Submission to the Parliamentary Joint Committee on Human Rights regarding the *Religious Discrimination Bill 2021* (Cth)

Research Expertise in this area

My name is Dr Alex Deagon. I am a Senior Lecturer in the School of Law at the Queensland University of Technology, and my expertise is in religious freedom in Australia. In regard to this issue I have published peer-reviewed journal articles, presented at national and international conferences, and have written opinion pieces and provided expert commentary on religious freedom issues to the media. Some relevant publications are listed below, and I am currently writing a book on religious freedom and discrimination in Australia, the US and the UK. The book is under contract with Hart Publishing, Oxford, a legal publisher of international repute. For a full catalogue of my experience and publications in this area, please see https://staff.qut.edu.au/staff/alex.deagon.

- A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination (Hart Publishing, Oxford, UK): forthcoming 2023.
- Religion and the Constitution: A Response to Luke Beck's Safeguard Against Religious Intolerance Theory of Section 116 (2021) 44(4) *UNSW Law Journal* 1558-1583. (with Benjamin Saunders)
- State (non-)Neutrality and Conceptions of Religious Freedom in Jasper Doomen and Mirjam van Schaik (eds) *Religious Ideas in Liberal Democratic States* (Rowman & Littlefield, 2021) 65-85.
- Is Religious Liberty Loving in Principle? in Michael Quinlan (ed) *Inclusion, Exclusion and Religious Freedom in Contemporary Australia* (Connor Court Publishing, 2021) 17-47.
- Principles, Pragmatism and Power: Another Look at the Historical Context of Section 116 (2020) 43(3) *Melbourne University Law Review* 1033-1068. (with Benjamin Saunders)
- Equal Voice Liberalism and Free Public Religion: Some Legal Implications in Michael Quinlan, Iain Benson and Keith Thompson (eds) *Religious Freedom in Australia: A new* Terra Nullius*?* (Connor Court Publishing, 2019) 292-332.
- A Christian Framework for Religious Diversity in Political Discourse in Michael Quinlan, Iain Benson and Keith Thompson (eds) *Religious Freedom in Australia: A new* Terra Nullius*?* (Connor Court Publishing, 2019) 130-162.
- Religious Schools, Religious Vendors and Refusing Services After Ruddock: Diversity or Discrimination? (2019) 93(9) *Australian Law Journal* 766-777.
- Maintaining Religious Freedom for Religious Schools: Options for Legal Protection after the Ruddock Review (2019) 247(1) *St Mark's Review: A Journal of Christian Thought and Opinion* 40-61.

- Liberal Secularism and Religious Freedom in the Public Space: Reforming Political Discourse (2018) 41(3) *Harvard Journal of Law and Public Policy* 901-934.
- Liberal Assumptions in Section 116 Cases and Implications for Religious Freedom (2018) 46(1) *Federal Law Review* 113-137.
- Defining the Interface of Freedom and Discrimination: Exercising Religion, Democracy and Same-Sex Marriage (2017) 20 *International Trade and Business Law Review* 239-286.

I have contributed significantly to religious freedom law and policy in Australia. My submissions have been cited in multiple Commonwealth Government reviews and inquiries. The Australian Law Reform Commission Freedoms Inquiry (2015) agreed with and adopted my submission that religious speech might be protected by both Section 116 and the implied freedom of political communication (p 134). The Australian Senate Select Committee Inquiry into the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill (2016) extensively quoted me and relied on my written submissions and expert evidence in relation to religious freedom (2.88, 2.90), which helped inform the national debate and government policy on religious freedom protections during the process of legalising same-sex marriage. I was also invited to give expert evidence on the legal foundations for religious freedom in Australia, and contemporary challenges, to the Joint Standing Committee on Foreign Affairs, Defence and Trade (Human Rights Sub-Committee) Inquiry into the status of the human right to freedom of religion or belief (2017).

This Inquiry released an Interim Report in November 2017. The Report extensively cited and relied on my written and oral submissions in relation to interpretation of the free exercise clause in s 116 of the Constitution, and the tension between religious freedom and anti-discrimination law. For example, the Inquiry adopted my positive characterisation of the High Court's definition of religion and accepted that definition (p 16), agreed with my submission that the constitutional protection of free exercise extends to individuals (p 20), and relied on my submission as the leading view on how the free exercise clause has been interpreted narrowly (p 32). The Report further relied on my submission as the leading authority on the tension between religious freedom and anti-discrimination (p 76). The Report specifically relied on my submissions to clarify the nature and limits of any religious freedom protections, including draft proposals for legislation (pp 79, 86). Based on a written submission I was also invited to appear before the Ruddock Religious Freedom Review Panel (2018) to give expert oral evidence, one of only 21 academics around Australia to appear.

After the release of the Ruddock Review, Senator Penny Wong moved a bill to remove religious exemptions for religious schools in the Sex Discrimination Act, which gave rise to two Senate inquiries. First, I made a written submission to the Legal and Constitutional Affairs References Committee Inquiry on Religious Exemptions for Religious Educational Institutions (2018). The Committee released their report on 26th November 2018, which consisted of a majority report (ALP/Greens) and a dissenting report (Coalition). I was cited

by the majority report in relation to potential constitutional issues with any attempt to remove religious exemptions in Commonwealth legislation. In particular, the majority report noted my argument that removing religious exemptions in Commonwealth law would breach s 116 of the Constitution (p 26). I was cited extensively by the dissenting report on similar constitutional issues, as well as to support arguments regarding the need for the religious freedom of religious educational institutions to be maintained and substantively protected.

The dissenting report extensively quoted and relied on my arguments that the harm against religious educators is greater if the exemptions were removed than the harm against those discriminated against if they are retained (p 64), that international law requires legal protection for faith-based schools to positively select staff who uphold the ethos of the school (p 68), that religious freedom requires the protection of minority beliefs from the prevailing orthodoxy of uniform equality (pp 69-70), that removing exemptions actually promotes inequality by failing to take into account due accommodations for religious entities disproportionately targeted by equality legislation (pp 72-73), that removing religious exemptions in Commonwealth law for religious educational institutions would breach s 116 by prohibiting the free exercise of religion (pp 81-82), that withdrawing state support of religious educational institutions would limit pluralism and undermine democracy (p 83), and that religious educational institutions need legal protection to maintain the distinct and unique religious ethos which undergirds their approach to education (p 93). The dissenting report further quoted from two citations in my submission: The dissent in the Canadian Trinity Western University case (2018) which noted that the accommodation of difference serves the public interest (p 84), and a quote from Professor Nicholas Aroney expressing religious practice as broader than just belief and worship; it also includes social, cultural, commercial, educational, medical and charitable activities (p 92). I was also quoted by Government Minister Senator Zed Seselja during the Senate Debate on 3/12/18 on the need to maintain religious freedom for religious schools, which was used to justify proposed Government amendments to the bill (Senate Hansard, p 2).

