



14 February 2018

The Expert Panel on Religious Freedom
C/o Department of the Prime Minister and Cabinet
By email: religiousfreedom@pmc.gov.au

RE: Submission to the Commonwealth Expert Panel on Religious Freedom

1. The Human Rights Law Alliance and the Australian Christian Lobby welcome this opportunity to make a submission to the Inquiry into the Status of the Human Right to Freedom of Religion or Belief.
2. The Human Rights Law Alliance implements legal strategies to protect and promote fundamental human rights. It does this by resourcing legal cases with funding and expertise to create rights-protecting legal precedents. The Alliance is especially concerned to protect and promote the right to freedom of thought, conscience and religion or belief. In the past 24 months, the Alliance has aided more than 30 legal cases, and allied lawyers appeared in State Tribunals and Magistrates, District and Supreme Courts as well as the Federal Court.
3. With more than 100,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party partisan or denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory parliaments.
4. This submission focusses on the intersection between freedom of religion and other human rights first in international law, second in Australian law, and third in the lived experience of Australians.

The Right to Freedom of Thought, Conscience and Religion or Belief

5. Of all freedoms, the freedom of thought, conscience and religion or belief is in certain significant ways the most fundamental.
6. The freedom is protected as a matter of priority in the US Constitution by way of the First Amendment and is one of the few rights expressly granted by the Australian Constitution.¹
7. All the democratic freedoms, including speech, expression and association, are related to freedom of thought, conscience and religion or belief. When a citizen is free to speak, they

¹ *Commonwealth of Australia Constitution Act* s 116.

speaking their beliefs and convictions. When free to express, they live out their convictions in practice. When free to associate, they form official and unofficial groups around common causes borne out of their beliefs and convictions. Freedom of thought, conscience and religion or belief is therefore, in the words of Mason CJ and Brennan J, “the essence of a free society.”

8. Freedom of religion also has a limiting effect on the power of governments, guarding against instincts of totalitarianism, censorship and control. If citizens are free to locate their beliefs and convictions outside of the state itself and give effect to them, then the state concedes that certain things lie outside of its jurisdiction. This paradigm guarantees freedom and promotes the autonomy, self-determination and flourishing of the people which has long been a treasured and relatively unique feature of Western-style democracy.

Under the ICCPR

- (i) *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.*
 - (ii) *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
 - (iii) *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.*
 - (iv) *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.*
9. The International Covenant on Civil and Political Rights contains a strong and broad statement of the freedom of thought, conscience and religion or belief. It includes the rights both to belief and expression and covers both the private and public sphere.
10. The expressive element of the right is described in terms of “worship, observance, practice and teaching.” This covers an extremely broad spectrum of public and private activities and patterns of life. The broad intent of the right is confirmed in part by clause 4, which clarifies that it extends to the religious and moral education of children in accordance with the convictions of their parents.
11. Article 18 is one of a small number of non-derogable rights in times of public emergency, establishing its fundamental importance among all human rights.²
12. Importantly, the permissible limitations listed in clause 3 of Article 18 must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The threshold of “necessary” is very high and may be contrasted with lower thresholds such as “reasonable” or “reasonably necessary.”

In General Law

13. The fundamental importance of freedom of religion to democratic societies has been acknowledged in domestic law by the High Court, which has said:

² *International Covenant on Civil and Political Rights*, Article 4.

*Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society.*³

14. Chief Justice Mason and Justice Brennan went on to confirm that the right is one of both belief and expression:

*What a man feels constrained to do or to abstain from doing because of his faith in the supernatural is prima facie within the area of his legal immunity, for his freedom to believe would be impaired by restriction upon conduct to which he engages in giving effect to that belief. The canons of conduct which he accepts as valid for himself in order to give effect to his belief in the supernatural are no less a part of his religion than the belief itself.*⁴

15. It goes without saying that if the right were one merely of belief, it would be no right at all. It is not ultimately possible to regulate what people think in the secrecy of their own minds. The right is only valid insofar as it covers the expression of genuinely held beliefs through conduct.

16. Redlich J of the Victorian Court of Appeal recently articulated the same principles, that the right is key to a plural democracy, is an expressive right, and is one that protects a person's identity.

*The precepts and standards which a religious adherent accepts as binding in order to give effect to his or her beliefs are as much a part of their religion as the belief itself. The obligation of a person to give effect to religious principles in everyday life is derived from their overarching personal responsibility to act in obedience to the Divine's will as it is reflected in those principles. Religious faith is a fundamental right because our society tolerates pluralism and diversity and because of the value of religion to a person whose faith is a central tenet of their identity. The person must, within the limits prescribed by the exemptions, be free to give effect to that faith.*⁵

Permissible Limitations

17. Under the ICCPR the right is non-derogable but may be limited on specific grounds. Each of these grounds has been defined in the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*.
18. Limitations on the ground of public health relate to actions taken by government in dealing "with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured."⁶
19. Limitations on the ground of public safety "means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property."⁷
20. Limitations on the ground of public morals shall be made only if the state can "demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community."⁸

³ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120 at [6] per Mason CJ & Brennan J.

⁴ *Ibid.*

⁵ *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75 at [561].

⁶ *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, at [25].

⁷ *Ibid.*, [33] – [34].

⁸ *Ibid.*, [27] – [28].

