

PRESBYTERIAN CHURCH OF AUSTRALIA

*Submission to the Freedom of Religion and Belief in the
21st Century Project*

26 February 2009

1. Our standpoint

The federal government has rightly expressed a desire to see social cohesion and harmony promoted within the Australian community. As a denomination of Christians, the Presbyterian Church of Australia similarly seeks to promote peace, justice and harmony within our society. Jesus Christ, reminding us of the teaching of Moses, instructs us that we ought to love our neighbour as ourselves (Leviticus 19:18; Luke 10:27) and indeed explained that this means we ought to love, rather than hate, even those who would make themselves our enemies (Matthew 5:43-46). Expounding the teaching of Christ, the Apostle Paul teaches us to bless those who curse us, never to pay back evil for evil to anyone, to respect what is right in the sight of all men and, as far as possible and so far as it depends on us, to be at peace with all men (Romans 12:17-18).

As Christians, we have a message of good news – the love of God expressed in the sacrificial life of his Son, the Lord Jesus Christ – to share with all. We know that the message of God's redeeming grace is not received by all, but we have no interest in coercion of any kind. The Westminster Confession of Faith, to which our denomination subscribes, teaches that 'God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men' (WCF 20:2). We are committed therefore to speaking and living what we believe to be the truth, but at all times 'speaking the truth *in love*' (Ephesians 4:15) and expressing this love through lives of service and compassion directed especially to the sick, the imprisoned and the stranger (Matthew 25:34-40; Luke 10:29-37).

Consistent with these principles, Christians of many denominations, including those of the Presbyterian Church of Australia, have worked hard to contribute to the well-being of the Australian community. It is surely not necessary to document in detail the many ways in which Christians have provided social welfare services, health care, education, and much else, all contributing fundamentally to the social fabric of the community. We therefore believe strongly in the principle of freedom of religion, meaning the freedom of religious individuals and groups to put their religious beliefs into practice. We are concerned that there are some sectors in Australian society which do not respect or even understand the valuable contribution that Christians have made. It would be extremely harmful for our society if 'freedom of religion' were to be understood as 'freedom *from* religion'. There is a real sense in which every perspective is 'religious', even the humanistic. We affirm the freedom of individuals and groups to express their religious beliefs in practice within the proper constraints of law.

The following submission is made, therefore, praying to God on behalf of all who are in authority in this nation, that we may be at liberty to lead quiet and peaceful lives in all godliness and dignity (I Timothy 2:2). Whilst in this paper you will find criticisms of the *Article 18 Report*, the Discussion Paper, and *Religion, Cultural Diversity and Safeguard*

Australia, these criticisms, though serious, are voiced in a spirit of cooperation and concern for the well-being of the people of this country.

In preparing this submission we have examined and drawn from several other submissions that are being made by other Christian bodies, including those of the state churches of our own denomination as well as research material provided to both the Victorian Ad Hoc Inter-Faith Committee and ourselves. Note however, that our recommendations differ from those of the Victorian Committee.

2. The United Nations Framework

2.1 The Universal Declaration of Human Rights

The first clause of the Preamble to the Universal Declaration of Human Rights (the Declaration) asserts the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice, and peace in the world.”

Article 1 of the UDHR declares:

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.

It is important to recognise that according to Article 1 of the Declaration the state is *not* the source of human rights. Rather, the inviolable dignity of the human person is derived from and directed to that which transcends the authority of the state. Article 1 declares that the person is “endowed with reason and conscience”. Reason and conscience direct the person to the source of that endowment. This orientation toward freedom and equality in dignity and rights is typically expressed in religion.

So, in the first chapter of the Bible, we read,

God created man in his own image, in the image of God he created him; male and female he created them. (Genesis 1: 27)

Human dignity is grounded in God’s creation of and love for humanity:

For God so loved the world, that He gave His only begotten Son, that whoever believes in Him shall not perish, but have eternal life. (John 3:16)

Freedom of religion, meaning freedom from any bondage that would prevent people from the service and worship that is due to God, is basic to the faith of the Bible. In the book of Exodus, we read of Yahweh’s message for Pharaoh King of Egypt: ‘Let My people go, that they may serve Me’ (Exodus 8:1). The Apostle Paul similarly urged that:

entreaties and prayers, petitions and thanksgivings, be made on behalf of all men for kings and all who are in authority, so that we may lead a tranquil and quiet life in all godliness and dignity. (I Timothy 2:2)

The confession to which our denomination subscribes teaches that ‘God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word ...’ (Westminster Confession of Faith 20:2, citing James 4:12 and Romans 14:4). It is in this sense that we read the Declaration, which affirms at Article 18:

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.

As the Ramsey Colloquium pointed out some years ago, because religion most directly addresses the foundation of human dignity, religious freedom is the source and safeguard of all rights and freedoms.¹ As a denomination of Christians, we affirm that religion is a communal and public commitment. We believe that we have been created as beings in community with God and each other, and that human community is expressed in many varying ways, most particularly in the family (Genesis 1:28; 2:24; 12:3). For this reason, we affirm with Article 16 of the Declaration that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”. The Ramsey Colloquium has thus observed:

Respect for human rights requires the protection of the communities and associations by which a culture of human dignity either flourishes or dies. We know from historical experience that, when these communities are weakened or destroyed, individuals become abstract instruments of collective power and the way is opened to tyranny and totalitarian control. The state is the servant and not the master of the communities of allegiance in which free persons express their identity and solidarity with others.²

The many affirmations in the Declaration relating to the rights of each person should be understood, not as the rights of isolated individuals, but of persons in community one with another. As Article 29 puts it: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” The Declaration thus recognises the importance of many and varied forms of human community, in areas such as political participation (Article 21), work (Article 23), education (Article 26) and cultural life (Article 27). In particular, Article 26 states that “Parents have a prior right to choose the kind of education that shall be given to their children” (Article 26).

We submit that it is vitally important that the right to freedom of religion recognised in Article 18 of the Declaration and Article 18 the International Covenant on Civil and Political Rights be understood in this context. Religious freedom is basic to human dignity and rights, and it is something that can only be exercised in community with others. It has special expression not only in specifically religious communities, such as churches and religious orders, but also in family life, in primary, secondary and tertiary education, in work practices, in cultural life and even in political participation through the formation of think tanks, political parties and

¹ ‘On Human Rights - The Universal Declaration of Human Rights Fifty Years Later: - A Statement of the Ramsey Colloquium’, *First Things* (April 1998).

² *Ibid.*

lobby groups. While we respect the need for an institutional separation of church and state, none of these areas of life should be regarded as “religion-free” zones.

