Executive summary

- Australia’s system of government has Christian roots and today Australia has a majority ‘Christian’ population.
- ‘Culture wars’ brought on by the rise of ‘progressive’ ideologies threaten to undermine the bedrock of western democracies, including Australia.
- In order to accommodate the desires of up to 3% of Australia voters, the fundamental beliefs and opinions (religiously based or otherwise) of somewhere between 30% and 40% of voting Australians are at risk of being ignored or rejected.
- Australia has little in the way of domestic human rights law but has ratified the International Covenant on Civil and Political Rights (ICCPR) and is bound by it in international law.
- The ICCPR gives primacy to the right to freedom of thought, conscience and religion. It also accords key rights to the natural family and man-woman marriage.
- The ICCPR does not countenance same-sex marriage. Same-sex marriage law in Australia implies local ‘rights’ for gay couples but cannot lay claim to found an overarching ‘human right’.
- People and institutions of faith/belief/conscience will suffer serious consequences if their rights to believe and practice are not protected by local laws (as required by the ICCPR). The state and ‘progressives’ determined to enforce belief in same-sex marriage will ‘punish’ non-conformers.
- Gay people could suffer minor inconvenience or hurt feelings if people and institutions of faith/belief/conscience are permitted to choose whether or not to participate in gay weddings. The right of gay people to legally marry is unaffected. Gay people could choose to recognise that ‘diversity’ means that some people don’t believe in gay marriage.
- The ICCPR upholds the right of parents to ensure the religious and moral education of their children in conformity with their own convictions. People and institutions of faith/belief/conscience should not be forced to expose their children to gay sex education and radical gender theory in school.
- Progressive ideologies are political (power hungry) in nature and demand conformity. Unless the march of ‘progressivism’ is checked, large sections of society (not small minorities) will be disenfranchised and marginalised.

Religion and government

Australia, like most ‘western liberal democracies’ was founded on Christian principles and perceptions of humanity and good government. The freedoms and rights we all enjoy, and the institutions of society and government that uphold them are underpinned by these beliefs. The Australian Constitution commences with these words (emphasis added):

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

Alfred Deakin, Australia’s second Prime Minister, offered the following prayer after the Constitution was finally ratified:

"We pray that it may be the means of creating and fostering throughout all Australia a Christ-like Citizenship."
Federal parliament commences each sitting with a traditional prayer. Although the practice is frowned upon by some as a denial of ‘secular government’, it has been consistently upheld by parliament to this day.

More than 52% of Australians identified as ‘Christian’ in the 2016 census.

The so-called ‘culture wars’ being waged in western liberal democracies around the world today are essentially the clash of traditional (mainly Christian) beliefs and values typical of ‘conservative’ citizens (including practicing Christians) with the so-called ‘progressive’ ideas which undergird political correctness, identity politics, environmentalism, ‘mercy killing’ (abortion and euthanasia) and the sexual-social agenda of the LGBTQI movement, including radical gender theory. ‘Progressive’ ideologies can be characterised as broadly left-wing or socialist and, in fact, the roots of most of these ideas, especially radical gender theory, are firmly founded in atheistic Marxist political theories about ‘oppressors’ and ‘the oppressed’, with little or no scientific basis.

Progressive’ ideologies focus on ‘oppressed’ minorities and ‘victims’ rights at the expense of the common good, heedless to the reality of daily life for the vast majority of the population.

This submission cautions that the further Australia and other nations step away from fundamental biblical beliefs and principles that undergird liberal democracy, the more difficult it will be to maintain the ‘social contract’ that has bound us together until now, without increasing levels of injustice.

Tail wags dog
In December 2017, the Australian parliament passed a new law that fundamentally changed the nature of a foundational building block of Australian society – marriage and the family. This represented a huge triumph for political correctness, identity politics and the LGBTQI movement over traditional beliefs based on scripture, biology, human history and common sense.

According to the 2016 Census, the ABS counted “approximately 47,000 same-sex couples” out of the “more than six million families in Australia on Census night”.

- Same-sex couples therefore represented less than 0.78% (i.e. less than 1 percent) of the families in Australia in 2016.

According to the ABS General Social Survey: 2014 (summary results published in June 2015), 268,000 people identified as gay or lesbian, and another 255,000 people identified themselves as bisexual or other sexual orientation. Combined, these groups represent little more than 3% of the adult population.

- Just over 1.5% of the adult population identified as gay or lesbian in 2014.
- Approximately another 1.5% of the adult population identified themselves as bisexual or other sexual orientation.