21. Limitations are also permitted on the ground of public order, which “may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order.”⁹
22. Finally, limitations are also permitted insofar as they are the result of balancing the claims of other fundamental human rights provided for under the Covenant.¹⁰
23. To this end, the most common cause of conflict relates to the right of non-discrimination, which is also provided for under Article 26 of the Covenant. That Article requires that states parties “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...” The various anti-discrimination and equal opportunity acts in each Australian jurisdiction create several mechanisms by which this right is pursued domestically.
24. It is well established that human rights interact with each other and that drawing the line too far in favour of one right will burden other rights. In this regard it is important to strike the right balance in legislation pertaining to human rights issues.
25. The definition of discrimination that the law adopts is therefore of key importance. It must define the appropriate outer limits of the right, ensuring its scope is not such that it is either under-protected in the face of plenary freedoms, or over-protected at the expense of freedoms, such as freedom of religion.
26. An overly expansive legislation of the right to non-discrimination might capture conduct that ought to be something less. For example, mere differences of treatment that are reasonable and objective in the circumstances.
27. This is significant because differences of treatment are inherent in the very exercise of fundamental freedoms which are themselves rights demanding protection. Freedom of association, by its very nature, requires that organisations and associations be permitted to differentiate among their members and staff. Those who support the aims of the organisation will be preferred. This is something less than unjust discrimination.
28. The same may be said of freedom of religion which requires individuals and organisations to be able to be discriminating in the beliefs they choose to hold, and the lives they lead to express those beliefs. Their churches and religious bodies must be able to select members who share their faith or ethos.
29. This vexed question of balancing the exercise of fundamental freedoms against differentiations of treatment that could amount to discrimination is addressed in General Comment 18, which provides the United Nation’s Human Rights Committee’s interpretative guidance concerning Article 26. It relevantly provides:

*...the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*¹¹

⁹ Ibid, [22] – [24].

¹⁰ Ibid, [35] – [37].

¹¹ UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html>, paragraph [13].

30. The assumption inherent in this guidance is that differentiations of treatment arising in the pursuit of rights and freedoms under the covenant do not necessarily amount to unjust discrimination where the actions are reasonable and objective in the circumstances.

Concerns in Australia

31. Against this backdrop, several concerns arise in terms of Australia's domestic law.
32. The recently published Interim Report from the ongoing Commonwealth Inquiry into the Status of Freedom of Religion or Belief states:

The threats to religious freedom in the 21st century are arising not from the dominance of one religion over others, or from the State sanctioning of an official religion, or from other ways in which religious freedom has often been restricted throughout history. Rather, the threats are more subtle and often arise in the context of protecting other, conflicting rights. An imbalance between competing rights and the lack of an appropriate way to resolve the ensuing conflict is the greatest challenge to the right to freedom of religion.

33. The Chair's foreword also notes:

Firstly, legal protection of religious freedom in Australia is limited ... While a culture of religious freedom has thrived, and the common law has respected religious freedom to a large extent, the legislative framework to ensure this continues is vulnerable.

Most significantly, there is almost no explicit protection for religious freedom at the Commonwealth level. The Constitution does place "fetters" on the Commonwealth government, preventing it from restricting religious practice to some extent. But this is a fairly narrow protection, and it does not provide a positive protection of the right, nor does it prevent the States and Territories from restricting religion.

34. The Interim Report concludes that 'the preponderance of evidence from all sides of the issue support the claim that religious freedom should be specifically protected in Commonwealth law, however this is achieved'.
35. A discussion of some key areas in which these concerns are played out follows.

Balancing Non-Discrimination and Freedoms

36. There has been a proliferation of legislation enshrining far-reaching rights of non-discrimination in Australia. Every State and Territory has at least one Act embodying substantial non-discrimination principles¹² whilst the Commonwealth has four. 15 acts are footnoted below which collectively cover 50 different protected attributes. Once attributes which might be reasonably considered to cover similar subject matter are amalgamated, the list can be reduced a still substantial 29 attributes.
37. The definition of what constitutes discrimination on the ground of an attribute can differ marginally between jurisdictions, but most define discrimination by some reference to

¹² *Anti-Discrimination Act 1977 (NSW); Equal Opportunity Act 2010 (VIC); Racial and Religious Tolerance Act 2001 (VIC); Charter of Human Rights and Responsibilities Act 2006 (VIC); Anti-Discrimination Act 1991 (QLD); Equal Opportunity Act 1984 (WA); Equal Opportunity Act 1984 (SA); Anti-Discrimination Act 1998 (TAS); Anti-Discrimination Act (NT); Discrimination Act 1991 (ACT); Human Rights Act 2004 (ACT); Age Discrimination Act 2004 (CTH); Disability Discrimination Act 1992 (CTH); Racial Discrimination Act 1975 (CTH); Sex Discrimination Act 1984 (CTH)*

“unfavourable treatment” or “detriment” because of the attribute.¹³ Definitions of this type potentially capture an extremely broad range of differences of treatment and contain few limiting or clarifying principles for their application.

38. One such demonstration of the potential uses open to discrimination laws of this type arises in *Aitken & Ors v State of Victoria*¹⁴. On appeal from VCAT, the Applicants had argued that the provision of optional special religious instruction in their children’s schools constituted direct discrimination because it caused them to be “identified as different” through the segregation of the class into two groups. The claim was therefore based on the mere existence of a difference of treatment.
39. The judge in that case held that there was no “detriment” of a sufficiently substantive nature, but not by reference to any clarity concerning what amounts to “detriment” from the Act itself.
40. This lack of clarity concerning what amounts to unjust discrimination as opposed to mere differentiations of treatment (or something in-between) is a cause for concern for two main reasons.
41. Firstly, the international principles from which Australia’s non-discrimination laws originate make a significantly larger effort to clarify the difference according to established human rights principles. This is because the principles have been drawn up with careful regard to the fact that rights are held in delicate balance and frequently do raise competing claims which need to be resolved in the most rights-respecting manner.¹⁵
42. Secondly, if the limits of non-discrimination are not properly defined as in the international law, then the right will not balance appropriately against other human rights, including religious freedom, and will have the effect of potentially derogating from them.
43. This second concern is amplified by the fact that many of Australia’s human rights are found in common law. This is mainly true of those rights which constitute what have come to be known as “fundamental freedoms” inherent in Australia’s system of Constitutional representative democracy and common law heritage. Under a common law system, people are free to do anything that is not expressly forbidden by law:

*Under a legal system based on the common law, ‘everybody is free to do anything subject only to the provisions of the law’, so that one proceeds ‘upon the assumption of freedom of speech’ and turns to the law ‘to discover the established exceptions to it’.*¹⁶

¹³ See meanings of direct discrimination in: *Discrimination Act 1991* (ACT) s 8(2); *Equal Opportunity Act 1984* (SA) ss 29, 51, 66, 85A; *Equal Opportunity Act 2010* (VIC) s 8. Other acts require the detriment to be established by comparison to treatment (real or hypothetical) of persons without the relevant attribute in not materially different circumstances, see for eg: *Anti-Discrimination Act 1977* (NSW) ss 7, 24, 39, 49B, 49T, 49ZG, 49ZYA; *Anti-Discrimination Act 1998* (TAS) s 14; *Equal Opportunity Act 1984* (WA) ss 8, 9, 10, 10A, 35A, 35O, 36, 53, 66A, 66V.