2.2 The International Covenant on Civil and Political Rights

The relevant articles in the International Covenant on Civil and Political Rights (ICCPR) are Articles 18, 25 and 27.

Article 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.
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.
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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2³ and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 18(1) and (2) maintains that people have the right both to believe and to practice their religion, whether individually or communally, as well as the right to have or to adopt a religion or belief of their choice. In manifesting one's religion by teaching that religion's claims to truth, it is inevitable and necessary to critique the claims of other religions. This needs to be understood as serving the legitimate propagation of a religion without necessarily being seen as an attack on *persons* of other religions. In relation to proselytising religions such as Christianity, Islam, and even Buddhism and Hinduism, the manifestation of religion in teaching cannot be separated from proselytism and evangelism. While Article 18 of the ICCPR does not refer specifically to the right to ‘change’ one's religion, Article 18 of the

³ The distinctions referred to in Article 2 include “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Declaration does, and we read the ICCPR as including this right, and thus affirming the right to proselytise.⁴

Article 18(4) specifically protects the rights of parents “to ensure the religious and moral education of their children in conformity with their own convictions”. Article 27 reinforces Article 18 in the protection of the communal expression of religious faith. Article 25 affirms that every citizen shall have the right and the opportunity, without any distinction, inter alia, of religion, to take part in the conduct of public affairs. Religious belief and its expression must be no barrier to participation in the public domain. We do not accept a truncated view of citizenship that would require religious persons to put aside their religious beliefs when engaging in public discussion and political debate.⁵

Article 18(3) acknowledges the need for limitations on religious freedom, but the grounds of limitation are strictly defined. They must be prescribed by law and they must be *necessary* in order to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. We acknowledge that “necessity” can be interpreted in various ways. We submit that it should be interpreted in the light of the Siracusa Principles,⁶ promulgated in 1984 by the International Commission of Jurists and several other international bodies. The Siracusa Principles help to define the conditions and grounds for permissible limitations and derogations enunciated in ICCPR in order to achieve its aims. They include the following general interpretive principles:

1. No limitations or grounds for applying them to rights guaranteed by the Covenant are permitted other than those contained in the terms of the Covenant itself.
2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.
3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.
4. All limitations shall be interpreted in the light and context of the particular right concerned.
5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.
6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.
7. No limitation shall be applied in an arbitrary manner.
8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.
9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.

⁴ General Comment No. 22, UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), para. [5]. See also Paul Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge, 2005), ch 5; Jean Bethke Elshtain, ‘Toleration, Proselytizing, and the Politics of Recognition’ and John Witte Jr, ‘The Rights and Limits of Proselytism in the New Religious World Order’, both in Thomas Banchoff (ed), *Religious Pluralism, Globalization, and World Politics*, by *Rights and Limits of Proselytism* (Oxford, 2008), 105;.

⁵ See Christopher Eberle, *Religious Convictions in Liberal Politics* (Cambridge, 2002).

⁶ United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc. E/CN.4/1984/4 (1984).

10. Whenever a limitation is required in the terms of the Covenant to be “necessary,” this term implies that the limitation:

- (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant,
- (b) responds to a pressing public or social need,
- (c) pursues a legitimate aim, and
- (d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

3. Aspects of Religious Belief and Practice

3.1 Religion is expressed Communally

Christians seek the freedom to congregate and organise as communities. In order to maintain a common faith and internal cohesion it is necessary to define that faith, which inevitably involves categories of inclusion and exclusion. ICCPR, Articles 18(1) and 27 especially acknowledge and uphold the communal aspect of religion.

3.2 Religion is Whole of Life

Christianity has a well developed doctrine of the separation of church and state, traced originally to Jesus’ statement:

render to Caesar the things that are Caesar's, and to God the things that are God's
(Matthew 22:21)

The Apostle Paul developed this doctrine further in Romans 13:1-10. In acknowledging the claims of Caesar,⁷ the Christian will do so in obedience to Jesus Christ and his way of life.

Christianity establishes a framework for thinking about God, oneself and one’s place in the world. To be a follower of Jesus Christ is to acknowledge His Lordship in every compartment of life; it means to follow His way of life as set forth in the Bible and confirmed in the teaching of the Church.

Article 18(1) and (2) with the proviso of 18(3) and Article 25 of the ICCPR acknowledges and upholds the right of churches and their people to practice their religion both privately and publicly.

⁷ “Caesar” in the sense of the state with its legal apparatus, i.e. legislative, executive and judicial powers.

3.3 Religious Education

There is a long history, wherever the church has been found, of its involvement in education at primary, secondary and tertiary level. Church and other faith-based schools make clear the importance of a religious foundation to the life of their educational institutions.

Central to the notion of a faith-based school is that there is much more to a religious education than merely having lessons on the beliefs and doctrines of the faith. The faith-based school is a religious community and the faith provides a context and a focal point for the children's education. In a religious school, through the teaching and example of staff members who adhere to the religion, the codes of conduct that follow from the religious beliefs are taught and practiced. The pastoral care provided by the school is also an expression of the faith and the moral values of the staff. The entire school community is a manifestation of the religious beliefs of those concerned in the sense protected by Article 18(1) of the ICCPR. Article 18(4) in turn and accordingly acknowledges and upholds the right of parents "to ensure the religious and moral education of their children in conformity with their own convictions".

3.4 Propagating the Faith

To practice one's religion means to communicate that religion, and in the case of the Church there is the specific injunction of Jesus Christ addressed to his followers:

go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you. (Matthew 28:19, 20)

Allowing the freedom to evangelise, to persuade others of the truth as one understands that truth, is integral to a free society. This is a freedom that applies as much to the non-religious person as to the religious. Religions do not need and should never expect protection from competing claims to truth.

As stated above, the manifestation of religion in teaching cannot be separated from proselytism and evangelism, and for the reasons stated above, we affirm that both Article 18 of the ICCPR, with Article 18 of the Declaration, incorporates the right to 'change' one's religion, and by necessary implication affirms the right to proselytise.

3.5 Rival Religious Claims

All religions, Christianity included, as well as proponents of belief systems such as atheism,⁸ make competing truth claims. Believing in the truth of one's religion necessarily means that on some matters at least, one believes others to be mistaken to the extent that the respective

⁸ Examples of recent books espousing atheism include Richard Dawkins, *The God Delusion* (Bantam Books, 2006), Michel Onfray, *The Atheist Manifesto* (Melbourne University Press, 2007), Christopher Hitchens, *God is not Great* (Allen & Unwin, 2007), Sam Harris, *The End of Faith* (Norton, 2004) and Daniel C Dennett, *Breaking the Spell* (Penguin Books, 2006), most of which have proved to be best sellers.

beliefs are inconsistent. While different religions have much in common, and much that unites them, there are points of difference on which they cannot agree. It follows that teaching about the faith may involve pointing out areas of difference with other religions or systems of belief and declaring them to be wrong in relation to those matters.

