

The Expert Panel
Religious Freedom Review
Department of Prime Minister and Cabinet
Submitted Online

Dear Panel Members,

As a person of strong personal faith and who has engaged at a personal and professional level with the policy questions arising from your review, I am grateful that our national government is conducting an investigation into the question of freedom of belief across all levels of government in the nation. It is a testament to our democracy and civil society that we have:

- (1) recently conducted a civil debate on a highly contentious matter, namely the definition of marriage, and
- (2) thereafter established an unrestricted review of religious freedom across all jurisdictions, something that few nations have genuinely undertaken.

I truly hope that this review either draws in, or instigates, state and territory governments to participate or reflect upon the way their laws and policies impact upon individual freedoms of conscience, belief and religion.

I encourage you to invite those jurisdictions to participate, and I also note the timing of this review. Whilst one could be cynical, I would simply urge that – as reviews often do – you extend your deadline and call for further submissions as it is unlikely, given the Christmas season, that a representative sample of well-formed submissions will be provided before your present 31 January 2018 deadline.

Before responding in detail to your terms of reference, I state a very important principle central to my submission today.

I have found it easiest and best to summarise my view as supporting a *religious free market*. It is my term for what I believe Australia has enjoyed until recent times as the *status quo*, though there are state-based exceptions in Victoria and Tasmania, and proposed in the Northern Territory. These stray into the alternative model I juxtapose in this submission.

In the marketplace of ideas, people who have faith convictions, no faith at all and everything in between, ought to have the right to address members of the public inviting them to subscribe to their belief system.

It follows from my religious free market principle that if your views, be they religious, atheistic or otherwise, require the force of law to support your beliefs, then the truth of your beliefs is on shaky ground. It says more about you as an individual, or the religious system in which you believe, that it requires the strong arm of the law to either enforce it, or protect it from criticism. State protection of religious systems demonstrates either insecurity about the inherent truth of the tenets of that system, or the privilege that system holds within the state (or both).

I believe that the truth and the faith that represents it will withstand scrutiny and indeed persecution in the present world and the world we are building for our children and descendants. Why? The truth is true. As such, whatever governments, police, courts, the media or others do, I know my faith will endure.

It must also be observed from historic reflection upon our Australian nation and the world in which we live, that the Christian faith upon which this nation was founded has been superior to all other belief systems throughout history and the world in providing that very religious free market of which I speak. This religious free market has been fought for with undeniable bloodshed and grief, but far less so than the systems of government outside of those with a Christian heritage. The leading jurisdictions in the world that provide religious freedom are those that were founded by Christians and/or upon a stated Christian ethos. One need only look at the serious and horrific religious freedom atrocities encountered in history, and today, in the Islamic world and in atheism-based communist regimes. As you review the question of religious freedom in Australia, you must look at the international historical experience and circumstances today. The Christian faith, in particular, is the most persecuted in the world and there are more martyrs today than in the times recorded in the Bible. Do not doubt for a minute that it cannot happen in Australia also. State-based regimes to regulate the expression of religion are the mechanisms used in the past and present to produce horrific ends, even under an atheist or so-called 'secular' governmental belief system.

The only possible alternative to the 'religious free market' we have largely enjoyed in Australia (as section 116 of the Constitution rightly prevents a state religion) would be a 'regulated religion regime'. The closest analogue we have to such a regime is in the state of Victoria, which bans words and actions that might offend, insult or cause other harm to persons of religious belief. The Victorian government may dispute that their regime establishes or protects, say, a secular religious worldview. However, it bans the expression of views that might offend persons of other faiths. It stifles speech to an extent that the state-sanctioned view is that some views must never be publicly uttered and, as such, at least establishes a secular dominance banning some other views, if not an atheist regime where it is deemed better there is no

public expression (or God forbid, private adherence) to any religion at all. It is simply impossible to prevent religious offence, on one hand, and allow the unfettered public exposition of every belief of that religion, on the other hand. Someone of religious belief will be offended, and someone will need to be prosecuted. So the options are to not have a religious free market, or a regulated religion regime where it is the present or future reality that a certain view of the world is protected ahead of all others who are regulated by that regime.