Second, I made a written submission to the Legal and Constitutional Affairs Legislation Committee on Religious Exemptions for Religious Educational Institutions (2018), and was invited to present expert oral evidence to the Committee in February 2019. The Committee released their Report on 14th February 2019. I was cited in support of a proposed Government amendment to the bill which would protect the ability of religious schools to teach in accordance with their religious doctrine (3.31), and in support of the fact that the bill was rushed, flawed and a more detailed consideration was needed (3.68). Consistent with my submissions the Committee recommended that the bill not be passed and the issue be referred to the Australian Law Reform Commission for further consideration (3.80-3.84). Consequently, the Senate did not pass the bill and the Government did refer the issue to the ALRC.

I also made submissions to the Attorney-General's Department on the first and second exposure drafts of the *Religious Discrimination Bill*.

Executive Summary

These submissions are made in my personal capacity and I do not claim to speak for any organisation.

I support the *Religious Discrimination Bill Package* ('the Bill') as it currently stands. I only comment on the following particularly controversial aspects of the Bill for the purpose of providing scholarly justifications of those aspects.

Religious belief and activity is the only attribute that does not attract comprehensive, separate protection under Commonwealth discrimination legislation. Such protection is necessary to address increasing hostility to religion and to fulfil our international obligations.

Religious Schools and Discrimination

Sections 7-11 of the *Religious Discrimination Bill* enable religious bodies, including religious educational institutions, to give preference to persons who adhere to the religious belief and activity of the body for employment purposes. This will override the recently passed amendments to the Victorian *Equal Opportunity Act* which prevent religious schools from preferencing staff in accordance with a religious ethos. However, it will not override state or Commonwealth discrimination laws relating to sex, sexual orientation or other protected attributes. It deals with religious discrimination only. The media has reported rumours of a deal to remove the Section 38 religious exemptions in the *Sex Discrimination Act* in exchange for passing the Bill. To the extent such rumours are accurate and within the scope of the Committee's terms of reference, this would be misconceived. Previous parliamentary committees considered such a move and rejected it, recommending the issue be considered in depth by the Australian Law Reform Commission. This is still the best approach as religious discrimination and religious exemptions to sex discrimination are conceptually and legally separate.

Under the Bill, religion as a protected attribute includes religious belief and activity, which includes standards of behaviour, speech and conduct. So the Bill will have the effect of allowing religious schools to preference staff with belief and behaviour consistent with the ethos of the school, as indicated in the relevant sections. Such preferencing is a fundamental human right. It fulfills Article 18(4) of the *International Covenant on Civil and Political Rights*, which obliges states (without limitation) to facilitate parents educating their children in accordance with their own convictions. This entails the ability for religious schools to preference staff who adhere to the religious beliefs and activities of the school's religious

ethos. As held by the European Court of Human Rights considering the issue under the European Convention of Human Rights, such preferencing is a necessary aspect of a pluralist democracy with diverse views.

Statements of Belief

Section 12 of the Bill protects statements of belief by stating that they are not discrimination, specifically overriding the Tasmanian *Anti-Discrimination Act* which provides that statements which cause 'offence' may be discriminatory. This is a positive move because the Tasmanian legislation is far too broad. It is an outlier in Australian anti-discrimination law and stifles freedom of speech and the expression of religion in public life. Detractors claim that this will license hurtful personal attacks on the basis of religion. This is extremely unlikely for three reasons. First, the hypotheticals posed as possible examples are fanciful. Second, in the event such hypotheticals do occur, they are not currently unlawful and the Bill will not affect this. Such statements can be dealt with through existing disciplinary or other legal processes. Finally, statements of belief must overcome significant hurdles to attract protection from the Bill: they must be made in good faith, and not be malicious, and not be reasonably considered to threaten, harass, intimidate or vilify, and must not urge the commission of a criminal offence. This combination of limitations means the kinds of hypotheticals posed by the detractors, if they exist, would not meet the standard to be protected. The protection of statements of belief is appropriately designed to promote the robust discourse which is the hallmark of a democratic and pluralist society.

Corporations as Discrimination Litigants

The Bill effectively empowers religious bodies, including associations and corporations, to be litigants in discrimination matters. The Australian Human Rights Commission has argued that the first exposure draft of the Bill was too broad in defining who may be a victim of religious discrimination, arguing that the ability of religious corporations such as religious institutions, schools, charities and businesses to make claims is a significant departure from international human rights law which protect only the rights of natural persons. However, there are two independent constitutional supports for protecting the ability of religious corporations to be litigants in the Bill. First, the Constitution supports the power to legislate to protect incorporated and unincorporated religious bodies against religious discrimination through the external affairs power. This gives effect to Article 18(1) of the *International Covenant on Civil and Political Rights* and other connected provisions and international law instruments, which protect individuals manifesting their beliefs in community with others (including through incorporated and unincorporated communities), and protect such communal entities against discrimination. In this respect international law jurisprudence clearly accepts religious associations as distinct persons at law which can sue and be sued in their own right. Second,

the Commonwealth has the power to legislate with respect to constitutional corporations through the corporations power. Where a religious corporation is a constitutional corporation, and such a corporation is the object of statutory command or has rights and obligations conferred upon it, the Commonwealth has the ability to designate a religious corporation as a litigant. Therefore, as a constitutional matter, there is no impediment to empowering religious corporations as litigants in a law protecting against religious discrimination, and indeed such is required as a means to give adequate effect to the protections afforded to individuals and groups against religious discrimination in international law.

Detailed Submissions on the Bill

Religious Schools and Discrimination

The principle of religious liberty is not merely limited to private, individual belief and action. It extends beyond private belief and acts of worship to public and associational contexts such as proselytization, social and business interactions, employment, cultural and charitable activities, education, and so on. For many religious people these external manifestations of religion are just as central and important to them as private belief, prayer and worship.[1] Article 18 of the *International Covenant on Civil and Political Rights* reflects this:

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.

This indicates the actions associated with the principle of religious liberty are rights exercised by individuals and groups, individually and in community with others, and publicly or privately. It includes freedom of belief and to change beliefs, but also extends to manifestation. Note in particular 18(4), which obliges states to have respect for the liberty of parents to educate their children in conformity with religious convictions without limitation.

[1] Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33(1) *University of Queensland Law Journal* 153, 161 at FN 46.