As Professor Patrick Parkinson has pointed out:

One can say that another is mistaken while defending to the utmost his or her freedom to believe, practice and profess those beliefs. One can also respect the integrity of those who hold to beliefs with which one disagrees. This is to say we can oppose a person's ideas and yet respect the person. Disagreement, even vigorous debate, is a normal part of life in any free society and is one of the markers of its vitality and capacity for growth and change. People disagree about politics, sport, the arts, the economy, the environment and a myriad of other things. Sometimes people are offended by the views of others. *Disagreement is not a problem* for a society, and disagreement on religious matters can be no exception. Disagreements only become a problem for a community when they threaten public safety or order.⁹

Article 18(1) and (2) acknowledge and uphold the right of churches and their people to engage in apologetic¹⁰ activity of this kind, within the constraints specified in Article 18(3) and, we submit, interpreted in the light of the Siracusa principles.

3.6 Codes of conduct

A wide gulf has opened up between the views of many religious bodies and certain sections of society in relation to acceptable behaviour in relation to sexuality and marriage. This is not because the Church or other religions have changed their beliefs and practices but because the beliefs and practices of many in the society have changed. The major monotheistic world religions share similar beliefs about the wrongfulness of sex before or outside marriage, and in relation to homosexual practice (as distinct from homosexual orientation).

This shift in societal mores needs to be taken into consideration not only in the usual sense that the churches need to understand the different context in which they now exist, but also in the sense that the society at large needs to recognise and respect the Churches as *minorities* entitled to the same kind of equal concern and respect that all minorities are entitled to. At this stage in time, there is little doubt that church belief on sex before marriage is a minority one, and is in need of protection in terms of Article 18 of the ICCPR. The churches' belief that the homosexual act is wrong is more widely held in society, but the churches' beliefs and codes of practice in this respect need to be protected as legitimate manifestations of religion pursuant to Article 18.

The churches' right to hold and manifest these beliefs may particularly be threatened if individual rights to non-discrimination are so privileged over the rights of religious groups as

⁹ Patrick Parkinson, 'A National Framework for Religious Freedom', Unpublished Paper, p. 4, available at: <<http://www.nswchurches.com/Resources/Articles/A09022.pdf>>.

¹⁰ Apologetic activity" means the public reasoned defence of religious faith or, for that matter, the philosophical presuppositions for a particular worldview such as Darwinism.

to make it unlawful for religious groups to insist upon adherence to certain forms of conduct as a condition of inclusion in, or employment by, an organisation that exists to give expression to that faith. If churches' are not allowed this freedom, society is countenancing a form of intolerance and discrimination that is contrary to the rights enshrined in Articles 18 and 25 of the ICCPR.

4. Critique of Victorian legislation

In our view the greatest challenges to freedom of religion in Australia have emerged in recent years in the State of Victoria. Given the UN framework for freedom of religion, how well has the Victorian Government done in protecting freedom of religion in the State of Victoria? With regard to the *Racial and Religious Tolerance Act 2001*, the *Charter of Human Rights and Responsibilities Act 2006* and the *Abortion Law Reform Act 2008*, the short answer is not at all well.

4.1 Racial and Religious Tolerance Act 2001

The first blow to freedom of religion came with the passing of the *Racial and Religious Tolerance Act 2001 (RRTA)* and more especially when within a short period of time a number of complaints were made against Christians, the most scandalous and widely reported being the complaint against Catch the Fire Ministries and two Pastors. The complaint was brought by the Victorian Muslim community, but there is evidence to suggest that the claim was actually instigated by the Equal Opportunity Commission. The complaint gave rise to a widespread perception that the Victorian Muslim community were seeking to use Victoria's religious vilification law to place Islam and its teachings as set out in the Qur'an, Sira and the Hadith in an effectively privileged position whereby these documents could never be subjected to scrutiny and criticism, a privilege neither afforded nor requested for the Bible. Eventually, at great cost to the two Pastors in terms of personal reputation, time, money and emotional stress, the Tribunal findings were overruled in the Victorian Court of Appeal and the complaint referred back to the Tribunal where the matter was subsequently settled. However the Victorian Court of Appeal could not reach a consensus on the interpretation of the legislation, so its scope and application remains shrouded in uncertainty.

The Victorian law has been widely condemned in the media and in learned journals around the world, being held up as the prime example of what not to do in relation to religious hatred legislation. We draw the attention of the Commission to three papers in particular, those by Patrick Parkinson, Professor of Law, Sydney University, Rex Ahdar, Professor Law, University of Otago, and Garth Blake SC.¹¹

¹¹ Patrick Parkinson, 'Religious vilification, anti-discrimination laws and religious minorities in Australia: The freedom to be different' (2007) 81 *Australian Law Journal* 954; Rex Ahdar, 'Religious vilification: Confused policy, unsound principle and unfortunate law' (2007) 26(2) *University of Queensland Law Journal* 293; Garth Blake SC, 'Promoting religious tolerance in a multifaith society: Religious vilification legislation in Australia and the UK' (2007) 81 *Australian Law Journal* 386.

The Victorian legislation led to an unprecedented letter of concern to Mr Bracks¹², the Victorian Premier, from a group of church leaders requesting the removal of religious vilification from the Act, or at the very least removal of the civil provisions.

Concomitant with the letter of concern to Mr Bracks, a petition with 27,000 signatures requesting the removal of religious vilification in the Act was presented to Parliament.

The Church leaders' letter of concern argued two main points.

The first point was that while the Victorian legislation recognised freedom of speech,¹³ it failed to recognise freedom of religion. In fact it attempted to deal with religious conduct as a sub-category of freedom of speech, a serious failure to comply with Article 18 of the Declaration and Article 18 of the ICCPR. The exceptions in Section 11 of the Victorian Act designed solely with freedom of speech considerations in mind, with no exceptions in the Act appropriate to freedom of religion.

The second objection to the Act was to point out that in containing civil provisions, whereby individuals and organisations of one particular religion were able to pursue individuals and organisations of another religion through the civil courts, the Act proved highly damaging to Christian-Muslim relations in Victoria. As the authors of *Religion, Cultural Diversity and Safeguarding Australia* pointed out, there really is very little support accorded to inter-faith activity in Australia. The Victorian Act, by facilitating the actions taken in the civil court against Christians, has ensured that this remains the case.

