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The RSA is an independent not-for-profit organisation, advocating for a secular Australia in which public policy is guided by evidence, reason and compassion. Founded in 1906, the RSA is the oldest freethought group in Australia.

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## 1. Introduction and recommendations

The Rationalist Society of Australia (RSA) welcomes the opportunity to make this submission to the Expert Panel of the Religious Freedom Review.

The RSA is an independent not-for-profit organisation, advocating for a secular Australia in which public policy is guided by evidence, reason and compassion. Founded in 1906, the RSA is the oldest freethought group in Australia.

The RSA believes a secular government is necessary to ensure the human rights of all Australians are adequately protected. When governments accord privileges and power to one group, they necessarily discriminate against and harm other groups. Secularism allows for diverse belief systems to co-exist and flourish because it prevents government, public policy and administration disproportionately favouring the interests of any one group.

Despite the misleading rhetoric surrounding this Review, there is no fundamental disagreement between those who support a secular form of government and those who advocate for the right to freedom of religion and belief. These two goals are mutually dependent: freedom of religion cannot properly exist without secular government, and government cannot be truly secular if it does not guarantee freedom of religion or belief.

The conflict exists instead between those who recognise that freedom to manifest religious belief must be limited to prevent harm and undue privilege, and those who suppose their religious beliefs accord them the unfettered right to manifest those beliefs, even if this involves breaching the fundamental rights of others. The RSA holds that many privileges accorded to religious bodies in Australia perpetuate and entrench systems of inequality and prejudice. This Review provides an opportunity for these systems to be questioned and dismantled, and instead replaced with laws more appropriately aligned with international human rights law.

Powerful religious lobbies and their parliamentary allies have attempted to represent the growing intolerance of religious prejudice in Australia as an attack on “religious freedom”. This is especially true of some Christian religious bodies who claim their right to freedom of religion permits them to denigrate and bully those who do not share the same beliefs or characteristics, and that any criticism of this behaviour constitutes oppression and abuse. This misguided narrative comes as the historical privileges granting religious bodies the power to perpetuate inequalities through discrimination and prejudice are now being decisively challenged by the Australian public. One need only look to the overwhelming ‘yes’ vote last year for confirmation that prejudice against LGBTI people, whatever its basis, is no longer acceptable in modern Australia. A push to end undue historical privilege must not be confused with oppression.

This Review provides an opportunity not only to clarify the limits on religious freedom required in an open, diverse and secular society, but also to question the many existing privileges accorded to religious bodies in Australia that perpetuate and further entrench inequality and prejudice.

## Summary of recommendations

- 1) Any examination of the right to freedom of religion or belief must examine the right of non-religious people and members of minority religious groups to be free from the impositions of any other religion.
- 2) A federal statutory human rights instrument that protects and balances fundamental human rights should be enacted.
- 3) Religious exemptions to anti-discrimination laws should be limited to the following:
  - a) the ordination or appointment of priests, ministers of religion or members of any religious order;
  - b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;
  - c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; and
  - d) the selection or appointment of people, by a body established to propagate religion (or religious views), to positions substantially involving religious observance, practice, teaching, leadership, counselling or lobbying.
- 4) Demands for broader religious exemptions or privileges, in particular with regards to their expansion to include religious individuals, or commercial enterprises operated by religious individuals, should be categorically rejected.
- 5) Repeal the provisions of the *Charities Act 2013* and the *Australian Charities and Not-for-profits Commission Act 2012* that treat the “advancement of religion” as inherently charitable, and abolish any related rule of the common law.

## [2. Right to freedom of thought, conscience and religion](#)

### Limitation of Article 18 necessary

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) codifies the right to freedom of thought, conscience and religion.<sup>1</sup> The right consists of two distinct freedoms. The freedom an individual has to “*have or to adopt* a religion or belief of his choice”<sup>2</sup> is absolute, and guarantees the freedom to change one’s religion or belief, including to adopt non-religious beliefs.<sup>3</sup> The right also ensures the “freedom, either individually or in

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<sup>1</sup> This submission will refer to the “right to freedom of religion or belief”.

<sup>2</sup> International Covenant of Civil and Political Rights, art 18 (1).

<sup>3</sup> UN Human Rights Committee (HRC), *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 1993: (5)

community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”<sup>4</sup> This freedom can be justifiably and lawfully limited in order to ensure adequate protection of the essential rights of others.

