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Submission to:

Freedom of Religion Panel

Department of the Prime Minister and Cabinet

Submission by CAHS on freedom of religion in Australia (13/02/18)

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Overview:

The current system of laws in Australia protects the right to freedom of religion. Freedom of religion depends on, and is part of the right, shared by all people, religious or otherwise, to hold their most fundamental in conscience beliefs, without fear of persecution or discrimination for holding those beliefs. As such it is a right based on the right to freedom of belief and conscience, rather than a right to impose religious beliefs, or values dictated by those beliefs, on others.

Freedom of religion needs to be carefully distinguished from religious privilege and religious discrimination; situations where the believers or values of a religion are given a privilege above other beliefs, or entitled to discriminate against others based on their religious beliefs.

We support freedom of religion as part of our support for freedom of thought and conscience. But support for freedom of religion should not be allowed to cross over into religious privilege or discrimination. Freedom of religion does not justify discriminating against others.

The right to freedom of thought, conscience and religion needs to be defended in a way that respects the dignity and rights of all people, it is imperative to ensure that “freedom of religion” is not used as a weapon to undermine other fundamental human rights.

Brief statement on the terms of reference:

“The Panel shall examine and report on whether Australian law (Commonwealth, State and Territory) adequately protects the human right to freedom of religion.” The right to freedom of religion is adequately protected in the current Australian situation. The key issue is not that this right is in danger, but the possibility of advocating policies of religious privilege or discrimination in its name, and thus undermining the basic foundational right of freedom of thought, conscience and religion. This is the key danger we need to guard against in the current environment in Australia.

“Consider the intersections between the enjoyment of the freedom of religion and other human rights.” Actions proposed by some, such as refusing the provision of goods or services or requested medical services on the grounds of freedom of religion do not constitute defences of freedom of religion, but promotion of religious privilege or religious based discrimination under the guise of freedom of religion.

There should be no conflict at the intersection of freedom of religion with other rights as freedom of religion is part of freedom of belief, conscience and religion. Respecting this basic human right means respect for the right of people to hold their views, and not to be discriminated against merely for holding those views. The instant a particular set of views is singled out for extra protection, for instance religion, there is a risk that the discussion will be about privileging those views against all others. This would be a breach of the most fundamental of human rights.

Definitions:

Freedom of thought religion and conscience: The right of a human being to hold their own views and opinions. This right is absolute and foundational. It is not a right to act on or impose those views. It is a right to not be punished or discriminated against simply due to the holding of those views. This is a necessary right to enable the maximum freedom and autonomy of all human beings to explore and discover for themselves meaning and fulfilment in life.

While this right protects from persecution and discrimination, it does not protect from criticism. To disagree with a person’s point of view is part of freedom of speech. Mere disagreement is not persecution or discrimination.

Freedom of religion: A subset of freedom of thought, religion and conscience.

Religious privilege: A situation where a person or viewpoint is privileged because it is religious. For instance, the view that a representative community advisory body should have members from all the religions in the community, but no requirement to include representatives of other thought systems that give meaning to people's lives in the community, such as Humanism, would be an example of religious privilege.

Religious based discrimination: A situation where a person is discriminated against because of their religion. For instance the view that, in a Christian owned business, products should not be sold to Muslims, would be an example of religious based discrimination.

1: Meaning of freedom of religion:

All human beings should be entitled to the maximum amount of freedom and dignity compatible with the same amount of freedom and dignity being available for all others. Respect for the dignity and autonomy of human beings includes at its core, respect for each human being's independence of thought and expression.

This particularly applies to human beings' most fundamental ideas about meaning and purpose in life. People should not be punished solely because their ideas and opinions are different to others. Freedom of thought and conscience in this context means the freedom to develop one's ideas without any penalty or discrimination based only on those ideas being different. It does not mean the right to act on those ideas to dominate others, it means protection of the right to develop and hold those ideas as a human being.

This includes, of course, religious beliefs. The need to respect the basic freedom of thought and conscience of all human beings is the core justification for freedom of religion. Freedom of religion is a component of freedom of thought and conscience. A brief exploration of some contemporary global human rights documents shows how well accepted this is.