Partly with the Victorian experience in mind, the United Kingdom *Racial and Religious Hatred Act 2006* deliberately concerns itself only with the use of “threatening words or behaviour” or displays of “any written material which is threatening” calculated “to stir up religious hatred”. The UK Act has no civil provisions, only criminal provisions. As such, the offence is more narrowly defined and, as a criminal offence, involves a necessary element of *mens rea* (the intention to do wrong).

Likewise when in Opposition, the present Federal Government tabled the *Crimes Act Amendment (Incitement to Violence) Bill 2005* which was directed at securing criminal prosecution against anyone who might threaten “to cause physical harm to another person or a group because of the race, colour, or national or ethnic origin of the other person or of some or all of the people in the group”.

In her Explanatory Memorandum, Ms Nicola Roxon MP included the following statement:

Comparison to Victorian laws

There is some similarity between this Bill and the Racial and Religious Tolerance Act 2001 (Vic), in that both provide offences motivated by religion. However, there are also two important differences:

¹² The letter may be viewed here: http://www.acl.org.au/pdfs/load_pdf_public.pdf?pdf_id=461&from=VIC.

¹³ See clause 1 of the Preamble to the Act.

- this Bill will only prohibit threats of and incitements to violence on religious grounds, not a broader prohibition on inciting hatred. This means that there is no doubt that mere criticism of a religion will not be caught by this Bill, and
- this Bill only provides criminal offences not civil remedies. This means that it will provide no opportunity for religious groups to sue each other in civil courts or tribunals. Only the police and prosecutors will bring prosecutions.

4.2 Charter of Human Rights and Responsibilities Act 2006 (Charter)

Section 14 of the Victorian *Charter of Human Rights and Responsibilities Act 2006* mirrors the positive guarantee of freedom of thought, conscience and religion found in ICCPR Article 18.

A problem immediately arises, however, when section 7 of the *Charter* is taken into account. The limitation provisions in section 7 bear little resemblance to ICCPR article 18(3) in their practical and legal effect. Section 7(2) of the *Charter provides*:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

The first point to be noted is that, contrary to Article 18(3) of the ICCPR, there is no boundary to the grounds on which freedom of religion may be restricted in the *Charter*.

In the second place, by including only a general limitation clause, the *Charter* fails to define with sufficient particularity the precise limitations that are justifiable in relation to freedom of religion in particular. As noted earlier, the subsequently enunciated Siracusa Principles define in appropriately specific terms, the conditions and grounds for permissible limitations and derogations enunciated in ICCPR in order to achieve an effective implementation of the rule of law.

In particular, s 7(2) of the Victorian *Charter* does not comply with Principles 1, 3 and 10 of the Siracusa principles. There is no mention of strict interpretation of limitations or the favouring of the right concerned and the principle of “necessity” is not explicitly stipulated in the *Charter*.

We express concern that the *Charter* enables the state to restrict rights in a far greater range of circumstances than are prescribed by Article 18 of the ICCPR, thus *effectively restricting* rights that are supposedly guaranteed under the *Charter*.

A further point of divergence from Article 18(3) of the ICCPR is that much is left to judicial discretion in the interpretation and application of the limitation provisions.

The fundamental right to freedom of religion should not be susceptible to change by judicial interpretation. Judges, with respect, are unelected and through Australia's common law system inevitably have enormous potential to influence the content of fundamental rights in this field as litigation ensues.

An example of wide judicial discretion conferred in the determination of fundamental rights is found in section 32(1) of the Victorian *Charter*, which stipulates that

(1) So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.

Among the statutory provisions that are to be interpreted this way obviously is the *Charter* itself and that includes its constituent guarantees. Section 32(2) does not require the international standard, Article 18 of the ICCPR, to be the yardstick for interpretation.

(2) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.

The result is that international law and the extent to which it may be considered in interpreting a human right is left to the discretion of the judge and indeed may not be considered at all.

In fact no clear guidelines are offered as to those matters to be taken into account when determining a human right. It is simply inappropriate for judges effectively to award fundamental freedoms to the individual or take them away according to such an ill-defined principle of what "is compatible with human rights". This is especially true of freedom of religion which is the subject of Australia's pre-existing international commitments.

Every case which is judicially determined turns on particular facts. In some cases different human rights may be in apparent conflict. In other cases a human right may be seen to be in conflict with a perceived right which is in fact not a human right. Whenever there is judicial interpretation at the expense of a human right, it may have authoritative value in subsequent litigation. The greater the range of contests in which human rights are at issue, greater is the range for uncertainty in the content of fundamental rights.

The broadly defined method of interpretation in the Victorian Charter impacts not simply the guaranteed rights in the Charter but, by virtue of section 32, everything else in the Victorian statute book. The Charter enables the Supreme Court to make a declaration of incompatibility with a State law if an issue arises in a court proceeding whether a law is consistent with a human right (section 33 of the Charter).¹⁴ A declaration of incompatibility under the Victorian Charter *of itself* will not only affect the rights or obligations of the parties to the litigation which gives rise to the declaration, but the body of law developed by judges

¹⁴ Provision is also made for the scrutiny of proposed State laws, all intended to conform State laws to the judicial interpretation of human rights under section 32. The potential reach of that judicial interpretation is unfathomable.

through their interpretation of human rights will be the law applicable throughout the jurisdiction.

Disputes which call for judicial interpretation will not only be those asserting the straightforward denial of a human right but inevitably will arise incidentally whenever it suits a party to invoke a human rights issue in pursuit of their claim (whether or not it is a human rights claim). Human rights will thus enter the arena of private litigation and be used as a sword as well as a shield, as demonstrated with the Victorian RRTA.

If there is to be a charter or bill of rights in any jurisdiction (and we do not wish to be understood to be supporting such a case), human rights claims should be directed against the state and not private parties. As soon as human rights can be asserted by private parties, whether individuals or religious groups, they will be. The concern here is that *a culture of rights assertion will be generated on religious grounds when instead tolerance should be the touchstone.*

Generally, this level of judicial discretion and basic uncertainty in the interpretation of fundamental human rights is unacceptable, and as such forms a significant part of our misgivings concerning charters of rights.

4.3 Abortion Law Reform Act 2008

The *Abortion Law Reform Act 2008* contains the following conscientious objection clause:

8 Obligations of registered health practitioner who has conscientious objection

1. If a woman requests a registered health practitioner to advise on a proposed abortion, or to perform, direct, authorise or supervise an abortion for that woman, and the practitioner has a conscientious objection to abortion, the practitioner must—
 - (a) inform the woman that the practitioner has a conscientious objection to abortion; and
 - (b) refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.

