Cth)" [2004] *JCULawRw* 7; (2004) 11 *James Cook University Law Review* 132 at <http://www.austlii.edu.au/au/journals/JCULawRw/2004/7.html#fn152>

⁶⁹ Shaheen Sardar Ali, "A push to reform Islamic divorce could make Sharia councils redundant in Britain," *The Conversation*, 9 November 2016, , <https://theconversation.com/a-push-to-reform-islamic-divorce-could-make-sharia-councils-redundant-in-britain-68023>

guardians, including religious conversion, does not lead to discriminatory treatment” of the parties or of the children involved.⁷⁰

8.5 *Defect: the existence of religious practices which discriminate generally*

- 8.5.1 Many religions restrict and/or attempt to compel the behaviour of persons by not extending tolerance to, or actively discriminating or inciting violence against, adherents of other religions (or of no religion) and against other categories of people chosen on a discriminatory basis (such as women and LGBTIQ persons) ‘under the guise of manifesting their religion or protecting the “moral high ground.”’⁷¹
- 8.5.2 Indeed, as one writer says, “*some of the most spectacular expressions of religious fervor come from groups that promote violence, intolerance, misogyny and homophobia ... Whether it is the American religious right that demonizes LGBT and other people, the Buddhist groups in Burma who kill Muslims, or the Muslim Brotherhood in Egypt that used state power to attack democracy, the harm done by organizations in the name of religion is often horrific.*”⁷²
- 8.5.3 The Panel would not need to look too far back into 2017 to recall the anti LGBTIQ speech that was encouraged in Australia in the name of religion.⁷³
- 8.5.4 Exclusionary behaviour on the part of religious organisations is legislatively protected throughout many countries by inclusion of exemptions for religious organisations in anti-discrimination legislation. The International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958* recognises two exemptions from its religious anti-discrimination provisions in the employment context: the first where a particular religion is an inherent requirement of the job, and the second where having a particular religion for a particular job is required by the tenets and doctrines of the religion, and the requirement is not arbitrary and is consistently applied (article 1.2).
- 8.5.5 Another common employment exemption is where having a particular religion is not an inherent requirement of the job (for example, an administrative role within a church rather than a religious role) but is regarded as necessary so as to avoid injury to the religious susceptibilities of members of that religion.
- 8.5.7 Exclusionary behaviour would be discouraged if religiously-based exemptions were removed from anti-discrimination legislation. The mere knowledge that the law permits ‘religious’ individuals to discriminate (for example on the basis of sexual orientation or gender identity) is itself an affront to those individuals and perpetuates negative stereotyping.⁷⁴
- 8.5.8 ALHR rejects the suggestions that were made in the context of the Marriage Equality ‘debate’ that anti-discrimination law conflicts directly with the right to freedom of/from religion or that anti-discrimination law itself involves religious persecution (the argument being that anti-discrimination law is somehow unfair in that it restricts persons holding religious views from discriminating against others in the name of manifesting their own religion).⁷⁵
- 8.5.9 There is no ‘right of conscientious objection’ under human rights law for persons holding discriminatory ‘religious’ beliefs. In particular, adherence to a discriminatory religion should not

⁷⁰ Bielefeldt (2015) op cit, p 22.

⁷¹ Shaheed, op cit, par 46.

⁷² Larry Cox, “Human rights must get religion,” 14 April 2014, <<https://www.opendemocracy.net/openglobalrights/larry-cox/human-rights-must-get-religion>> accessed 10 February 2018.

⁷³ See, for example: http://www.acl.org.au/tags/freedom_of_speech

⁷⁴ See Donald and Howard, op cit, p 13, citing R. Wintemute, ‘Accommodating Religious Beliefs: Harm, Clothing or Symbols, and Refusals to serve others,’ (2014) 77 (2) *Modern Law Review*, 223 and M. Malik, ‘Religious Freedom in the 21st Century,’ Westminster Faith Debates, 18 April 2012: <http://faithdebates.org.uk/debates/2012-debates/religion-and-public-life/what-limits-to-religious-freedom/> accessed 10 February 2018.