Australian law imposes limitations on the manifestation of religious beliefs to protect the rights and dignity of others in the community. For example, female genital mutilation, whether required by a religious or a traditional belief system, is a crime, and so too are honour killings. These restrictions do not constitute religious persecution or a violation of freedom of religion or belief. They are necessary to ensure that people are not harmed by the religious beliefs of others.

It is not possible for the freedom to manifest religious belief to be absolute in a secular and liberal society. This is because the core tenets of most religious faiths put them in direct conflict not only with non-religious belief systems, but with one another, as they make prescriptive claims about how people should live. Many belief systems dictate interference in the beliefs of others; some religious texts dictate punishments for non-believers, or discrimination against people who hold other faiths.

This means limitations on freedom of religion or belief are necessary not only because failure to do so would see conflicts with other human rights, but also because it would render peaceful coexistence of different and multiple belief systems impossible.

The Expert Panel cannot question whether the right to freedom of religion or belief can be derogated from. But any group, religious or otherwise, that claims the freedom to *manifest* one’s religion or belief system should not be limited is misusing the human rights framework to achieve aims contrary to that of promoting and protecting human dignity and safety for all. This must be noted by this Review.

### **Article 18 protects all people and not just those who are religious**

The purpose of the right to freedom of religion or belief articulated in Article 18 is not just to protect those who hold a religious worldview or a belief in supernatural beings. According to the Human Rights Committee, Article 18 includes “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.”<sup>5</sup> Any examination of this right must acknowledge this. The RSA wishes to impress the importance of including the non-religious in considerations of the intersection between freedom of religion or belief and other human rights.

Just like other vulnerable groups, non-religious people around the world face both *de facto* and *de jure* discrimination. According to the *2017 Freedom of Thought Report* produced by the umbrella organisation, the International Humanist and Ethical Union (IHEU), twelve countries currently have laws in which leaving or changing religion by “apostasy” is

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<sup>4</sup> International Covenant on Civil and Political Rights, art 18 (1)

<sup>5</sup> HRC, *General Comment No. 22*: (5)

punishable by death, and 85 countries engage in “severe” or “grave” discrimination against the non-religious.<sup>6</sup>

The extreme nature of violence perpetrated against non-religious people was noted by the UN Special Rapporteur on Freedom of Religion or Belief, Dr Ahmed Shaheed, who expressed concern about “the brutality with which social hostilities are visited upon humanists [and atheists] the world over.”<sup>7</sup> The IHEU notes that such cases remain “...only some of the most noticeable moving parts on the extensive machine of anti-non-religious discrimination which exists in almost every country.”<sup>8</sup>

The importance of ensuring all individuals are protected is clear; this is not a right merely for those belonging to a religion. The RSA is disappointed this is not reflected in the title of this review, nor in the Terms of Reference. We fear this absence suggests the interests of particular religious groups will be prioritised above more genuine consideration of Article 18 in the Australian setting.

#### **Recommendation 1**

Any examination of the right to freedom of religion or belief must examine the right of non-religious people and members of minority religious groups to be free from the impositions of any other religion.

### [3. Elevation of ‘freedom of religion’ is unjustified, opportunistic and harmful](#)

#### **Freedom of religion or belief cannot and should not be elevated to a superior position above other rights**

In the same way that it is misguided to argue the right to manifest one’s religious belief should be unlimited, it is misguided to argue the right to freedom of religion is a uniquely important human right.

The Expert Panel must be wary of this argument and the misrepresentation of human rights law it is based upon. It is worth noting that certain Christian religious groups, previously vehemently opposed to strengthening human rights protections, have now begun to reframe their interests in terms of human rights.<sup>9</sup> This can be seen in the evolution of arguments used by Christian lobby groups in Australia over the last decade. As recently as 2008/2009, Christian groups were arguing against the strengthening of freedom of religion

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<sup>6</sup> International Humanist and Ethical Union, *Freedom of Thought 2017: A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious*, 2017

<sup>7</sup> *Ibid.*, ‘Editorial Introduction’

<sup>8</sup> *Ibid.*

<sup>9</sup> Prof Carol Johnson and Prof Marion Maddox, ‘Talk of same-sex marriage impinging on religious freedom is misconceived: here’s why’, *The Conversation*, 28/8/2017

in Australia, as it was considered such a development would restrict their freedom to discriminate against minority religions.<sup>10</sup>