Clearly the Act lacks a *no disadvantage conscientious objection clause* such as we find in the National Health and Medical Research Council guidelines which contain such clauses as:

Those who conscientiously object to being involved in conducting research with separated fetuses or foetal tissue should not be compelled to participate, nor should they be put at a disadvantage because of their objection.

Instead, the Victorian *Abortion Law Reform Act* requires referral for abortion by doctors, nurses, pharmacists and psychiatrists, who otherwise would not participate in an abortion procedure on the grounds of conscience, such conscience usually being informed by religious conviction. If one regards abortion as immoral, one cannot also refer for abortion.

Nurses have a particular problem because they would be “under a duty to assist” in a late term abortion, if a doctor requests and claims that it is an emergency. Doctors at least can exercise their discretion that a late term abortion is never medically necessary – that attempting live birth is the safer option if the woman’s life is in danger.

Prior to passage through the Parliament, the *Abortion Law Reform Bill 2008* was referred to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament. The Committee noted “that despite their conscientious objection against abortion, the Bill will compel health practitioners to make a referral to another health practitioner who the practitioner knows does not have a conscientious objection to abortion”.¹⁵ While noting that the Bill contained provisions that would be in breach of section 14 of the Charter, relying on section 7(2) of the Charter the Committee left the matter to parliamentary discretion. The Parliament, in passing the *Abortion Law Reform Act 2008*, effectively concluded that section 7(2) of the *Charter* overruled section 14.

Because of this particular failure of the Victorian Charter in relation to conscientious objection, we express concern that it is unlikely the Charter will prevent the Victorian Government successfully proposing the removal of exception clauses in the Victorian *Equal Opportunity Act 1995*, originally inserted to prevent state interference in religion, should this be the Government’s intention.

5. Critique of the Discussion Paper and launch of the FRB Project

5.1 Freedom of Religion or Freedom from Religion?

Question 5.8, which appears on page 8 of the Discussion Paper, asks: “is there a role for religious voices alongside others in the policy debates of the nation?” The question is a most alarming and inappropriate one, given the existence of Articles 18 and 25 of the ICCPR. The right of religious believers to participate in the policy debates of our nation should be an unquestionable first principle, not a mere possibility to be discussed.

A report of Mr Calma’s comments made at the launch of FRB Project reads as follows:

“Does religious belief influence policies being determined in any country, particularly in our country?” he said.

Mr Calma says there is a balance to be struck between the freedom to practice a religion and not pushing those beliefs on the rest of society.¹⁶

The presence of Question 5.8, as well as Questions 2.3 and 2.4 of the Discussion Paper, together with these remarks, raises the question whether the FRB Project is predicated on the assumption that an extreme secularist conception of “public reason” is the proper default position for public discourse and that the project is not in this sense about freedom *of* religion, but rather freedom *from* religion. We are well aware that many secularists hold this opinion. It would be particularly unfortunate, and certainly would undermine the credibility of the FRB Review, if the review were to be biased in this way.

¹⁵ Found here: http://www.parliament.vic.gov.au/sarc/Alert_Digests_08/08alt11body.htm#11_note.

¹⁶ ABC Radio report of the launch of the FRB project: <http://www.abc.net.au/news/stories/2008/09/17/2366511.htm?section=justin>.

In order to remove confusion on this point we call on the AHRC to remove these questions from the Discussion Paper.

Again, according to the cited ABC Radio report,

Mr Calma says there is evidence of a growing fundamentalist religious lobby, in areas such as same-sex relationships, stem-cell research and abortion.

It is to be sincerely hoped that these reported comments by Mr Calma, assuming they are correct, do not represent what the FRB project is about. Certainly if the Report is correct, Mr Calma could be interpreted as engaging in a form of religious vilification of his own, targeted at religious people he refers to as “fundamentalist”, with the imputation that such persons are illegitimately “pushing [their] beliefs on the rest of society”. We would certainly hope that such an interpretation does not reflect Mr Calma’s actual intentions.

It is not unreasonable to ask the question: just what is this “growing fundamentalist religious lobby” that is active in the area of “same-sex relationships, stem-cell research and abortion”? Large sections of the church are on record as opposed to same sex marriage, embryonic stem cell research and abortion. Are they to be characterised, if not vilified, as a “fundamentalist religious lobby”? On 2 September 2008 an open letter to Victorian politicians opposing the Victorian Government’s abortion legislation appeared in *The Age* and *Herald Sun* newspapers. This letter was signed by thirty-nine Church leaders, including the Catholic and Anglican Archbishops, the heads of the Presbyterian, Lutheran, Coptic Orthodox, Antiochian Orthodox and Russian Orthodox Churches, and Pastors of Melbourne’s largest Baptist, Churches of Christ and Pentecostal denominations.

Surely such egregious name calling directed at the leadership of so many mainline Christian denominations is grossly inappropriate for the launch of the FRB Project.

5.2 Defining Acceptable Religion

According to the Discussion Paper, it is stated that the FRB Project builds on HREOC’s earlier report *Article 18: Freedom of Religion and Belief* released in 1998 and the 2004 report *Religion, Cultural Diversity and Safeguarding Australia*.

Religion, Cultural Diversity and Safeguarding Australia repays careful study if only to highlight the presumptions underlying the report.

Religion, Cultural Diversity and Safeguarding Australia is predicated on the assumption that “the construction of social harmony” in accord with the “social policy of multiculturalism espoused by both sides of the political fence” requires “religious moderation” and “interfaith activity”. In other words religion, and bringing religions together in joint activities based on “knowing about and respecting each other’s beliefs in fair and honourable competition, not allowing the mistakes and tragedies of the distant and recent past to pervert the present”, must be brought into play to serve political ends.

Pointedly, attention is drawn to those whose “religious framework is aligned with a Biblical, Qur’anic or other fundamentalism or revivalism” and who do not “accept the universalism

that is at the authentic core of all major religions”. This claim to be able to identify the “authentic core” of all major religions is itself a religious claim, with its own “exclusivist” implications.

Later in the report it is stated that “the report is written from a religiously pluralist perspective that aims to ensure peaceful co-existence and avoids any evangelical and forced missionisation but allowing conversion and reciprocity”. Threats to Australia’s social fabric are seen by the Report’s authors to be such matters as “a continued emphasis on one religion being superior or the correct one as holders of the total truth”, “the refusal to co-operate or interact with other faith communities” and “the anti-Islamic views of some extremist Christians”. This latter statement is notably not qualified as to the many possible meanings of “anti”; nor is “extremism” defined with any precision; and there is no corresponding acknowledgment of the anti-Jewish and anti-Christian views harboured by some Muslims. Indeed, the report judiciously avoids even identifying the terrorists responsible for the attacks of 11 September 2001 12 October 2001, 11 March 2004 and 7 July 2005, as actually being Muslim.