A 'regulated religion regime' sounds promising in a Western context to some of the Christian faith. However, the essence of that regime is replicated in the Islamic world and religious freedom is highly restricted. Just ask those in prison in those countries (not to mention those executed) for doing nothing more than holding a religious belief.

What is good for the goose must be good for the gander. Principles hold value because they work universally, not in one half of the world but not the rest. If Western nations like Australia prefer and apply with force a regulated religion regime, they are saying to the Islamic world, you may regulate religion in a similar manner, preferring your own religion of choice. Islamic nations, unlike us, have no section 116 of the Constitution to hold them back and, in sharia law, no inhibition about imposing that regime on all people within their nation, whether they like it or not, whether they must use brutal or lethal force to impose it or not. Cast out of your mind that pontifications at the United Nations will halt religious freedom abuses in Islamic countries. Those countries have captured the UN Human Rights Council to silence criticism (and indeed spend most of their time criticising the nation their religion demands must be eliminated, namely Israel).

No, Australia must try another way – a better way – namely, leading by example.

Finger-wagging at nations that abuse human rights, particularly religious freedom, will not help. We must lead by example. Refugees are desperate to get to countries like Australia because their freedoms are not upheld at home. We can not promote a domestic policy that can not be applied in refugees' home countries to uphold freedoms and stem the refugee tide. Any regime that regulates religion picks a favoured orthodoxy and every time, Islamic regimes will pick Islam where we might use our model to pick secularism, atheism or an enucleated version of Christianity.

To be clear, for your review or our nation to propose a domestic, regulated religion regime would also play into the hands of sharia law advocates and their foolhardy co-belligerents in the political left. In a regulated religion regime, Islamists in Australia will be quite justified in saying that if it is an actionable offence to insult, offend, humiliate or intimidate someone for holding a Christian belief (e.g. in Victoria), then the same must hold for those behaviours towards a person of Muslim belief. They have already done so in one celebrated case in Victoria some years ago

at great personal cost to the Christian pastors who were setting out their research on Muslim belief.

To establish regulated religion regimes is to also take before the Courts (or the unaccountable and partisan 'tribunals') the question Pontius Pilate put to Christ 'What is truth'? It invites the taxpayer to fund religious police, namely people who are 'experts' in Christian, Muslim, Hindu or other beliefs to determine whether the belief claimed by claimant or respondent are validly held beliefs. The state begins to form precedent and views on what are, or are not, validly held beliefs and in so doing, a state-endorsed 'orthodoxy' or dare I say 'religion' develops. Have we fallen so far into civil disrepair that governments reinstate the religious police of first century Roman Palestine, or indeed the very religious police active in many Islamic countries today?

Religious belief or faith is most dynamic when it is open to free question and debate. It was within this context that Jesus himself and, notably, St Paul, engaged in public debate, expressing views that some hearers deemed insulting, offensive, humiliating or intimidating. Some even tore their clothes and poured ashes on their heads. Pray, how would Jesus' statement be interpreted today that he would 'destroy this temple, and in three days raise it up?' In the gotcha, trigger-happy modern social and traditional media environment and the developing culture of religious regulation, Jesus would have been branded a terrorist and most likely crucified much sooner than he ultimately was (by, I note, a religious system in cahoots with the Roman state).

I accept that the Christian faith has grown fastest in places where it is persecuted most strongly, commencing from its inception within the Roman Empire. Communist Russia is a horrific historical example, whilst China still represses religious freedom, as do parts of the Islamic world.

As a father and potential grandfather who believes nothing is more sacred to give your child than your faith, I am appalled to think that Australia, a federation of states who united in 1901 'humbly relying on the blessing of Almighty God', could become a nation that regulates religion and empowers Christian persecution. I would not be a good father if I did not seek for my descendants the same freedoms that I myself have enjoyed. I am happy myself and for my children and descendants to be publicly challenged and even ridiculed for our beliefs. To have 'the book' thrown at them for their beliefs is a bloody bridge too far.

I can not state strongly enough my warning that it is the wrong path for your review to determine that we ought to replicate 'religious discrimination' laws from states like Victoria as the 'solution' to concerns about religious freedom.

To borrow from *Star Wars*, as Admiral Ackbar said, "It's a trap."

In fact, it is no laughing matter. The Victorian model is an invitation to persecute people of Christian belief because, as night follows day, they are who those regimes are turned against.