The UN's Universal Declaration of Human Rights¹ (UDHR) is the foundational document of the post-World War 2 global approach to protecting human rights. It was proclaimed by the UN General Assembly in 1948, Australia was one of the Countries that voted for its adoption. Whilst not a legal instrument it has been seen by people around the world as a guiding document in building a world that respects the dignity of all people².

Article 1 UDHR says: *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

Article 18 UDHR says: *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

Freedom of religion was thus included as a key right. It is noticeable that Article 1 characterises humans as endowed with "reason and conscience" and that article 18 couples freedom of religion with freedom of "thought" and "conscience". Freedom of religion is not an idea that can be separated from, or override, respect for all human beings' freedom of thought and conscience. Respect for freedom of thought and conscience is in fact the foundation of respect for people's religious beliefs.

The International Covenant on Civil and Political Rights³ (ICCPR) was established in 1966 and is a treaty Australia has joined. It was ratified by Australia in 1980⁴.

ICCPR clause 18 reproduces clause 18 of UDHR with slightly different wording: it says, in part:

18.1: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

18.2: No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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

This wording maintains the connection with freedom of thought and conscience. It also includes, at sub clause 3, an express limitation, referring to limitations on manifestation of religion or beliefs to protect a number of matters, including the fundamental rights and freedoms of others.

Whilst the right to hold one's own belief should be sacrosanct, it does not follow from this that respect for one's own belief entitles one to discriminate against others. To do so would violate the basic principle of respect for freedom of thought, conscience and religion from which the concept of freedom of religion derives its legitimacy.

The right to not be discriminated against for one's own views does not, and should not, translate into the right to discriminate against others for their views. Discriminating against people with different views, in the name of respect for one's own freedom of thought, is discrimination.

People do indeed have different and contradicting beliefs. It would not be possible in any society for people with contradictory beliefs to all act on them. So a distinction needs to be made between the right to hold a belief, and the right to, in the words of ICCPR, manifest that belief.

Freedom of religion (and thought and conscience) means the right to hold one's beliefs without fear of punishment or discrimination. It does not mean the right to impose one's beliefs on others. Freedom of religion does not justify religious privilege or religious discrimination. It is important to bear this distinction in mind when looking at freedom of religion in Australia.

2: Humanism and freedom of religion:

The first sentence of the Amsterdam Declaration⁵; the main document of contemporary humanism, includes the statement that humanism: *"affirms the worth, dignity and autonomy of the individual and the right of every human being to the greatest possible freedom compatible with the rights of others."*

For humanists, respecting human dignity means respecting the freedom of belief of human beings and so includes respect for freedom of religious belief. But, this freedom needs to be tempered by respect for the dignity of others and the need to maintain the same degree of respect for other's beliefs. Humanism therefore takes a similar approach to ICCPR 18:3; freedom of belief is strongly defended, but it is accepted there may be limitations to how people "manifest" their beliefs. There are no grounds for imposing religious beliefs on others.

This is important in another context for this enquiry as well. Humanism is an approach to life which humanists hold as a matter of belief and conscience. The “right” to freedom of belief in Humanism should therefore be protected as effectively as the right to freedom of religion under ICCPR 18 and UDHR 18.

Whilst the enquiry is focussed on freedom of religion only, the very articles of international agreement which uphold this right bracket it with freedom of belief and conscience.

To discuss freedom of religion only, without simultaneously acknowledging the general right to freedom of thought and conscience, risks obscuring the basic principle of respect for human dignity and autonomy which underlies them all. Such an approach risks the very religious privilege we have been warning against by presenting a scenario where freedom of religious beliefs is emphasised, but other freedoms of thought and conscience do not receive the same degree of consideration.

Freedom of religion is not a sui generis special case with unique rights attached to religion, it is simply one example of freedom of thought.

We hope that the review panel bears in mind that non-religious people with belief systems, such as humanists, also deserve exactly the same protections of our freedom of belief and conscience as religious believers. We hope the review panel confirms in its final report that it supports freedom of conscience and belief for all, not just the religious.