¹⁴ [2013] VSCA 28.

¹⁵ This is a well-recognised principle of human rights law. For recent comment, see James Spigelman, ‘2012 Human Rights Day Oration’ (Speech delivered at the Australian Human Rights Commission’s 25th Human Rights Award Ceremony, Sydney, 10 December 2012.)

¹⁶ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 564 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ) quoting *Attorney General v Guardian Newspapers* (No 2) [1990] 1 AC 109, 283.

44. The corollary of this principle is that no person or authority may interfere with the liberty of a person except by authority of law.¹⁷
45. Fundamental freedoms have largely been inherent in Australia's system of general law apart from any legislation or Constitutions.
46. Given that common law gives way to legislation, it ought to be of particular concern to Australian legislators that rights or freedoms that are legislated without cautious regard to their limits and proper balance will result in infringements upon the rights and freedoms of others.
47. In the Australian context, non-discrimination has been legislated extremely widely, in terms of the number of protected attributes, the number of relevant statutes and the unconventionally broad scope given to the term "discrimination." This potentially captures conduct which may amount to a mere difference of treatment that is reasonable and objective in the circumstances.
48. Place is given to other rights with which non-discrimination may therefore conflict by way of a much more feeble system of exemptions and exceptions in non-discrimination legislation. For example, religious bodies may be able to discriminate based on religion in the selection of employees for religious roles,¹⁸ political parties on the basis of party membership,¹⁹ single-sex schools on the basis of the sex of a student²⁰ among many other examples.
49. Schemes of this nature have the unfortunate effect of setting non-discrimination up as the paradigm under which human rights claims are to be resolved. As but one of several rights, this is an inaccurate representation of human rights principles. The actual paradigm is "human rights" and within it is located each of the rights set out in the ICCPR.
50. The problem is exacerbated by reference to religious freedom as a "religious exemption" which is narrowly defined. Or by freedom of association which is protected by specific examples (political parties, clubs etc.) These are in fact plenary freedoms with wide relevance to the balancing of human rights principles. They are not merely narrowly defined exceptions to a non-discrimination paradigm.
51. The case of *Christian Youth Camps v Cobaw*²¹ provides a strong example of the paradigm shift. Whilst the *Equal Opportunity Act 2010* (VIC) in its current form and in its form as it stood at the time of the events in that case provides some of the more comprehensive religious exemptions²², they were read very narrowly by the Court.
52. The narrow application of the exemptions was done in several ways.
53. First, *Christian Youth Camps* was held to not be "body established for religious purposes" despite its Constitution focussing on conducting camping, conferencing and similar activities in

¹⁷ *Entick v Carrington* (1765) 19 St Tr 1029.

¹⁸ For example, *Equal Opportunity Act 2010* (VIC) s 82

¹⁹ For example, *ibid*, s 27.

²⁰ For example, *ibid*, s 39.

²¹ (2014) 308 ALR 615.

²² *Equal Opportunity Act 2010* (VIC) ss 81, 82(2), 83(2), 84. Victoria is unique in specifically clarifying that "religious bodies" will include charities intended to be run in accordance with religious tenets and beliefs. It is also unique in creating a specific religious freedom exemption for individuals and not only organisations.

accordance with the beliefs and doctrines of the Brethren denomination,²³ requiring staff to subscribe to a statement of faith,²⁴ and being established under the Brethren Trust.²⁵

54. The court drew a line between “religious” and “commercial” activity, indicating that a commercial enterprise was essentially “secular” and therefore not capable of bearing religious purposes.²⁶
55. Second, the Court agreed that the actions of Christian Youth Camps were not done in order to conform with the its doctrines. The court limited “doctrines” to the church’s “core architectural statements of faith.”²⁷
56. Third, and in any event, the court opined that the conduct was not “necessary” to conform to the doctrines of the Christian Brethren.²⁸ Maxwell P considered that the campsite’s belief concerning marriage was a “rule of private morality.”²⁹
57. Professors Aroney and Babie and Dr Joel Harrison note the following in relation to these narrow approaches to religious freedom:

As a method of determining the boundaries of permissible claims, creating a bright line between ‘religion’ and ‘commerciality’ is a blunt instrument. Many organisations may undertake commercial work within a religious ethos.³⁰ A kosher or halal slaughterhouse or certifier, for example.³¹ A religious publisher.³² A wedding photographer.³³ A diocese’s hall for rental.³⁴ A bed and breakfast.³⁵ Fundamentally religious liberty has traditionally been understood as protecting against a coerced conscience, and as securing the capacity for groups to pursue an ethos and form a body of people in response to an understanding of the divine. On this view, CYC’s decision not to accept a booking does not necessarily cease to be an act of religious conscience simply because it takes place in a commercial setting.^{36 37}

58. And:

²³ Above n 18, [205].

²⁴ Ibid, [206].

²⁵ Ibid, [203].

²⁶ Ibid, [209], [247], [250].

²⁷ *Cobaw* [2010] VCAT 1613 (8 October 2010) [288], [277].

²⁸ *Cobaw* (2014) 308 ALR 615, [287] – [288].

²⁹ Ibid, [280] – [285], [290], [330].

³⁰ Ibid, [563] (Redlich JA); see also *Burwell v Hobby Lobby Stores, Inc*, 134 S Ct 2751, 2770 n 23 (Alito J) (2014). Alito J further notes the contention that such organisations exist simply to pursue money ‘flies in the face of modern corporate law’. Ibid 2770.

³¹ See eg, *Jewish Liturgical Association Cha’are Shalom Ve Tsedek v France* (European Court of Human Rights, Grand Chamber, Application No 27417/95, 27 June 2000).