Mimicking freedom-stifling laws like those in Victoria is the opposite direction to which Australia should be going.

So, too, is the foolhardy proposition that we must codify treaty text in our law as a means of defending religious freedom. Similarly reckless is the proposition that Australia needs a 'Bill of Rights'. Flee from such folly. These are merely vehicles for attacking Australian sovereignty and the very freedom you are asked to protect.

The source of much treaty-making, the United Nations, has long stopped representing the domestic values and common sense of Australians. It has not prevented wars and genocide, as it was set up to do. It no longer serves its purpose.

A directionless, vain United Nations has been co-opted as a vehicle for activists to push increasingly aggressive:

- (1) alleged emancipation campaigns for speculative minorities, or
- (2) causes that the UN, itself, never has to pay or be accountable for,

leaving the consequences, bill and mess at the feet of sovereign nations like Australia.

I regret that amendments proposed by some during the debate on redefining marriage were based on the 'treaty-making' proposition. I do not support this approach. To do so is to further erode not only Australian sovereignty but that of states, territories and families.

Any advocate for a treaty-codifying 'internationalist' approach is implicitly saying two things:

- (1) they 'trust' a government of one complexion to responsibly use such powers to protect religious freedom, and
- (2) they implicitly accept (for they will not admit they cannot foresee) that a government of a different complexion might foreseeably use such power for irreparable harm to personal freedom and liberty.

Treaty codification is a H-bomb to freedom and once it is dropped, mutually assured destruction of freedom is certain. It is entirely foreseeable that the expanding number of genders and sexualities will be given the imprimatur of treaties conceived or backed by the United Nations. Those treaties will then impose new obligations and restrictions via codification – if not by default – on the Australian populace. Do not fall into the wistful belief that codifying one 'freedom' or 'right' protects it forever. Not only can future parliaments change that codification, but other 'rights' might be

interpreted to trump that right – or indeed new ‘rights’ might trump your cherished right.

Laws can not change hearts. If a right is valuable, it is respected by the population and promoted by its leaders. Rights do not need codification, they need acceptance and defence by civil society.

So, then, thoughts may turn to constitutional protection, such as a bill of rights. Bills of rights are designed for infant or failed nations where rights have been trampled in the past – not in strong, free democracies like Australia. Such constitutional amendments or adjuncts are also vehicles that crash through the constitutional separation of powers between the judiciary and legislature. A court’s interpretation of a bill of rights is ultimately informed by international law and treaties regarding the same right described in the bill of rights. Judicial interpretations become court-made law, which is beyond what the rule of law permits or contemplates. Our judges are not elected (nor should they be) and serve for long tenures that end by their own choosing or retirement age for good reason – they are not accountable to the public for the decisions they make, only to the rule of law. Courts must not make law, legislatures should: only they are accountable to the public for their law-making.

One may point to the Western example of the United States of America’s bill of rights, particularly the First Amendment, to say such is apt to preserve religious freedom in Australia. The American bill of rights was established at the same time the first fleet landed in Botany Bay, seeking to prevent the abuses that caused the grievances leading to the civil war against Great Britain. The conventions and founding fathers who drafted our constitution had the benefit of over 100 years’ observation of America’s bill of rights and turned askance from establishing the same when framing our founding documents. Arguably, section 116 of our Constitution was informed by the framing and application of the First Amendment yet it is interesting to note that section 116 is not as prescriptive as the First Amendment and the states did not refer power over religion to the commonwealth to apply section 116 to the state context – a point I will return to later.

A bill of rights is not the solution - look at this year’s Australian debate on marriage to see the way the public have accepted an outcome they participated in via postal survey, enacted soon thereafter via the legislature. In the USA, by contrast, a Supreme Court ruling *Obergefell v Hodges* settled the same question conclusively – notwithstanding the First Amendment provisions regarding freedom of religion. There has been immense civil discord in the USA ever since.

For the sovereignty of our nation and for the sake of all freedoms here, you must resist any submissions asking you to codify treaties or a ‘bill of rights’ in our nation.