One significant method of achieving this obligation is facilitating the ability of faith-based schools to educate in accordance with their faith-based ethos as parents may wish to choose this. Religious liberty in principle, and with particular regard to associated actions, is subject only to legal limitation which is *necessary* (not merely reasonable) to protect public safety, order, health, morals or fundamental rights and freedoms of others. This is a high threshold which requires substantive proof before any legal limitation is appropriate.[2]

The fundamental question is why religious schools should be permitted to discriminate. Or, to rephrase the question in a less pejorative way, why should religious schools have a positive right to select and regulate the school community, including staff and students? The answer is because it allows the school to maintain a distinctive religious ethos. As mentioned earlier, Article 18(4) of the *International Covenant on Civil and Political Rights* obliges nations to have respect for the liberty of parents to educate their children in conformity with religious convictions. One significant method of achieving this obligation is facilitating the ability of faith-based schools to educate in accordance with their faith-based ethos as parents may wish to choose this. Framed as a legal right to select, allowing faith-based schools to select staff designed to consistently uphold this ethos is an essential aspect of maintaining the ability to educate in accordance with an ethos. Australia is merely fulfilling its international obligations by enabling faith-based schools to choose staff in accordance with their religious convictions.[3]

Since religious groups in particular provide the associational structures (including visionary and didactic resources) for training in discourse concerning advancement of human development and the common good, it is essential for moral engagement and civic virtue (and democracy itself) that these groups be protected by and from the state.[4] As legal scholar Hans-Martien Ten Napel argues, 'it is precisely within such faith and other communities that mature visions of the good life can develop, which simultaneously contribute to the notion of the common good'.[5] Thus, it is beneficial for all people if religious associations, including schools, are free to run according to their own rules, because this enables the development of more diverse and inclusive visions of how to achieve the public good.

---

[2] See Alex Deagon, 'Maintaining religious freedom for religious schools: options for legal protection after the Ruddock Review' (2019) 247(1) *St Mark's Review: A Journal of Christian Thought and Opinion* 40, 49-50. In accordance with the Siracusa Principles, any restriction must be necessary to achieve one of the objects listed, and must be proportionate to that object in the sense that it is the least restrictive means to achieve that object: '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), accessed February 19, 2019, https://www.uio no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf.

[3] See Deagon, Maintaining Religious Freedom (n 2) 49-50.

[4] Alex Deagon, 'Equal Voice Liberalism and Free Public Religion: Some Legal Implications' in Michael Quinlan, Iain Benson and Keith Thompson (eds), *Religious Liberty in Australia: A new* Terra Nullius*?* (Connor Court Publishing, 2019) 323-324.

[5] Hans-Martien Ten Napel, *Constitutionalism, Democracy and Religious Freedom* (Routledge, 2017) 97.

The broad definition of religious liberty explained earlier means the actions associated with the principle of religious liberty extend not just to belief and worship, but also to teaching, propagation, identifying conditions of membership and standards of conduct, and appointing officers, leaders and employees.[6] Such practices are all protected, even if the organisations are formed for broader social, commercial or educational purposes.[7] These insights provide a persuasive basis for allowing religious schools the autonomy to choose employees and students who uphold their doctrines in belief and conduct. A religious school may want to preserve their distinctive identity as religious in order to be a community which approaches questions of education from that particular religious perspective. Indeed, they may see the practice of education itself as a religious injunction which is to be performed in accordance with their religious convictions. So it is not enough for only the headmaster and religious studies teacher to uphold Christianity, for example. The entire community is designed to cultivate a consistent ethos. Maintaining this religious identity allows the school to present a unique perspective in a democracy, and legally compelling them to accept employees or students with views or conduct inconsistent with that perspective undermines their religious identity and, consequently, their democratic position as equal and valued citizens.[8] Facilitating this action affirms the unique, equal and valued position of religious people and communities as citizens.

The Bill correctly and explicitly recognises that equality does not necessarily trump religious freedom. 'The limits drawn around discrimination laws [are] an integral part of a structure designed to reflect the relevant human rights as a whole'.[9] In other words, since equality and religious freedom are both positive rights under international law, and there is no hierarchy of human rights, it is accurate to provide positive protection for religious freedom which reflects its status as a human right alongside and not inferior to the right of equality. Recognising that certain conduct by religious bodies is not discrimination enables schools to select staff consistent with their religious and institutional ethos and to enforce generally applicable procedures and rules with regard to student advocacy, conduct, dress and so forth.[10] The framework recognises that schools are creating a community with a distinct ethos which will contribute to public good.

This proposition might well sit awkwardly with those who do not adhere to the doctrines of the particular religious institution. Nevertheless, if we desire a healthy and inclusive democracy which genuinely and equally tolerates freedom to differ, we must allow

[6] Carolyn Evans, *Legal Protection of Religious Freedom in Australia* (Federation Press, 2012) 35.
[7] Aroney, Freedom of Religion (n 1) 161 at FN 46.
[8] Deagon, Equal Voice Liberalism (n 2) 325.
[9] Neil Foster, 'Freedom of Religion and Balancing Clauses in Discrimination Legislation' (2016) 5 *Oxford Journal of Law and Religion* 385, 389.
[10] See Deagon, Maintaining Religious Freedom (n 2) 53-54.

associations the freedom to publicly conduct themselves in such a way as to maintain their unique identity on their terms. Only this will facilitate a robust, collective political encounter of perspectives for consideration and critique by citizens so they are fully informed to pursue the common good.

This principle is explicitly recognised in international human rights law. Article 9 of the European Convention of Human Rights states:

> 1. 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 worship, teaching, practice and observance.
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The European Court of Human Rights ('ECHR') has recognised that religious organisations have distinct legal rights. 'The importance of the collective dimension to religious freedom has emerged as an important theme in Convention jurisprudence'.[11] Harrison notes that the autonomy of these groups is linked with their ability to privately maintain their traditions and publicly express their beliefs. There is a 'distinct line of jurisprudence that emphasises the importance of religious associations to a vital civil society'.[12] For example, in the foundational case of *Kokkinakis v Greece*, the Court states:

> As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a democratic society… it is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conceptions of life… The pluralism indissociable from a democratic society… depends on it.[13]

The collective dimension of Article 9, the freedom to manifest in community with others, contributes to the common good and pluralism in a democratic society. Protecting 'the autonomy of the religious institution' in this way is essential for preserving 'the pluralism indissociable from a democratic society'.[14] As McCrudden emphasises, 'the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords... Were the