3: Some historical considerations re the importance of freedom of religion

Freedom of religious belief is an important value. For many people in the past, and in the present, religion has provided the main path to meaning and purpose in life. Basic respect for a person’s fundamental beliefs about how to live a meaningful life therefore needs to include respect for religious beliefs.

Ironically, for most of history, the main threat to freedom of religion has in fact come from religion. Major religions such as Christianity and Islam have long histories involving persecution of both non-believers outside the religion, and dissenters within the religion. The struggle for the right to freedom of religion in European history emerged not as part of a struggle against the forces of anti-religion, but against the forces of religion!

European history, since the rise of Christianity, had been marked by centuries of intolerance for both non-Christians, and for Christians who did not share the views of the relevant Christian leadership. Imprisonment, torture, and execution, including by such ferocious methods as the auto-de-fé, were too often the fate of Christians who dissented from the Christian authorities.

As historian John Coffey writes of medieval Christian Europe *“The classic theory of religious coercion expounded by St. Augustine was almost universally accepted in the medieval period, and hardly anyone held to the standard modern position that the magistrate must not punish individuals for their religious beliefs. Although toleration was sometimes implemented as a political necessity, religious uniformity remained the ideal. The Augustinian consensus in support of the persecution of heretics and schismatics was only widely challenged in the sixteenth and seventeenth centuries.”*⁶

Even after this challenge was mounted it has been a long slow process of winding back the power of religion to persecute others in European culture.

Australia has a legal system inherited from England. The last execution of a heretic in England was in 1612⁷. But the process of allowing a fuller equality of freedom of religious belief has been more recent. It was not until the “Papists Act” of 1778 that post-reformation England law was amended to

allow Catholics to inherit and purchase land⁸. In 1828 the Sacramental Test Act removed the requirement for being a member of the Church of England to hold public office⁹, and in 1871 the University Tests Act allowed Jews to become scholars or fellows at English Universities¹⁰. Other laws imposing the values of the Church of England on people regardless of their right to freedom of religion, such as those restricting activity on the Christian “Sabbath” lasted well into the 20th century, not just in England, but in Australia as well.

The key point here is that it was the forces of religion that imposed these restrictions on freedom of religion. Traditionally the main threat to freedom of religion has come from – religion. Historically the battle for freedom of religion has been a battle against the forces of religion, not of anti-religion.

The story of freedom of religion is not a story of the long battle to free religion from the control of anti-religion. It is the story of a long battle to break down the power of religion so that all people could have freedom of conscience, belief and religion.

So it is important to remember that in considering the right to freedom of religion in Australia we are looking at it from a background where an established Christian culture and legal system imposed its values on others.

From this historical perspective it is easy to understand how some people, from the perspective of an existing socially strong religion, may experience its declining power as a threat, and feel that its decline to a position of equality with other belief systems is a threat to “freedom of religion”. Likewise people outside this traditional power structure however, may feel, given the long history of dominance by one religious point of view, that it is more important to protect “freedom of religion” as part of protecting freedom of thought and conscience rather than by returning the previously dominant point of view to a privileged position.

It is important to remember that the fight for freedom of conscience and belief is not an academic exercise, it is one that has been going on in western culture for centuries with Christianity as the main opponent of freedom of conscience, belief and religion, and so people may well come to this issue with attitudes influenced by this history.

From logical, historical, and humanist perspectives the removal of one form of religion from a dominant position is not a threat to freedom of religion, but a necessity to ensure that all beliefs and religions can be at an equal level of freedom and status.

4: Some issues and risks in the current Australian situation.

The Australian legal system contains strong protections of the right to freedom of religion. Expert studies by both the Australian Law Reform Commission and the Law Council of Australia reported that there is protection of freedom of religion in Australia¹¹. The Law Council of Australia’s submission, for instance, included the statement that “*The Law Council has not identified any laws imposing direct restrictions on the freedom of religion.*”¹² The Law Reform Commission stated: *Australians enjoy the freedom to worship and observe religion, and the freedom not to be coerced into engaging in religious practices*¹³.

