



Religious Freedom Review Submission

A submission to the Religious Freedom Review from the Humanist
Society of South Australia Inc.

CONTENTS

1	Executive Summary.....	3
2	Introduction.....	5
3	Discussion.....	6
3.1	Religious freedom.....	6
3.1.1	Individual rights.....	6
3.1.2	‘Religion and belief’ in international law.....	6
3.1.3	There is no ‘Hierarchy of Rights’.....	7
3.2	Avoiding harm and protecting dignity.....	8
3.2.1	LGBTIQ+ community.....	8
3.2.2	Aboriginal and Torres Strait Islander People.....	9
3.2.3	Religious education in publicly funded schools.....	11
3.2.4	Religious chaplains in Australian Public Schools.....	12
3.3	Current religious exemptions.....	13
3.3.1	Sex Discrimination Act Exemptions.....	13
3.3.2	Tax Exemptions.....	16
3.3.3	Exemptions to the Equal Opportunity Act (Victoria).....	16
3.3.4	Blasphemy laws.....	17
3.4	Religious discrimination in Australia.....	17
3.5	Medical treatment.....	17
3.5.1	Contraceptive and reproductive services.....	17
3.5.2	Medical treatment of minors.....	19
3.5.3	Genital mutilation of minors.....	19
3.6	Royal Commission into Institutional Responses to Child Sexual Abuse.....	20
3.7	Australian Bill of Rights.....	21
4	Recommendations.....	22
4.1	Marriage.....	22
4.2	Medical Treatment.....	22
4.2.1	Contraceptive and Reproductive Treatments.....	22
4.3	Child Protection.....	22
4.3.1	Child Sexual Abuse.....	22
4.3.2	Genital Mutilation.....	23
4.4	Education.....	23
4.5	Religious Organisations.....	23
4.5.1	Welfare and Service Providers.....	23

4.5.2 Employment.....24

4.5.3 Charities24

4.6 Australian Bill of Rights24

5 Conclusion.....26

6 Endnotes27

1 EXECUTIVE SUMMARY

In 2015 the Australian Law Reform Commission (ALRC) looked at whether there were any Commonwealth laws that infringed upon freedom of religion. The ALRC report found that there are no Commonwealth laws that ‘significantly encroach on freedom of religion in Australia’.¹ The Australian Law Reform Commission is a federal agency, filled with legal experts whose job it is to make determinations of this kind, after investigation at the behest of the government. If they found there are no laws that infringe on freedom of religion, then SA Humanists agrees fully with their findings.

When reviewing international treaties which have – to a large extent – codified the human rights that are accepted by a majority of nations, we find that there is no established hierarchy of rights. That is that no one individual right automatically holds precedence over any other. It is from this position that SA Humanists argues that it is not appropriate for the Australian Parliament to decide that one individual right is more deserving of explicit protection in law than another.

The issue of competing rights is most prominent in two issues, the first being the right of an individual to dignity and to be free from discrimination. This issue is of importance now in Australian society after the legalisation of marriage equality. However, the short period of time that marriage equality has been legal, and the history of case law prior to its legality demonstrate that there is no interest in forcing religions to officiate and provide their amenities to couples they believe cannot be married in their faith. This is demonstrated by the complete lack of individuals who have been divorced seeking to force a Catholic priest to perform a wedding ceremony for them.

The second issue of competing rights concerns minors and their right to bodily integrity and to grow up to be a healthy and intact adult. The bodily integrity of female minors is currently protected by law through the banning of female genital mutilation no matter what the faith or cultural beliefs of the parent or legal guardians. This same protection is not provided to male minors who are still subjected to ritualised genital mutilation, more commonly known by its sanitised term of ‘male circumcision’. Whilst there can be medical reasons to carry out the procedure on a minor at a doctor’s recommendation, in general, procedures that cause damage or change to a minor’s genitals should be banned unless medically necessary. Such a ban allows the individual to decide for themselves once they attain the ability to decide for themselves.

SA Humanists also find that there are many aspects of society that give undue privilege to religion to the detriment of others. In the provision of health services to women and LGBTIQ+ people, religious health providers are currently able to withhold medically necessary treatments from patients in their care which, in at least one case cited, led to complications that would not have arisen in a secular health provider.

These privileges for religious organisations also extend to their employment practices, no matter the job role. Consequently, due to them being one of the largest employers of people in the caring professions (teachers, health practitioners, social workers, etc.), they are allowed to fire individuals based on factors an ordinary secular organisation in the same field would not. This has the effect of causing harm and a loss of dignity for individuals that find themselves in these situations.

Another aspect of religious Freedom that is of particular importance to SA Humanists is that Aboriginal and Torres Strait Islanders’ belief systems and culture be afforded the same status and treatment as any other organised religion or religious belief. Just because there are neither codified books, nor an organisation does not mean that the beliefs of indigenous Australians are any less important and in need of protection under the concept of religious freedom. For example, whilst the Australian parliament would have no interest in forcing the Catholic Church to include women in its priest hood, the exact same situation should apply to the tradition of men’s and women’s business. It is entirely up to those who hold the beliefs to decide how those beliefs should be manifested.

SA Humanists recognise that in a multicultural society such as Australia it is important that there are adequate provisions to ensure that people can practise their religion or belief; whether that be theistic, non-theistic or atheistic, but most

vitality that any practice of religion or belief does not infringe upon the fundamental human rights of others. We believe that Australia will be a better place for all people by implementing an Australian Bill of Rights, so all rights can be fully protected.

Consequently, SA Humanists make the following recommendations:

1. Marriage

- 1.1. No changes regarding exemptions for religious ministers nor organisations are required to allow them to continue manifesting their religious beliefs.

2. Medical Treatments

- 2.1. That all hospitals and health treatment facilities that take public patients be required to offer all forms of medical treatments as would be appropriate for a facility of its funding and equipment level and where such treatment might be not available to ensure that a patient is transferred to a facility where it can be provided.

Or

- 2.2. That a compulsory code of practice (or similar) be implemented for all hospitals and health facilities claiming religious exemptions for refusing to offer certain medical treatments (such as terminations) to:

- a. Be required to make that information known to its patients;
- b. Ensure that a patient requiring a treatment not offered is transferred to an appropriate facility where it can occur;

And that if a patient develops complications as a direct result of non-compliance then the facility or health practitioners are held culpable for the complications.

3. Child Protection

- 3.1. That all recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse be implemented in full and that Governments withstand pressure and ensure that all people in positions of authority are made mandatory reporters, no matter their religious objections.
- 3.2. That the ritual mutilation of any child's genitals be expressly banned in the way that female genital mutilation is currently.

4. Education

- 4.1. That Special Religious Instruction in government schools be conducted during non-teaching hours such as lunch or before or after school.
- 4.2. That the exclusively religious position of school chaplain be removed or at least opened to non-religious workers.

5. Religious Organisations

- 5.1. That any religious organisation involved in the delivery of services and welfare to the public be expressly forbidden from discriminating based on its own beliefs and from proselytising during service delivery.
- 5.2. That current employment exemptions for religious organisations be wound back to only encompass roles which require an employee to be an active participant in the faith; or that any role that is subject to such exemptions be clearly advertised as such.
- 5.3. That religious organisations not be granted charity status for the sole purpose of advancing religion or that such organisations be subject to the same reporting requirements as non-religious organisations

6. Australian Bill of Rights

That an Australian Bill of Rights be enacted to ensure that Australians, parliaments and courts have a firm framework in which to assess possible conflicts and breaches of human rights, including the right to freedom of and from religion.

2 INTRODUCTION

This submission has been produced by the Humanist Society of South Australia Inc. (SA Humanists) in response to the call from the Freedom of Religion Review set up by Prime Minister Turnbull.

SA Humanists are a not for profit incorporated association under South Australian law and have charity status under the Australian Charities and Not-for-profits Commission. SA Humanists first formed in 1963 as part of a global movement in reaction to the horrors seen during World War II and the desire to help ensure that these atrocities would never again occur. This Humanist movement has since grown into a fully developed life stance which embraces Reason, Evidence and Compassion as being the three main ways to live a better life for ourselves and those around us. Humanists recognise that because we have such a profound ability to affect the environment – both positively and negatively – we have a responsibility to ensure that the planet and all living on it can continue living and thriving.

SA Humanists believes that the basic right of all people in Australia to realise their full potential and participate fully in society can only be achieved when all people, whatever their backgrounds, ethnicity, creed, religion, colour, orientation, or nationality receive equality of opportunity and treatment in all areas of life. It is from these positions that SA Humanists writes its submission: that all humans are deserving of respect; all humans have a responsibility to not cause harm to others; and to, where possible, lessen the harm caused.

This submission is structured to discuss six general areas regarding religious freedoms, individual rights and discrimination.

1. Religious freedom
2. The need to avoid harm and protect dignity (particularly for LGBTIQ+ and Aboriginal and Torres Strait Islander individuals)
3. Current Exemptions that exist in law
4. Medical Treatment
5. The Royal Commission into Institutional Responses to Child Sexual Abuse
6. An Australian Bill of Rights

The interplay between competing rights such as the right to manifest ones' religious beliefs and the right to be free from discrimination are explored with reference to international law and treaty, and social precedent and acceptance.

The evidence presented in these broad areas of discussion are then used to make concrete recommendations that the Government or Australian Parliament can implement to improve the state of Human Rights in Australia. These recommendations fall into six areas of responsibility:

1. Marriage Law and associated exemptions
2. Medical Treatment of adults and children
3. Child Protection
4. Education
5. Religious Organisations covering welfare and service providers, employment and charity status
6. Australian Bill of Rights

3 DISCUSSION

3.1 RELIGIOUS FREEDOM

From a historical perspective, freedom of religion has been used to refer to the tolerance of different theological systems of belief, while freedom of worship has always been defined as freedom of individual action. So religious freedom means that an individual can believe and worship, or alternately, practice freedom from belief and worship, as they wish without oppression. They can change their beliefs or their religion at any time; and they can associate with others to express their beliefs.

Religious freedom is not the right to interfere with others' rights to manifest their beliefs, nor a right to discriminate against other people. Religious freedom is not the freedom, based on one's own religious beliefs, to refuse services to others, to denigrate others, to restrict the civil rights of others, or to force your own beliefs and practices upon them. As the High Court has held, 'General laws to preserve and protect society are not defeated by a plea of religious obligation to breach them'.²

3.1.1 INDIVIDUAL RIGHTS

Both historically, and in the rights outlined in international instruments these are rights of individuals; as such, they are not applicable and should not be applied to organisations or institutions. The only exception to this is the rights of Indigenous peoples, who have the right to pursue their human rights as a collective under UNDRIP.

Despite these being individual rights, we have the strange situation in Australia where religious exemptions only seem to apply to religious organisations and not to individuals. Individuals can access some protections, but not the exemptions allowing them to discriminate based on their own personal beliefs.³

SA Humanists believes that the present situation goes against the intent of history and international law. Therefore, all religious organisations and institutions should be removed from being able to access the protections offered by the current exemptions to the discrimination laws.

