Thankyou for the opportunity to be involved in Australian democracy by enabling public submissions to this very important review of Australian law religious freedom protections. I note at the outset that I was born and raised in Australia and consider myself a devout Christian. I therefore acknowledge having a deeply held interest in protecting religious freedom in Australia. However, as I will hopefully make clear below, my interest is essentially in protecting fundamental freedoms for all Australians whether they profess a religious belief or not.

Introduction

While our highest law, the Commonwealth Constitution includes a presumption of religious belief on the part of all citizens through the words ‘WHEREAS the people...humbly relying on the blessing of Almighty God have agreed to unite...’, it is my opinion that fundamental human rights, including freedom of religion will not be adequately protected in Australia until we enact a Bill of Rights the same as that of the United States of America. Quite possibly, our own Australian Founding Fathers could not foresee a day where freedom of religion would be questioned or impinged by subordinate legislation, or possibly they thought that protections in the Common Law or imported through the Magna Carta itself would enshrine personal freedoms. Maybe this is why they did not include a Bill of Rights in the Constitution; however, it has been my experience over the past decade in Australia that personal freedoms have been impinged, possibly unintentionally by legislators, while endeavouring to enact legislation meant to protect vulnerable members of society. The problem we have in Australia is that there is no declaration of fundamental human rights against which to measure or interpret what should be subordinate legislation. Government, and the law resulting therefrom, is formed to protect the individual in their rights to life, liberty and property, not to encroach on these fundamental freedoms. Without anything more than an international treaty to reference, freedom of thought, belief, conscience, speech and association have been impacted by recent legislation and the political opinion of an increasingly secular society.

Terms of Reference

I hope there is sufficient scope within the terms of reference, as you interpret them, to consider other fundamental freedoms that will be affected by any lack of Australian law protection identified through your review. Hopefully there is sufficient space within the scope point: ‘consult as widely as possible’, or at least considering ‘the intersections between...other human rights’ will provide ample opportunity to broadly cover essential freedoms beyond the limit of what might be classified religious. It is clear to me that if ‘religious freedom’ is read too narrowly, some related rights will be omitted from the review.

Religion Defined

The Macquarie Dictionary\textsuperscript{1} defines ‘religious’ as ‘adj. 1. of, relating to, or concerned with religion.’ Religion is then defined as ‘n. 1. the quest for the values of the ideal life, involving three phases, the ideal, the practices for attaining the values of the ideal, and the theology or world view relating the

\textsuperscript{1} Macquarie Concise Dictionary, 4th Edition, 2006
quest to the environing universe.’ Defining the ideal Australian life is very personal and I am sure that opinions would vary from person to person, family to family and community to community. At the heart of anyone’s definition of the ‘ideal life’ is a personally held belief or opinion and abstract from any religious organisation. In fact, from my own experience, the expressions of belief or ‘practices for attaining the values of the ideal’ if you will, vary within my own congregation from individual to individual and family to family such that it would be difficult to reconstruct the stated ideal promoted by my Church, solely by observing the daily actions of one individual or family.

**Freedom of Religion to be Broadly Construed**

The United Nations Human Rights Committee (UNHRC) notes that Article 18 of the International Covenant on Civil and Political Rights (ICCPR) ‘protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed.’ This aligns with the dictionary definition of religion above which is essentially a belief system (with or without theology) and related actions endeavouring to achieve an ideal life within your environment. Religious freedom is therefore not exclusively focused on religious organisations, the opinions of their members or leaders/ministers. It is a freedom that should be afforded to all individual citizens as everyone has a belief system upon which they base their actions whether they profess a belief or not or associate with others having similar beliefs or not.

**Same-Sex Marriage and Majority Belief**

I would refer you to the Government’s own Human Rights Commission website where some good information is available. In particular, the additional comments from the UNHRC on the right to freedom of thought, conscience and religion. The UNHRC notes that ‘The fact that a religion[s]...followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.’ It was my experience during the recent Same-Sex Marriage survey campaign to have four hand-made signs stolen from me and another sign defaced three times by those who clearly believed differently to myself. It is probably not difficult to surmise that I was in the minority of the survey respondents, however, my freedom of speech and my freedom to civilly express my beliefs was impacted by the actions of a subset of the majority. Further to my own experience was the widely reported intolerance of some majority opinion holders against some of those who comprised the minority. This was clear evidence of a growing intolerance within the broader society for those who hold different beliefs.

**We Should Not Need an Exemption for Religion**

At the conclusion of the campaign and survey, even though many concerns were raised regarding the potential loss of freedoms resulting from the redefinition based on examples from other countries, the resulting legislation simply included a carve out for ministers of religion. This is inadequate protection, for all those deemed to be in the minority, against legal action under State based anti-discrimination laws simply for expressing their belief in marriage between a man and a woman. We must have a clear expression of freedom of belief and freedom of speech at a Constitutional level in order to guard against the use of subordinate legislation to effectively persecute others because of their beliefs. Protection of freedom to believe what you will should not need to be included as an exemption or carve-out. If there is a need to provide an exemption then it must be a poorly drafted piece of legislation. Either that, or we are missing in our law the

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3 Ibid.
fundamental freedoms that need not be stated as an exemption. The interpretation of the new legislation would always include the freedoms declared in a constitutional Bill of Rights.

**Parent’s Should Maintain their Rights over Educating their Children**

My wife and I have four boys. We did not plan to have children with the intent to leave their moral education to others. We believe in an ideal way of life and we choose to act in a way that is consistent with our quest to achieve this ideal way of life. It is incongruous for me to think that a conscientious parent would want their child to pursue another way of life to that of their own ideal. I may not be perfect in my quest to achieve the ideal, however, I would certainly encourage my children to pursue the same quest for happiness. Why would I want them to make choices that I think could lead to unhappy outcomes for their life? Regardless of whether others think I am right or wrong, if my beliefs and therefore actions do not constitute abuse of the child, why should another person have the right to educate my child against my wishes as to what the child should believe? To once again quote from your own Government source, the UNHRC state that ‘public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.’ Once again, if we have an overarching Bill of Rights that included quite clearly the rights of the parents for their child’s education, there would be no need to include an exemption or carve out in government policy regarding moral education as had been debated following implementation by some States of the ‘Safe Schools’ program.

**Conclusion**

I have stated above that the freedom of religion is fundamentally a freedom of belief. Freedom of belief is theistic, non-theistic and atheistic all at the same time. Freedom of speech is simply an expression of freedom of belief. If the right should be afforded to individuals then the same rights should also extend to associations or organisations that comprise individuals of the same belief. Individuals and associations of individuals should be free to express their beliefs by speech or actions in private or in public as long as their actions do not adversely impact on the freedoms of others. These fundamental beliefs need to be guaranteed by superior legislation at the Constitutional level similar to the Bill of Rights of the United States of America if we ever hope to clear the legislative quagmire into which we are descending.

Respectfully yours

Timothy Hill

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4 Ibid.