³² See Julian Rivers, *The Law of Organized Religions: Between Establishment and Secularism* (Oxford University Press, 2010) 131.

³³ See, eg, *Elane Photography v Willock* (NM Sup Ct No 33, 687, 22 August 2013).

³⁴ *Smith and Chymyshyn v Knights of Columbus* 2005 BCHRT 544 (29 November 2005).

³⁵ *Hall v Bull* [2013] 1 WLR 3741 (United Kingdom Supreme Court).

³⁶ See *Commissioner of Taxation v Word Investments* (2008) 236 CLR 204, which recognised that commercial activities and charitable status on religious grounds are not necessarily inconsistent: Ian Murray, ‘Charity Means Business – Commissioner of Taxation v Word Investments Ltd’ (2009) 31 *Sydney Law Review* 309.

³⁷ Aroney, Nicholas and Harrison, Joel and Babie, Paul T., *Religious Freedom Under the Victorian Charter of Rights* (July 31, 2016) page 10. Matthew Groves and Colin Campbell (eds), *Australian Charters of Rights a Decade On* (Federation Press, 2016). Available at SSRN: <https://ssrn.com/abstract=2816687> or <http://dx.doi.org/10.2139/ssrn.2816687>.

These are very problematic statements. In a strange juridification, doctrine was narrowly linked to explicit texts, such as formal creeds and declarations. However, religious creeds are typically limited to specific matters in response to particular controversies internal to the religion. Religious bodies themselves are more often likely to consider 'doctrine' to cover the entire teaching of the faith, not the particular matters that have been formalised as binding dogma.³⁸ The Brethren Church undoubtedly did not think its doctrine on sexuality or marriage needed to be written down expressly in CYC's trust deed, noting that it had been drafted in 1921.³⁹

59. The authors go on to note that the cause of the "strange juridification" appears to lie in the fact that the Court elevated non-discrimination to a position of primary importance, making it the paradigm by which the various rights claims were to be measured. One reason for this was the ascertainment of an equality-based purpose of the *Equal Opportunity Act* and the placement of equality and non-discrimination as the "keystone" of the *Charter of Human Rights and Responsibilities*. Of the Tribunal decision, the authors relevantly note:

In the Tribunal, Judge Hampel considered that the Equal Opportunity Act must be interpreted in a way that realises the human rights listed in the Charter.⁴⁰ Although this included religious liberty, arguably equality and non-discrimination were elevated in importance, consistent with Bell J's description of the principles of equality and non-discrimination as 'the keystone in the protective arch of the charter'.⁴¹ While asserting no single right should be privileged, Judge Hampel considered any exceptions to antidiscrimination must be read narrowly because they impair the full enjoyment of s 8.^{42 43}

60. And in respect of the Court of Appeal Decision, they note:

...like Judge Hampel, Maxwell P and Neave JA considered that the exceptions in the Act should not be given a broad interpretation. According to Maxwell P, the exception for religious bodies does not define the limits of antidiscrimination law in aid of liberty, but rather was an exception from the full scope of a law designed 'to eliminate, as far as possible, discrimination against people'.⁴⁴ He considered that a narrow reading of the exemption was consistent with imposing limitations on religious liberty to 'protect... the fundamental rights and freedoms of others'.⁴⁵ In this way, whether the Charter applied or not, the principle of equality was privileged over the principle of religious freedom.⁴⁶

61. It therefore emerges that the adjudication of human rights claims in both of these cases, whether the *Charter of Human Rights and Responsibilities Act 2006* applied to the decision or simply the provisions of the *Equal Opportunity Act*, has been conducted by making equality and non-discrimination the paradigm human right.

³⁸ See, eg, *Reaney and Hereford Diocesan Board of Finance* [2007] Employment Tribunal Case No 1602844/2006 (17 July 2007) (UK); See also Thomas Scannell, 'Christian Doctrine' in *The Catholic Encyclopaedia* (Robert Appleton Company, 1909) Vol 5.

³⁹ Above n 37, page 11.

⁴⁰ *Cobaw* [2010] VCAT 1613 (8 October 2010) [25].

⁴¹ *Lifestyle Communities Ltd Case (No 3) (Anti-Discrimination)* [2009] VCAT 1869 (22 September 2009) [277].

⁴² Above n 39, [219] – [225].

⁴³ Above n 37, page 9.

⁴⁴ *Ibid*, [186], *Equal Opportunity Act* (VIC) s 3(b). The Court also emphasised the Act was 'beneficial' legislation to be given a liberal construction at [180].

⁴⁵ *Ibid*, [190], [193].

⁴⁶ Above n 43.

62. The problem then flows: the ability of Christian Youth Camps to exercise religious and associational freedoms is compromised by an imbalanced approach to human rights.

Sufficiency of Religious Exemptions

63. The discussion so far has centred on the Victorian legislation which provides for wider-reaching religious freedom exemptions than any other state.
64. The Victorian exemptions clearly define “religious body” to include a “charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs and principles.”⁴⁷ Other states are less clear, limiting statements to “bodies established for religious purposes”⁴⁸ which could be read more narrowly, or, in the case of New South Wales, the even narrower “bodies established to propagate religion.”⁴⁹
65. The list of attributes upon which religious bodies may be permitted to discriminate under the Victorian Act include religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity.⁵⁰ In some jurisdictions this list is much narrower – for example, in Tasmania the only permissible grounds of discrimination are gender and religious belief, affiliation or activity, and even then only in very limited circumstances.⁵¹ It is further important to note that “gender identity” is a separate attribute under the Tasmanian law and is not exempted for religious freedom.⁵² The limitations of the Tasmanian act are therefore particularly burdensome.
66. The threshold for granting permission to so discriminate is conduct that conforms to religious doctrine or is “reasonably necessary”⁵³ to avoid injury to the religious susceptibilities of the religious adherents in Victoria. This may be contrasted with other states where the marginally higher threshold of “necessary” is applied.⁵⁴
67. Finally, Victoria is the only jurisdiction that includes a personal right to religious freedom in its exemptions.⁵⁵ The anti-discrimination statutes of other states overwhelmingly characterise religious freedom as an institutional, rather than a human right. This is a significant concern and derogates from the right.
68. The *Cobaw* precedent is therefore very troubling in its low esteem for the right to freedom of religion and resultant heavy burden on the expressive and institutional elements of the right. The legislation of other states threatens to have a far greater rights-restricting effect if their more limited exemptions are also to be interpreted narrowly.