3.1.2 'RELIGION AND BELIEF' IN INTERNATIONAL LAW

Article 18 of the UDHR, Article 18 of the ICCPR and Article 1.1 of the Elimination of Intolerance Declaration all use the expression 'freedom of thought, conscience and religion'. However, and importantly, the phrase 'or belief' is also used in these instruments, with the drafting history of the Elimination of Intolerance Declaration indicating broad agreement that 'religion or belief' encompasses theistic, non-theistic and atheistic beliefs.⁴ These interpretations are broad enough to encompass the many, varied belief systems, and to include the spiritually prominently found in Aboriginal and Torres Strait Islander belief systems and religions.

The UN Human Rights Committee have adopted a broad interpretation of 'freedom of religion or belief' as covering freedom of theistic, non-theistic and atheistic beliefs and freedom not to subscribe to any of these beliefs.⁵ The Committee have stated upon the scope of 'religion and belief' in relation to the ICCPR Article 18

*'The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.'*⁶

Additionally, the Committee has pointed out that the ICCPR 'does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice'.⁷ These freedoms are protected unconditionally and without hierarchy.⁸ United Nations Rapporteurs have also taken the view that 'religion or belief' encompasses theistic, non-theistic and atheistic beliefs.⁹

'Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.'

Any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community would be of concern.’¹⁰

The High Court has also noted that ‘the guarantees in s 116 of the Australian Constitution would lose their character as a bastion of freedom if religion were so defined as to exclude from its ambit minority religions out of the main streams of religious thought.’¹¹ Whilst the Australian Constitution does give the Commonwealth power to make laws with respect to external affairs, it must be remembered that this head of power only enables the Commonwealth to make a law implementing an international treaty provided the law gives effect to the terms of the instrument in a reasonably appropriate and proportional way.¹² Therefore the term ‘religion and belief’ must be implemented in the broadest possible manner.

3.1.3 THERE IS NO ‘HIERARCHY OF RIGHTS’

Freedom of religion and belief has never been unconditional. It is just one of a larger body of human rights and any consideration concerning an individual's right to religious freedom or belief must certainly examine acceptable limits on its expression in so far as it adversely impacts others’ rights.

‘There is a wide range of justifications advanced for laws that interfere with freedom of religion, including, but not limited to, protecting people from discrimination in public life, preventing a greater harm, and limitations where laws directly interfere with other legal rights and freedoms.’¹³

The United Nations Human Rights Committee has made it very clear that all human rights need equal protections and that the unconditional protection of freedom of religion and belief do not apply to manifestation of religion or belief which may be made subject to limitations for defined purposes under both the ICCPR and the Elimination of Intolerance Declaration. In relation to ICCPR Article 18, they have stated that

‘Limitations may be applied only for those purposes for which they are prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.’¹⁴

In the 1998 Human Rights Commission report on Article 18 of the ICCPR, Chris Sidoti wrote that

‘The scope of the state’s power to restrict or influence religious expression must be consistent with both the right to manifest religion or belief and the permitted limitations on that right. In determining the scope of permissible limitations clauses, states should proceed from the need to protect the rights guaranteed under the ICCPR, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26, notably including religion.’¹⁵

He continued to point out that only fundamental aspects of religious belief should be considered for protections, not merely permissible aspects, by elaborating that

‘The importance of this distinction gains added weight in the context of article 18.3 of the ICCPR. Article 18.3 allows limitations on the manifestation of religion or belief where they are necessary to protect public safety, order, health or morals and the fundamental rights

*and freedoms of others. Clearly it is difficult to argue that laws necessary to protect fundamental rights and freedoms and the other important social interests listed in article 18.3 should be overridden by practices which are permissible but not essential or fundamental to religion or belief.'*¹⁶

SA Humanists would also like to point out that when looking at 'religious beliefs' a careful distinction must be made between what is a genuine 'religious conviction' and what is a 'cultural conviction'. The nature of religious belief also means that adherents of differing beliefs believe things that are directly contradictory to each other. While some may believe in the inherent 'sinfulness' of a LGBTIQ+ individual, another may believe that those same people are created that way by their deity to teach about tolerance, acceptance and love for their fellow human. It would seem difficult to justify discrimination based on sexual orientation as being a 'religious conviction' of Christianity when many Christians do not seem to have a religious basis within their faith communities of exclusion of members based on sexual orientation. Importantly, there is a considerable difference between having the 'freedom of religion' to believe that LGBTIQ+ people are inherently 'sinful' and the manifestation of that belief into an action that deliberately discriminates against such persons.

3.2 AVOIDING HARM AND PROTECTING DIGNITY

For many years, the notion of religious freedoms in Australia has been fiercely contested 'in the extent to which it is lawful for religious groups to discriminate' through the operation of 'religious exemptions' in anti-discrimination legislation, most notably those in relation to gender.¹⁷ It would appear that having such broad religious exemptions would be in direct defiance of the Covenant on the Elimination of Discrimination against Women (CEDAW).

Whilst religious exemptions do affirm the importance of the right to religious liberty, which is protected by numerous domestic and international legal instruments,¹⁸ religious exemptions to anti-discrimination legislation seem to place the values of religious freedom and equality into conflict. As Andrew Altman notes, 'claims of religious liberty are frequently made by persons who wish to engage in activities that appear to amount to discrimination.'¹⁹ This leaves the unenviable task to governments and the law to attempt to maintain a balance by 'restricting ... liberty for the sake of upholding, perhaps even promoting, equality'.²⁰

The right to religious freedom and the right to live free from discriminatory actions and behaviours have often come into conflict.²¹ In requiring both sides to argue which particular right should be given greater freedom, the present gender based anti-discrimination legislation entrenches this appearance of direct opposition of these rights. The Racial Discrimination Act 1975 (Cth) finds balance in a much more non-conflicting way by legislating against acts that are likely to 'offend, insult, humiliate or intimidate',²² but providing for broad public interest-based exemptions.²³ In this way, it manages to sustain a balance between robust public debate, and the need to protect marginalised or disadvantaged groups from hate speech²⁴ on a case-by-case basis.

SA Humanists advocates that any exemptions in any other anti-discrimination legislation follows the Racial Discrimination Act example of being a broad and public interest based adjudicated on a case-by-case basis. Due to the history in Australian society of discrimination and marginalisation, SA Humanists believes that – in addition to protecting the human rights of women – there are two specific marginalised minority groups that are in need of 'special consideration' when it comes to the balancing of fundamental human rights. These groups consist of Aboriginal and Torres Strait Islander peoples, and the LGBTIQ+ community.

3.2.1 LGBTIQ+ COMMUNITY

Personal gender identity and sexual orientation is 'complex and multifactorial, involving genetic, hormonal, psychosocial and other contributing factors'.²⁵ It is not a mental health issue,²⁶ or 'lifestyle choice'. However, discrimination remains a critical issue, especially amongst those who discriminate on gender and/or gender identity or sexual orientation grounds, because this behaviour in itself reinforces to them that LGBTIQ+ people are less worthy of fundamental rights than other people.

Overseas studies have identified various health risks have been found to affect sexual and gender minorities in a disproportionate manner.²⁷ There are higher rates of depression, anxiety and mood disorders²⁸ and suicide attempts,²⁹ overall.³⁰ Contributing factors to these disproportionate numbers include stigma, discrimination, bullying and risk of violence. Studies have found that LGBTIQ+ people have suffered from verbal harassment, family gossip, fear of being in public, family exclusion, rejection by friends, and feeling like the police refused to protect them.³¹ Additionally, many have suffered discrimination such as eviction, job loss, denial of medical services, physical or sexual assault, and even death.³²

While it would seem common sense, it should be pointed out clearly that the right to personal identity would be of little value if that right cannot be affirmed and embraced in a public context,³³ which is the effect of broad religious exemptions in gender based anti-discrimination legislation. In the case of *Christian Youth Camps Ltd v Cobaw Community Health Service Ltd*³⁴ Redlich JA explicitly stated that Cobaw Community Health Services' objectives of protecting people's 'self-worth and personal dignity' are of 'intrinsic value'.³⁵

That dignity is at the core of equality is observed in several international jurisdictions;³⁶ the Canadian Supreme Court has held that the concept of dignity ensures 'equal recognition' for all members of society, who are all 'equally deserving of concern, respect and consideration'.³⁷ In the Basic Law of the Federal Republic of Germany (the Constitution of Germany), respect for human rights is expressed as dependent on respect for dignity: article 1 states that 'human dignity shall be inviolable', and from this derives the existence of 'inviolable and inalienable' human rights.³⁸

It seems incredibly difficult to validate the concept that religious beliefs barring interracial marriage would not justify an exemption from the racial discrimination law, but the religious belief that a person's gender identity is 'sinful' might justify an exemption from gender based discrimination law.³⁹ The simple fact of the matter is that maintaining religious exemptions in gender based anti-discrimination law is about continuing misogyny and homophobia, and not about religious freedom.

Australian civil law is directed against less serious harms than the criminal law. It covers for example, 'intentional infliction of emotional distress'.⁴⁰ Religious organisations are subject to these laws; however, the same cannot be said for gender based anti-discrimination law.⁴¹ It seems inherently difficult to justify treating the interest of being free from discrimination based on sexuality and its consequent assault on dignity as less worthy of protection than the interests underpinning Australian civil laws. Any assertion that gender-based discrimination causes less harm than other civil wrongs both overestimates the harm caused by civil wrongs and underestimates the harm caused by gender based discriminatory acts.⁴²

The disproportionate and severe health issues amongst LGBTIQ+ people are attributable to the 'widespread stigma, perpetuated by centuries of ignorance, and in an environment of institutionalized and legalized discrimination; they are not the de novo consequences of expressing non-heterosexual and non-conforming gender identities'.⁴³ To look after the LGBTIQ+ community we must remove religious exemptions that are causing them harm. Actual, documented, harm is being caused by the continuance of these exemptions that allow stigmatisation and discrimination against them because of their gender identity and/or sexual orientation. Removing exemptions will assist the Australian community, as a whole, through greater acceptance of diversity, lowering the very real cost to people of the negative effects of stigmatisation and discrimination and the financial and resource costs of the additional health care needs this is causing.

3.2.2 ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

On 13 September 2007, the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly. The Declaration sets out the individual and collective rights of Indigenous people, as well as their rights to culture, identity, language, employment, health, education and other issues (UNHRC 2007). The Australia Government officially endorsed the declaration on 3 April 2009.