On the other hand, 4,873,987 Australians who voted in the plebiscite – or 38.4% of the almost 80% of eligible voters – are against same-sex ‘marriage’.

- On their own, ‘No’ voters represent almost 31% of eligible voters in Australia.

It’s not unreasonable to suppose that the 20.5% of eligible voters who didn’t vote in the plebiscite would have voted ‘Yes’ or ‘No’ in approximately the same proportions as the rest of the nation, had they returned their ballot.

- On that assumption, nearly 40%, or 4 out of 10 adult Australians, do not support same-sex ‘marriage’.

**Other human rights**

The Terms of Reference of the expert panel are to:
- consider the intersections between the enjoyment of the freedom of religion and other human rights
- have regard to any previous or ongoing reviews or inquiries that it considers relevant
- consult as widely as it considers necessary

No doubt many of the ~4.9 million Australians who voted ‘No’ based their decision on religious convictions, arising from the Hebrew bible, Christian bible, Koran or other scriptures. I was one of them, holding that God’s revelation in the Christian bible (which includes the Hebrew bible) about human sexuality, marriage, the family and human prospering declares the truth about these matters, and represents the ultimate good for all societies at all times.

However, there would be many Australians who voted ‘No’, not out of any formal religious conviction, but based on their own conviction and good conscience that marriage is between a man and a woman, and children are the product of their exclusive union – as believed and practiced in societies throughout the world from time immemorial. Such people may hold one or more reasonable convictions that same-sex ‘marriage’ should not be:
- endorsed by the law as being equivalent to man-woman marriage;
- acclaimed by the state as an equally valid and desirable model of human coupling, and as a sound basis for procreation (using acquired sperm or a surrogate mother) and the rearing of children; and
- imposed on an overwhelmingly heterosexual society for the sake of a tiny minority.

Some of these non-religious Australians may even hold a conviction that same-sex marriage is morally wrong, without having any particular religious basis for that belief. Regardless, all Australians who voted ‘No’ will be very concerned with the question of whether they can raise and instruct their own children and grandchildren in accordance with the convictions they hold in good conscience when the surrounding polity and the education system upholds and teaches very different beliefs.

For all Australians who voted ‘No’ – religious believers, agnostics and atheists alike – this matter strikes so profoundly at their conceptions of humanity, marriage and family that the enjoyment of ‘religious freedom’ is only one aspect requiring consideration by the panel. Regardless of ‘religion’, this matter concerns fundamental beliefs about humanity and foundational social structures and institutions. It concerns the rights of ordinary Australians to hold, publicly express and act consistently with beliefs that are not eccentric, off-beat or extreme in any way – beliefs that until very recently were considered the norm.

What is at stake today is not the right of two people to marry ‘whoever they want’ – that right is now assured by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*. The ‘right’ of practicing LGBTIQ Australians to be legally ‘married’ has been secured – certainly in the civil sense.

What is at stake today is the right of 30% - 40% of Australians:
- not to actively participate in same sex marriage ceremonies and celebrations against their will and conscience; and
- not to be compelled to allow their children to be indoctrinated at school with state sponsored propaganda (used advisedly) about the practice of homosexual sex, radical gender theory (for which there is no scientific basis) and other sexual practices, which a substantial minority of Australians regard as unhelpful at best or anathema at worst.

Should the coercive tools of the state be available to force well-meaning people to conduct themselves in a manner contrary to their beliefs and conscience in relation to such fundamental matters?
‘Legal’ framework for human rights in Australia
Australia has no ‘bill of rights’ or any equivalent, overarching rights legislation, although there are various federal and state anti-discrimination Acts. When it comes to freedom of religion, Australia’s Constitution contains only section 116, which states:

116. Commonwealth not to legislate in respect of religion
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

In her 2009 paper entitled “Legal Aspects of the Protection of Religious Freedom in Australia”, Associate Professor Carolyn Evans from the Centre for Comparative Constitutional Studies at Melbourne Law School stated as follows5 (emphasis added):

“Australia is party to a number of international treaties that protect the right to freedom of religion or belief and prohibit discrimination on the basis of religion. These rights have been further fleshed out in a range of documents and cases. While this international law does not become part of the Australian law automatically, it is significant in at least three ways. First, Australia is bound by international law in international courts and tribunals, and should not lightly breach its international obligations. Secondly, international human rights law can influence the interpretation of legislation and the development of the common law. Thirdly, the Commonwealth Parliament has limited power to pass legislation. If it wishes to legislate in the area of religious freedom it will have to rely on the ‘external affairs’ power in the Australian Constitution to do so. This requires that any legislation that is passed by the Commonwealth Parliament be closely linked to the international treaties on freedom of religion or belief. At present, Australia has done very little to legally protect religious freedom in the form required by relevant international human rights treaties.”