⁷⁵ Donald and Howard, op cit, p 1.

give one the legal right to refuse to interact with others because of those persons' sexual orientation or gender identity, nor to vilify persons because of those persons' sexual orientation or gender identity. Legislation should not privilege the followers of one religion or belief against another, or discriminate between 'religions' or beliefs. And a secular democratic government should not privilege the right to act on 'religious' views above other human rights. As Professor Grimm explains:

*"... self-determination of religious communities as to the content and requirements of their religion does not mean that the state has to tolerate every behavior that is religiously motivated. Freedom of religion is not an absolute right, and religious communities are not extraterritorial. Like all fundamental rights, religious freedom may be limited by the state. The need for limitations follows, firstly, from the fact that freedom of religion is equal freedom for all individuals and all religious groups. Since the transcendent truths or divine revelations that religious groups claim to practice mutually exclude each other, the state must respect a group's creed, but prevent the group from making it binding for society as a whole. This requires a distinction between the internal and the external sphere. Claims based on an allegedly absolute truth may be raised within the religious group only. They may not be imposed on the external world."*⁷⁶

8.6 Defect: the lack of protection of children's rights in relation to religion

- 8.6.1 A defect which is related to those previously mentioned (breaches of human rights of members of a religion or attempts to breach rights of those outside the religion) is that there is a lack in Australia of protection for the rights of children in relation to freedom of/ from religion, except in the extreme cases of forced (child) marriage and genital mutilation of girls, both of which can involve purported religious justifications.
- 8.6.2 The Commonwealth *Criminal Code Act 1995* contains offences regarding forced marriage. It is illegal to cause a person to enter a forced marriage, and to be a party to a forced marriage.⁷⁷ The Commonwealth *Marriage Act 1961* provides that a marriage may be void if the consent of a party was not real, or if a party was not of marriageable age. The *Marriage Act* permits a marriage where one party is aged between 16 and 18 years of age, where there is both the required consent (usually parental) and an Australian court order from a judge or magistrate authorising the marriage. It is illegal for any person under the age of 16, or two people under the age of 18, to marry.
- 8.6.3 All States and Territories of Australia prohibit female genital mutilation⁷⁸ both within their jurisdictions and extraterritorially and it is a criminal offence to remove a child from Australia, or to assist, whether overtly or tacitly, in such a removal for the purpose of submitting her to any

⁷⁶ Grimm, op cit, p 2374.

⁷⁷ Australia's forced marriage offences carry a maximum penalty of seven years' imprisonment, or nine years' imprisonment for an aggravated offence. An offence may be aggravated in several circumstances, including where the victim is under the age of 18. If the victim is under the age of 18 and is taken overseas for the purpose of forced marriage, the maximum penalty increases to 25 years' imprisonment.

⁷⁸ See World Health Organization (2016, May 16) *Female genital mutilation* available at: <http://www.who.int/mediacentre/factsheets/fs241/en/> and Y. Zurynski et al for Australian Paediatric Surveillance Unit Female Genital Mutilation Study Steering Committee, "Female genital mutilation in children presenting to Australian paediatricians" (2017) 102 *Archives of Disease in Childhood* 509-515 available at: <http://adc.bmj.com/content/102/6/509> and Elizabeth Elliott and Yvonne Zurnyski, "Female genital mutilation is hurting Australian girls and we must work together to stamp it out", *The Conversation*, 9 February 2017 at <https://theconversation.com/female-genital-mutilation-is-hurting-australian-girls-and-we-must-work-together-to-stamp-it-out-71885>

form of female genital mutilation overseas. However the legislation can be inconsistent in terms of penalties and age coverage.⁷⁹

8.6.4 Protection for children is particularly important in that, as the former Special Rapporteur on Religious Freedom has pointed out, “attitudes, customs, norms and practices ... are unfortunately still widespread, whereby children are treated as if they were the property of their parents, families or communities, without having rights in their own capacity.”⁸⁰

8.6.5 “Given the child’s dependency on an enabling family environment, albeit with recognition of the variety of family forms,” says Bielefeldt, “parents have the primary responsibility for supporting the child in the exercise of his or her human rights” and should provide “appropriate guidance and direction.”⁸¹ He continues:

23. ... the need of the child for an enabling environment must not lead to the wrong conclusion that parents or other family members can simply override, ignore or marginalize the rights of the child. The status of the child as rights holder must always be respected and should, inter alia, be reflected in the manner in which parents provide guidance and direction to the child. The decisive term employed in the Convention on the Rights of the Child is “the evolving capacities of the child” ...