Aboriginal and Torres Strait Islander peoples have suffered from discrimination imposed by Australian law in particular. In addition to being denied the right to vote for many decades, various laws have permitted the forced removal of their children, prevented them from marrying, limited their freedom of movement and permitted their wages to be

confiscated,⁴⁴ as well as losing their traditional lands. Institutionalised racism and generational trauma are still adversely affecting Aboriginal and Torres Strait Islander people today. Additionally, in Australia, there is a terrible lack of knowledge, recognition and respect for Aboriginal religious and spiritual beliefs. As Sir William Deane stated

‘The cultures and traditions of the original inhabitants of our continent stretch back into the Dreamtime of 60,000 years ago. When the first Europeans arrived in 1788 to establish a militarily run penal settlement, they made little sustained effort to understand the nature or the content of those cultures and traditions, or the strength of the bonds between the Indigenous peoples and their land or territory. Nor was there any real understanding of the extent to which the Indigenous belief in the supernatural enriched the lives of the Aborigines, provided continuity with the past while explaining the present, identified and regulated relationships, provided the context and content of aspirations and regulated almost all aspects of life and conduct.’⁴⁵

According to data from the Australian Bureau of Statistics, in 2011, there were 669,900 people, representing 3% of the total Australian population who identified as Aboriginal and Torres Strait Islander. However, in her 2017 report, United Nations Report, Special Rapporteur on the Rights of Indigenous Peoples, Ms Victoria Tauli-Corpuz, found that Aboriginal and Torres Strait Islander people made up 27% of the total Australian prison population in 2016, something Ms Tauli-Corpuz described as a ‘major human rights concern’⁴⁶ and stated that urgent measures should be taken as a national priority.

As of 2015, 35% of all children placed in out of home care were Aboriginal or Torres Strait Islanders. At that time, Aboriginal and Torres Strait Islander children numbered just 5.5% of all children 0-17 years old in Australia. As Ms Tauli-Corpuz stated in her report ‘In 1997, the year in which the report entitled ‘Bringing Them Home’ was published, Aboriginal and Torres Strait Islander children constituted 20 per cent of children in out-of-home care. By 2016, that figure had increased to 36 per cent, with Aboriginal and Torres Strait Islander children being 10 times more likely than non-indigenous children to be in out-of-home care.’⁴⁷

Recent estimates show that an Aboriginal and Torres Strait Islander male born in 2010 – 2012 is likely to live to 69 years, approximately 10 years less than a non-Indigenous male. An Aboriginal and Torres Strait Islander female born in 2010 – 2012 is likely to live to 74 years, whereas a non-Indigenous female is likely to live to 83 years. Babies born to Aboriginal and Torres Strait Islander women are almost twice as likely to die in their first year as those born to non-Indigenous women are.

The leading causes of death for Aboriginal and Torres Strait Islander people living in NSW, Qld, WA, SA and the NT in 2015 were coronary heart disease, diabetes, chronic lower respiratory disease, and lung and related cancers. Tuberculosis notifications were 11 times higher for Indigenous people than for Australian born non-Indigenous people in 2009 – 2013. In 2015, hepatitis C notifications were five times higher for Aboriginal and Torres Strait Islander people than for non-Indigenous people.

For many Aboriginal and Torres Strait Islander people, spirituality and religious belief is an integral and intrinsic part of their culture and identity, and the fact that it has survived ‘is testament to the strength and resilience of Aboriginal and Torres Strait Islander cultures.’⁴⁸ However, significant barriers persist that prevent the full expression of cultural and spiritual beliefs. These barriers include access to traditional land, the recognition and protection of sacred sites, and the loss of language. As such, ‘special protection’ needs to apply to enable these belief systems to flourish. As recommended by UN Special Rapporteur, Mr Abdelfattah Amor

‘The land and sacred sites hold a fundamental significance for the Aboriginals, insofar as their beliefs are identified with the land. A basic question is therefore the recognition of an Aboriginal religion intrinsically related to the land within the framework of an Australian society essentially based on Judeo-Christian and western values. In the view of

*the Aboriginals, maintaining the integrity of the land takes on a religious dimension, which therefore has to be preserved.*⁴⁹

Aboriginal spirituality comes from a person's sense of belonging to the land, the sea, and other people and to one's culture. It is an expression of cultural heritage, and it is inherent in stories, ceremonies and dance, values and structures. These multifaceted and many belief systems provide a depth of belief and give the 'answers to the great universal religious questions of humankind, the questions about origins, meaning, purpose and destiny'.⁵⁰

UN Special Rapporteur for Indigenous Peoples, Erica-Irene Daes, has stated that Aboriginal beliefs and spirituality are intrinsically linked to the land generally and to certain sites and objects of significance in particular. Their preservation is fundamental to the spiritual and religious life of Indigenous peoples.⁵¹ As Lorraine Inje, Chairperson of the Aboriginal Language Centre stated in 1997

*'There can be no reconciliation without justice. Justice for indigenous people can only be brought about by the acceptance, recognition and appreciation of the spiritual connections that indigenous people have to traditional lands.'*⁵²

SA Humanists acknowledge that Aboriginal and Torres Strait Islander groups need to affirm and express their identity collectively, and that sometimes this involves the right to exclude. For example, in certain situations it would seem acceptable for an Aboriginal and Torres Strait Islander group to protect its cultural identity and beliefs by excluding non-Indigenous people, and for them to maintain their tradition of men's and women's business. This is in line with statement made by the United Nations, regarding the ICCPR, that

*'Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group'*⁵³

Further, it must be acknowledged that Aboriginal and Torres Strait Islander people are suffering from actual harm in many areas due to institutionalised racism and generational trauma, and that some of this harm stems from a lack of understanding and acknowledgment of Aboriginal and Torres Strait Islander spirituality and religion, and its vital importance in Aboriginal and Torres Strait Islander culture and identity. Legislation relating to matters such as Aboriginal and Torres Strait Islander health care, social services, cultural heritage and land rights should make certain that Aboriginal and Torres Strait Islander religious and spiritual beliefs are given 'special protections' and ensure their rights to their culture.

3.2.3 RELIGIOUS EDUCATION IN PUBLICLY FUNDED SCHOOLS

Special Religious Instruction in publicly funded schools is at odds with the Australian Curriculum⁵⁴ as developed by the Australian Curriculum Assessment and Reporting Authority (ACARA).⁵⁵ The ACARA Board consists of members that represent the Australian Government and all education streams across states and territories. The Australian Curriculum is taught in Australian government schools for reception to year 10 students. Special Religious Instruction is also at odds with the national Early Years Learning Framework *Belonging, Being & Becoming* (2009) Department of Education and Training (Cth)⁵⁶ that promotes inclusion and respect for diversity and guides the learning of children from birth to five years of age and through the transition to school in Australia.

The Australian Curriculum has been developed over many years with the input and extensive consultation with expert educators, current teachers, principals and schools, academics, authorities and associations, state and territory educational authorities and major professional associations. Please see *Curriculum Development Process Version 6* (2012) by ACARA⁵⁷ to understand just how extensive the development and consultation process has been to create the Australian

Curriculum. The Curriculum has been accepted and adopted Australia-wide as being best practice and the appropriate content for the education of children.

Apart from the obvious focus in areas such as reading, writing, arithmetic and science, the Australian Curriculum also focuses on educating children on understanding diversity and acceptance of difference. To allow the promotion of specific belief systems during school hours is at direct odds with the stated position of ACARA on religious education in public schools. In the Australian Curriculum, religion is represented as a study 'about religion' rather than instruction in a particular religious faith. The Australian Curriculum already has lessons on the diversity of religions in Australia, and lessons that focus on Australia's Judeo-Christian heritage. It also looks at different belief systems from around the world and throughout history. Clearly, the importance of educating children about religion has been acknowledged and extensively covered by the Australian Curriculum in an inclusive manner.

It has long been understood that to have a cohesive multicultural society there must be a basic understanding in the community of each other's differences and similarities. As has been seen in the last few years, religious based organisations that have been allowed to operate programs in schools have focused upon trying to convert children to their particular belief system and have disseminated information that is not inclusive for all the diversity that occurs in the student population. Please refer to the *Report on the Review of the Connect Religious Instruction Materials* (2016) by the Queensland Department of Education and Training⁵⁸ and to Deanne Carson's 2015 report '*A critical analysis of you: an introduction*'.⁵⁹

Dissemination of this sort of information can lead to certain children feeling unaccepted because of their difference and could lead to bullying behaviours by classmates because of their differences. This is of great concern especially for LGBTIQ+ students who are not accepted because of their differences by some religious belief systems. Making the conditions available for such bullying to occur in publicly funded schools goes against the *Melbourne Declaration on Educational Goals for Young Australians* (2008) by the Ministerial Council on Education, Training and Youth Affairs⁶⁰ that states that public education systems must 'provide all students with access to high-quality schooling that is free from discrimination based on gender, language, sexual orientation, pregnancy, culture, ethnicity, religion, health or disability, socioeconomic background or geographic location'

There are numerous opportunities for parents to allow their children to be educated in their choice of specific religious beliefs outside of official school hours. The vast majority of religious institutions already have in place educational opportunities aimed specifically at children. If parents wish to have their child's education focused upon a certain religious belief, there are a great number of them to choose from. There is no place for this type of education to be allowed in publicly funded schools during official school hours to the detriment of the available schooling hours for the teaching of the Australian Curriculum.

3.2.4 RELIGIOUS CHAPLAINS IN AUSTRALIAN PUBLIC SCHOOLS

The National School Chaplaincy Program (NSCP) was initiated in 2006. Its purpose was to install religious workers into schools for "pastoral care", even though there had been no research identifying such a need.

Funding for the NSCP is conditional upon every chaplain being religious:

*"A chaplain is an individual who is recognised through formal ordination, commissioning, recognised religious qualifications or endorsement by a recognised or accepted religious institution."*⁶¹

The NSCP has received criticism from parents, teachers, the Australian Psychological Society, the Australian Education Union, the Queensland Teachers Union and the Australian Council of State School Organisations.⁶² Public schools are secular by nature and must be open to students from all faiths and none. SA Humanists is concerned that chaplains are recruited and trained by fundamentalist religious organisations. Chaplains are employed almost entirely by evangelical

organisations including Scripture Union Queensland, ACCESS Ministries, Schools Ministry Group, YouthCARE and Generate Ministries.

The NSCP guidelines state that chaplains are not permitted to seek to convert students nor engage them in counselling, however instances of both are widespread. In recent times providers of chaplains in schools have been documented publicly stating that their aim is to convert school children. Throughout 2015 through to the 2017 school year, Secular Public Education⁶³ has regularly received numerous complaints from across Australia related to chaplains evangelising and proselytising in public schools. This is done through the use of programs and activities initiated and/or arranged by the chaplain, such as Bible Clubs, JAFFA Clubs (Jesus A Friend For All), the SHINE program for girls, visiting evangelical bands and the advertising of Christian camps through school newsletters.

The other serious issue is how chaplains respond to students questioning their sexuality. Chaplains' religious beliefs make them ill-suited to support those young people struggling with their sexuality. The favouring of the religious, over the non-religious, for no reason other than their religiousness, is unacceptable in government policy. Such an explicitly religious program is out of step with modern Australian society. Chaplains are unable to be advocates for the true interests of ALL students and students should be able to access guidance from a professionally qualified counsellor.