In terms of international law and internationally recognised human rights, Australia, along with 166 other countries, has ratified the International Covenant on Civil and Political Rights (ICCPR) which includes much of the Universal Declaration of Human Rights (UDHR), settled in 1948.

- A covenant (or convention) is a binding treaty, coming into force upon ratification by a certain number of States. The ICCPR was drafted in 1966 and came into force in 1976.
- Article 26 of the Vienna Convention on the Law of Treaties provides that: ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith’.
- Article 2(2) of the ICCPR requires Australia to take all necessary legislative and other measures to give effect to the rights in the Convention. The ICCPR is scheduled to the Australian Human Rights Commission Act 1986 (Cth) (the AHRC Act), and the Australian Human Rights Commission is responsible for monitoring Australia’s compliance with the ICCPR.
- In 1991, Australia agreed to be bound by the First Optional Protocol to the ICCPR. This means the United Nations Human Rights Committee can hear complaints from individuals who allege that the Australian Government has violated their rights under the ICCPR. However, the findings of the Human Rights Committee are not enforceable.
- Article 4 of the ICCPR identifies absolute (or non-derogable) rights which cannot be infringed in any circumstances. These are articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

5 Page 5 of the paper.
Relevantly to the matter at hand, the ICCPR states as follows (emphasis added):

**Article 18**
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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 would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19**
1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order, or of public health or morals.

…

**Article 23**
1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.
Based on the articles of the ICCPR quoted above, we can make the following observations:

1. The right to freedom of thought, conscience and religion (Article 18) is not confined to religion but includes thought and conscience, which assumes the possession of reason (as stated in Article 1 of the UDHR) the ability to reflect, and a moral sensibility.

2. The right to freedom of thought, conscience and religion (Article 18) is one of the few rights deemed to be ‘absolute’. It cannot be derogated from or infringed (Article 4).

3. The qualifications in Article 18 itself (paragraph 3) in relation to the freedom to ‘manifest’ (make known, show, exhibit, demonstrate) one’s religion or beliefs permit only such limitations as are:
   a. prescribed by law; and
   b. necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. Parents are to be accorded the liberty to ensure the religious and moral education of their children in conformity with their own convictions. This directly implies a right in parents to withdraw their children from any education which is not in conformity with the parents' convictions.

5. There is a specific article protecting the right to “hold opinions without interference”, which also expands the scope of recognised rights beyond freedom of religion, and is accompanied by “the right to freedom of expression” (Article 19).

6. Again, the restrictions of these rights permitted by Article 19 are only such as are:
   a. provided by law; and
   b. necessary for:
      i. respect of the rights or reputations of others; or
      ii. the protection of national security or of public order, or of public health or morals.

7. "[T]he family" is recognised as the fundamental unit of society, not merely “a married couple” (or a cohabiting couple). Marriage is inextricably linked to the “founding of a family”. The family is further defined as being:
   a. natural; and
   b. founded by men and women of marriageable age.

8. It is noteworthy that only the words ‘marry’ and ‘marriage’⁶ are used to describe the union that is the foundation of a family. Given the international scope, high purpose and relative economy of words in the UDHR and the ICCPR, the choice of ‘marriage’ as the descriptor can be attributed to the ubiquity of the meaning and connotations of this word, across diverse cultures and nationalities, as referring to the publicly declared and celebrated bonding for life of a man and a woman, normally with a view to being the progenitors of the next generation.

9. Nowhere does the ICCPR assert a right of same-sex attracted persons to “marry and found a family”, nor does it assert the right of “any person to marry any other person”. The right is restricted by definition and nature to marriageable men and women, recognising the complementarity of the sexes. Specifically, two persons of the same sex cannot produce progeny; that is, they cannot have a natural (i.e. biological) family of their own.