There is a danger that these religious groups, having recently adopted human rights language to advocate for their own interests, will misrepresent the nature of freedom of religion or belief. In particular, there is a self-interested tendency to portray freedom of religion as the most fundamental of all human rights, and as the foundation from which all human rights discourse emanates.<sup>11</sup>

The question at hand is how conflicting interests are to be accommodated. Arguments that seek to frame freedom of religion as uniquely important, trumping other rights, are unjustified, opportunistic and harmful. There is no principle within the tradition of human rights law that elevates freedom of religion as a special right above other human rights. Freedom of religion must be considered in its proper place within a broader human rights framework, and limited where necessary to protect the fundamental rights and freedoms of others.

#### **Further protection of Article 18 must only be within federal and state human rights instruments**

Freedom of religion and belief is not and cannot be a specially elevated human right. Codification of freedom of religion as a stand-alone right is likely to unduly elevate protection of religiously-motivated conduct above other fundamental rights. We believe any codification of freedom of religion or belief should only be contained within a comprehensive federal or state human rights document covering Australia's international obligations.

#### **Recommendation 2**

A federal statutory human rights instrument that protects and balances fundamental human rights should be enacted.

#### **4. Religious exemptions to anti-discrimination laws**

The RSA urges the Expert Panel to consider the harms caused by religious exemptions currently enjoyed by religious bodies under anti-discrimination laws. These exemptions are antithetical to international best practice in human rights legislation, and are emblematic of the undue privilege accorded religious bodies in Australia. In according religious bodies these exemptions, federal and state/territory governments enable and legitimise the prejudice committed against vulnerable Australians; they are in effect complicit in preventing marginalised groups from adequately participating in society. We urge the

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<sup>10</sup> See Table 6 in Jacqueline K. Nelson, Alpha Possamai-Inesedy and Kevin M. Dunn, 'A critical analysis of submissions to the Review of Freedom of Religion and Belief in Australia Inquiry', *Australian Journal of Social Issues*, Vol.47 No.3, 2012, 310

<sup>11</sup> See for example, the Wilberforce Foundation's submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into *The status of the human right to freedom of religion or belief: Submission 115*, p. 2.

Expert Panel to recommend repealing exemptions that perpetuate religious privilege at the expense of vulnerable Australians.

### **Anti-discrimination norms**

Anti-discrimination norms are codified in Australian law at both federal<sup>12</sup> and state/territory<sup>13</sup> levels. Anti-discrimination laws ensure personal conceptions of morality and belief are superseded by a universal conception of basic human dignity. Anti-discrimination laws established all Australians as equal in value to society and equal under its laws.

Anti-discrimination norms are not only codified in Article 2 of the ICCPR, but, according to the UN Human Rights Committee, “constitute a basic and general principle relating to the protection of human rights.”<sup>14</sup> As such, the fundamental nature of non-discrimination norms must not be undervalued. The essence of human rights is to protect individuals *just by virtue of being human*, and not by virtue of any extrinsic qualities such as having (or not having) particular beliefs, physical characteristics or affiliations. Anti-discrimination laws and norms ensure this by requiring that all human rights are applied in a way that treats every human as equal in worth. They ensure people living with disabilities are treated the same before the law as are able-bodied people, and that women are not treated unfairly at work due to pregnancy. They guarantee that laws which segregate society based on skin colour – such as those that saw Indigenous Australians banned from swimming pools and isolated on school buses – will not reappear in Australia. Any attempt to artificially elevate freedom of religion over and above these norms disregards the point of human rights altogether.

### **Existing permanent religious exemptions entrench prejudice and cause harm**

The RSA notes with concern the disregard shown by some religious lobbyists for the importance of upholding anti-discrimination laws, and an increasing sense of entitlement held by certain religious bodies that their own prejudices must be legally protected.

This is manifest in exemptions to anti-discrimination laws afforded religious bodies, which allow for discrimination to be committed by religious bodies in instances not allowed by non-religious bodies. Permanent exemptions for religious organisations and bodies are found in a number of federal and state anti-discrimination laws, and are unjustifiably broad. The exemptions found in the *Sex Discrimination Act 1984* (Cth) (‘SDA’) illustrate the egregious nature of such exemptions.