[11] Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State,* 2nd edn (Oxford University Press, 2013) 138.
[12] Joel Harrison, *Post-Liberal Religious Liberty: Forming Communities of Charity* (Cambridge University Press, 2020) 174-175.
[13] *Kokkinakis v Greece* (1993) 17 EHRR397 [31].
[14] Christopher McCrudden, *Litigating Religions: An Essay on Human Rights, Courts, and Beliefs* (Oxford University Press, 2018) 68-70.

organisational life of the community not protected by Article 9... all other aspects of... freedom of religion would become vulnerable.'[15] The most powerful cases demonstrate this principle through protecting the autonomy of religious organisations in selecting their leaders.[16] In addition, Article 9 has limited horizontal effect in disputes between members of a religious organisation and the organisation itself, for 'religious group autonomy requires clear limits to the freedom of individuals. The freedom that an individual has to leave a religious organisation in the event of a dispute is fatal to bringing a religious liberty claim against it under the Convention.'[17] Manifesting religious belief through joining with others in a corporate or associational aspect involves a 'necessary exclusion of people of a different or no religion'; if such exclusion is not legally protected 'the perverse effect will be to undermine religious liberty'.[18]

Hence religious communities have the right to determine their own structure, membership, policy, objectives and so on. 'Selection of leaders is one of the very core aspects of religious association autonomy... religious bodies have the right to reject candidates for ministry or discipline or expel an existing pastoral minister even if the grounds for doing so appear to liberals (and others) to be archaic, illiberal or bigoted. The grounds for selection and dismissal are matters within the province of the religious community, and it alone, to decide'.[19] Any state remedies would be invasive and destructive to religious freedom and, indeed, the separation of church and state and democracy itself; state-determined appointment or dismissal of religious leaders, and/or penalties for non-compliance, are hallmarks of authoritarian and religiously repressive regimes.[20] In short, 'the right of religious communities to select their own religious leaders is borne out by the European Convention case law. The European Court of Human Rights has made it abundantly clear that attempts by a state to interfere in the selection of leaders will not be tolerated.'[21]

As Rivers explains:

> A religious group cannot sustain its distinctive identity unless it [discriminates]. Such distinctions may be unjust in a public context but entirely necessary in a religious context. To reject a potential employee on account of their theological heterodoxy would be intolerable behaviour on the part of a public administrator but an essential part of the role of a church ministerial selection board. This is simply social pluralism in practice, and equality law recognises it in exemplary form when it excludes 'single characteristic associations' (i.e. those whose main purpose is to bring together people

[15] Ibid 139; Ahdar and Leigh, *Religious Freedom in the Liberal State* (n 11) 376-377.
[16] McCrudden, *Litigating Religions* (n 14) 68-70.
[17] Ahdar and Leigh, *Religious Freedom in the Liberal State* (n 11) 138-139.
[18] Ibid 350.
[19] Ibid 395.
[20] Ibid.
[21] Ibid 396-399.

> who share a certain characteristic) from the non-discrimination obligations applying to membership in associations generally.[22]

And similarly, Ahdar and Leigh:

> Freedom to associate with others of like mind necessarily involves freedom to exclude people who do not share the beliefs in question… those so excluded are free to join other religious groups (or form their own group) and so this should not be seen as harmful. On the contrary: if the state were to prevent exclusivity through its non-discrimination laws, this would amount to denial of a basic aspect of religious liberty. Paradoxically, perhaps, exclusive societies add to the diversity of society.[23]

Hilkemeijer and Maguire argue that the ability of religious schools to discriminate is inconsistent with European human rights law because the law does not take into account whether the person is engaged in secular or religious activities and the grounds of dismissal could be unrelated to religion.[24] They propose a better option for reform is either a law requiring the school to demonstrate that it is necessary to employ staff who adhere to the school's religious faith (the narrowest option), or a law allowing schools to discriminate if they can demonstrate that the discriminatory action is a genuine occupational requirement and it satisfies a reasonableness test.[25]

However, this misreads ECHR jurisprudence, which supports robust institutional autonomy. In one seminal case, the ECHR observed that religious communities exist in organised structures and the 'autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords'.[26] The EU Directive acknowledges the right of religious organisations to require employees to adhere to the ethos of the organisation.[27] Thus, Aroney and Taylor note that in a number of cases the ECHR has found in favour of the religious institution when an employee has breached the institution's ethos, 'even when the ethos requirements of the

[22] Julian Rivers, 'Is Religious Freedom under Threat from British Equality Laws?' (2020) 33 *Studies in Christian Ethics* 179, 182-183.
[23] Ahdar and Leigh, *Religious Freedom in the Liberal State* (n 11) 360.
[24] Anja Hilkemeijer and Amy Maguire, 'Religious Schools and Discrimination against Staff on the Basis of Sexual Orientation: Lessons from European Human Rights Jurisprudence' (2019) 93(9) *Australian Law Journal* 752, 756-761.
[25] Ibid 763-765.
[26] *Sindicatul "Pastorul Cel Bun" v Romania*, App.No. 2330/09, Judgment of 9 July 2013 [136].
[27] *European Council Directive* 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

employer organisation impinge on the employee's fundamental human rights'.[28] For example, dismissals of teachers of religious doctrine and educators in religious educational facilities were not found to breach the ECHR:

> In some, perhaps most, religious schools loyalty might not be expected from those employees who are not engaged in representing the ethos of the organisation by functions such as chaplaincy or religious education. In some other schools, however a wider range of employees (perhaps even all of them) may be commissioned to promote the religious calling of the school. Their terms and conditions of employment would presumably reflect this in some way. The faith-based calling of a school, and the degree to which there is an expectation that the staff in question share that faith and will be actively engaged in promoting its mission, become the distinguishing features justifying them being contractually bound to remain loyal to the ethos of the organisation. This is not that far removed from the political allegiance expected of those employed by political parties and lobbyists.[29]

In addition, the assumption that there is a relevant distinction between 'religious' and 'secular' activities is incorrect. For many religious communities, all activities are religious. There are no purely secular activities and for many religious schools the provision of educational services in accordance with the ethos of the religion is a core activity of the religion. The mathematics teacher can be a religious mentoring and guidance position which acknowledges the beauty and precision in the understanding of God's creation, and the groundsman can be a religious mentoring and guidance position in the cultivation and care of God's creation, just as much as the religious studies teacher is a mentor and guide in understanding religion.[30] Religion 'embraces a broad number of activities including freedom to choose leaders, establish seminaries and schools, prepare and distribute religious texts, and serve the community through daycare centres and soup kitchens'.[31] As Ahdar and Leigh observe, 'opponents in the debates about the application of equality norms to religious ethos employers have been to a very large degree talking past each other because of their fundamentally incompatible starting points about the nature of employment'; in particular, the secular or 'instrumental' view that is about outcomes and functions, as opposed to the religious 'organic' approach which sees work as a vocation in the context of service to God and fulfilling the religious mission of an organisation; 'A liberal, pluralist, society can only