As Dr David Zyngier stated in *Education Matters Magazine*:

“As a former teacher and principal, and now education researcher, I find it unbelievable that our taxes are being used to put religious (and overwhelmingly Christian) men and women into our multicultural public schools to “help young students as they grow and struggle to find their place in life”. If parents opt to send their children to a public secular school then that is what they should get. This is the role for professionally-trained social and welfare workers accredited by the appropriate professional organisation and not a fundamentalist Church organisation like the Scripture Union and Access Ministries.”⁶⁴

3.3 CURRENT RELIGIOUS EXEMPTIONS

In Australia, currently legal exemptions exist in faith-based schools, hospitals, welfare and housing services that discriminate against people based on their sexual orientation, gender identity, intersex status or even their marital status. We have the unacceptable situation where students can be expelled, staff can be fired, and essential services for vulnerable people can be refused to someone because of how they have a relationship.⁶⁵

Various religious exemptions are currently provided in both State and Commonwealth level legislation. Whilst actions taken to conform with religious doctrines are important and respect the right to freedom of religion, these considerations must be properly balanced against the need for universal human rights protections, principally the right to be protected by anti-discrimination legislation, but also rights of privacy, freedom of expression and association.

The current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels diminish the appropriate coverage of universal anti-discrimination protections. Religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirements and genuine occupational qualifications in other areas.

3.3.1 SEX DISCRIMINATION ACT EXEMPTIONS

Under the Sex Discrimination Act 1984 (Cth) (SDA), it is unlawful to discriminate against a person based on a person's sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, breastfeeding, and family responsibilities.⁶⁶

However, there are religious exemptions;

- s 23(3)(b), which allows discrimination in the provision of accommodation by religious bodies;

- s 37 which allows discrimination in the ordination or appointment of priests, ministers of religion or members of any religious order, the training or education of persons seeking ordination or appointment, the appointment of persons to perform religious duties or functions, and any other act or practice of a body established for religious purposes that ‘conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion’; and
- s 38 which allows discrimination by educational institutions established for religious purposes in relation to the employment of staff and the provision of education and training, provided that the discrimination is in ‘good faith in order to avoid injury to the religious susceptibilities of adherents of that religion’

This means a religious school, for instance, may lawfully choose not to employ a pregnant, unmarried teacher, in circumstances where this would be discriminatory conduct for a non-religious organisation.⁶⁷

The area in which this has historically proved particularly problematic is in relation to protection from discrimination for LGBTIQ+ people, although other individuals may also experience discrimination based on sex, marital or relationship status, pregnancy or age. While the introduction of the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 was an important step forward in extending anti-discrimination protection coverage across the Australian community, the continued general exemptions for religious organisations limit equality under the law with respect to anti-discrimination protection.

Religious exemptions are a critical issue in the context of the outsourcing of government functions, especially in the areas of education, health, aged care, recreational services and community services, to the private sector where employers are increasingly religious organisations. They also provide many other services to the public, and as such, religious exemptions can have a significant impact on the ability of people, including women and LGBTIQ+ persons, to find and remain in work, or access services. While s37(2) of the SDA now specifically removes Commonwealth funded aged care from the exemption, religious organisations are major employers in Australia. This exemption was removed under the justification that ‘when such services are provided with tax payer dollars, it is not appropriate for providers to discriminate in the provision of those services’.⁶⁸

It is unacceptable that religious organisations are not subject to the same laws as other significant employers and organisations. As a general principle, religious organisations should be required to adhere to a degree of accountability that reflects their level of participation in employment, which is an area of public life clearly covered by anti-discrimination law. Religious exceptions need to be constructed in a manner that appropriately recognises the religious/secular divide and balances the right to equality with rights to freedom of thought, religion and belief.

Limiting religious exemptions to those circumstances where there is a specific religious element to employment strikes an appropriate balance between religious rights and freedoms. For example, we support continued exemptions where a religious body employs a person as a priest, minister of religion or in a capacity directly related to the promotion of that worldview. If a religious school employs a teacher of religion, it would appear reasonable for that person to be required to adhere to the relevant religion and its tenets. However, it would not appear reasonable for a mathematics teacher to be held to the same standard, because religious belief has nothing whatsoever to do with mathematics.

There should not be general exemptions for religious bodies for simply any acts and practices. For example, it should be unlawful to discriminate against a school librarian hired by a religious organisation on the grounds of their sexual orientation, marital status or gender identity. Sexual orientation, marital status or gender identity has no relevance on the person’s ability to lend books, knowledge of the Dewey Decimal system or to assist a student with an enquiry. We would encourage the Government to narrow the focus of current religious exemptions to bring them into line with the approach to exemptions taken for all other employers. As Starke J opined in 1943, an individual’s freedom to act upon his or her religious beliefs is constrained by the right of other members of society to protection against ‘unsocial actions or actions subversive of the community itself’.⁶⁹

In today's world of high unemployment, it is not as simple as having a person find another position in a secular institution if a religious one disapproves of their gender identity; the stark reality is that people require employment to be able to eat, pay for somewhere to live and cover household bills. People should not have to be forced to conform to doctrines they do not adhere to due to fear they will become unemployed. Threats to their job security such as those made to over 180,000 people by some leaders of the Catholic Church in 2017 are an unacceptable situation.⁷⁰

Australia has a high percentage of religious schools in the education sector, such schools receiving substantial Federal and State government funding. This gives religious organisations an inordinate amount of influence and the opportunity to impose its beliefs and judgements on people who do not share them. Under the current system, religious schools have threatened the employment of teachers who identify as LGBTIQ+ and have neglected to support LGBTIQ+ students.⁷¹ If the Australian government permits this discrimination to continue, then it is denying equal rights to both employees of religious schools and vulnerable young students.

SA Humanists believes that there is a vital societal need to maintain that the public/private divide must be demarcated to state that religious freedoms can only apply as far as the point that the religious beliefs of one person or group do not negatively impact upon other people and society generally.⁷² General religious exemptions given to religious organisations are directly contrary to the protections specified in UDHR, ICCPR, CEDAW, CROC, the Elimination of Intolerance Declaration, and the Gender Resolution.

3.3.1.1 *Tasmania's Anti-Discrimination Act 1998*

SA Humanists believes that the Tasmanian Act is a good example of a piece of legislation that has appropriate checks and balances in place to protect all human rights.

There are three provisions outlining relevant religious exceptions in the Act:

Section 51 **Employment based on religion**

- (1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment if the participation of the person in the observance or practice of a particular religion is a genuine occupational qualification or requirement in relation to the employment.
- (2) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, principles or practices."

Section 51A **Admission of person as student based on religion**

- (1) A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to admission of that other person as a student to an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion.
- (2) Subsection (1) does not apply to a person who is enrolled as a student at the educational institution referred to in that subsection.
- (3) Subsection (1) does not permit discrimination on any grounds referred to in section 16 other than those specified in that subsection.
- (4) A person may, on a ground specified in subsection (1), discriminate against another person in relation to the admission of the other person as a student to an educational institution, if the educational institution's policy for the admission of students demonstrates that the criteria for admission relates to the religious belief or affiliation, or religious activity, of the other person, the other person's parents or the other person's grandparents."

Section 52 **Participation in religious observance**

A person may discriminate against another person on the ground of religious belief or religious activity in relation to-

- (a) the ordination or appointment of a priest; or
- (b) the training and education of any person seeking ordination or appointment as a priest; or
- (c) the selection or appointment of a person to participate in any religious observance or practice; or
- (d) any other act that-
 - (i) is carried out in accordance with the doctrine of a particular religion; and
 - (ii) is necessary to avoid offending the religious sensitivities of any person of that religion.”

Discrimination by religious organisations appears to be *only* allowed on the basis of religion. If so, it specifically does not allow discrimination on the basis of other attributes, such as a person’s sexual orientation, gender identity or intersex status. SA Humanists believes that the Tasmanian Anti-Discrimination Act 1998 better protects the human rights of those Australians who identify as LGBTIQ+.

3.3.2 TAX EXEMPTIONS

Currently religious organisations receive tax-exempt status due to the public benefit presumed to be derived from the advancement of religion within the Charities Act 2013. Religious organisations are exempt from the Goods and Services Tax, income tax, fringe benefits tax at the Federal level; land tax, stamp duty, payroll tax and car registration at the State level; rates, and some power and water charges (local government and utilities).

In effect, this means that Australians who do not have religious beliefs are subsidising the exemption of the organisations of those that do. Dr Max Wallace, in a previous submission to government⁷³ showed that between 1996 and 2000, the Sanitarium Company contributed \$55 million to its owner, the Seventh Day Adventist Church. This amount comprised 65% of the Church’s earnings. The Church, however, did not have to pay corporate tax.

We note that the Australian Charities & Not-for-profit Commission was established in 2012. The ACNC has brought some transparency to the Charities sector. Those religious organisations that accept government funding are now subject to financial reporting obligations. However, the data that is provided is inconsistent across various religious organisations.

SA Humanists believes that the advancement of religion, in and of itself, should not be recognised as an approved charitable purpose. While many religions do engage in charitable activities that genuinely benefit the wider public, others do not. SA Humanists is of the view that the commercial arms of religious organisations should not be exempted from taxation requirements and that a level playing field is required in the business sector. An Essential Report poll completed in April 2016 found that 64% of Australians think religious organisations should now be taxed.⁷⁴

3.3.3 EXEMPTIONS TO THE EQUAL OPPORTUNITY ACT (VICTORIA)

As an example of a good application and use of legislation in balancing fundamental rights and freedoms we would like to highlight a recent Victorian case.

Arora v Melton Christian College (Human Rights) [2017] VCAT 1507

The Victorian Civil Administrative Tribunal (VCAT) ruled in September last year that Melton Christian College (MCC) had breached the Equal Opportunity Act by discriminating against a boy who wears a turban. Sidhak Singh Arora was refused admission because he wore a patka, a head covering worn by Sikh children. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) intervened in the case as the independent watchdog for equality law.

As a result of this ruling and the consequent compulsory conference between the parties, MCC has now changed its uniform policy and Sidhak Singh Arora is now able to enrol. According to the VEOHRC, the VCAT’s decision in this case was an important test for clarifying the exceptions in the Equal Opportunity Act 2010. This is the first time that these exceptions from discrimination have been considered in Victorian courts or tribunals.

MCC is a Christian school; however, it has an open enrolment policy. The school accepts enrolments of students from other faiths. A little over 50% of the school community does not identify explicitly as Christian and many families at the school have no religious beliefs.

In a 50-page judgment, VCAT member J Grainger said that he considered that MCC's uniform policy, in so far as it prohibits head gear of a non-Christian faith, could be described as 'openly discriminatory'. The judgment also observed that while the wording of ss37 and 40(a) of the Equal Opportunity Act may be imprecise, the Committee believes it is unlikely to extend to policies that are openly discriminatory; and that the general prohibition on discrimination in s38 of the Equal Opportunity Act is to be read in a broad and beneficial manner, so as to broaden the protection afforded to individuals seeking to access education in Victorian schools on an equal footing. Most Victorian schools recognise the importance of equality and anti-discrimination issues in their dress codes and school uniform policies. J Grainger also noted that rather than promoting inclusivity, MCC's prohibition on head coverings of a non-Christian faith promoted exclusivity by, in this particular case, excluding a potential student.