⁴⁷ *Equal Opportunity Act 2010* (VIC) s 81.

⁴⁸ *Anti-Discrimination Act 1977* (NSW) s 56; *Anti-Discrimination Act 1991* (QLD) s 109; *Anti-Discrimination Act* (NT) s 51; *Equal Opportunity Act 1984* (SA) s 50; *Equal Opportunity Act 1984* (WA) s 72; *Anti-Discrimination Act 1998* (TAS) s 52.

⁴⁹ *Anti-Discrimination Act 1977* (NSW) s 56.

⁵⁰ *Equal Opportunity Act 2010* (VIC), s 82.

⁵¹ *Anti-Discrimination Act 1998* (TAS) ss 19, 51, 52.

⁵² *Anti-Discrimination Act 1998* (TAS) s 16(ea).

⁵³ Above n 50.

⁵⁴ Above n 48.

⁵⁵ *Equal Opportunity Act 2010* (VIC), s 84.

Commonwealth Non-Discrimination Legislation

69. Commonwealth legislation mostly⁵⁶ defines discrimination by reference to a comparator group, requiring that less favourable treatment be afforded to someone on the basis of a protected attribute than a person (real or hypothetical) in the same circumstances without the attribute. Only then can a finding of discrimination be made. If the treatment in question only results in indirect discrimination, it is also subject to a reasonableness test, which raises a potential defence where the acts allegedly leading to indirect discrimination were nonetheless reasonable in the circumstances.⁵⁷
70. The use of a comparator group and the presence of a reasonableness test does not, however, go directly to the issue of balancing other rights and freedoms. This is done, as in the case of the states, by way of exemptions.
71. Religious exemptions are significant in relation to the *Sex Discrimination Act 1984* because sex and gender are key issues relevant to the doctrines and beliefs of religions and religious bodies. The act contains exemptions for religious schools in respect of the employment or contracting of staff, and the provision of services.⁵⁸ It contains an exemption for the provision of accommodation by a religious body.⁵⁹ It also permits bodies established for religious purposes to do acts or have practices that conform to the doctrines, tenets, and beliefs of the religion and are necessary to avoid injury to the religious susceptibilities of adherents of that religion.⁶⁰ This is similar in style to one of the exemptions provided for in the Victorian *Equal Opportunity Act*.
72. Of concern, however, is the recently added carve-out to the accommodation exemption. It is no longer permitted to be a provider of Commonwealth funded aged care accommodation as a religious body whilst conforming with doctrines, tenets or beliefs that may otherwise be discriminatory under the Act.⁶¹
73. The Commonwealth legislation does not ameliorate the concern that non-discrimination has become the paradigm under which narrow exceptions are permitted for other human rights including religious freedom. This is a departure from human rights law principles. If construed in a similarly narrow manner to the exemptions in *Cobaw*, the right to freedom of religion is poorly protected and risks being significantly infringed upon under this legislative regime.
74. It is also troubling that the Australian Human Rights Commission has appointed a commissioner for each Commonwealth anti-discrimination act. The result is that, of its seven commissioners, arguably all of them have either a solely discrimination-based or heavily discrimination-based portfolio. This represents a massive over-representation of a single human right and a massive under-representation of most other human rights by a Commission that is purportedly established to protect human rights as a whole. The single commissioner that has a portfolio encompassing any freedoms at all (including religious freedom) also has a discrimination-based

⁵⁶ *Age Discrimination Act 2004* (CTH) ss 14, 15; *Disability Discrimination Act 1992* (CTH) ss 5, 6; *Sex Discrimination Act 1984* (CTH) ss 5, 7B.

⁵⁷ *Age Discrimination Act 2004* (CTH) s 15(1)(b); *Disability Discrimination Act 1992* (CTH) s 6(3); *Sex Discrimination Act 1984* (CTH), s 7B.

⁵⁸ *Sex Discrimination Act 1984* (CTH) s 38.

⁵⁹ *Sex Discrimination Act 1984* (CTH) s 23(3)(b).

⁶⁰ *Sex Discrimination Act 1984* (CTH) s 37.

⁶¹ *Sex Discrimination Act 1984* (CTH) s 23(3A).

equality portfolio.⁶² The paradigm shift from human rights to equality and non-discrimination is therefore evident in this regard as well.

General Limitations Clauses

75. State and Commonwealth Anti-Discrimination laws establish an unhelpful and incomplete framework of religious exemptions which inadequately balance the right of religious freedom against the right to non-discrimination.
76. The basic deficiency relates to the scope of discrimination itself, in terms of its proper limits and balance. The problem has been acknowledged in both state and federal laws by the Australian Law Reform Commission's recent Freedoms Inquiry (ALRC Report Number 129). The Commission recommended that consideration be given to a general limitations clause to remedy the deficiency in any efforts to harmonise Commonwealth, State or Territory discrimination laws⁶³. The clause proposed by Professors Patrick Parkinson AM⁶⁴ and Nicholas Aroney⁶⁵ is reproduced in full at page 150:
1. *A distinction, exclusion, restriction or condition does not constitute discrimination if:*
 - a. *it is reasonably capable of being considered appropriate and adapted to achieve a legitimate objective; or*
 - b. *it is made because of the inherent requirements of the particular position concerned; or*
 - c. *it is not unlawful under any anti-discrimination law of any state or territory in the place where it occurs; or*
 - d. *it is a special measure that is reasonably intended to help achieve substantive equality between a person with a protected attribute and other persons.*
 2. *The protection, advancement or exercise of another human right protected by the International Covenant on Civil and Political Rights is a legitimate objective within the meaning of subsection 1(a).*⁶⁶
77. This approach adopts the kind of “reasonable and objective” and “pursuit of other rights” tests proposed at international law, discussed above, refining the definitional scope of discrimination to ensure it is always balanced appropriately against competing rights claims.
- 78. Recommendation: The Expert Panel should recommend that existing exemptions in anti-discrimination law be reframed as ‘general limitations clauses’**

Carve-Outs

79. The expressive limb of the right to religious freedom is increasingly being subjected to “carve-outs” which incrementally reduce its scope.
80. The *Cobaw* example given above shows how that a “commercial sphere” exemption is one often raised by those inclined to limit religious freedom. Under this paradigm, when someone offers goods or services, they cannot do so in a way that avoids injury to their religious convictions. Similarly, religious organisations cannot abide by their conscientious beliefs if they undertake any commercial activity.