[28] Nicholas Aroney and Paul Taylor, 'The Politics of Freedom of Religion in Australia: Can International Human Rights Standards point the way forward?' (2020) 47(1) *University of Western Australia Law Review* 42, 56-58.
[29] Ibid 58-60.
[30] See eg Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State,* 2nd edn (Oxford University Press, 2013) 157; Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33(1) *University of Queensland Law Journal* 153, 161 fn 46.
[31] Ahdar and Leigh, *Religious Freedom in the Liberal State* (n 11) 375-377.

flourish by permitting diverse groups within civil society, and that includes, we suggest, organisations that are religiously exclusive'.[32]

This is because religion is a communal and social matter which ought to be passed on to future generations through institutions which shield religion from overly regulatory states. Efforts should be made to accommodate both democratic priorities and the autonomy of religious communities.[33] Refusing accommodation of difference involves several 'dangerous' assumptions, including courts determining what are and are not 'core beliefs' of the religion (e.g. the nature of marriage), that religion should be irrelevant in the context of public services, and concordantly, that religion is irrelevant in the public sphere.[34] 'The idea that religious organisations should be wholly subject to the demand of the civil law reflects the increasing indifference of many to religion... If the institutions of any religion are, without hesitation or any weighing of the effects made, subject to the demands of the law, whatever their own doctrines, secular interests are bound to come to dominate those of a religious nature'.[35]

So Parkinson argues that implementing genuine occupational requirements grounded in secular understandings of religion would 'greatly reduce the freedom of religious organisations to have staffing policies consistent with their identity and ethos'.[36] Many schools see their religious ethos as central to the educational mission of the school and believe this requires staff to believe and act consistently with that ethos.[37] This framing emphasises the freedom of religious organisations to select and regulate their membership in the form of a positive right for manifestation of religion in a community.

Following from this, an exemption or right which places the decision in the hands of a secular tribunal to decide whether an activity is 'religious', an occupational requirement is 'genuine', or a discriminatory action is 'reasonable', runs significant risk of imposing a secular perspective on a theological question, which would severely undermine the autonomy of religious communities and cause an intrusion of the state in the church.[38] Courts should accept the testimony of the religious communities on this rather than acting as a secular

[32] Ibid 374.
[33] Roger Trigg, *Equality, Freedom and Religion* (Oxford University Press, 2012) 157.
[34] Ibid 119.
[35] Ibid.
[36] Patrick Parkinson, 'The Future of Religious Freedom' (2019) 93(9) *Australian Law Journal* 699, 702.
[37] Ibid.
[38] Neil Foster, 'Respecting the Dignity of Religious Organisations: When Is It Appropriate for Courts to Decide Religious Doctrine?' (2020) 47(1) *University of Western Australia Law Review* 175; Alex Deagon, 'The "Religious Questions" Doctrine': Addressing (Secular) Judicial Incompetence' (2021) 47(1) *Monash University Law Review* (forthcoming).

arbiter of a theological dispute.[39] The Bill explicitly recognises this in the Section 7 test and accompanying explanatory notes.

Religious group autonomy is also not merely an aggregation of individual rights, which is a 'secular liberal and deficiently atomistic approach which undermines religious freedom' by allowing government interference in the group to satisfy individual rights.[40] Robust autonomy for religious communities acknowledges 'the group itself as possessing legal identity and rights' as a result of the 'intrinsically collective dimension to religious freedom and the centrally communal component of manifesting religion'.[41] Consequently, 'religious group association may [and must] sometimes trammel individual rights' because that is intrinsic to the definition of association itself; the ability to associate necessarily entails the ability to exclude, and it is up to the association to put standards in place to make these decisions in relation to leadership, membership, employment, and external activities.[42] As a reasonable accommodation, individuals have a right to leave the group if they wish and, if they like, form a new association with others of similar mind. 'As a general principle, and putting aside situations where no meaningful right of exit exists, it is not for the state to force a religious body to change its ethos to suit belligerent or disgruntled individuals'.[43] In the specific context of schools, this is for religious schools to determine and parents are free to choose to send children to that school or other schools. If parents or students are uncomfortable with the position of the school, they are free to choose a different school, rather than forcing the school to change their ethos and practices to suit them. Such schools may operate in accordance with religious beliefs and behaviour which forms the ethos of that organisation. Forcing them to hire persons who do not adhere to the ethos will undermine the religious nature of the organisation, effectively destroying it. Freedom of association therefore necessarily entails freedom to exclude, and this does not impinge on any rights of disadvantaged individuals as long as a genuine right of exit exists.

Given the important role of religion in human life and community, legislatures and courts should be ready and willing to respect religion by considering exemptions or positive rights.[44] Of course, all parties affirm the importance of religious liberty; what matters are the perceived limits of religious liberty. It has always been the case that religious liberty is limited by what is conducive to public good, but today notions of the public good are strongly informed by equality, inclusion and mental health, especially applied to the LGBT community. As Chavura, Gascoigne and Tregenza observe:

[39] See Foster, Respecting the Dignity of Religious Organisations (n 38); Deagon, Religious Questions Doctrine (n 38).
[40] Ahdar and Leigh, *Religious Freedom in the Liberal State* (n 11) 375-377.
[41] Ibid.
[42] Ibid 392.
[43] Ibid 392-394.
[44] Ibid 151.

> These ideals are operating to constrict religious liberty, particularly as it applies to religious associations and institutions, whose historic right to discriminate in order to preserve institutional authenticity conflicts with the demands of individualistic authenticity that animates so much moral discourse today.[45]

However, 'interfering with the beliefs and practices' of religious communities 'carries its own dangers'.[46] Though secular liberalism is focused on individuals, religion is strongly communal. Religious associations and institutions (communities) have an existence and distinctive character apart from their members; 'without criteria of membership, and distinctive activities, they would cease to exist'.[47] This character matters because they not only reflect the beliefs of members, but help to mould them for the good of the broader community.[48] Though some challenge the autonomy of religious communities to set their own standards as undermining individual rights, 'it is usually recognised that religious freedom is safeguarded as long as any individual has a right of exit'.[49] Evans and Gaze also warn that 'individuals are entitled to develop and live out their own conceptions of the good life and that this entitlement is an important bulwark against deadening social conformity and, at the extreme, totalitarianism'.[50] Similarly, Trigg observes that the 'liberal ideal of... equality' can itself 'take on the status of an orthodoxy, which can be potentially oppressive'.[51] In effect, 'a concern for equality can visibly diminish religious freedom'.[52] Rather than simply restricting religious freedom because it may undermine equality norms, the autonomy of religious communities should be accommodated to protect Australian democracy and freedom.[53]