SA Humanists believe that the outcome of this case was a good result. Catholic and Independent schools currently educate 34.6% of Australian students. As shown in the 2016 Census, Australia is increasingly a country of religious diversity, with Hinduism, Sikhism, Islam and Buddhism all becoming more common, together with a growing percentage of people reporting no religion. No child should experience discrimination at school because of their family's religious faith or lack thereof.

3.3.4 BLASPHEMY LAWS

In Australia, blasphemy law is a common law relic in all states except for Queensland and Western Australia where it has been abolished. Being able to comment upon or criticise a belief is a fundamental right under international law such as the UDHR and the ICCPR enshrined under the concept of 'Freedom of Speech'. 'Freedom of Speech' does not include freedom to incite hatred, nor freedom to act.

3.4 RELIGIOUS DISCRIMINATION IN AUSTRALIA

Throughout history, there have been many different practices, performed in the name of religion, that have now been outlawed, or have never been contemplated as being allowable in Australian society, due to their infringement upon others' human rights or fundamental freedoms. These things include, but are not limited to slavery, killing non-believers, death sentences for blasphemy or heresy, burning 'witches', stoning adulterers to death, 'honour' killings, Sati (widow burning), child brides, punishing female rape victims, female genital mutilation, infanticide, taking of female virgins as spoils of war, selling your daughter, and punishing homosexual males for having consensual sex.

Whilst some of these things were simply outlawed due to their being covered by general criminal laws, others needed to be rectified by the passing of specific legislation. These limits on religious practices are a necessary imposition to ensure that the fundamental human rights of all of Australian society are protected.

The Australian Law Reform Commission, in their 2015 report on Traditional Rights and Freedoms stated that there are no Commonwealth laws that 'significantly encroach on freedom of religion in Australia'.⁷⁵ In light of the ALRC findings, no further legislation to protect 'religious freedom' seems either needed or warranted.

3.5 MEDICAL TREATMENT

3.5.1 CONTRACEPTIVE AND REPRODUCTIVE SERVICES

Presently in Australia there is the unacceptable situation of health services that are run by religious organisations, that also accept government funding, are able to discriminate over whether they give contraceptive or fertility services. These facilities are supposed to provide healthcare to the general public, and the discriminatory organisational practice of not providing medical treatment to people should not be an area where a religious exemption applies. No organisation that is in receipt of public funds for providing a public service should be allowed to discriminate in this way.

It was reported by Leslie Cannold in 2001 that

*'In Australia a pregnant woman scheduled to give birth at a Melbourne public hospital run by Catholic Health Australia was devastated when her membranes ruptured too early, dooming the pregnancy and her non-viable foetus. Denied both standard care options of medication to speed delivery or surgery to end the pregnancy - and unable to transfer to another hospital - she was forced to wait nearly a week until sepsis was diagnosed and the foetus was removed.'*⁷⁶

This sort of situation is where the right of the woman to reasonable health care has been denied by religious privilege. It is unacceptable that in Australia a woman cannot easily and readily access an appropriate medical procedure for the health condition that is requiring treatment. Such a situation is in direct opposition to the UDHR and CEDAW and must be immediately rectified.

3.5.1.1 *Current Religious Exemption for Pharmacists*

The Code of Ethics of The Pharmaceutical Society of Australia (PSA) states that:

A pharmacist has a right to decline provision of care based on a conscientious objection. However, this right should not prevent the consumer from accessing health care that they are entitled to.

*Therefore in these circumstances the pharmacist should inform the consumer of the objection and appropriately facilitate continuity of care for the consumer.*⁷⁷

The PSA advises pharmacists who have an objection to providing oral contraceptives on religious grounds to ensure that consumers are informed as to where they can access such items. Pharmacists should also always identify another pharmacy for the medicine or health service.

Safeera Hussainy (Lecturer in Pharmacy Practice, Monash University) and Angela Taft (Associate Professor in Public Health, La Trobe University) whilst conducting a study on emergency contraceptive pills in 2014, found that 22% of pharmacists felt it was reasonable for their religious faith to influence supply.⁷⁸

Directing a consumer to an alternative pharmacy in a metropolitan area overcomes this problem of religious discrimination by pharmacists. However, what if there is no valid alternative? What if the pharmacy is the only pharmacy in a small country town? Women already face limited access to contraceptive choice and to health services generally in rural areas. A pharmacist who wishes the religious right to refuse to provide a health service is therefore creating medical difficulties for Australian women, many of whom do not have their own transport to seek an alternative pharmacy in another town perhaps hundreds of miles away.

SA Humanists notes that the General Pharmaceutical Council in Great Britain introduced new standards in 2017 that apply to all pharmacists and pharmacy technicians. In Standard 1 titled "Pharmacy professionals must provide person-centred care", the Standard directs, amongst other things:

"People receive safe and effective care when pharmacy professionals:

- *respect and safeguard the person's dignity*
- *recognise and value diversity, and respect cultural differences – making sure that every person is treated fairly whatever their values and beliefs*
- *recognise their own values and beliefs **but do not impose them on other people****
- *take responsibility for ensuring that person-centred care is not compromised because of personal values and beliefs.*⁷⁹

(*our emphasis)

SA Humanists applauds the GPC for their determination to respect diversity in patient care and recommends that the PSA consider revising their Code of Conduct to reflect the same. Denying a woman access, either directly or because purchasing the medication elsewhere is unfeasible is a direct contravention of the UDHR and CEDAW and must be rectified.

3.5.2 MEDICAL TREATMENT OF MINORS

Several religious groups have conscientious objections to particular forms of medical treatment. Examples include some eastern religions objections to the use of drugs, Christian Scientists' opposition to medical examination and treatment based on their concept of disease and opposition by Jehovah's Witnesses to blood transfusions.⁸⁰

Allowing an adult to choose whether they wish to consent or not to particular medical procedures and treatments based on their beliefs is perfectly acceptable. However, when it comes to the necessary medical treatment of children, the best interests of the child must over-ride the beliefs of the parents. Even if refusal of medical treatment was considered a religious practice, the prohibition of this practice upon children is justified by ICCPR Article 18.3 and Elimination of Intolerance Declaration Article 1.3 as an allowable limitation on the right to manifest religion or belief because the limitation is necessary for the protection of the rights of the child. SA Humanists considers any refusal of necessary medical treatment upon a minor to be a violation of internationally recognised human rights standards under several instruments.⁸¹ Obviously, this would only be applicable in situations where there was an immediate threat to the life or risk of serious harm occurring to the child without medical intervention and would not apply otherwise.

3.5.3 GENITAL MUTILATION OF MINORS

3.5.3.1 *Female genital mutilation*

Female genital mutilation or female circumcision is the collective term for a number of different practices.⁸² Female genital mutilation is not considered a religious practice. It is generally accepted as having pre-dated Islam, Christianity and other major religions. Genital mutilation of young females is a traditional practice in some African and other countries.

All jurisdictions in Australia have passed legislation directly outlawing this ritual practice. Additionally, the Australian Law Reform Commission considered that female genital mutilation would constitute an assault under ordinary criminal legislation.⁸³

3.5.3.2 *Male genital mutilation*

Although male genital mutilation is also a practice that occurred before the founding of the Abrahamic religions, it is now a practice of mainly the Jewish, Muslim and some Indigenous cultures. However, only the Jewish and some Indigenous cultures seem to have an age preference for when this ritual is performed. SA Humanists strongly feels that this ritual should not be performed upon a child. There is no reason the adherent of a particular belief should not wait until they have obtained the age of consent before deciding whether they wish to follow this particular ritual. Male children of these particular belief communities are not considered outcasts of these belief communities if they have not had this ritual performed.

To protect female children from genital mutilation but not male children goes against the ideals of gender equality, and against the rights of the child to bodily autonomy if performed for any reason except for medical necessity. Male genital mutilation violates Articles 3, 19 and 24 in CROC relating to the best interests of the child, protection from abuse and neglect and the right to the highest attainable standard of health.⁸⁴ It also violates Article 7 of the ICCPR that prohibits cruel, inhuman or degrading treatment. However, there can be no questioning of the appropriateness of this practice when it is undertaken for necessary medical purposes.

Even if considered a religious ritual, the prohibition of this practice upon children is justified by ICCPR Article 18.3 and Elimination of Intolerance Declaration Article 1.3 as an allowable limitation on the right to manifest religion or belief because the limitation is necessary for the protection of the rights of the child. SA Humanists considers any non-medically

essential genital mutilation performed upon a minor to be a violation of internationally recognised human rights standards under several instruments.⁸⁵

3.6 ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

The Final Report by the Royal Commission into Institutional Responses to Child Sexual Abuse runs to over 17 volumes and reflects an exhaustive, comprehensive inquiry that ran for over five years. The inquiry conducted 57 public hearings and 8,000 private sessions. Approximately 4,000 institutions were reported to the Royal Commission, which heard from 1,200 witnesses over 400 days of testimony. The Royal Commission uncovered the horrific extent of institutional child sexual abuse and found many institutions had failed children over many decades. The Royal Commission has estimated the number of child victims in the tens of thousands. A total of 409 recommendations have been made.

The Royal Commission has called for a systematic overhaul of the culture, structure and governance practices that allowed such horrendous child abuse. It would be neither possible nor appropriate to consider all the recommendations in this submission.

As widespread as the abuse has shown to be, the Catholic Church across Australia has accounted for the greatest number of cases overall, with almost 4,500 alleged victims and 1,800 alleged perpetrators over the past 35 years. The analysis found 7% of Catholic priests were alleged sexual offenders.

Final Report, Executive Summary, page 6

“In many religious institutions, the power afforded to people in religious ministry and the misplaced trust of parents combined with aspects of the institutional culture, practices and attitudes, to create risks for children. Alleged perpetrators often continued to have access to children even when religious leaders knew they posed a danger. We heard that alleged perpetrators were often transferred to other locations but they were rarely reported to police. The failure to understand that the sexual abuse of a child was a crime with profound impacts for the victim, and not a mere moral failure capable of correction by contrition and penance (a view expressed in the past by a number of religious leaders) is almost incomprehensible. It can only be explained by acknowledging that the culture of some religious institutions prioritised alleged perpetrators and institutional reputations over the safety of children.”

A few of the major recommendations by the Royal Commission include:

- religious ministers be forced to report information confided to them in confessional
- a new criminal offence be created for failing to protect children within an institution
- a new National Office for Child Safety be created; and
- celibacy in the Catholic Church be voluntary.

Catholic Archbishop of Melbourne, Denis Hart, has said he does not fully support some of the recommendations delivered by the Royal Commission. In particular, Archbishop Hart does not support any changes to confession that would force a priest to report information to authorities.

SA Humanists maintains that religious organisations have historically had a privileged position in Australian society. Thus, the deference and preferential treatment accorded to religious organisations has in fact enabled much of the harm experienced by the victims of child abuse. Religious organisations and their clergy have been allowed to escape accountability and place their religious law above Australian law. This is not “religious freedom”; this is criminal behaviour.