This brings me to a question I encourage your review must consider and determine, and that is the question of whether it has been an error for the states not to have protections for religious freedom of a nature similar, say, to the First Amendment in

the United States. If I am not mistaken, states have almost unfettered capacity to regulate religion. It may be attractive to some (although unrealistic) to suggest your review should recommend that states codify protections for religious freedom in their constitutions. I would love to see the debate. My own view on that matter, though, is that for over a hundred years we have seen civil society respectfully handle and protect religious freedom without states enacting constitutional protection. That is not to say that society will not disrespect religious freedom in future, and I could be convinced of the case for state constitutional change. However, I can not presently see past three propositions I have made already:

- (1) Laws do not change hearts, we need to build civil society to respect rights and freedoms;
- (2) The First Amendment did not prevent *Obergefell v Hodges*. Great thought and debate would need to be given to what such a state-based constitutional protection said, and what ills it was designed to prevent – and even so, it may still fail to protect religious freedom; and
- (3) State constitutional change is also highly unlikely and, sadly, public respect for religion is at such lows, it is proximate to public disdain for politicians. Mounting a campaign to protect ‘religion’ is not likely to be electorally popular. Yours, however, is not a review to consider what is politically achievable, but what is desirable to preserve freedoms. I look forward to reading your deliberations and findings on this question.

I now conclude by explaining how I believe a continuing religious free market should work, in the form of recommendations.

Do not be put off by the phrase ‘free market’, if that somehow triggers political preconceptions or revulsion. All short-hand descriptions fail at some level. As I say, it is my term for what has largely been Australia’s *status quo*.

Look at it this way: at the time of writing in 2017, almost every Australian citizen holds a video and audio recording device in their pocket, and the means to publish the same live to the whole world. Have we so little faith in the media, and indeed citizen journalists using their smartphones? Think, for instance, of a couple recent instances where a race-based rant on public transport was captured by other passengers and published online. The offenders suffered greater public scorn and shame than any court could impose. Your statements can be recorded and broadcast the moment you open your mouth. Indeed, unless you have deactivated the new default setting, your smartphone is probably recording what you say, converting it to text and filtering the content you see on your phone apps based on what you talk about. No doubt smartphone features are linked with Australia’s intelligence apparatus to detect dangerous speech and plans to commit actual physical violence, and triggers further surveillance or arrests as a result. Whatever regime you recommend could conceivably be enforced using such surveillance methods in future.

A street preacher has to be prepared to see his preaching go around the world via a listener's smartphone. Indeed, he or she would be well advised to record their own preaching to prevent misrepresentation of what they preached.

We do not need state apparatus to prevent hurt feelings, bruised beliefs or misrepresentation of statements. The live publishing capability of every citizen already serves a sufficient deterrent (if general common sense and decency is not enough) to prevent personal offence or insult. Indeed, one could argue that Twitter alone is a global continuous debate and court of public opinion on belief and conscience. We do not need the state to duplicate this system.

Recommendations:

1. **Repeal all state and territory laws that make it unlawful to discriminate on religious grounds.** Religion should have nothing to fear from debate and beliefs being challenged.

2. **Repeal all federal, state and territory laws that make it unlawful for persons or organisations to discriminate on sexuality grounds, when they are doing so based on their conscience or religious conviction.** In other words, codifying state-based exemptions to sexuality discrimination for people of conscience or belief. Faiths held by the majority of Australians and indeed billions worldwide have clear views on sexuality. Careful thought will be required on how to achieve such exemptions now that marriage has been redefined. In the eyes of many people of faith, same-sex unions are not acceptable within that faith system. Those who seek to redefine millennial religious teaching to accommodate new views on sexuality will not prevail. There will always be, no matter how small their number, adherents to those faiths holding orthodox views and they are entitled to act upon their beliefs. Let the internal contests of those religious systems thrash that out and leave the state out of it. The state must not be a cheerleader for progressive religion as, by implication, they would also be required or called upon sooner or later to prosecute orthodox religion. If we uphold free speech, those who find sexuality discrimination abhorrent have access to the internet, social media and traditional media to express their views about the matter. They did so in great numbers during the recent marriage debate, during which – so far as I know – not one person had to be prosecuted under the ill-conceived temporary speech-restriction regime for that debate. Trust the public to respond to faith-based or conscience-based sexuality discrimination, naming and shaming if they wish, and leave the strong arm of the state out of it.