There are rumours that s 38(3) of the *Sex Discrimination Act* may be repealed as part of a deal to pass the Bill. This would be a poor move. First, if s 38(3) was repealed (removing direct discrimination), schools would only be able to generally regulate student conduct if it is 'reasonable in the circumstances' under s 7B (indirect discrimination). However, unless it is made clear that this determination is up to the school, it gives secular courts effective theological power to determine if a particular school policy based in religion is 'reasonable'. This is an unwise intrusion of the state in the church and consequently it undermines religious

[45] Stephen Chavura, John Gascoigne and Ian Tregenza, *Reason, Religion and the Australian Polity: A Secular State?* (Routledge, 2019) 48.
[46] Trigg (n 33) 39.
[47] Ibid 43.
[48] Ibid 44.
[49] Ibid 99.
[50] Carolyn Evans and Beth Gaze, 'Between Religious Freedom and Equality: Complexity and Context' (2008) 49 *Harvard International Law Journal Online* 45.
[51] Trigg (n 33) 83.
[52] Ibid 32, 116, 119-120, 128-132.
[53] Charlotte Baines, 'A Delicate Balance: Religious Autonomy Rights and LGBTI Rights in Australia' (2015) 10(1) *Religion & Human Rights* 45, 49. See also Alex Deagon, 'Equal Voice Liberalism and Free Public Religion: Some Legal Implications' in Michael Quinlan, Iain Benson and Keith Thompson (eds), *Religious Liberty in Australia: A new* Terra Nullius*?* (Connor Court Publishing, 2019) 314-317, 325-326.

freedom.[54] Second, a uniform rule imposed on students which regulates their conduct may still be interpreted to be directly discriminatory. For example, a rule that a student cannot bring a same-sex partner to a school social is directed at conduct, not orientation (it applies to heterosexual students as well as homosexual ones). But in cases such as *CYC v Cobaw* courts have not made this distinction between orientation and conduct, stating that the conduct is indissolubly linked to the orientation.[55] As such, under the mere protection of s 7B schools may actually not be able to impose general rules on students which are reasonably based in the religious ethos of that school. Third, such an amendment would have unduly broad and unforeseen repercussions which could severely undermine religious freedom in Australia. The simple repeal of s 38(3) extends to any educational institution where education or training is provided, including tertiary theological colleges with an explicitly religious approach, not just religious primary and secondary schools. Such an amendment would prevent these bodies from legal protection in the process of providing religious education and training.

Consequently, the Parliamentary Committee which considered a similar proposed repeal two years ago found (for these and other reasons) that the repeal was rushed, flawed and a more detailed consideration was needed.[56] The Committee recommended that it not be passed and the issue be referred to the Australian Law Reform Commission for further consideration.[57] Consequently, the Senate did not pass the repeal. The issue has been referred to the Australian Law Reform Commission, which is now due to report back one year after the Religious Discrimination Bill passes. This is an appropriate conclusion.

It is not unreasonable or disproportionate to expect a particular community with certain ethical commitments to not engage with or provide services to persons or groups which contradict those commitments. Rather, the religious body should be provided with autonomy to define their own doctrine and what that doctrine entails for their practice.[58] Completely removing the ability for religious communities to preference and select their leaders, members and method of teaching coerces uniformity (i.e. compels other communities to conform to a particular version of the good) rather than to accept that there are diverse approaches to pursuing the good.[59]

---

[54] See eg Neil Foster, 'Respecting the Dignity of Religious Organisations: When is it Appropriate for Courts to Decide Religious Doctrine?' (2020) 47 *University of Western Australia Law Review* 175.
[55] See *Christian Youth Camps Limited v Cobaw Community Health Services Limited* [2014] VSCA 75.
[56] See 'Sex Discrimination Report', *Senate Legal and Constitutional Affairs Legislation Committee* [3.68]. The Report can be accessed (February 19, 2019) here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Sexdiscrimination/Report?fbclid=IwAR1TqKRJ5EA5I7o3D2cv_Wc2qlr_vhaSIrK-NsZCKRHSzr5rr_2iIZ0SEzk.
[57] Ibid [3.80] – [3.84].
[58] See Alex Deagon, 'The "Religious Questions" Doctrine': Addressing (Secular) Judicial Incompetence' (2021) 47(1) *Monash University Law Review* (forthcoming).
[59] As explored in Joel Harrison, *Post-Liberal Religious Liberty* (Cambridge University Press, 2020).

It is true that any who are discriminated against may 'suffer significant harm to their dignity, emotional well-being and in some cases their economic security'.[60] However, Walsh notes that the religious community who incidentally engages in discrimination in the process of maintaining a particular ethos consistent with their religious beliefs 'will typically suffer much greater harm' if there are no laws protecting their ability to do this, including 'severe emotional distress from the violation of their faith commitments', potentially the 'impairment of their relationship' with the rest of their faith community, and being the subject of 'protests, boycotts and complaints to anti-discrimination tribunals with the frequent result' that they will be forced to cease either their religious ethos or their activities – both fatal to the existence and nature of the community.[61] In the vast majority of cases the party discriminated against can simply choose another option at minimal cost, and given increasing support for vulnerable persons and groups (especially among the young) and potential financial incentives for the religious party to accept their requests, it is increasingly unlikely that discrimination will occur. The failure to realise that harm to the religious party from not protecting their autonomy overrides harm to the party from being discriminating against only results from simply refusing to give the religious party's beliefs and interests any significant weight.[62]

Finally, it is important to note the incidental ability to 'discriminate' in this context actually preserves equality between religious and non-religious communities. An example to illustrate this principle is political parties. Political parties, by their nature, discriminate on the basis of political opinion. It would be absurd for the law to compel a particular political party to hire someone who repudiates the ethos of the party in thought or conduct, and the law has long recognised this ability for political parties to 'discriminate'.[63] The same notion applies to religious schools.[64]

So rather than framing religious freedom in a way which intuitively subordinates religious freedom to equality, Aroney advocates for positive rights to select staff who adhere to the beliefs and observe the practices of the religious group in question, as provided in this Bill.[65] He concludes:

---

[60] Greg Walsh, 'Same-Sex Marriage and Religious Liberty' (2016) 35(2) *The University of Tasmania Law Review* 106, 126.
[61] Ibid 127.
[62] Ibid 127-128. See Nicholas Aroney and Benjamin Saunders, 'Freedom of Religion in Australia' in Matthew Groves, Daniel Meagher and Janina Boughey (eds), *The Legal Protection of Rights in Australia* (Hart Publishing, 2019) who also argue that there needs to be greater recognition of the wrongness and harm which results from compelling religious parties to act contrary to their conscience.
[63] Aroney and Saunders (n 62).
[64] See Alex Deagon, 'Defining the Interface of Freedom and Discrimination: Exercising Religion, Democracy and Same-Sex Marriage' (2017) 20 *International Trade and Business Law Review* 239, 276-278.
[65] Nicholas Aroney, 'Can Australian Law Better Protect Freedom of Religion' (2019) 93(9) *Australian Law Journal* 708, 716, 719.