The universalist religious presuppositions of the report are taken by the authors to imply certain social goals and the exclusion of certain kinds of “behaviour”, based in this case in a dubious distinction between “evangelical and forced missionisation” (whatever this means) and “conversion and reciprocity” (again, whatever this means). The report speaks explicitly of “avoiding” such missionisation. But given the context and intended recipients of the report, the alarming implication is that the resources of executive government should be marshalled to control such activity. A first step in this direction is made explicit in the report’s recommendation that an Advisory Council to Government be formed to undertake a variety of duties including, most chillingly, the monitoring of the websites of Australia’s ethnic and faith communities for material or links “damaging to Australia’s social cohesion”.

It simply won’t do for the writers of a report on religion and cultural diversity to criticise persons of a particular religious faith for what in academic jargon may be termed an exclusivist metanarrative on the basis of the writers’ own exclusivist (in their case, “universalistic”) metanarrative.

Presuppositions and recommendations such as these are unlikely to command much support in Christian circles.

We can go a step further. Defining what is an “acceptable manifestation” of a person’s *religion or belief in teaching, practice, worship, and observance* flies in the face of Article 18(1) of the ICCPR. Persons and more particularly communities define what it means to manifest their religious beliefs, not governments and not government agencies and inquiries.

5.3 Religious Freedom Act

The thrust of *Article 18: Freedom of Religion and Belief* appears to be the establishment of a *Religious Freedom Act*, elsewhere described (page 128) as a “federal anti-vilification law”.

It is difficult to comment on the desirability or otherwise of such legislation when *Article 18: Freedom of Religion and Belief* does not provide a draft of such legislation for consideration.

However it is possible to glean from *Article 18: Freedom of Religion and Belief* that such legislation would contain the following elements:

- codification of ICCPR article 18 and Religion Declaration articles 1, 5 and 6. (R2.3)
- be subject to certain limitations (R2.4)
- cover theistic, non theistic and atheistic beliefs (R2.5)
- make discrimination unlawful on the grounds of religion and belief, with certain exemptions provided such exemptions are “established to be a genuine occupational qualification”, “made in good faith” and not “arbitrary (but) consistently applied” (R4.1)
- proscribe hatred that constitutes an incitement to discrimination, hostility or violence (R5.3)
- provide a free pass for academic and artistic vilification of religion “in the public interest” (R5.3)
- resolve such disputes through the civil courts.

If the above summary of the elements of a *Religious Freedom Act* is what is intended then we will do all we can in cooperation with others to oppose such legislation.

Our opposition to the proposal of *Article 18: Freedom of Religion and Belief* for the establishment of a *Religious Freedom Act* is fuelled to a considerable degree by its resemblance to the Victorian *Racial and Religious Tolerance Act 2001*, including the use of the civil courts.

A major deficiency in *Article 18: Freedom of Religion and Belief* was that it chose to treat religion as an individual matter, failing to recognise the communal nature of religion. Whilst there will always be value in individual stories, people of religious faith look to their leaders to speak on behalf of their religion. The failure to recognise the communal nature of religion undermined the conclusions and therefore the authority of *Article 18: Freedom of Religion and Belief*.

6. Response to Specific Issues raised in the Discussion Paper

In the following sections we make no attempt to answer all the issues that are raised in the Discussion Paper but rather focus on those issues on which we can contribute.

6.1 Roles and Responsibilities of religious and secular organisations

While religious vilification legislation such as RRTA may have laudable aims, legislation is not an effective vehicle for creating an open and tolerant society. It is the function of education in its broadest sense to foster positive attitudes in Australian society. Religious groups have an important role to play in that process. It is a well known fact and a constant component of Christian teaching and preaching that Christians are to love their neighbours, even their enemies, and do so in practical ways.

In our view, the underlying aims of anti-vilification legislation are better served by allowing free and full discussion, in part to allow the evils of attitudes giving rise to vilification and bigotry to be exposed. The cost has already been shown through the Victorian experience to be too great both to free speech and religious expression. Religious vilification legislation provides a weapon in the hands of one religious group against another. This does not engender tolerance. Provocation and hostility is talked up in pursuit of litigation, rather than down. It is more readily available to those with resources at the expense of those without. It also works to the detriment of those religious groups with a proselytising mission. In particular it works against the Australian Church and Christian individuals who have consistently shown moderation in the face of provocation such as the *Piss Christ* exhibition and the publication of Richard Dawkins' *The God Delusion*. This moderation stems from the suffering and rejection motif so integral to the Christian Faith.

As Christians and leaders in the Christian community we gladly accept the responsibility to live peaceably with fellow Australians of differing religious beliefs. Such a responsibility is central to our faith. Our Lord Jesus said "Blessed are the peacemakers for they shall be called the sons and daughters of God" (St Matthew 5:9) and on another occasion Jesus summarised the law of God as follows,

You shall love the Lord your God with all your heart and with all your soul and with all your mind. This is the great and first commandment. And a second is like it: You shall love your neighbour as yourself. On these two commandments depend all the Law and the Prophets.
(Matthew 22:37-40).

Jesus' parable of the *Good Samaritan* (Luke 10:29-37) offers a superb paradigm for how Australians such as ourselves should welcome new Australians regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Numbers of us have been involved to varying degrees in interfaith relationships, where the objective has been to form personal relationships and to become better acquainted with one another's religious beliefs and practices, including identifying points of agreement as well as debating points of difference.

What will not do is any proposal based on an attempt to paper over differences of belief and practice. For example, there is a profound difference between the Muslim understanding of Allah who according to the Qur'an "has no partner" and "has fathered no one", with the Christian understanding of one God in three persons, Father, Son and Holy Spirit. Again the

understandings of Christians and Muslims as to the way of salvation are profoundly different. Both religions have both inclusive elements, drawing together people of every nationality, and exclusive elements in asserting their religion to be the true religion. Both religions are proselytising, seeking adherents where they can. We say these things not to be controversial but simply to speak the truth.

Mutual respect can exist between religious communities when the differences of belief are accepted as real differences, whilst at the same time these communities recognise the common humanity that binds all men and women everywhere across the centuries of time together.

It is noteworthy to record that on 13 October 2007, 138 Muslim scholars, clerics and intellectuals from around the world came together for the first time since the days of the Prophet Mohammed to invite the leaders of all the world's churches, and indeed Christians everywhere, to come together to explore the fundamental common ground between Islam and Christianity. The best basis for dialogue and understanding they declared to be the love of God and the love of the neighbour. The invitation has been gladly taken up by Christian leaders with various ongoing conversations undertaken.