However there are some areas where the long dominance of one point of view has produced situations or habits of thought that may be closer to justifications for religious privilege or religious based discrimination than freedom of thought, conscience and religion:

4.1: Refusing goods and services on religious freedom grounds:

It has been argued that, in the light of the move to marriage equality, those whose opposition to same sex marriage is based on religion should be able to refuse services to same sex weddings¹⁴; the famous example given is that of the baker of a wedding cake who does not wish to provide cakes to same sex weddings.

This is clearly a situation where to deny a good or service on the grounds of freedom of religion is in fact to use the religious belief to deny the fundamental equality and dignity of others. It is a “manifesting” of religion which clearly goes against the grain of ICCPR 18:3 as it clearly abjures the fundamental dignity of others. It would be religious discrimination, rather than an expression of religious freedom to act in this way.

Some examples of the logic behind this illustrate how impossible it is to support the idea. Suppose the cake shop owner refused to sell a cake for a Jewish wedding? Suppose an atheist cake shop owner refused to sell a cake for a religious wedding?

These sorts of actions are not defences of freedom of religion. They are examples of intolerance validated by religion (or other beliefs in the case of the atheist cake shop owner). They are examples of religious inspired discrimination.

Allowing religiously inspired restrictions such as the type above in relation to the sale of goods and services does not defend freedom of religion; it opens the door to using religion to justify discrimination and a denial of fundamental human dignity and equality.

4.2 Wearing Religious Garments and Symbols

Respect for freedom of religion should entitle people to wear whatever religious garment or symbol they see fit, as long as to do so does not violate other laws.

Just as religious freedom entitles people to wear what they think is appropriate, it does not entitle them to control the clothing of others. Attempts to force people to wear religiously prescribed clothing against their will, abuse of people who refuse to wear religiously prescribed clothing, abuse of people wearing clothing that is frowned upon by the religion, for instance clothing that is perfectly legal, but according to the religion too indecent, all these forms of conduct amount to religion controlling what people wear. It is a denial of other people’s freedom, not an exercise of religious freedom, to engage in such behaviours. It is religious based discrimination, not a protection of freedom of religion.

4.3 Assisted Dying

Recent law reforms in Victoria have made assisted dying possible in that State. A person’s choice about the manner of their death is one of the most crucial exercises of their personal autonomy they can make. A person’s freedom of thought and conscience needs to be respected in this area. So, where a person is seeking to end their life in a legal manner in good conscience, to deny them the opportunity to do so in the name of religion would not be an exercise in freedom of religion, it would be an attempt to use religion to restrict that person’s freedom of choice.

4.4 School Chaplaincy Program

The School Chaplaincy Program, currently funded by the Federal Government, apparently only provides funding for chaplains endorsed by religious groups¹⁵. This is a clear example of privileging a religious approach above a non-religious approach. It is not the case that only religious people are

capable of feeling care and compassion for others, and wanting to help them through providing chaplaincy support. While such a policy does not present a threat to freedom of religion it provides an example of privileging religiously motivated people (religious chaplains) above non-religiously motivated people, non-religious chaplains, such as humanist chaplains.

In other words such an approach discriminates against those who do not have a religious motivation. It would be an example of religious inspired discrimination; limiting the options for non-religious chaplains simply because of their exercise of their right to freedom of conscience and belief.

In the four areas we have surveyed here the main issues observed have been the claims of religious privilege being used to undermine respect for the freedom of thought and conscience of others. Whilst we support freedom of religious belief we do not support the privileging of religious belief above other beliefs held in conscience. Respecting freedom of religious belief should not be used to privilege religion. It should be part of an approach that respects the freedom of belief and conscience of all human beings, not just the religious.

We call upon the review panel to confirm that freedom of religious belief should be seen as part of freedom of belief and conscience for all, not just the religious. To privilege religious beliefs above others, in the name of religious freedom, is to actually undermine the equal respect for the freedom of belief and conscience for all that should underpin freedom of religion.