> Given that international human rights law recognises that religious freedom extends to the establishment and maintenance of religious, charitable, humanitarian and educational institutions, and the right to establish associations with like-minded people includes the right to determine conditions of membership and participation within such organisations, consideration should be given to protecting freedom of religion in the context of anti-discrimination laws through the enactment of statutory affirmations of the positive right of religious bodies to select staff who share their religious beliefs so as to maintain the religious ethos of the organisation... that is a consequence of living in a diverse society which respects religious freedom.[66]

Statements of Belief

Section 17(1) of the *Anti-Discrimination Act 1998* (Tas) states that 'a person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute… in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed'. From Section 16 such attributes include race, sexual orientation, gender identity, and political or religious activity. This is a very broad limit, for one person's religious speech or religious activity may well 'offend' another. It is out of step with other Australian jurisdictions on this point and has stifled freedom of speech and public expression of religion. For example, this was the provision that caught Archbishop Porteous when he distributed a Catholic pamphlet to Catholic parishioners which said 'Don't Mess with Marriage'. Transgender activist and Federal Greens candidate, Martine Delaney, impugned this document on the basis that it breached the provision by insulting, offending or humiliating an individual or group because of a listed attribute (homosexuality), and brought a case to the Tasmanian Anti-Discrimination Commission.[67] The case was eventually dropped, though not before considerable time and expense spent by the Archbishop.[68] More significantly, the Commissioner had decided that there was a case to answer.[69]

Section 12 of the Bill will prevent such frivolous and vexatious cases by overruling the 'offend or insult' threshold in the Tasmanian Anti-Discrimination Act, and it explicitly states that a statement of religious belief 'does not constitute discrimination for the purposes of any anti-discrimination law'. This is a narrower and more appropriate limit which protects moderate statements of belief. As noted in the Executive Summary, in order to attract protection, such statements must be made in good faith, *and* must not be malicious, *and* must

---

[66] Ibid 720.
[67] Delaney had already pursued similar actions with the Exclusive Brethren a decade earlier. See Bernard Doherty, 'The "Brethren Cult Controversy": Dissecting a Contemporary Australian "Social Problem"' (2013) 4(1) *Alternative Spiritualities and Religion Review* 33, FN 33.
[68] See e.g. https://www.catholicweekly.com.au/anti-discrimination-proceedings-dropped-but-archbishop-porteous-disappointed/. Accessed November 25, 2019.
[69] See https://www.abc net.au/news/2015-11-13/catholic-church-has-discrimination-case-to-answer/6939942. Accessed November 25, 2019.

not be harassing, threatening, intimidating or vilifying, *and* must not urge the commission of a criminal offence. The Bill does not shift existing restrictions such as reasonable employer directions in a work context, the application of employer codes of conduct in a work context, or laws against vilification and defamation.

The protection for statements of belief is a reasonable and moderate protection which facilitates robust debate on matters of importance in a democratic society.

Corporations as Discrimination Litigants[70]

Section 51(xxix) of the Constitution provides that the Parliament shall have power to make laws with respect to 'external affairs'. This enables the Commonwealth to make laws for the purpose of implementing rights and obligations arising from international treaties ratified by Australia.[71] If the Commonwealth law is for the purpose of implementing rights or obligations under a treaty, it will be supported by the external affairs power. In the seminal *Victoria v Commonwealth* (*Industrial Relations* case), the joint judgment further confirmed there has been 'a continual expansion in the range of the subject matter of treaties', and this expansion has been well recognised.[72] The implication is the Commonwealth can legislate for the purpose of implementing rights and obligations by reference to a specific treaty under the external affairs power.

The *Industrial Relations* case also outlined the applicable test: the law 'must be reasonably capable of being considered appropriate and adapted to implementing the treaty', and the law 'must prescribe a regime that the treaty has itself defined with sufficient specificity to direct the general course to be taken by the signatory states'.[73] The first aspect (conformity) entails a proportionality analysis which considers the purpose of the treaty, and 'it is for the legislature to choose the means by which it carries into or gives effect to the treaty'; 'the validity of the law depends on whether its purpose or object is to implement the treaty… And the purpose of legislation which purports to implement a treaty is considered… to see whether the legislation operates in fulfilment of the treaty and thus upon a subject which is an aspect of external affairs'.[74] However, 'deficiency' in implementation 'is not necessarily fatal to the validity of the law'; partial implementation is sufficient where the deficiency is not 'so substantial as to deny the law the character of a measure implementing the Convention' or it is a deficiency which does not render the law 'substantially inconsistent with the Convention'.[75] The second aspect (specificity) requires that the treaty embodies precise

[70] **I acknowledge Mark Fowler as an equal co-contributor to this section of material.**
[71] *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168. See Cheryl Saunders, 'Articles of Faith or Lucky Breaks? The Constitutional Law of International Agreements in Australia' (1995) 17(2) *Sydney Law Review* 150, 159.
[72] *Industrial Relations* (1996) 187 CLR 416, 478 (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ).
[73] *Industrial Relations* (1996) 187 CLR 416, 486-487.
[74] Ibid 487.
[75] Ibid 489.

obligations, rather than mere aspirations which are 'broad objectives' permitting 'widely divergent policies'.[76]

The Bill purports to implement, among other instruments, Article 18 of the *International Convention on Civil and Political Rights* ('ICCPR') ratified by Australia in 1980, which states:

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.[77]

As noted above, freedom of religion is a right exercised by individuals and groups. Article 18(1) specifically protects the ability to act in community with others (including through corporate vehicles) as a form of manifesting belief, both privately and publicly.[78] In particular 18(4) obliges states to have respect for the liberty of parents to educate their children in conformity with their religious convictions, which entails allowing the creation and maintenance of associations formed for the purposes of educating in conformity with religious convictions (faith-based schools). Though there are no limitations to this requirement in the instrument, religious freedom generally in Article 18(3) is subject only to legal limitation which is *necessary* (not merely reasonable) to protect public safety, order, health, morals or fundamental rights and freedoms of others. This is a high threshold which requires substantive proof before any legal limitation is appropriate.