Of course it is not only Christianity but other religions that make truth claims.

In recent times the new atheists make their own truth claims whilst at the same time ridiculing religious believers, often in extremely offensive ways. Arguably, it is the new atheists like Richard Dawkins and Christopher Hitchens who are the most intolerant of alternative belief systems.

The point about a changing role and face for religion is not so much that religion changes – religious belief has remained remarkably consistent across the centuries of time, certainly for religions possessing holy books – but that the impact of religion changes.

It is readily acknowledged that religion has diminished in importance and impact over time within the Australian culture. However with the arrival of new immigrants from the developing world and post September 11 all that is changing. New immigrants on the whole are significantly more religious than the existing population whether the new arrivals are Christian, Muslim, Buddhist, Hindu or of other faiths. To this factor must be added two further factors: religious people, again regardless of what particular religion to which they adhere, on the whole have more children than non religious people; and this is even more so true of those persons of religious faith that might be identified by a variety of terms such as traditional, conservative, orthodox, strict, evangelical or fundamentalist. All of this can be simply confirmed by visiting the Churches, Synagogues, Mosques and other places of worship of such groups of believers and especially those that are recent arrivals to observe all the children present.

Therefore we conclude that religion is not going to disappear any time soon, but rather increase in importance in the life of the nation.

The nation was given a foretaste of this during the last election when the Australian Christian Lobby in association with a broad array of Church leaders across the denominational divide was able to secure at very short notice via video conferencing an audience of 100,000 persons to hear Mr Rudd and Mr Howard explain their policies to a Christian audience.¹⁷

6.2 Religion and the State

It has always been a part of Christian teaching and practice to engage in education, health and welfare activities. Go anywhere in the world where Christian missionaries have gone and schools and hospitals started by the missionaries with the financial and prayer support of their home Churches will be found.

In the early European settlement of Australia it was the Churches that started the schools and hospitals. Education by the State only occurred when the Protestant Churches, mainly for financial reasons In the late nineteenth century, ceded their schools to the State. The Catholic Church retained their schools whilst a small number of independent denominational and non denominational schools continued. With the 1960's crisis in funding for the Catholic School system, the Government of the day decided the most cost effective measure for the Australian taxpayer was to supplement funding of the private (essentially Catholic system) with State funding.

This opened up the possibility for the funding of new schools independent of the State school system. With a curriculum and school ethos in the State school system increasingly hostile to religious belief, Churches and other associations of Christians as well as other mainly religious groups began opening and developing what today is a very extensive faith based school system that operates at a cost significantly lower on a per capita basis than the State based school system. The trend to private as opposed to public education continues.

The provision of health and welfare services by Churches stems from several factors: Churches have a long history of providing such services together with a proven track record in voluntary service, factors which have induced Governments to enter into partnerships with Churches and their agencies for the provision of such services. Generally speaking the clients of such services have a preference for the more personal and caring approach of Church based organisations *vis a vis* State based agencies.

It has always been of some interest to Christians that our secularist opponents have been unable to replicate our services whether in education, health or welfare on a volunteer basis, choosing rather to pursue their objectives through tax funded state instrumentalities.

¹⁷ We note that 19% of Australians claim to attend church at least monthly and in excess of 1.7 million Christians attend church in a typical week (Source: National Church Life Survey). Additionally, 64% of the Australian population, given the option to declare any religion or no religion at all, choose to identify themselves as Christians, usually identifying a specific Church body to which they belong. (Source: Australian Government Census).

Churches are prepared to continue as government service delivery agencies so long as that is the desire of governments and the Australian people.

However, governments do need to understand that the activities of churches will be governed by frameworks which will not necessarily be those of governments, nor of all segments that make up the general population.

6.3 Security Issues in the aftermath of September 11

We do not know of any interference to the churches and Christians generally as a result of the security measures adopted in the aftermath of September 11. We are grateful that our government has sought to take measures to minimise terrorist attacks on Australian soil.

There have been concerns regarding the detention policies of the previous Australian government with people kept in detention far too long, and in a number of cases illegal immigrants returned to their own nation when clearly personal risk was involved, occasioned for example when such a person, who may have been a Muslim, converted to Christianity.

We understand that this issue is fundamentally about the experience of Muslims living in Australia as the security issue has arisen from the terrorist activities of Islamic militants, particularly the targeting of Australian holiday makers on Bali, but more generally the New York, London and Madrid bombings.

We note the attempt to blame the terrorist activities of Islamic militants on a variety of factors such as the Palestinian situation and experiences of Muslims in both Muslim nations as well as elsewhere including Europe, the USA and Australia, such experiences including poverty and negative stereotyping of Muslims.

With certain caveats, we support the Australian Government's initiatives in developing a National Action Plan directed to improving the educational and work opportunities of the Muslim population in Australia.

Our caveats include the following:

At the launch of FRB Project, Mr Laurie Ferguson MHR said that the Government saw the FRB Project as an important part of the National Action Plan, saying that "although its focus will be on the Islamic Faith it will include many aspects building on the 1998 HEREOC report, on the Freedom of Religion and Belief".

While we applaud the Government in its efforts to facilitate the greater integration of the Muslim community, we reject any notion that the FRB Project should somehow be slanted towards protecting Muslim sensitivities. Freedom of Religion and Belief should apply indiscriminately to all people of religion (or no religion). Freedom of religion cannot be considered without its relevance to each of the religions. It would be unfortunate if Muslim groups were seen to obtain preferential treatment not available to other immigrant groups including persons of Christian, Buddhist, Hindu, Sikh and other faiths or indeed no faith at all. There are many immigrant persons from religious backgrounds such as these who

continue to live in poverty and encounter discrimination in this country, and a National Action Plan should be aimed at these groups as well. In short, the National Action Plan should be entirely non-discriminatory. Indeed, we question whether a National Action Plan directed solely to Moslem immigrants is consistent with Australia's commitment to non-discriminatory policies.

A particular concern to Christians, remembering that they are found in every nation, is the persecution of Christians where they are a minority people group. In some predominantly Muslim and Hindu countries for example, Christians, Jews and persons of other religious faiths are often subjected to all kinds of humiliating restrictions and persecution. So long as this continues, Christian perceptions of Muslims will be coloured by this fact.