Dominican priest Tom Doyle, an American canon lawyer and previously a consultant to Pope Francis’ Pontifical Commission for the Protection of Minors was interviewed for an article in the Newcastle Herald on 4 January 2018. Tom

Doyle believes it is essential for the Australian Government to apply pressure on the Church to act on the Royal Commission recommendation to name child sexual abuse as a crime in church law, rather than a sin or moral failure. He said,

“By persisting in calling sexual abuse a moral failure the institutional church is continuing to try to avoid the true nature of child abuse, as well as its own accountability. Its insistence on calling it a moral failure is tantamount to claiming there are two standards of accountability and the church is “special”, with the right to respond to sexual abuse within its own system and its own standards.”

SA Humanists believes highlighting these few points from the Royal Commission is important to reinforce our stance that religious freedoms (in this case, placing religious law above civil law) should never infringe upon the fundamental human rights of others. Far from being the bastion of morality that they proclaim themselves to be, religious organisations have a terrible history of child abuse and the covering up of criminal behaviour. As Cory Bernardi said, ‘most Australians have no place, or don't have any time for moral lectures or virtue-signalling from people in an industry that has a very chequered history.’⁸⁶ The findings of the Royal Commission are one fundamental reason that the rights of the individual under the ICCPR must not be extended to organisations.

3.7 AUSTRALIAN BILL OF RIGHTS

Instead of having anti-discrimination legislation under multiple pieces of differing legislation an Act that was analogous to the British Equality Act would bring all types of anti-discrimination under one piece of legislation. The British Equality Act implicitly removes any exemptions from organisations that engage in government funded public duties.

Ultimately, instead of differing discrimination Acts a Bill of Rights must be considered. Australia is one of the few democracies without such a document protecting the rights of people in this country. There are many good examples of how these sorts Charters work in practice, for instance the European Convention on Human Rights and the Canadian Charter of Rights and Freedoms. Both these documents have been in existence over many years, so evidence of how they have worked in practice and any amendments that were required over time can be easily studied as a basis for an Australian Bill of Rights.

The Humanist Society of South Australia (SA Humanists) believes there is a need for federal legislation to implement international human rights law. However, the implementation of any international treaty to which Australia is a party requires the implementation of the entire document to ensure that all fundamental human rights are protected. When executing any treaty regarding ‘religious freedom’ it would require that in its content and implementation that it needs to ensure that that both freedom of religion and belief is protected, and that the protections of freedom of religion and belief encompasses theistic, non-theistic and atheistic beliefs. Any legislation must also comply fully with relevant international treaties, covenants, and declarations, on fundamental rights including

- The entirety of the Universal Declaration of Human Rights
- The entirety of the International Covenant on Civil and Political Rights
- The entirety of the Covenant on the Elimination of Discrimination Against Women
- The entirety of the Convention on the Rights of the Child
- The entirety of the United Nations Declaration on the Rights of Indigenous Peoples
- The entirety of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- The entirety of the Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity Resolution
- The entirety of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Declaration

in that they only allow protections in so far as those protections do not infringe upon others' rights, especially in relation to women, children, the LGBTIQ+ community, and Indigenous people and include both freedom of religion and freedom from religion in any discrimination protections.

4 RECOMMENDATIONS

4.1 MARRIAGE

In 2015, the Australian Law Reform Commission found that there were no Australian laws that impacted upon the freedom of religion. Whilst the definition of marriage has been expanded to include any two consenting adults, SA Humanists are of the view that this change does not impact in any material way on freedom of religion.

Prior to marriage equality being passed by the Australian Parliament religions were able to pick and choose who they would perform marriage ceremonies for and who they would allow to use their places of worship and amenities. For example, Catholic priests could choose to refuse to marry a person who had been divorced.⁸⁷ Despite there being no explicit exemption regarding this issue in Australian or state anti-discrimination laws there has not been a single case seeking to force a church to marry two people against its own beliefs or to supply services or amenities to such a couple. Indeed, during the public campaign for a successful 'yes' vote for marriage equality, one couple were denied the use of a church and the services of a minister for publicly holding the view that they believed that marriage equality should be Australian law.⁸⁸ This couple, whilst expressing dissatisfaction with the situation did not entertain the idea of suing the church or the minister to force their marriage to take place in the church. Indeed, any such case would have been unsuccessful then and still would be today.

Consequently, SA Humanists recommends that no changes regarding exemptions for religious ministers nor organisations are required to allow them to continue manifesting their religious beliefs.

4.2 MEDICAL TREATMENT

4.2.1 CONTRACEPTIVE AND REPRODUCTIVE TREATMENTS

With the introduction of Medibank and then Medicare, Australia recognised that all people have a right to access medical care and that that care should be free from barriers to access. This includes barriers such as a hospital's decision to not offer certain reproductive treatments and terminations.⁸⁹ Therefore, SA Humanists recommends one of the following changes be implemented:

1. That all hospitals and health treatment facilities that take public patients be required to offer all forms of medical treatments as would be appropriate for a facility of its funding and equipment level and where such treatment might be not available to ensure that a patient is transferred to a facility where it can be provided.

or

2. That a compulsory code of practice (or similar) be implemented for all hospitals and health facilities claiming religious exemptions for refusing to offer certain medical treatments (such as terminations) to:
 - a. Be required to make that information known to its patients;
 - b. Ensure that a patient requiring a treatment not offered is transferred to an appropriate facility where it can occur;

And that if a patient develops complications as a direct result of non-compliance then the facility or health practitioners are held culpable for the complications

4.3 CHILD PROTECTION

4.3.1 CHILD SEXUAL ABUSE

As revealed by the final report by the Royal Commission into Institutional Responses to Child Sexual Abuse, religions of varying denominations have failed to protect their youngest and most vulnerable charges from sexual abuse. They have either wilfully ignored evidence or have purposefully and deliberately covered up crimes. There have been reports⁹⁰ that

the Catholic church will fight one of the Royal Commission's recommendations; that priests who learn of child sexual in confession be mandated to report it. The fact that it appears that some religious institutions have not yet learnt the lessons from the Royal Commission's investigation demonstrates that Australian law must step in and ensure that they behave in a way acceptable to Australian society when it comes to the protection of children and vulnerable individuals.

Therefore, SA Humanists fully support the implementation of all of the Commission's recommendations and recommends to Governments that they withstand pressure and ensure that all people in positions of authority are made mandatory reporters, no matter their religious objections.

4.3.2 GENITAL MUTILATION

Rightly so, all Australian states have passed legislation specifically making the mutilation of female genitals of minors illegal; including any actions taken to allow it to happen, for example travelling to another country for that purpose. However, the accepted practice of male genital mutilation of minors remains an accepted practice because of the perceived non-harm involved. Such a decision should only be made by the person to whom the genitals belong.

SA Humanists recommend that such ritual practices come under the same banner and legislation as female genital mutilation. Doing so demonstrates that Australians value the bodily autonomy of all minors no matter what genitals they were born with.

4.4 EDUCATION

SA Humanists recognise the internationally recognised right of parents to raise their children within their own faith tradition and SA Humanists would object in the strongest possible terms to any proposal to actively or indirectly prevent that. This applies particularly to the ability of Australia's Aboriginal and Torres Strait Islander people to educate their children in their own traditions and cultures considering the long history of attempts by white Australia to diminish and or eradicate these beliefs. However, this should not extend to active government support in the way of providing school time to religious organisations to enter schools for the purpose of instructing students in the organisation's specific religion.

SA Humanists recommend that all States introduce similar legislation as Victoria in relation to religious instruction in public schools. The *Education and Training Reform Act 2006* states that government school education is secular and does not promote any particular religion. As part of the general religious education curriculum, students are taught about major forms of religious thought and expression, as well as religious celebrations or festivals. Non-compulsory, special religious instruction is held during lunch time or out-of-school hours for those students who wish to 'opt in'. This instruction is provided by churches and other religious groups approved by the Minister and is based on distinctive religious tenets and beliefs.

In relation to school chaplains in public schools, SA Humanists recommend that the position of school chaplain be abolished and be replaced with qualified professional social workers/counsellors. At the very least, we would argue that the position of school chaplain must include the option of employing a secular worker.

4.5 RELIGIOUS ORGANISATIONS

4.5.1 WELFARE AND SERVICE PROVIDERS

Religious organisations are one of the biggest employment sectors in Australia and the largest welfare and support services sector. Consequently, at some point in their lives, every Australian will most likely have to deal with a religious organisation in either an employee-employer relationship or as a consumer of welfare services. With such a substantial portion of the Australian public interacting with these organisations – many with no other option – it is incumbent on the Australian Government to ensure that they are freely accessible to all with no barriers and no discrimination of service. To allow such discrimination is also an affront to individual dignity and the right of an individual to express their identity

Therefore, SA Humanists strongly recommends that any organisation (whether religious or not) be expressly forbidden from discriminating in the supply of its services to people; particularly vulnerable individuals (for example LGBTIQ+ individuals) and that proselytising during the delivery of services also be forbidden.

4.5.2 EMPLOYMENT

Australian's with a passion and desire to work in the social services field often have limited employment options available to them when it comes to working for either a religious organisation or a secular organisation. This means that often, despite being of a different or of no faith (or practicing the same faith but differently), they are not able to choose their employer and so are beholden to the organisations own religious beliefs and subject employment conditions that, if it were a secular organisation, would otherwise not apply.

Consequently, SA Humanists recommends one of the two following options (with a preference for number 1):

1. That current exemptions for religious organisations be wound back to include only roles where practicing the organisation's faith is a requirement of the position. For example:
 - a. Ministers of religion;
 - b. Sunday school teachers; or
 - c. Spokes persons

Roles that might be exempt might include:

- a. Accountant;
- b. Mathematics teacher;
- c. Financial counsellor; or
- d. Social worker

or

2. That when a religious organisation advertises a position they must state that the organisation is exempt from some aspects of anti-discrimination legislation. This would allow prospective applicants to decide whether they wish to be employed by such an organisation, opening themselves up for possible dismissal based on one of these exemptions.

4.5.3 CHARITIES

SA Humanists recognise the incredibly significant role that charities and not for profit organisations play in the landscape of Australian society. Indeed, many of these charities are run by religious organisations. Unfortunately, because of this, they are not subject to the same reporting requirements as other secular charities working in the same field. SA Humanists recommends that one of the following be implemented (with preference for the first recommendation):

1. That the singular purpose of "advancement of religion" no longer receive automatic charity and tax-exempt status. This would not mean the fantastic work of religious based charities would cease, they would instead be classified under other categories and be subject to the corresponding reporting requirements.

or

2. That all charity categories be subject to the same reporting requirements with no exemptions for religious based organisations that allow them to exist with minimal to no reporting on their finances and activities

4.6 AUSTRALIAN BILL OF RIGHTS

The interplay between various individual rights, including the freedom of religion is a complex environment that cannot be laid out completely in legislation and regulation. As evidenced earlier in this submission, no hierarchy of rights has ever been established. Consequently, for Australia to legislate protection for any one particular right above all others would be a bold and dangerous move when it comes to international relations.