3. **We must not permit gender discrimination laws to be co-opted by advocates for the exploding number of new 'genders' to target people of religion, belief or conscience.** Gender anti-discrimination sought to exclusively improve respect for *women* in our society. Laws regulating discrimination

based on gender are being extended by transgender and other activists to further restrict the freedom of those whose religious beliefs dictate that there are truly only two genders, male and female (aside from the miniscule minority of medical cases where this is ambiguous). Faith-based convictions on third and other genders must also be respected and thereby, similar reforms to those proposed in recommendation 2 require consideration.

4. **Repeal the powers that permit partisan Commissions and their Commissioners** initiating, encouraging or running complaints under federal and state-based 'anti-discrimination' regimes. The Human Rights Commission and state Equal Opportunity Commissions have shifted affirmative action to affirmative lawfare. Complainants bear no impost or challenge other than to send an e-mail as I have today, and the Commissioner does the rest in their self-styled 'tribunals'. Meanwhile a respondent must obtain legal advice, engage legal counsel and potentially bear the public shame of being subjected to a complaint that might never be tested in a genuine court of law. It is highly offensive for advocates for these regimes to shrug their shoulders, smile and say 'but the complaint was withdrawn, so nobody was hurt'. Archbishop Porteous and Pastor Campbell Markham, both from Tasmania, ought to be called as witnesses to your inquiry. If a complaint is genuine, the complainant must engage in some effort and personal cost in doing so. I hasten to add (as I have heard it proposed in some places), that it is ridiculous and dangerous to have regimes where
 - (a) no person need actually have been insulted or offended, but the commissioner (or some other 'complainant') can initiate a complaint about certain statements or behaviours anyway; or
 - (b) a complaint can continue even though a complainant has elected to withdraw the complaint.
 Neither of these scenarios should be allowed to occur in a nation that respects the rule of law, the right to a fair trial and an impartial justice system. The rule of law has, until recently, required a plaintiff to make their case at their own initiative unless it is a criminal matter, in which the police prosecute in the interests of public safety and justice. Anti-discrimination regimes are taking an increasingly criminal, not civil, justice approach without the civil rights protections usually attendant in the criminal system.
5. If the present activist, freedom-affronting and quasi-criminal Commission regimes are to continue, the legislature must codify that the executive will **fund the defence as well as the prosecution**. A federal inquiry should receive this recommendation as uncontroversial given this has been the approach on recent High Court questions testing section 44 of the Constitution. If a member of parliament's eligibility to sit (notwithstanding the disclosures they made, when running for office, that they were eligible) is of such public benefit that taxpayers bear the legal cost of both sides of the case

(not to mention the attendant cost of running a by-election if the MP loses the case), how much more so should the state underwrite test-cases on freedom? I emphasise, my preference is – as stated in recommendation 4 - to curtail the affronts to the rule of law in the way these Commissions operate but, failing that, my fall-back position is to mandate state undertakings as to legal costs for both parties.

We must not permit the apparatus of government, particularly its police force and justice system, to become enforcers of a state-sanctioned view of the proper expression of religious belief. If states and nations do so, people of religious convictions that are contrary to the state-sanctioned view will be among the first crushed under that boot-heel.

The public, embodied by civil society, are well able in the post-modern age to self-regulate the expression of belief and opinion.

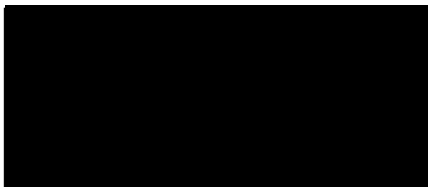
Only where words and actions have the genuine potential to cause serious and likely imminent physical harm should the state get involved in regulating public statements and debate, through the criminal justice system (as has been the case for centuries). Indeed, national security apparatus and current proposed laws serve well enough to address threats to national security and human safety without the need to further regulate speech.

We cannot pay lip service to free speech, we must uphold it.

My faith in our nation and people like yourselves - whom I trust to have strong character and conviction - might well be shaken by your recommendations.

My faith in the loving God I believe in will never be shaken.

God bless you as you gaze at the Gordian knot our government has asked you to untangle. If, like me, your beliefs are unshakable, you will have the courage to make and advocate for the recommendations that will set Australia as a beacon and righteous model for religious freedom for the whole world.



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