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⁶ From a logical and linguistic point of view, a sense of the true meaning of the noun ‘marriage’ is revealed in its more generalised use as the union, fusion, combination or alliance of two (or more) different (usually complementary) things. Examples include the ‘marriage’ of jazz and funk (in music), or the ‘marriage’ of different cuisines, say French and Caribbean (in food). Likewise, bacon and eggs is a kind of culinary ‘marriage’ but combining bacon with bacon would never be described as a ‘marriage’. Ergo, to refer to a same-sex union as a ‘marriage’ can be seen as both a linguistic and a category error. Some other noun or descriptor would be more accurate, such as ‘homogeny’.
Of the 167 countries that have ratified the ICCPR, only 25 have same-sex marriage laws and these are the product of relatively recent ‘progressive’ and LGBTIQ political agitation resulting in legislation specific to each jurisdiction; such laws are not based on the founding human rights principles of the UDHR or ICCPR. In many of the 142 countries without same-sex marriage laws, the prevailing view is that such laws are immoral or contrary to Article 23 or both.

**Comparing ‘rights’**

Based on the above analysis, there is no internationally recognised ‘human right’ for same-sex attracted persons to ‘marry’ or found a family. The ‘right’ of same-sex couples to marry in Australia is directly implied by recently amended Australian legislation and is not underpinned by the common law or any widely recognised, overarching human right. Accordingly, this ‘right’ of same-sex couples to ‘marry’ carries (or should carry) considerably less weight than the fundamental and ‘absolute’ right to freedom of thought, conscience and religion (ICCPR, Article 18).

Despite the reasoning presented above, some will contend that Article 23 should be read so as to include same-sex unions. Even if that were accepted (which this submission does not), the rights articulated in Article 23 (family and marriage) are subordinate to those in Article 18 (freedom of religion and belief) because:

- Article 18 applies to “everyone” regardless of age and at all times, whereas Article 23 applies only to “men and women” (of marriageable age) who wish to marry and found a family, which not everyone wishes to do (or can do); and
- Article 18 is ‘absolute’, which Article 23 is not.

**Balancing rights**

It is useful to consider the practical consequences of enforcing the ‘rights’ of some citizens to the detriment of others with different lifestyles or beliefs.

What ‘harm’ is caused to same-sex couples who are about marry when a civil marriage celebrant or goods/services provider (collectively ‘Provider’) declines to be involved in or service their wedding?

1. First, Providers of all kinds may decline their services for a host of reasons, the most obvious being their unavailability on the day in question. This is a simple fact of life faced by all citizens and consumers. If one service provider is unavailable, we find another who is available.

2. Secondly, if the Provider declines for reasons of belief/conscience, the question turns on the response (or reaction) of the same-sex couple, who can either:
   a. choose to respect the beliefs of others, and not to take the refusal personally but accept it as part and parcel of being a member of a diverse society, just as a Muslim host would accept that his Christian guest may decline to eat halal meat at dinner; or
   b. be insulted or take offence, regardless of how politely the request is declined, and then proceed to locate another, willing, Provider.

Importantly, the right or ability of the same-sex couple to be ‘married’ has not been diminished. Crucially, the type of ‘harm’ done to the same-sex couple by a non-participating Provider ranges from ‘none’ (or minor inconvenience) at the lowest end to ‘indignation or hurt feelings’ at the highest end. Many people would agree (and I agree) that ‘indignation or hurt feelings’ is not a form of ‘harm’ that the law should concern itself with (hence the call to remove or moderate section 18C of the Racial Discrimination Act 1975). Certainly, ‘indignation or hurt feelings’\(^7\) was not in the minds of John Locke or John Stuart Mill when they discussed human freedoms and the limits to be placed on them by the law due to the ‘harm’ that could be caused to oneself or others.

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\(^7\) As a matter of principle, robust public debate about core personal beliefs, lifestyle and social matters should not be thwarted by one side or the other claiming they are so hurt or offended by the expression of a contrary belief or opinion that the very expression itself should not be permitted. Likewise, it is not a valid or persuasive argument in favour of one’s lifestyle, belief or position to say that your side of the debate is offended by the very existence or expression of contrary views. In any case, the side of the SSM debate that consistently derided and insulted (even humiliated) people on the other side was the side that ‘won’ the plebiscite – the ‘Yes’ supporters – who routinely used ad hominem rebuffs against ‘No’ supporters. As was demonstrated overwhelmingly during the campaign leading up to the plebiscite, the belief/faith/conscience side merely argued its case with facts and reason, generally standing up to insults with grace and courage (and without appealing to their own ‘hurt feelings’).
On the other hand, what ‘harm’ is caused to a Provider whose belief or conscience forbids same-sex marriage but who is either coerced against their belief to participate in a same-sex marriage for fear of prosecution or is prosecuted for acting on their conscience by declining to participate? At the lowest end, this person has effectively been denied their basic human right to exercise (or manifest) freedom of conscience or belief due to state coercion. At worst, this person will suffer punishment or approbation at the hands of the state (legal expenses, lost time in court, orders for compensation) for exercising their basic human right to freedom of conscience or belief. As an objective commentator with no religious affiliation, Brendan O’Neill’s observations while appearing on ABC’s Q&A program are pertinent: (https://www.youtube.com/watch?v=qnzpMKb-Wk4).