Presently, Australia has no mechanism to automatically incorporate international treaties into law. Therefore, SA Humanists recommend that Australia adopt an Australian Bill of Rights that incorporates the present various international treaties on rights that it is signatory to and that it apply to all jurisdictions in Australia. Further, SA Humanists recommends that all issues and disputes that may arise in the area of Human Rights be adjudicated in an Australian Human Rights Court. Such a court would have the expertise and experience to judiciously decide such cases, especially when various rights appear to be in conflict.

When deciding on the wording of an Australian Bill of Rights, to ensure that it truly represents the understanding of the Australian people, a Constitution Convention, guided by experts in the field should be used. Such a Convention would allow complete and thorough exploration of Human Rights and how Australians think they should be enshrined and protected in the Australian legal landscape.

How this Australian Bill of Rights is then adopted is for parliament to decide. However, SA Humanists recommend – for the greatest community acceptance – that it be passed by referendum as an amendment to the constitution of Australia; thereby preventing future parliaments winding these rights back as would be possible if they were enacted by legislation alone.

5 CONCLUSION

The interplay between various Human Rights is complex due to there being no hierarchy. This complexity of competing rights (for example the right to employ according to an organisation's faith and the right of an individual to not be discriminated against based on their sex, gender, age or sexual orientation) is not one that can be solved simply through legislation and regulation passed by Parliament. It requires specific expertise to weigh up competing arguments on a case by case basis; a task best left to a judiciary with expertise and experience. This judiciary should be informed by law in the form of an Australian Bill of Rights passed by either the Australian Parliament or as a constitutional amendment passed by the Australian public in a referendum.

A Bill of Rights would resolve all manner of inconsistencies currently present between Federal and State anti-discrimination legislations. It would enshrine rights currently only protected in common law (a general freedom of speech) or through a broad reading of the Australian Constitution (a freedom of political speech). If developed by a Constitutional Convention, it would provide a clear understanding of what Australians understand to be fundamental human rights and how we apply them. An Australian Bill of Rights would ensure that all internationally enshrined human rights are protected, if properly implemented.

However, as the ALRC found in 2015, there are currently no Commonwealth laws that significantly infringe upon the right to religious freedom in Australia. As such, there is no need to introduce further legislation to protect religious freedom above other rights. In fact, present religious exemptions should be scaled back to ensure that the rights of women and the LGBTIQ+ community are adequately protected from undue discrimination.

SA Humanists have identified several areas where rights are under threat from discrimination and harm from people manifesting their religious beliefs and have made recommendations on how they might be better protected. This is of importance when it comes to religious organisations that use government and tax payer funds. Religious organisations should not be allowed to access religious exemptions in the provision of these tax payer subsidised services. Religious organisations should be held to the same standard as other employers and other providers of goods and services to the public.

All these issues of competing and conflicting rights can be resolved through the implementation of SA Humanists' final recommendation: an Australian Bill of Rights.

SA Humanists thanks the Religious Freedom Review Panel and Secretariat for their time and work involved and hope that our submission will help inform their recommendations that will allow Australia to become an even more just and free society where all people are free to live their lives without harm nor a lack of dignity.

6 ENDNOTES

¹ The Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, December 2015, 5.154.

² *Scientology Case* (1983) 154 CLR 120, 136. Mason ACJ and Brennan J. See also Kruger (1996) 190 CLR 1, 160 (Gummow J).

³ *Burke v Tralagga* (1986) EOC ¶192-161.

⁴ D J Sullivan, 'Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination', 82 *American Journal of International Law* 487, page 491 n.17 (1988).

⁵ General Comment No.22 (1993) paragraph 2 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.3, 1997, page 36.

⁶ *Ibid* paragraph 1.

⁷ *Ibid* paragraph 3.

⁸ *Ibid*.

⁹ For example, T C Van Boven, *Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, UN Doc. E/CN.4/Sub.2/1989/32 1989, paragraph 5; E Odio Benito, *Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on Grounds of Religion or Belief*, UN Doc. E/CN.4/Sub.2/1987/26 1986, paragraph 13, reprinted in *Human Rights Study Series No.2*, UN Sales No. E.89.XIV.3, 1989; A Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, UN Doc. E/CN.4/Sub.2/200/Rev.1, page 1 n.1, UN Sales No.60.XIV.2 (1960) reprinted in (1978) 11 *New York University Journal of International Law and Policy* page 227.

¹⁰ General Comment No. 22 (1993) paragraph 2 in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.3, page 37.

¹¹ *Church of the New Faith v Commissioner for Payroll Tax (Vic.)* (1983) 154 CLR 120, pages 131-132.

¹² *R v Burgess; Ex parte Henry* (1936) 55 CLR 608, pages 646, 674, 688; *R v Poole; Ex parte Henry (No. 2)* (1939) 61 CLR 634; *Airlines of New South Wales v New South Wales (No. 2)* (1965) 113 CLR 54, pages 82, 102, 118, 126, 141; *Commonwealth v Tasmania (the Franklin Dam case)* (1983) 158 CLR 1; *State of Victoria v Commonwealth of Australia*; *State of South Australia v Commonwealth of Australia*; *State of Western Australia v Commonwealth of Australia* (1996) 138 ALR 129. Some judges have suggested that is not enough for a challenged law to give effect to treaty obligations; that the law must, of itself, also deal with a subject of 'international concern' to be valid under Section 51(xix): see, for example, Justice Stephen in the Franklin Dam case at page 216. See also L Zines, *The High Court and the Constitution*, Butterworths, Sydney, 3rd edition, 1992, Chapter 13.

¹³ *Traditional Rights and Freedoms*, above n 1, 5.57.

¹⁴ General Comment 22, above n 3.

¹⁵ Chris Sidoti, Human Rights Commissioner, *Article 18 Freedom of religion and belief*. (1998) 30.

¹⁶ *Ibid* 43.

¹⁷ Reid Mortensen, 'A Reconstruction of Religious Freedom and Equality: Gay, Lesbian and De Facto Rights and the Religious School in Queensland' [2003] *QUTLawJL* 16; (2003) 3 *Queensland University of Technology Law and Justice Journal* 320, 323.

¹⁸ See, eg, *Racial and Religious Tolerance Act 2001 (Vic)* s 8 ; *Anti-Discrimination Act 1991 (Qld)* s 124A(1); *Anti-Discrimination Act 1998 (Tas)* s 19(d); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 2(1), 18. The Commonwealth, New South Wales and South Australia are notable exceptions, as they do not have such explicit legislative protections.

¹⁹ Andrew Altman, *Discrimination* (30 August 2015) *Stanford Encyclopedia of Philosophy* <<http://plato.stanford.edu/archives/fall2015/entries/discrimination/>>.

²⁰ Thomas Giegerich, 'Freedom of Religion as a Source of Claims to Equality and Problems for Equality' (2000) 34 *Israel Law Review* 211, 212.

²¹ See generally Joel Harrison and Patrick Parkinson, 'Freedom beyond the Commons: Managing the Tension between Faith and Equality in a Multicultural Society' [2014] *MonashULawRw* 19; (2014) 40 *Monash University Law Review* 413, 414.

²² *Racial Discrimination Act 1975 (Cth)* s 18C.

²³ *Ibid* s 18D.

²⁴ *Eatock v Bolt* [2011] FCA 1103; (2011) 197 FCR 261, 311 [210] (Bromberg J).

²⁵ Bailey, J. M., Vasey, P. L., Diamond, L. M., Breedlove, S. M., Vilain, E., & Epprecht, M. (2016). *Sexual orientation, controversy and science. Psychological Science in the Public Interest*, 17, 45–101.

²⁶ Lambda Legal. (2016). *Health and medical organization statements on sexual orientation, gender identity/expression and "reparative therapy"*. New York, NY: Author cited in Ronald O. Valdiserri, David R. Holtgrave, Tonia C. Poteat & Chris Beyrer, *Unraveling Health Disparities among Sexual and Gender Minorities: A Commentary on the Persistent Impact of Stigma*, *Journal of Homosexuality* Vol. 0, Iss. ja, 2018.