⁶² Mr Edward Santow has responsibility for marriage equality, rights affecting LGBTIQ Australians, the Optional Protocol Against Torture, freedom of expression, freedom of association and freedom of religion.

⁶³ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Report 129), at [5.124]

⁶⁴ MA (Oxf) LL.M (III), Professor of Law, University of Sydney.

⁶⁵ LLB BA LL.M PhD, Professor of Law, University of Queensland.

⁶⁶ Above n 3, at [5.111].

81. Similarly, arguments are often raised that organisations should not be permitted to pursue certain freedom rights, including religious freedom, if they are recipients of Commonwealth funding. This includes schools, public benevolent institutions, health and education bodies and so forth.
82. A legislative expression of this can be found in the *Sex Discrimination Act 1984* where aged care facilities which receive Commonwealth funding may not be run in accordance with religious convictions that run contrary to the non-discrimination principles of the Act.⁶⁷ In this way, religious exemptions are specifically revoked from such organisations.
83. The field of employment law is also the subject of derogations to religious freedom. Although the right would historically have granted religious organisations, in conjunction with the right to freedom of association, the ability to employ staff who share their convictions, pressure exists to bring about reform. An expression of this has recently been seen in Victoria where so-called “inherent requirements” amendments to the *Equal Opportunity Act 2010* (VIC) would see religious bodies (and only religious bodies, which are discriminatorily targeted by the amendments) stripped of their right to employ staff who share their ethos if it is not deemed an “inherent requirement” of the specific job in question.⁶⁸
84. A current example of the same can be drawn from the Northern Territory where the government is currently conducting a consultation on whether exemptions to the Anti-Discrimination Act in that state should be removed, stripping religious organisations of the right to employ staff that share their ethos.
85. These efforts to encroach upon religious expression sphere by sphere are concerning and have the effect of curtailing religious freedom. They do so under a paradigm that has shifted from one of human rights protection to the promotion of equality and non-discrimination as the matter of primary importance. They also do so in contravention of the permissible derogations to religious freedom at international law. None of these are “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”⁶⁹
86. The limitations are also hard to reconcile with judicial statements in Australia concerning the toleration of pluralism and diversity which underpins both religious belief and expression because religion is a fundamental part of people’s identity.⁷⁰

Vilification Laws

87. The regulation of speech has long been a fraught subject. The great English common lawyer, Sir William Blackstone wrote that “there can be nothing more equivocal and ambiguous as words” noting that “their meaning always depends on their connection with other words and things... and sometimes silence itself is more expressive than any discourse.”⁷¹
88. Attempts in Australian law to regulate speech beyond traditional limitations such as incitement to violence and defamation have been the subject of controversy with the Commonwealth Freedom of Speech inquiry⁷² and the consultation on the draft *Anti-Discrimination Bill 2016*

⁶⁷ Above n 61.

⁶⁸ See *Equal Opportunity Amendment (Religious Exceptions) Bill 2016* (VIC).

⁶⁹ *International Covenant on Civil and Political Rights*, Article 18(3).

⁷⁰ Above n 5.

⁷¹ William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1769, reprint 1983) Vol IV, 81.

⁷² Inquiry into the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) and related procedures under the Australian Human Rights Commission Act 1986 (Cth), Report available:

(TAS) each covering the issue of speech prohibitions that carry the low threshold of “offend” and “insult.”

89. Vilification laws with a slightly higher threshold along the lines of public acts that “incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people”⁷³ also exist in New South Wales, Victoria, Queensland and the Australian Capital Territory.
90. Regarding the low threshold of “offend” Hayne J of the Australian High Court has said:

*The general law both operates and has developed recognising that human behaviour does not accommodate the regulation, let alone the prohibition, of conduct giving offence. Almost any human interaction carries with it the opportunity for and the risk of giving offence, sometimes serious offence, to another. Sometimes giving offence is deliberate. Often it is thoughtless. Sometimes it is wholly unintended. Any general attempt to preclude one person giving any offence to another would be doomed to fail and, by failing, bring the law into disrepute.*⁷⁴
91. One problem that arises from the uncertainties around laws limiting speech is the tendency for laws limiting speech and conduct to be invoked in response to controversy rather than “hate”. The tendency is for people to label opinions with which they fiercely disagree as inherently “offensive” or “hateful” or similar and invoke laws designed to achieve legal intervention and punishment of those opinions.
92. This has implications for religious freedom because religious beliefs are often deeply and passionately held, and touch on matters of social and political controversy.
93. During 2016 the Catholic Archbishop of Hobart, Julian Porteous,⁷⁵ produced a pastoral letter outlining the Catholic church’s teaching on marriage. This was done in the context of an announcement by the government of a plebiscite on the matter. Martine Delaney, a transgender political candidate, lodged a complaint with Equal Opportunity Tasmania under the mechanism of the *Anti-Discrimination Act 1998*, alleging conduct that had caused offence. This mechanism has been the first step in a number of vilification and discrimination cases that have ended up in Supreme Courts.
94. Whilst the complaint was ultimately dropped by the complainant after 8 months, the uncertainty created by the complaint remains. It is uncertain whether the conduct of the Archbishop is unlawful given the difficulty inherent in understanding and applying the law with certainty.
95. The ongoing case of Cornerstone Presbyterian Church is a current example of conduct captured by the same law. The pastor, Campbell Markham, published blogs in the leadup to the marriage vote which outlined the church’s teachings on marriage and related matters. Another member of the church was engaged in evangelistic activities, distributing Christian literature and

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/FreedomspeechAustralia/Report.