Exemptions set out in the SDA allow discrimination against a person on any grounds covered by the Act, including sex, sexual orientation, gender identity, intersex status, marital or

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<sup>12</sup> *Sex Discrimination Act 1984* (Cth) s 37; *Age Discrimination Act 2004* (Cth) s 35.

<sup>13</sup> *Discrimination Act 1991* (ACT) ss 32-33; *Anti-Discrimination Act 1996* (NT) ss 37A and 51; *Anti-Discrimination Act 1991* (Qld) ss 41, 109; *Anti-Discrimination Act 1998* (Tas) s 52; *Equal Opportunity Act 2010* (Vic), ss 82-84; *Equal Opportunity Act 1984* (WA) s 73; *Equal Opportunity Act 1984* (SA) ss 50, 85ZM; *Anti-Discrimination Act 1977* (NSW) s 56.

<sup>14</sup> UN Human Rights Committee (HRC), *General Comment No. 18: Non-discrimination, 1989: (1)*

relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities.<sup>15</sup>

While other Commonwealth anti-discrimination legislation, such as the *Racial Discrimination Act 1975* and the *Disability Discrimination Act 1992*, have no religious exemptions, the SDA contains an extremely general catch-all exemption that applies to any conduct that either “conforms to the doctrines, tenets or beliefs of that religion”, or that “is necessary to avoid injury to the religious susceptibilities of adherents of that religion.”<sup>16</sup> This provision grants an extraordinarily broad ambit for discrimination in areas of employment, superannuation, contract workers, education, provision of goods, services and facilities, accommodation and land, clubs, and insurance. The SDA also includes specific exemptions, pertaining to employment and education provision of faith-based schools.<sup>17</sup>

Despite Australia’s international human rights obligations to “take all appropriate measures” to eliminate “customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”,<sup>18</sup> the existence of permanent belief-based exemptions promotes and entrenches traditional prejudice and harm against women and LGBTI communities. Religious institutions can lawfully refuse employment or services to a person on the basis of their gender, with no requirement to justify why such an action is necessary, beyond outright sexism. Faith-based schools can expel a child on the basis of their perceived or actual sexual orientation or gender identity, or that of their family members or carers.

Discrimination of the kind allowed by these exemptions causes significant harm. Research shows the already high levels of LGBTI youth suicide are increased when they experience abuse or harassment.<sup>19</sup> LGBTI youth are already five times more likely to have attempted suicide compared to the general population; for transgender and gender diverse people over 18 years of age, this figure rises to nearly eleven times more likely.<sup>20</sup>

Exemptions that allow for religious organisations to discriminate apply to services, such as mental health, disability, health, youth, housing and homelessness, whose very existence is predicated on the need to provide support for people in already vulnerable positions. Religious organisations can legally refuse services to someone by virtue of their perceived or actual sex characteristics, gender identity, sexual orientation, or marital status. Vulnerable women can be denied protection and support based on their marital status or whether they are pregnant. The severity of this absurd situation is heightened for those seeking assistance in rural or regional areas, as there is no provision that makes concessions when access to such services is limited.

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<sup>15</sup> *Sex Discrimination Act 1984 (Cth)*: section 3(b)

<sup>16</sup> *Ibid.*: section 37(d)

<sup>17</sup> *Ibid.*: section 38

<sup>18</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 5

<sup>19</sup> Sally Morris (National LGBTI Health Alliance), [Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People and Communities](#), 2016; also Skerrett DM, Kölves K, De Leo D. ‘Are LGBT populations at a higher risk for suicidal behaviors in Australia? Research findings and implications’, *Journal of Homosexuality*, 2015.

<sup>20</sup> *Ibid.*

The Australian Government has recognised the egregious harms that such exemptions can cause, but at the same time continues to maintain them. In 2013 the Gillard Government enacted amendments preventing Commonwealth-funded aged care services from discriminating based on the characteristics protected by the SDA, in an attempt to minimise discrimination faced by LGBTI older people seeking aged-care. This amendment was a worthy step in the right direction, and the RSA sees no logical or justifiable reason why this recognition should not extend to LGBTI and other vulnerable people seeking other services that are currently exempt.

**Existing permanent religious exemptions lack transparency, accountability and disregard human rights best practice**

The current sweeping exemptions fail to include any provision for investigating the impact of the discrimination allowed, or for reflecting on the merit of attempts to justify the discrimination. The RSA believes the ‘balancing’ exercise that determines what constitutes legitimate limitations on the manifestation of religious belief – an exercise vital to the human rights process – has been misguided, replaced by a blanket provision that gives undue priority to the very prejudice anti-discrimination laws seek to prevent.