Stated in this way, it is immediately apparent to the objective observer that the balance lies in favour of protecting basic freedoms of belief or conscience.

The necessity for protections in Australia is underlined by experiences overseas of people and institutions of faith. Cake makers have been prosecuted8 and private schools threatened with closure9 for failing to comply with the new orthodoxy. Based on the experience of people and institutions in what were formerly regarded as ‘western liberal democracies’, it is not enough for civic authorities that people of faith/belief/conscience must ‘accept’ that they now live in a country which legally recognises same-sex marriage. In Australia, as elsewhere in the world, the LGBTIQ movement and governments at all levels appear unrestrained in their desire to silence dissent and force everyone not simply to accept that a law exists, but to agree with it and adopt its underlying beliefs and worldview as their own. This is a form of totalitarian ‘re-education’ that should raise loud alarm bells with right-minded people everywhere. Unfortunately, the bulk of the mass media openly supports this agenda and those with the temerity to question it are lampooned and shouted down.

One aspect of this emerging hegemony that causes consternation among people of faith/belief/conscience, and the private institutions that serve them, is the threat of compulsory education in gay sexual practices and radical gender theory. As evidenced by the ‘Safe schools’ program adopted by various state government departments of education and originally endorsed by the federal government10, educators see the school curriculum as an opportunity to advance the latest ‘progressive’ political and socio-sexual agenda, regardless of its moral or scientific value (or despite the lack of either). If, contrary to their rights under ICCPR Article 18.4, parents are to be required (as part of the national curriculum) to keep their children in classes teaching such material, or, worse still, private, faith based schools and colleges are to be forced to teach this material, in my opinion, Australia will truly have embraced fascism. Unfortunately, the record in the UK and Canada holds out little hope.

It’s no wonder that ordinary people of faith/belief/conscience in Australia increasingly see themselves as not merely ‘disenfranchised’ but under attack. Greater empowerment of the ‘progressive’ LGBTIQ movement in Australia, with its equal commitment to radical gender theory, comes at the risk of even further marginalisation of the (much larger) minority belief/faitth/conscience community.

Current position

Many Australian voters who voted ‘Yes’ in the marriage postal ballot did so in the belief that religious freedoms would be protected – in part because Malcolm Turnbull and others consistently stated that such matters were not in issue.

Regrettably, when the parliament debated the Bill to amend the Marriage Act, even the most basic religious protection amendments were defeated. They included:

- Religious and conscientious protections for celebrants;
- Freedom of expression and recognition of legitimate beliefs;

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10 Before the highly inappropriate (some would say salacious) contents of the program were brought to public attention.
• Protections for charities;
• Non-discrimination in Government funding;
• Protection of religious bodies and schools; and
• Parents to have the right to withdraw children from certain classes.

This demonstrates an alarming lack of either understanding (knowledge) or respect by our political leaders for the human rights contained in Articles 18 and 19 of the ICCPR and Australia’s obligations to uphold them. The *Sex Discrimination Act 1984* (Cth) addresses some of these issues in sections 37 and 3811 by giving religious bodies certain exemptions in recognition of their beliefs and practice, and the same approach has been taken in various state based equal opportunity or anti-discrimination acts. These religious bodies are private institutions that are not beholden to government for their existence and whose beliefs both define their purpose and are the source of the benefits that flow to their members and the wider society.

For consistency with such existing legislation, it is difficult to understand why the revised *Marriage Act* should not also contain the same exemptions for religious bodies. Furthermore, Australia has a duty to honour its obligations under the ICCPR. But far more than this, the issues raised in this submission concerning the political and legal imbalance that will be created if the marriage rights just granted to a small minority of Australians are not tempered by a comprehensive recognition of the beliefs and convictions of a relatively large number of Australians, will only serve to further divide and alienate ordinary people in this country.

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