We strongly urge the panel to make clear its support for freedom of belief, conscience and religion for all rather than supporting the use of “freedom of religion” as a vehicle for the privileging of religion

5. Conclusion

Australia’s current framework offers adequate protection of freedom of religion. Freedom of religion itself needs to be understood in the context of the broad right to freedom of thought and conscience. It is a right to be able to develop and express one’s views. It is not a right to impose one’s views on others. It is not a right to take away other people’s basic rights simply because their exercise of those rights contradicts a religious belief.

We hope the review panel confirms in its final report that it supports freedom of conscience and belief for all, not just the religious.

It is important to ensure that we protect the right to freedom of thought, conscience and religion in a way that respects the dignity and rights of all people, and to ensure that this right is not used as a weapon to undermine other fundamental human rights.

About CAHS

The Council of Australian Humanist Societies Inc. was established in 1965 as a national body to help coordinate the activities of Australia's humanist societies and advocate for Humanist views and concerns at a federal level. Humanists believe that meaning in life, ethics and community can be developed through human means rather than relying on God or other supernatural foundations. There is no need for religion. Humanism is a values based alternative to religion.

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Notes

¹ Universal Declaration of Human Rights (UDHR) Text of this document and information about it on the UN website accessed at <http://www.un.org/en/universal-declaration-human-rights/> (accessed 10/02/18)

² Information about The role of UDHR in global observance of human rights can be found on Australian Human Right's commission website at <https://www.humanrights.gov.au/human-rights-explained-fact-sheet-5the-international-bill-rights> (accessed 10/02/18)

³ International Covenant on Civil and Political Rights (ICCPR) text accessed on 10/02/18 at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁴ Information about The role of UDHR and ICPR in global and Australia's observance of human rights can be found on Australian Human Right's commission website at <https://www.humanrights.gov.au/human-rights-explained-fact-sheet-5the-international-bill-rights> (accessed 10/02/18)

⁵ Text of Amsterdam Declaration available from International Humanist and Ethical Union website (accessed 10/02/18) at <http://iheu.org/humanism/the-amsterdam-declaration/>

⁶ Coffey, John: *Persecution and Toleration in Protestant England 1588-1689* Routledge 2014. Page 6.

⁷ Dates for basic historical events and legal reforms have been sourced from Wikipedia. For 1612 as the date for the last execution of a heretic in England see accessed 10/02/18) <https://en.wikipedia.org/wiki/Heresy>

⁸ Dates for basic legal reforms have been taken from Wikipedia. For the Papists Act see: https://en.wikipedia.org/wiki/Papists_Act_1778 (accessed 10/02/18)

⁹ For the Sacrament Tests Act see: https://en.wikipedia.org/wiki/Sacramental_Test_Act_1828 (accessed 10/02/18)

¹⁰ For the Universities Tests Act accessed see: https://en.wikipedia.org/wiki/Universities_Tests_Act_1871 (accessed 10/02/18)

¹¹ For the Australian Law reform Commission report see <https://www.alrc.gov.au/publications/summary-33> (accessed 10/02/18)

For the Law Council's submission to the freedom of religion round table see <https://www.lawcouncil.asn.au/resources/submissions/religious-freedom-roundtable> (accessed 10/02/18)

¹² Quote from Law Council's submission to the freedom of religion round table at <https://www.lawcouncil.asn.au/resources/submissions/religious-freedom-roundtable> (accessed 10/02/18)

¹³ Quote from Law Reform Commission report at <https://www.alrc.gov.au/publications/summary-33> (accessed 10/02/18)

¹⁴ E.g. see <http://www.abc.net.au/news/2017-11-27/push-dropped-to-let-florists-and-bakers-discriminate-ssm/9197448> (accessed 10/02/18) reporting on the abandonment of a legislative proposal influenced by such ideas.

¹⁵ ABC news report <http://www.abc.net.au/news/2014-12-02/non-religious-chaplains-may-not-be-funded-under-new-programme/5935450> (accessed 10/02/18) Also see Wikipedia summary https://en.wikipedia.org/wiki/National_School_Chaplaincy_Programme (accessed 10/02/18)