These concerns were noted by the Northern Territory Government, which recently proposed amending its *Anti-Discrimination Act 1996* (NT) to remove exemptions to “ensure that cultural and religious bodies are more accountable for their actions and more inclusive.”<sup>21</sup> Under these changes, religious bodies would need to seek exemptions from the Anti-Discrimination Commission and justify why they are needed. Such a process is in line with best practice for appropriately and fairly determining when an exemption to anti-discrimination law by an organisation is justified or not.

The RSA recognises that religious bodies should be free to organise and conduct those of their affairs which are closely connected to religious practice and observance: activities intimately connected to the practice of religious rituals, on premises are primarily used for religious observance, and which involve individuals who are members of that religion. We further accept that when training and employing religious officials in the conduct of religious observance, religious bodies should be able to require that certain shared religious beliefs be held by employees. But as argued elsewhere in this submission, this right to manifest religious practices is not unfettered, and in particular, religious organisations should *not* be eligible for exemptions to anti-discrimination laws when providing services which are not essentially religious in nature, and which are available to the wider public.

The RSA notes that limiting exemptions to areas pertaining to the employment and training of religious officials, and to the conduct of religious observance, would continue to allow discrimination in these areas based on sex, sexual orientation, gender identity, intersex status, etc. As a secular organisation, it is not our place to dictate requirements pertaining to the manifestation of religious belief in these particular circumstances. However we do

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<sup>21</sup> Northern Territory Department of the Attorney-General and Justice (NT Government), *Discussion Paper: Modernisation of the Anti-Discrimination Act*, September 2017.

note the diversity of religious beliefs in any given religious denomination, including disagreement about gender-specific roles and the inclusion of the LGBTI communities into positions of religious teaching and employment. The RSA notes that the proposed exemptions allow, rather than require, religious bodies to discriminate on the basis of sex, and we strongly support conversations within religious communities regarding inclusion and diversity in religious roles.

The RSA strongly objects to religious bodies exempt under anti-discrimination laws being funded in whole or in part by Commonwealth, state, territory or local governments, whether through statutory authorities or through entities contracted to provide services to the public. Public funds should not be used to support harmful discrimination.

### **Recommendation 3**

Religious exemptions to anti-discrimination laws should be limited to the following:

- a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; and
- d) the selection or appointment of people, by a body established to propagate religion (or religious views), to positions substantially involving religious observance, practice, teaching, leadership, counselling or lobbying.

### **A note on Prof Aroney's proposed general limitation clause**

The RSA notes that Prof. Nicholas Aroney, a member of the Expert Panel, has in previous writings and submissions proposed a 'general limitations clause' that would replace permanent existing exemptions.<sup>22</sup> His clause provides that an action or practice does not constitute discrimination if "it is reasonably capable of being considered appropriate and adapted to achieve a legitimate objective." The RSA contends this proposed clause constitutes far too low a bar for discrimination to be legitimated, by employing subjective and broad language which makes it too easy to justify illegitimate discriminatory action in the name of religion.<sup>23</sup> Should a general limitations clause replace permanent exemptions, it must be worded in such a way so as to preclude the harmful discrimination currently permitted by religious exemptions. The RSA defers to specialist human rights bodies on the correct wording, and mechanisms, associated with any general clause of this kind.

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<sup>22</sup> Patrick Parkinson AM & Nicholas Aroney, *Consolidation of Commonwealth Anti-Discrimination Laws submission*, 2012: 5

<sup>23</sup> As Aroney designed his clause as an alternatives clause, it does not matter what other subclauses define legitimate discrimination because allowing a limitation if "it is reasonably capable of being considered appropriate and adapted to achieve a legitimate objective" already lowers the bar much too far for discrimination, which owing to its importance in maintaining universality in the application of human rights, necessarily requires a high bar in order to impeach upon.

### **Religious exemptions in trade and commerce**

Any further expansion of permanent exemptions to anti-discrimination law would only serve to further entrench existing social inequalities and prejudices in Australia. The RSA notes with concern that arguments have been made to expand religious exemptions to anti-discrimination law so that individuals are no longer protected from discrimination in ordinary trade and commerce.