25. Adequate consideration of “the evolving capacities of the child” presupposes that the child, once capable of forming personal views, can express such views freely, with a chance of being heard and taken seriously. Article 12, paragraph 1, of the Convention confirms that right, while furthermore requiring that the views of the child be “given due weight in accordance with the age and maturity of the child”. Thus, the child should in the course of time assume a more and more active position in the exercise of his or her rights.⁸²

8.6.6 Bielefeldt concludes that “parents cannot be obliged by the State to remain religiously “neutral” when raising their children” because that would be an unjustifiable infringement of parental rights.⁸³ However in the area of education, he notes that pressure should not be exerted on children to conform to the socially dominant religion;⁸⁴ identifying a number of appropriate restrictions which would avoid violations of children’s freedom of/from religion and are particularly relevant to Australian public schools:

48. When religious ceremonies, such as public prayers, are performed in school, specific safeguards are needed to ensure that no child is forced to participate against his or her will, or the will of his or her parents. The same principle applies to religious instruction in schools, ... given on the tenets of a particular religion or belief. Such instruction must not be a mandatory requirement and it should always be connected with the option of receiving a low-threshold exemption (see, for example, [CCPR/C/82/D/1155/2003](#)). Requests for an exemption must not lead to any punitive consequences and must not influence the assessment of the general performance of students in school. ...

49. “Religious instruction” given in school differs conceptually from “information about religions and beliefs”. While religious instruction aims to familiarize students with a particular faith, information about religions and beliefs serves the purpose of broadening children’s knowledge and understanding of the diversity of faith systems and practices.

⁷⁹ Australian Attorney-General’s Department, *Review of Australia’s Female Genital Mutilation legal framework: Final Report*, March 2013, p 3, available at <https://www.ag.gov.au/Publications/Documents/ReviewofAustraliasfemalegenitalmutilationlegalframework/Review%20of%20Australias%20female%20genital%20mutilation%20legal%20framework.pdf>

⁸⁰ Bielefeldt (2015) op cit, par 16.

⁸¹ Bielefeldt (2015) op cit, par 22, discussing the Convention on the Rights of the Child.

⁸² Bielefeldt (2015) op cit, pars 23 and 25,

⁸³ Bielefeldt (2015) op cit, pars 36 and 37.

⁸⁴ Bielefeldt (2015) op cit, par 13. This is relevant to the school chaplaincy programme referred to below at 8.7.3.

*Unlike religious instruction, which should never be given against the will of the child or his or her parents, information about religions and beliefs can become part of the mandatory curriculum, provided it is taught in a spirit of fairness and neutrality.*⁸⁵

- 8.6.7 These principles are very similar to those espoused by the Victorian and NSW *Religions in School* organisation.⁸⁶ Bielefeldt adds, following the *Toledo Principles*, that education about religions and beliefs should be of high quality, based on solid research, and take into account internal diversity within various religions.⁸⁷ As the first of the *Principles* states: “students should learn about religions and beliefs in an environment respectful of human rights, fundamental freedoms and civic values.”⁸⁸

8.7 Defect: the politicisation of Christianity as the dominant Australian religion

*Since religious freedom means equal freedom, the state may neither privilege nor discriminate against certain religious groups.*⁸⁹