Muslims who come to Australia presumably do so because of the possibility of making a better life. In this they are no different to any other people group that comes to this country. Part of coming to a country like Australia is the requirement to accept Australian institutions and Australian ways of doing things. Persons adhering to the religion of Islam, like all persons of other religious faiths need to understand and accept the Christian and secular roots of Australian society. This of course does not mean that Muslims as with Christians, secularists and persons of other beliefs cannot seek to influence public opinion, or engage in civil and political life.

The Islamic community needs to accept a responsibility to offer no support, financial, moral or otherwise to those who would seek to do physical harm in this country.

There is a further problem that needs to be acknowledged both in government and the wider Australian community and that is the reliance of Islamic militants on Islamic texts and teachers that advocate a division of the world into *dar al-Islam* and *dar al-Harb*.¹⁸ This is an issue that needs to be out in the open but it is an issue that can only be addressed within the Islamic community. The contribution of government must be to ensure that the Australian public is protected from terrorist activity by vigilant intelligence, backed by efficient policing.

What is unacceptable and ultimately unhelpful is to draw an equivalence between so called "fundamentalist" Christians – remembering how wide the net for this group was cast in Mr Calma's ABC News report quoted earlier – and Islamic militants. There is simply no record, and this needs to be publicly acknowledged, of Christian "fundamentalists" engaged in terrorist, jihad type activities during the last 200 years of European settlement in Australia. The idea is ludicrous.

¹⁸ In the orthodox tradition of Islam, the world is divided into two components: *dar al-Islam*, the *house of Islam*, i.e. the *house of submission*, and *dar al-Harb*, the *house of war*. *Dar al-Islam* is an Islamic term used by Muslim scholars to refer to those countries where Muslims can practice their religion freely. *Dar al-Harb* is a term classically referring to those countries such as Australia where the Muslim law is not in force.

With these caveats stated we wish to make clear our own welcome to Australia and acceptance of peoples of varying racial and religious backgrounds who come to this country seeking a better life while accepting that the way “we do things” may be very different to where they came from. As the report, *Religion, Cultural Diversity and Safeguarding Australia* makes clear, “notwithstanding Australia’s historical legacy of religious rivalries, hostilities and mistakes, faith communities have lived and continue to live in peaceful coexistence” (p 117). Whilst the Report does go on to note the negative experiences of Australia’s Muslim community post September 11, none of this hostility can be laid at the door of the leadership of any of Australia’s faith communities.

6.4 The interface of religious, political and cultural aspirations

We have already commented on the unsatisfactory nature of the question (Q 5.8, page 8), “is there a role for religious voices alongside others in the policy debates of the nation?”.

Regardless of what secularists might hope for, persons of both religious and secularist faith will continue to jostle in the public domain and the maturity of a nation will be assessed on the basis of the willingness of secular humanists including atheists as well as Christians, Jews, Muslims and persons of other religious faiths to accept the right of others to participate no matter how repugnant their views may be to each other. We have the legislative and regulative powers of a democratically elected Government supported by the judiciary to ensure that Australia remains a well governed nation in which people of varying religious beliefs can build happy and peaceful lives.

The question of balancing integration and cultural preservation is in fact Australia’s story of the past 200 years. A dominant culture was quickly established and newcomers with cultural differences needed to bend to that dominant culture. But in bending, they also caused the dominant culture to bend toward them, and so in turn changed the dominant culture.

Australia has always given considerable liberty to peoples of differing cultures to organise their affairs, generally on a voluntary basis, to preserve aspects of those cultures not in direct conflict with the dominant culture. We hope this will continue to be the case.

There will always be points of conflict from time to time.

One such point of conflict is gender. Several church denominations, including our own, who on the basis of their reading of Scripture and according to their 2,000 year old tradition, limit the ministerial role to men. The dominant view in Australian society, largely enshrined in legislation, supports gender equality in employment.

Those churches that limit the priestly role to men are not going to change their position. The question is whether our society is mature and tolerant enough to accept that this shall be the case. Another example is the unwillingness of most churches to employ persons in homosexual relationships, on the basis of church teaching.

But what of female genital mutilation, polygamy, polyandry or polyamory? The argument in favour of these practices is not so straightforward and in our view should not be considered.

One reason is the novelty of such arrangements in the historical Australian context. This does not mean that one day a majority of persons in this country might favour polyamory and bring in laws that entrench polyamory. It is to be hoped that Christian and other voices, religious or otherwise, would not be silenced if they wished to speak in opposition.

7. Conclusions

Given increased hostility toward religion and persons of religious faith in sections of the Australian population and laws at a State and Territory level acting against freedom of thought, conscience and religion, there is an urgent need for the federal and state governments to review their policies in this area.

The *Article 18: Freedom of Religion and Belief* report offers no substantial conclusions relating to freedom of religion that we can endorse.

We recommend that government policies and legislation be reviewed to ensure that it adheres to the following principles:

1. Religion is communal in nature, and the free exercise of religion requires freedom of persons to associate in self-governing faith communities, including faith based schools and other organisations with a faith based mission or purpose. This includes freedom of positive selection, i.e., the right to advertise for and select staff sharing the beliefs, values and codes of conduct of that faith based school, organisation or community.
2. Religion is not solely a “private” affair, but rather includes many “public” dimensions, including those of “worship, observance, practice and teaching”, extending to the right to engage in apologetic, social welfare and evangelistic activity.
3. Freedom of religion includes freedom of conscience in the provision of goods and services. The law should not compel people of faith to undertake or participate in activities contrary to their conscience.

Further, we specifically recommend that:

4. Religious vilification laws, if enacted, ought to be limited to proscribing behaviour which incites people to acts of physical violence and intimidation, and that proceedings in such cases be initiated only by public authorities. Existing state laws which go beyond this ought to be repealed or amended.
5. Abortion-related laws must not require medical practitioners against their conscience to refer patients to medical practitioners willing to perform abortions. Existing state laws which go beyond this ought to be repealed or amended.
6. Existing exemptions for faith communities and faith based schools from anti-discrimination laws must be preserved and extended to ensure that freedom of positive selection is maintained, i.e., the right to advertise for and select staff sharing the beliefs, values and codes of conduct of that faith based school, organisation or community.

Religious freedom means freedom for people of all faiths. To undertake the FRB Project with a focus on the Islamic Faith would undermine the integrity of the project. We reject any notion that the FRB Project should somehow be slanted towards protecting Muslim sensitivities. Freedom of religion cannot be considered without its relevance to each of the religions. It would be unfortunate if Muslim groups were seen to obtain preferential treatment not available to other immigrant groups including persons of Christian, Buddhist, Hindu, Sikh and other faiths or indeed no faith at all. Freedom of religion should apply indiscriminately to all people of religion. In this the best interests of the Islamic community will be served.