The RSA reminds the Panel that before the enactment of the *Race Discrimination Act 1975* (Cth), Australian business owners could discriminate against customers based on the colour of their skin. Community expectations have evolved and the Australian public no longer supports such flagrant state-sanctioned racism. The RSA notes that community attitudes have also evolved with respect to sexually and gender diverse Australians, and that the Australian public no longer accepts state-sanctioned homophobia and transphobia.

The justification of discriminatory actions by reference to one's religiosity makes the action no less wrong, and makes the one who commits the discrimination no less of a bigot. While it is not up to the state to determine what any given religion requires of an individual, it *is* up to the state to determine which actions are unacceptable in a safe and respectful society. As such, business owners providing goods and services to the public should abide by the norms of anti-discrimination; if they do not wish to do so, they have the freedom to close their businesses.

#### **Recommendation 4**

Demands for broader religious exemptions or privileges, in particular with regards to their expansion to include religious individuals, or commercial enterprises operated by religious individuals, should be categorically rejected.

### **5. Lessons from previous inquiries**

The Review's terms of reference include having regard to previous relevant reviews or inquiries. One such inquiry resulted in the 2011 Australian Human Rights Commission report, *Freedom of religion and belief in 21<sup>st</sup> century Australia*.<sup>24</sup> Relevantly, an analysis of submissions made to this inquiry found that on the whole, submissions were significantly out of step with the Australian population's views on religion.<sup>25</sup> When compared to the beliefs of the general population, submissions were more positive about religion, less supportive of diversity, more worried about difference and diversity, more likely to contest the equality of races, ethnic groups and religion, more likely to possess extreme views on faith, culture and race, and less secular in orientation.<sup>26</sup>

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<sup>24</sup> Bouma, G., Cahill, D., Dellal, H. & Zwart, A. (2011) [Freedom of religion and belief in 21st century Australia](#), Research report prepared for the Australian Human Rights Commission.

<sup>25</sup> Jacqueline K. Nelson, Alphia Possamai-Inesedy and Kevin M. Dunn, 'A critical analysis of submissions to the Review of Freedom of Religion and Belief in Australia Inquiry', *Australian Journal of Social Issues*, Vol.47 No.3, 2012

<sup>26</sup> *Ibid.*

The authors of the analysis conclude that “the public submission process was an effective mechanism for re-asserting [the Christian lobby’s] privileged influence upon the state”<sup>27</sup> and that “Christian groups, who had the benefits of effective establishmentarianism, were able to flood the submission process with their vested cases for religious privilege, such that the status quo on religious entitlement prevailed.”<sup>28</sup> These findings should alert the Review Panel to the possibility that the submissions process may not provide an accurate picture of the Australian community’s attitude to religious freedom, serving instead to amplify the voices of powerful but unrepresentative religious interest groups.

## 6. Religious privilege in Australia

Prominent religious, especially Christian, voices have interpreted challenges to the dominance of their ideas as an ‘attack’ on religious freedom. However, recent policy changes in spheres traditionally dominated by religious voices have not come at the expense of the freedom to manifest one’s religion. Instead, these changes are an accommodation of a growing awareness that important social questions should not be dominated by religious ideology. A loss of dominance in the debate over contentious questions may be difficult to bear for religious interest groups, but it is clear that ‘freedom of religion’ has not been a casualty and continues to exist in Australia.

Not only is the right to manifest one’s religion safe, Christian institutions continue to enjoy a multitude of privileges in contemporary Australian society. For example, Christians are extremely well represented in federal parliament,<sup>29</sup> with over one quarter of members meeting regularly as part of the Parliamentary Christian Fellowship.<sup>30</sup> In addition, Christian prayers are read in both the federal Senate and House of Representatives at the start of each sitting day.

Outside federal parliament, churches and religious congregations enjoy a number of privileges. One of the clearest examples is that of tax exemptions. Designation of charity status under the *Charities Act 2013* (Cth) entitles a church or religious congregation to income tax exemption, as well as fringe benefits tax and GST exemptions. Smaller churches are also exempt from standard accounting and record-keeping obligations.

In addition, taxpayer funds are provided to private religious schools from federal, state and territory governments<sup>31</sup>, with Catholic schools in Australia receiving a majority of their funding from the government.<sup>32</sup> In Victoria in 2015, Catholic schools received over \$450

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<sup>27</sup> *ibid*, 313

<sup>28</sup> *ibid*, 314

<sup>29</sup> Jonathan James, ‘As Australia becomes less religious our parliament becomes more so’, *The Conversation*, 21/8/2017

<sup>30</sup> *ibid*.