- 8.7.1 Owing to the general lack of appreciation of the scope of the human right of freedom of ‘religion’/belief, Bielefeldt comments, governments commonly but wrongly:
- privilege private expressions of religion while ignoring rights related to communal and institutional religions, or vice versa, and/or
 - privilege one particular type of religion as part of the national heritage, ignoring the principle of equality amongst religions, thus politicizing that religion.⁹⁰
- 8.7.2 Saheed also warns against the politicization of religion, describing it as the use of religion “*as a means of shaping and reinforcing narrow concepts of national identity, tapping into feelings of religious belonging for the purposes of strengthening political loyalty*”.⁹¹ With politicization, he notes,
- “religion [is] harnessed to promote national unity and societal homogeneity through the invocation of one predominant cultural and/or religious legacy to which all citizens are supposed to relate in a positive manner”.*⁹²
- 8.7.3 Christianity is politicised in Australia in various ways as described below. The remedy for these defects is to cease the practices, and for our political leaders to demonstrate leadership in advancing freedom of/from religion that respects human rights. Examples of the politicisation of Christianity are:
- the general practice of giving of exemptions from anti-discrimination legislation to Christian institutions, as mentioned above;
 - the general social acceptance of attacks by Christian institutions upon those with whom they do not agree, as exemplified in the Marriage Equality ‘debate;’

⁸⁵ Bielefeldt (2015) op cit, pars 48 and 49, recommending the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (<http://www.osce.org/odihr/29154>) as a useful instrument for assessing and improving the quality of religious education teaching.

⁸⁶ <http://religionsinschool.com>

⁸⁷ Bielefeldt (2015) op cit, par (i), page 21.

⁸⁸ First Key Principle, *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (<http://www.osce.org/odihr/29154>, p 16.

⁸⁹ Grimm, op cit, p 2374.

⁹⁰ Bielefeldt, op cit, par 28 and following.

⁹¹ [A/HRC/25/58](#), para. 27, quoted at Shaheed, op cit, par 43.

⁹² Ibid.

- the school chaplains programme, which has resulted in employment of chaplains 99.5% of whom are Christian;⁹³
- calls to prioritise Christian refugees,⁹⁴ and
- the imposition of Christian practices in many areas of Australian public life, such as Christian prayers at the beginning of a session of Federal Parliament, or at the beginning of a session of local government.⁹⁵

8.7.4 In Australia, judicial failure to appreciate that freedom of ‘religion’ also includes the freedom to have no religion has resulted in breaches of human rights. In the case of *Hickin v Carroll* [2014] NSWSC 1059 the New South Wales Supreme Court held that a testamentary requirement that the testator’s adult children convert to Catholicism within three months in order to be entitled to inherit under the Will was a valid condition precedent, rather than striking down the requirement as contrary to public policy. Article 18(2) of the ICCPR provides that ‘no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.’ In this case the ‘condition precedent’ was effectively a coercion, a breach of the childrens’ right to ‘religious’ freedom and therefore against public policy.

8.7.5 Grimm points out, in discussing German law, that freedom of all religion and of secularism in a multicultural nation necessarily requires a secular constitutional state which is not involved in any religion itself. He describes the characteristics of such as state as follows:

The secular state is the state that dissolves its bonds with religion and claims independence from religious truths. This state no longer derives its legitimacy from God, but instead bases its power on worldly grounds. It does not serve a divine destination and does not feel responsible for the eternal salvation of its subjects. Rather, it pursues a common good of a worldly nature whose core consists in the security and welfare of its inhabitants. This does not mean that religious truths lose their right to exist, but they ... become a matter for the individual and the associations that the individual chooses to join. They are regarded as compatible with the secular state as long as they do not claim absolute validity for society as a whole and stay within the framework of the public order.

*... the secular constitutional state, finally, is the state that derives its legitimacy from a consent of the governed. In short, it is the democratic state, in which a paramount law regulates the establishment and exercise of political power.*⁹⁶

8.7.6 In the German context, Grimm sees the state as an important umpire where religious and civil rights conflict, saying that:

it is important that, within the secular constitutional state, religious freedom cannot be recognized unconditionally, even within a religious community. There are two main reasons for this. First, unlike the general laws, which are binding independently of the addressee’s consent, religious norms depend on voluntary compliance. The state’s monopoly of legitimate force does not allow compulsory means in the hands of religious