⁷³ Extract from the *Discrimination Act 1991* (ACT), s 67A; compare *Anti-Discrimination Act 1991* (QLD) s 124A; *Anti-Discrimination Act 1977* (NSW) ss 20C, 49ZT, 38S, 49ZXB; *Racial and Religious Tolerance Act 2001* (VIC) ss 7, 8; *Anti-Discrimination Act 1998* (TAS) s 19.

⁷⁴ *Monis v The Queen* [2013] HCA 4, at [222] per Hayne J.

⁷⁵ Summary of the case available at

https://www.sydneycatholic.org/news/latest_news/2016/201656_413.shtml.

preaching in public. Both men are subjects of the complaint for their conduct. The matter is the subject of an application to the Tasmanian Supreme Court challenging its validity.

96. This has a chilling effect on religious expression without any clear justification in human rights principles. As former New South Wales Supreme Court Chief Justice, James Spigelman, has recently said:

*The freedom to offend is an integral component of freedom of speech. There is no right not to be offended... When rights conflict, drawing the line too far in favour of one, degrades the other right.*⁷⁶

97. Freedom of religion is one of the several rights that could be degraded by vilification laws of this type.
98. Comparable problems have also emerged, however, in relation to vilification laws carrying the higher threshold test.
99. The well-known *Catch the Fire Ministries case*⁷⁷ concerned a seminar on the subject of Islam given by two Christian pastors, Daniel Scott and Danny Nalliah on 9 March 2002. Three people of Muslim faith attended the seminar and lodged a complaint of religious vilification in response to what they heard.
100. On 17 December 2004, VCAT held that the pastors had breached the law, later ordering them to place newspaper advertisements worth \$68,690 summarising the findings of the case.
101. In August 2006 the appeal was heard by the Victorian Court of Appeal, which found that the law had not been breached and that it had been wrongly applied. The Court of Appeal judgement was handed down in December 2006. The time, cost and stress implications of the action were enormous.
102. Many other complaints with a strong political motive targeting opinion are made to the various commissions and tribunals charged with implementing these laws in New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory. Unfortunately, non-disclosure agreements normally feature where the complaint is resolved during mediation, so the true extent of the chilling effect on religion among other freedoms is very difficult to ascertain. Certainly large numbers of vilification complains are accepted by each.⁷⁸
- 103. Recommendation: The Expert Panel should find that prohibitions on speech that offends or insults is an unjustifiable limitation on religious freedom in Australia and, inconsistent with international human rights law.**

Case Studies

104. Several cases in which the Human Rights Law Alliance has assisted during the past two years demonstrate this phenomenon. Names have mostly been redacted in favour of pseudonyms at the request of the parties, but the cases are briefly stated here to demonstrate the threats to freedom of religion emerging in social, corporate and related spheres.

⁷⁶ James Spigelman, '2012 Human Rights Day Oration' (Speech delivered at the Australian Human Rights Commission's 25th Human Rights Award Ceremony, Sydney, 10 December 2012).

⁷⁷ *Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc* [2006] VSCA 284.

⁷⁸ Equal Opportunity Tasmania accepted 117 vilification complaints between July 2015 and June 2016. This is a very small jurisdiction.

105. The mechanism by which most cases are brought on is either through institutional codes and bureaucracies, or anti-discrimination and vilification laws.
106. This list is very much incomplete, carrying just a cross-section of the matters in which the Alliance has been involved.
107. If the Panel is interested in unredacted, more detailed summaries of these and potentially other cases, a strictly confidential supplementary report could be supplied under parliamentary privilege.
108. A student at a major Australian university was recently suspended for a minimum of six months and conditions imposed on his enrolment following two incidents. First, he prayed for a fellow student struggling with anxiety (with her permission). Second, in response to a direct question from a classmate, he indicated that he would be happy to be friends with a homosexual person although he “would not necessarily agree” with homosexual conduct. The grounds relied on for the action were that he caused the student to “feel unsafe.” He was verbally warned not to speak about religion on campus.
109. A teacher at a government school engaged in a debate on Facebook concerning same-sex marriage. He shared news articles in support and offered his own contrary opinion, which is one informed by his Christian convictions. He was insulted in the local media as “homophobic” and was placed under investigation for suspected breaches of discipline by the relevant Department of Education.
110. A Commonwealth public servant with a conservative and Christian cultural heritage was given an official warning and placed under further investigation for suspected breaches of discipline after expressing his views at work. He had expressed concern at the pressure being placed on staff to march in a “pride” parade and had asked to be removed from the internal “pride” newsletter mailing list as he found some of the content offensive to his sensitivities around sex and related matters.
111. When his Christian views became known to employees, the General Manager of a Melbourne digital services agency was challenged about the content of the safe schools program. He indicated his disagreement with the teaching, but affirmed his belief in tolerance and respect. He was summarily dismissed for his beliefs and later obtained a settlement for unfair dismissal.
112. A medical practitioner with honorary status at a major Australian university recently gave talks in a church and a school, carrying a Christian view on human sexuality and conduct, her area of professional expertise. The university and a professional association of which she was a member both received complaints. Her membership with the association was terminated, whilst her honorary status was retained after she received legal representation, though warnings were issued.
113. A Christian Western Australian couple with two of their own children applied to be foster parents of children under the age of six. Their application progressed without a hitch until they were asked to disclose their Christian views of sexuality and sexual conduct. A decision notice was issued thereafter, indicating their application to foster children was refused on the basis that their beliefs rendered it “unsafe” for children to be placed in their care.
114. A faith-based school operating according to Christian convictions around gender was recently the subject of a complaint to VCAT alleging transgender discrimination for not allowing a girl to wear a boy’s uniform (the allegation is disputed by the school). The complainant has demanded

the school adopt policies that contradict its convictions and donate money to a transgender group. The school is threatened with further legal action if they do not comply.