- ²⁷ Bloisnich, J. R., Farmer, G. W., Lee, J. G., Silenzio, V. M., & Bowen, D. J. (2014). Health inequalities among sexual minority adults: Evidence from Ten U.S. States, 2010. *American Journal of Preventive Medicine*, 46(4), 337–349.; Fredriksen-Goldsen, K. I., Kim, J. H., Barkan, S. E., Muraco, A., & Hoy-Ellis, C. P. (2013). Health disparities among lesbian, gay, and bisexual older adults: Results from a population-based study. *American Journal of Public Health*, 103(10), 1802–1809.; Gonzales, G., Przedworski, J., & Henning-Smith, C. (2016). Comparison of health and health risk factors between lesbian, gay, and bisexual adults and heterosexual adults in the United States: Results from the national health interview survey. *Journal of the American Medical Association Internal Medicine*, 176(9), 1344–1351; Don Operario PhD, Kristi E. Gamarel PhD, EdM, Benjamin M. Grin MD, MPH, Ji Hyun Lee MD, MPH, Christopher W. Kahler PhD, Brandon D. L. Marshall PhD, Jacob J. van den Berg PhD, and Nickolas D. Zaller, “Sexual Minority Health Disparities in Adult Men and Women in the United States: National Health and Nutrition Examination Survey, 2001–2010”, *American Journal of Public Health* 105, no. 10 (October 1, 2015): pp. e27-e34.
- ²⁸ Bostwick, W. B., Boyd, C. J., Hughes, T. L., & McCabe, S. E. (2010). Dimensions of sexual orientation and the prevalence of mood and anxiety disorders in the United States. *American Journal of Public Health*, 100(3), 468–475.
- ²⁹ Testa, R. J., Michaels, M. S., Bliss, W., Rogers, M. L., Balsam, K. F., & Joiner, T. (2017). Suicidal ideation in transgender people: Gender minority stress and interpersonal theory factors. *Journal of Abnormal Psychology*, 126(1), 125–136.
- ³⁰ King, M., Semlyen, J., Tai, S. S., Killaspy, H., Osborn, D., Popelyuk, D., & Nazareth, I. (2008). A systematic review of mental disorder, suicide, and deliberate self-harm in lesbian, gay and bisexual people. *BMC Psychiatry*, 8, 70.
- ³¹ Stahlman, S., Sanchez, T. H., Sullivan, P. S., Ketende, S., Lyons, C., Charurat, M. E., ... Baral, S. D. (2016). The prevalence of sexual behavior stigma affecting gay men and other men who have sex with men across sub-saharan Africa and in the United States. *JMIR Public Health and Surveillance*, 2(2), e35.
- ³² Grant, J. M., Mottet, L. A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M. (2011). *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington, DC: National Center for Transgender Equality & National Gay and Lesbian Task Force.
- ³³ Murphy, Bobbi, "Balancing Religious Freedom and Anti-Discrimination: *Christian Youth Camps Ltd v Cobaw Community Health Service Ltd*" [2017] MelbULawRw 5; (2017) 40(2) Melbourne University Law Review 594.
- ³⁴ *Christian Youth Camps Ltd v Cobaw Community Health Service Ltd* [2014] VSCA 75; (2014) 308 ALR 615.
- ³⁵ *Ibid*, 713 [438].
- ³⁶ Fredman, 'Substantive Equality Revisited', above n 53, 17–20. For an example of the centrality of dignity in foreign jurisdictions see, eg, Constitution of the Republic of South Africa Act 1996 (South Africa) s 36(1); Grundgesetz für die Bundesrepublik Deutschland [Basic Law of the Federal Republic of Germany] art 1(1).
- ³⁷ *Law v Canada* [1999] 1 SCR 497, 529 [51] (Iacobucci J).
- ³⁸ Grundgesetz für die Bundesrepublik Deutschland [Basic Law of the Federal Republic of Germany] arts 1(1)–(2).
- ³⁹ Murphy, Bobbi, above n 33, 594.
- ⁴⁰ Cass Sunstein, 'On the Tension between Sex Equality and Religious Freedom' (Working Paper No 167, University of Chicago Law School, June 2007) 7.
- ⁴¹ *Ibid*, 3, 4.
- ⁴² *Ibid*, 7, 8.
- ⁴³ Ronald O. Valdiserri, David R. Holtgrave, Tonia C. Poteat & Chris Beyrer, *Unraveling Health Disparities among Sexual and Gender Minorities: A Commentary on the Persistent Impact of Stigma*, *Journal of Homosexuality* Vol. 0, Iss. ja, 2018.
- ⁴⁴ Williams, George. The legal assault on Australian democracy [online]. *QUT Law Review*, Vol. 16, No. 2, 2016: [19]-41. <<https://search.informit-com-au.ezproxy.flinders.edu.au/documentSummary;dn=639016193525566;res=IELHSS>>.
- ⁴⁵ Sir William Deane, Governor General of Australia, 'Religion and cultural diversity: global challenges and local responsibilities, Address for the opening of the 1997 Religion and Cultural Diversity Conference Melbourne, 28 July 1997, in (1997) 19(1) *Migration Action* 3'.
- ⁴⁶ Tauli-Corpuz, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, Human Rights Council, Thirty-sixth session, 11-29 September 2017, Agenda item 3.
- ⁴⁷ *Ibid*.
- ⁴⁸ Katja Mikhailovich and Ms Alexandra Pavli, *Freedom of Religion, Belief, and Indigenous Spirituality, Practice and Cultural Rights*, 2011, 16.
- ⁴⁹ Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/23, Addendum, Visit to Australia (Amor Report), UN Doc. E/CN.4/1998/6/Add.1, page 17.
- ⁵⁰ Edwards, W. 1994, 'Living the Dreaming', in C. Bourke, E. Bourke & W. Edwards (eds), *Aboriginal Australia*, University of Queensland Press, Brisbane, 66 quoted in Poroch, N., Arabena, K., Tongs, J., Larkin, S., Fisher, J. & Henderson, G. 2009, *Spirituality and Aboriginal People's Social and Emotional Wellbeing: A Review*, Discussion Paper No. 11, Cooperative Research Centre for

Aboriginal Health, Darwin, 6; Edwards, W. 1994, 'Living the Dreaming', in C. Bourke, E. Bourke & W. Edwards (eds), *Aboriginal Australia*, University of Queensland Press, Brisbane, 66.

⁵¹ Chris Sidoti, above n 15, 30.

⁵² Lorraine Inje, Chairperson, Aboriginal Language Centre, quoted in *Human Rights and Indigenous Australians*, Proceedings of the Australian Reconciliation Convention, 26-28 May 1997, Book 3, The Council for Aboriginal Reconciliation, Commonwealth of Australia, 1997.

⁵³ General Comment No. 23 (1994) in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/ Rev.3, page 41.

⁵⁴ See <<http://www.australiancurriculum.edu.au/>>.

⁵⁵ See <<https://www.acara.edu.au/>>.

⁵⁶ See

<https://docs.education.gov.au/system/files/doc/other/belonging_being_and_becoming_the_early_years_learning_framework_for_australia.pdf>.

⁵⁷ See <https://acaraweb.blob.core.windows.net/resources/ACARA_Curriculum_Development_Process_Version_6.0_-_04_April_2012_-_FINAL_COPY.pdf>.

⁵⁸ See

<<http://statements.qld.gov.au/Content/MediaAttachments/2016/pdf/Review%20of%20RI%20Connect%20materials%20August%202016.pdf>>.

⁵⁹ See <<http://religionsinschool.com/wp-content/uploads/2015/10/Carson-2015-Review-you-an-introduction.pdf>>.

⁶⁰ See

<http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf>.

⁶¹ Project Agreement for the National School Chaplaincy Programme Contract

<http://www.federalfinancialrelations.gov.au/content/npa/education/project-agreement/nat_school_chaplaincy.pdf>.

⁶² Australian Psychological Society – submission to the Consultation Process for the National School Chaplaincy Program, 1 July 2010 <<https://www.psychology.org.au/Assets/Files/APS-Submission-School-Chaplains-July2010.pdf>>.

Australian Education Union – Submission to the Select Committee into the Abbott Government's Budget Cuts, September 2014 <<http://www.aph.gov.au/DocumentStore.ashx?id=2ec1a29c-6b4e-4168-836b-bc7c0e96079d&subId=299823>>.

Queensland Teachers Union – Fact Sheet November 2013

<http://www.qtu.asn.au/files/1113/8681/3447/Religious_instruction_in_State_Schools_FS_November2013.pdf>.

Australian Council of State School Organisations – Peter Garrigan, speaker at the Humanist Society of Queensland Conference in October 2012

<<http://www.abc.net.au/religion/articles/2012/10/22/3615647.htm>>.

⁶³ Secular Public Education Limited is an Australian not-for-profit charity advocating for the protection of human rights and advancing education. <<http://spe.org.au/chaplains-proselytising/>>.

⁶⁴ Dr David Zyngier, senior lecturer in curriculum and pedagogy at Monash University, Australia

<<http://educationmattersmag.com.au/whats-wrong-with-school-chaplains/>>.

⁶⁵ Tosca Lloyd, 2018: a year that draws a line against prejudice, privilege and power, *The Age* January 7 2018.

⁶⁶ Sex Discrimination Act 1984 (Cth) ss 5–7.

⁶⁷ Traditional Rights and Freedoms, above n 1, 5.81.

⁶⁸ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill (2013) [2.31].

⁶⁹ *Adelaide Company of Jehovah's Witnesses v The Commonwealth* (1943) 67 CLR 116, 155 (per Starke J).

⁷⁰ Michael Koziol, Married Sunday, fired Monday: Churches threaten to dismiss staff who wed same-sex partners August 20 2017. <<http://www.smh.com.au/federal-politics/political-news/married-sunday-fired-monday-churches-threaten-to-dismiss-staff-who-wed-samesex-partners-20170817-gxy4ds.html>>.

⁷¹ See, for instance <<http://www.smh.com.au/federal-politics/political-news/married-sunday-fired-monday-churches-threaten-to-dismiss-staff-who-wed-samesex-partners-20170817-gxy4ds.html>>, and <<http://www.theage.com.au/victoria/gay-students-human-rights-breached-by-catholic-schools-20160614-gpipiq.html>>.

⁷² Human Rights Law Centre, Submission 148 quoted in *Traditional Rights and Freedoms*, above n 1, 5.78.

⁷³ Max Wallace, Submission No. 45 to the Standing Committee on Foreign Affairs, Defence and Trade, Freedom of Religion and Belief Inquiry completed on 27 November 2000.

<<https://www.aph.gov.au/DocumentStore.ashx?id=e7282bc2-5edd-42af-a9ea-8a99b42b2f7a&subId=464376>>.

⁷⁴ <<http://www.essentialvision.com.au/tax-on-religious-organisations>>.

⁷⁵ *Traditional Rights and Freedoms*, above n 1, 5.154.

- ⁷⁶ Leslie Cannold, The questionable ethics of unregulated conscientious refusal, ABC Religion and Ethics 25 Mar 2011 <<http://www.abc.net.au/religion/articles/2011/03/25/3174200.htm>>.
- ⁷⁷ Pharmaceutical Society of Australia Code of Ethics <<https://www.psa.org.au/downloads/codes/PSA-Code-of-Ethics-2017.pdf>>.
- ⁷⁸ “Emergency contraception in Australia: the desired source of information versus the actual source of information” Medical Journal of Australia Volume 200 Issue 7 – 21 April 2014 <<https://www.mja.com.au/journal/2014/200/7/emergency-contraception-australia-desired-source-information-versus-actual>>.
- ⁷⁹ General Pharmaceutical Council Standards for Pharmacy Professionals 2017 <https://www.pharmacyregulation.org/sites/default/files/standards_for_pharmacy_professionals_may_2017_0.pdf>.
- ⁸⁰ Chris Sidoti, above n 15, 51.
- ⁸¹ For example, CROC article 24.3; ICCPR article 7.
- ⁸² Nahid Touibia, Female Genital Mutilation, A Call for Global Action, Rainbo, New York, 2nd edition, 1995, page 9.
- ⁸³ Australian Law Reform Commission, Multiculturalism: Criminal Law, Discussion Paper 48, Australian Law Reform Commission, Sydney, 1991, page 22.
- ⁸⁴ Articles 3, 19 and 24 respectively.
- ⁸⁵ For example, CROC article 24.3; ICCPR article 7.
- ⁸⁶ Cory Bernardi quoted in Julia Holman and Alex McDonald, Hottest 100: Down Under singer Colin Hay slams Cory Bernardi's alternative music countdown, 18 January 2018. <<http://www.abc.net.au/news/2018-01-18/hottest-100-down-under-singer-slams-cory-bernardis-ac100/9340990>>.
- ⁸⁷ Australian Catholic Bishops Conference, n.d. “acbc_divorce_booklet.pdf” <https://www.mn.catholic.org.au/media/1685/acbc_divorce_booklet.pdf>
- ⁸⁸ Koziol, M., 2017, “Church cancels wedding because bride and groom supported gay marriage on Facebook”, <<http://www.smh.com.au/federal-politics/political-news/church-cancels-wedding-because-bride-and-groom-supported-gay-marriage-on-facebook-20170913-gygcyp.html>>
- ⁸⁹ This was highlighted in section 8.1 with the case of a woman suffering from sepsis due to the hospital she was in not offering earlier treatment in the form of an induced delivery or surgery to remove the foetus that had become non-viable
- ⁹⁰ Davey, Melissa, 2017, “Catholic church dismisses key recommendations from landmark inquiry into child abuse,” <<https://www.theguardian.com/australia-news/2017/dec/15/royal-commission-final-report-australia-child-abuse>>