⁹³ William Isadale and Julian Savulescu, “Remake school chaplaincy as a proper welfare program or scrap it”, *The Conversation*, 4 July 2014, at <https://theconversation.com/remake-school-chaplaincy-as-a-proper-welfare-program-or-scrap-it-28707>

⁹⁴ see generally Bielefeldt, op cit par 72, Sarah Hackett, “Favouring Christian over Muslim refugees is bad for everyone”, *The Conversation*, 15 September 2015 at <https://theconversation.com/favouring-christian-over-muslim-refugees-is-bad-for-everyone-47440>, and Michael Safi, “Calls to prioritise Christian refugees are discriminatory – Australia’s grand mufti”, *The Guardian* online, 9 September 2015 at <https://www.theguardian.com/australia-news/2015/sep/09/calls-to-prioritise-christian-refugees-are-discriminatory-australias-grand-mufti>

⁹⁵ For a discussion of this issue, see Luke Beck, op cit, p 17, who notes that “having a prayer frames those who are not religious or who are not members of the religion to which the prayer relates as not quite full members of the community.”

⁹⁶ Grimm, op cit, 2373.

*communities. Consequently, the state must prevent attempts by a religious community to enforce religious norms against an unwilling believer. Since freedom of religion includes the right not to join a religious community, the state must also guarantee the right to exit.*⁹⁷

- 8.7.7 He also sees the state as being required to actively protect constitutionally guaranteed liberties which may result in the balance being weighed in favour of a religion (for example, restricting an employer from unduly limiting their employee from complying with their religious duties), or in favour of protection from a religion (for example, where the state rules against the dismissal of an employee in a church- owned institution for violating a religious norm).⁹⁸
- 8.7.8 At the same time, Grimm takes the view that “state activities favoring traditions that may have Christian roots, but which developed a formative effect for society without retaining a specific religious connotation” do not amount to politicisation of Christianity, and do not justify equal treatment for other religions on equality grounds (for example in terms of equal number of public holidays to celebrate days that are important to other religions, or state support of religious education).⁹⁹
- 8.7.9 Similarly he believes that the state has no obligation to compensate for every disadvantage that may flow from compliance with religious duties, especially where that compensation could involve limiting the rights of others. He gives the example of non-believers being asked not to criticise specific religious beliefs, persons or symbols where such criticism is prohibited to members of that religion. He also rejects claims that members of some religions be permitted to withdraw from application of the general laws and from the jurisdiction of state courts in relation to certain areas of life such as marriage law.¹⁰⁰

9. Conclusion

- 9.1 It is clear that in practice there are a number of existing laws and practices limiting Australians from exercising their freedom of religion or limiting their freedom from religion.
- 9.2 It is ALHR’s submission that the appropriate balance between freedom of /from religion or belief and other freedoms would best be served by adoption at the federal level of a Bill of Rights or Human Rights Act. We would be happy to provide further submissions on the form that this legislation should take.
- 9.3 In conclusion we note the following important words from Professor Williams speaking at the *2017 Parliamentary Inquiry into the status of freedom of religion or belief*:

*It is wise for the inquiry to keep in mind that whatever protection we think of for religion cannot be in a vacuum. We have that problem at the moment with anti-discrimination and other statutes; they are too narrowly focused without the broader context. Here, being alive to freedom of speech, for example, and other counterbalancing or supporting interests is very important. In giving evidence to the section 18C inquiry recently I made the same point: in the end that inquiry was always going to be hamstrung by the fact that you cannot solve these problems with a narrow focus. These are about broader societal values, political leadership, cultural reinforcement and a legal scheme that does not cherry-pick things but says, 'Here are the things we think are important, and we will give them a consistent level of protection,' as opposed to the inconsistent ad hoc approach we have at the moment.*¹⁰¹

⁹⁷ Grimm, op cit, p 2379.

⁹⁸ Grimm, op cit, pp 2379 and 2380.

⁹⁹ Grimm, op cit, p.2380.

¹⁰⁰ Grimm, op cit, p.2381.

¹⁰¹ Professor George Williams, op cit, p 12.

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'BC' followed by a stylized flourish.

Benedict Coyne
President
Australian Lawyers for Human Rights