<sup>31</sup> Jessica Gerrard, ‘Explainer: how does funding work in the Catholic school system?’, *The Conversation*, 2/6/2017

<sup>32</sup> Catherine Hanrahan, ‘School funding explained without mentioning Gonksi’, *ABC*, 30/5/2017

million from the state government, and over \$1.6 billion from the federal government<sup>33</sup>, for a total of \$2.1 billion<sup>34</sup>.

Religions are also given an elevated position in schools through the National School Chaplaincy Programme, which provides grants for schools (over \$242 million between 2014 and 2018) to employ predominantly Christian chaplains.<sup>35</sup> The teaching of religious ideology is also funded by the NSW government through the Special Religious Education program under section 32 of the *New South Wales Education Act 1990*. The fact that these are opt-out models highlights the way in which religion is deemed to be the default ideology.

In addition, many social welfare programs are outsourced to religious organisations, giving them a great deal of power in determining the circumstances in which welfare is provided to people in need (see section 4 of this submission).

These examples demonstrate that the idea that the freedom to manifest one's religion is under any sort of 'attack' is misguided, and as such so too are the arguments calling for a strengthening of legal protections at the expense of the rights of others. Furthermore, dismantling any or all of these privileges would still not rise to the level of an attack. Christianity has been a powerful force in Australian politics since federation. The relegation of Christian ideology to the status of any other religion, consistent with secular values, requires the removal of privileges that Christian churches have long enjoyed. This is not an encroachment on the right to manifest one's religion, but a necessary condition for the guarantee of religious freedom for all Australians.

#### **Recommendation 5**

Repeal the provisions of the *Charities Act 2013* and the *Australian Charities and Not-for-profits Commission Act 2012* that treat the "advancement of religion" as inherently charitable, and abolish any related rule of the common law.

## 7. Conclusion

The right to freedom of religion or belief is an important right that protects not just the most powerful religions in society, but all people of all beliefs. As such, the government of Australia has a duty to ensure that no religion is privileged above any other, and that no one suffers at the hands of one religious belief system. That is, the Australian Government has a duty to be secular, to implement its human rights obligations and to protect its citizens from harmful discrimination and prejudice.

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<sup>33</sup> Catholic Education Commission of Victoria, *Annual Report 2015, 2016*, p. 42

<sup>34</sup> *Ibid.* also see: Catholic Education Commission of Victoria, *Allocating government grants to Catholic Schools in Victoria*, 2016, p. 4

<sup>35</sup> Project Agreement for the National School Chaplaincy Programme, p. 6:  
[http://www.federalfinancialrelations.gov.au/content/npa/education/project-agreement/nat\\_school\\_chaplaincy.pdf](http://www.federalfinancialrelations.gov.au/content/npa/education/project-agreement/nat_school_chaplaincy.pdf)

Currently, religious bodies – particularly powerful Christian religious bodies – are accorded privileges that make them exempt from multiple Australian laws, including anti-discrimination and tax laws. These exemptions entrench inequality and social prejudice against the most vulnerable in our society. The harm that such exemptions do to LGBTI communities deserves particular mention.

Religious exemptions directly contradict any respect of neutrality that the government of a secular liberal democracy must abide by.<sup>36</sup> That is, these exemptions exist *exclusively* to benefit those holding religious beliefs, placing the interests of the religious over and above the rest of the population.

The RSA argues that such exemptions should be repealed, except in very limited cases. The limiting of these exemptions will not restrict the right to manifest one's religion, but rather will limit religious privilege that allows religious bodies to unfairly discriminate against people on the basis of attributes such as their sex, sexual orientation, gender identity, intersex status and more.

Any proposal to expand religious exemptions to include religious individuals or businesses run by religious individuals should be rejected out of hand. Such flagrant discrimination is completely out of step with community expectations and the right to non-discrimination and equality. There is no circumstance in which we would accept such prejudice-based discrimination against someone on the basis of their race, and nor should there be any circumstance in which we accept it on the basis of their sex, sexual orientation or gender identity.

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<sup>36</sup> The principle of neutrality is considered by Dean Stretton in his submission to this Review.