115. A woman who holds accreditation with a family counselling service gave a talk challenging the queer theory view of transgenderism and gender identity. She was the subject of complaints to the qualifying body and had her accreditation terminated.
116. A man who worked for a national insurance firm engaged in a forum on the company's intranet. Several had posted voicing their support for same-sex marriage. He voiced his opposition. The posts were deleted, and he received a letter from human resources indicating that he would have to attend a meeting at which it would be discussed, "what action should be taken up to and including dismissal." The proceeding was dropped after he obtained legal representation.
117. Two medical doctors who declined on conscientious grounds to refer two lesbian couples for IVF treatment, due to their religious convictions around family and IVF itself, were the subject of complaints to the Medical Board. One received an official warning whilst the other had the proceedings dropped after obtaining legal representation.
118. A children's party entertainer based in Canberra updated her Facebook profile image to include the official "it's ok to vote no" frame during the same-sex marriage postal vote campaign period. She was terminated immediately from her job by her employer who was upset by her religiously motivated views, alleging it would be unsafe for her to continue working with children.
119. Refer to paragraphs 93 and 95, above, concerning vilification cases against Cornerstone Presbyterian Church and Archbishop Julian Porteous for teaching Christian doctrine.
120. When discrimination norms over-reach in favour of certain attributes, or without regard to other human rights and freedoms, they derogate from the rights and freedoms of others in the community. This is often reflected not only in various legislation, but also in how those standards are reflected in various institutions and groups. Without protection for the religious and other freedoms of Australians, such breaches of human rights can go unaddressed.
121. It is our observation that such matters are becoming more frequent and more difficult to defend. This is due in no small part to debate and subsequent change to the law on marriage.
122. **Recommendation: The Expert Panel should investigate options for a Commonwealth law that provides redress to persons whose religious freedom has been infringed.**

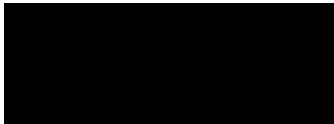
Same-sex Marriage

123. The controversial question of same-sex marriage and related issues of family, gender and sexuality are increasingly the cause of clashes between religious freedom and non-discrimination rights. This is the case because people of faith often carry deeply held traditional views on these matters which may be at odds with the recently amended Marriage Act and the various non-discrimination regimes as understood in the light of that amendment.
124. There are wide-ranging consequences that flow from the redefinition of marriage. Many cases will be provided to the Expert Panel from overseas jurisdictions. The Australian cases cited above in this submission demonstrate that the same appetite for litigation on this and related matters exists here also.
125. A summary of the areas in which religious freedom is impacted by same-sex marriage follows.

126. For many ministers of religion, it would be a violation of their conscience and/or sincerely held religious beliefs to participate in or perform a same-sex marriage. No minister of religion should therefore be compelled by law to solemnise any marriage.
127. Being a human right which accrues to the individual rather than merely an institution or denomination, this protection must be afforded to ministers regardless of their denominational affiliation or lack thereof. The same protection must therefore also be provided to civil celebrants.
128. Many businesses provide goods and services to the wedding, family and associated industries. This includes food supply, creative services, photography, venue hire, catering, event hire, event management, floristry, fashion, and any number of other services. These services may be provided to weddings, honeymoons, engagement events, anniversaries, babymoons, christenings, and others. Other businesses may be engaged in the family sector through fertility services, counselling, adoption and foster care among others.
129. Where a business is a small business operated by individuals with a genuinely held conscientious or religious belief about marriage and/or family, or where the business is a large business with governing principles that express a genuinely held conscientious or religious view about marriage and/or family, such businesses must be free to operate in accordance with those beliefs.
130. In balancing the rights of businesses and service providers against those of same-sex couples seeking services, it may be relevant to consider whether the product or service is available to the clients from an alternative provider.
131. Individuals who have a genuinely held conscientious or religious belief about marriage and who either express that belief or do or abstain from doing any act in accordance with that belief face discrimination on account of that belief.
132. It should therefore be unlawful to discriminate against any person either directly or indirectly, in employment, academic or trade or professional qualifications, engagement as a contractor, education, administration of government programs, membership of any group, provision of goods or services or facilities, or to subject to other disadvantage on the basis of a sincerely held conscientious or religious belief about marriage, family, sexuality and/or gender.
133. Many charities and non-profit organisations are operated according to a faith-based ethos. The values inherent in this ethos were the reason many were established, and are the reason many continue to function.
134. The ability of a charity or non-profit organisation to be established in accordance with certain values is essential to freedom of association and expression. Associational rights of this type must continue to be respected, regardless of any belief about marriage, family, sexuality or gender.
135. Importantly, their charitable status must be protected so that beliefs about marriage, family, sexuality and/or gender are not capable of being considered grounds for loss of charitable status.
136. Most associations in Australian society have certain rules of membership which may also comply with an organisational ethos, values or purpose. The existence of such organisations is protected due to freedom of association, whilst their ability to function as associations which uphold and share certain values is protected due to freedoms such as expression and speech.

137. The existence of such entities must be protected, including their right to maintain the ethos of members and employees.
138. It is also the case that those who have a genuinely held conscientious or religious belief about marriage, whether as individuals or entities, have been treated less favourably in relation to professional memberships and accreditations.
139. It should therefore be unlawful for any professional association, professional accreditation body, or professional standards body to deny or restrict registration or membership on the ground of, or to impose any condition on registration or membership that would have the effect of disadvantaging groups or persons who have a particular conscientious or religious belief about marriage, family, sexuality and/or gender, where such belief is not an inherent requirement relating to the very nature of the membership or accreditation.
140. The majority of these and other concerns were to be protected through specifically targeted provisions inserted into the Marriage Act 1961 by the 'Paterson Bill', proposed by Senator James Paterson in December 2017 as an alternative to the 'Smith Bill'.
141. **Recommendation: in light of the experience in other common law jurisdictions and the emerging experience in Australia, the Expert Panel should recommend that the amendments to the Marriage Act 1961 (Cth) proposed by the 'Paterson Bill' should be enacted as a discrete and targeted means to address the concerns around religious freedom that arise from the legislation of same-sex marriage.**

Yours Sincerely,



Martyn Iles
Managing Director
Australian Christian Lobby