In the context of an enactment seeking to prohibit religious discrimination, Article 18 does not stand alone. It works in conjunction with the prohibition on discrimination, found in Articles 2 and 26 of the ICCPR, which are, respectively:

---

[76] Ibid 486. Though the 'absence of precision does not… mean any absence of international obligation.' See *Tasmanian Dams* (1983) 158 CLR 1, 261-2 (Deane J).
[77] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
[78] See Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33 *University of Queensland Law Journal* 153.

> 2. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 26. Persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

There is an overlap between the prohibition on discrimination and the protection for religious freedom: where a domestic court denies a person's religious discrimination claim, it imposes an effective limitation on that person's religious manifestation, and the future manifestation of similar conduct in comparable circumstances. The overlap indicates that domestic religious discrimination protections can operate in a manner that fails to acquit the obligations imposed by Article 18(3).

International law supports the contention that religious corporations may be protected from discrimination as a means to adequately give effect to the religious freedom rights of individuals. The Australian Human Rights Commission asserts that it is an axiomatic principle of international law that human rights extend only to humans.[79] In itself, this is a non-contentious statement of general human rights principles (with the exception of Article 1 of the ICCPR concerning the collective rights of 'peoples'). However, to extend this principle to the absolute conclusion that human rights law precludes corporations from making complaints where discriminatory action against them places a limitation on the religious freedom rights of individuals goes too far. As illustrated by the following discussion, a wide range of international bodies and the domestic courts of certain countries have recognised that, due to the unique communal aspects of religious belief, corporate bodies may assert rights on the basis of their religious beliefs.

In the United States, businesses are understood to be capable of possessing a religious identity if that identity is relevant to their status as a victim of discrimination. For example, in *Sherwin Manor Nursing Ctr., Inc. v. McAuliffe* the Seventh Circuit Court of Appeals upheld a complaint of religious discrimination by a privately operated (non-charitable) nursing facility owned and operated by Jews:

[79] Australian Human Rights Commission, *Submission on the Religious Discrimination Bill*: Religious Freedom Bills | Australian Human Rights Commission.

> Sherwin presents a cognizable equal protection claim since it alleges that it was subjected to differential treatment by the state surveyors based upon the surveyors' anti-Semitic animus.[80]

Similarly in *The Amber Pyramid, Inc. v. Buffington Harbor Riverboats* it was held that 'a 'minority-owned corporation, like Amber Pyramid, assumes an "imputed racial identity" from its shareholders.'[81]

In the 2014 decision of the United States Supreme Court in *Burwell, Secretary of Health and Human Services et al v Hobby Lobby Stores Inc et al* ('*Hobby Lobby*'), the Court held that 'closely held' business corporations can assert religious freedom rights, acknowledging that '[f]urthering their religious freedom also "furthers individual religious freedom"'.[82] The United States Supreme Court recognised:

> A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of the people (including shareholders, officers, and employees) who are associated with a corporation in one way or another. When rights … are extended to corporations, the purpose is to protect the rights of these people.[83]

Turning to the European Convention context, as noted above Ahdar and Leigh recognise that 'The importance of the collective dimension to religious freedom has emerged as an important theme in Convention jurisprudence'.[84] In *X and Church of Scientology v Sweden* the European Commission of Human Rights held that a church could exercise Article 9 religious freedom rights on behalf of its members: '[w]hen a church body lodges an application under the Convention, it does so in reality, on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Article 9 (1) in its own capacity as a representative of its members.'[85] This can be seen as an extension of the Court's reasoning in *Hasan & Chuash v Bulgaria:* 'religious communities traditionally and universally exist in the form of organised structures' necessitating the recognition that 'participation in the life of [such communities] is a manifestation of one's religion.'[86] Similarly the Court has recognised that 'Were the organisational life of the community not protected by Article 9 of the Convention, all other

[80] 37 F.3d 1216, 1221 (7th Cir. 1994).
[81] L.L.C., 129 F. App'x. 292, 295 (7th Cir. 2005), (quoting *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc*., 368 F.3d 1053, 1059 (9th Cir. 2004)).
[82] *Burwell, Secretary of Health and Human Services et al v Hobby Lobby Stores Inc et al*, 573 U.S. (10th Cir, 2014).
[83] *Burwell v Hobby Lobby Stores Inc*, 134 S Ct 2751, 2768 (Alito J for Roberts CJ, Scalia, Kennedy, Thomas and Alito JJ) (2014) (emphasis in original).
[84] Rex Ahdar and Ian Leigh, *Religious Freedom in a Liberal State* (Oxford University Press, 2013 2nd ed) 138.
[85] (1979) 16 DR 68, 70.
[86] *Hasan and Chaush v Bulgaria* (European Court of Human Rights, Grand Chamber, Application no. 30985/96, 26 October 2000) [52].

aspects of the individual's freedom of religion would become vulnerable.'[87] Applying these principles, subsequent decisions have confirmed that religious corporations are direct beneficiaries of the rights conferred under Article 9 and may exercise those rights in their own capacity.[88]

With specific reference to the right to freedom from discrimination, the Court has recognized the ability of corporations to make discrimination claims. In *Cha'are Shalom Ve Tsedek v. France* the Court confirmed that religious corporations may take the benefit of the Article 14 protections from discrimination.[89] In that matter the applicant, a Jewish association, considered that the meat slaughtered by an existing Jewish organisation no longer conformed to the strict precepts associated with kosher meat, and sought authorisation from the state to conduct its own ritual slaughters. This was refused on the basis that it was not sufficiently representative within the French Jewish community, and that authorised ritual slaughterers already existed. Although the ECHR found in the circumstances that there was no actual disadvantage suffered by the organisation since it was still able to obtain meat slaughtered by the required method from other sources, it held that the association could assert rights under Article 14 (freedom from discrimination).

Article 18(1) of the ICCPR in its express terms protects the right to exercise the '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.' General Comment 22 further elaborates:

> The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in *community with others.*[90]

As Evans notes, 'while human rights belong to individuals, the right to manifest religious freedom collectively means that it has an organisational dimension', whereby it 'is for the individual, rather than the state, to decide whether to exercise the right individually and/or collectively.'[91]

---

[87] *Case of Fernández Martínez v Spain* (2014) ECHR 615, [127].
[88] See in particular *Kontackt-Information-Therapie and Hagen v Austria* No. 11921/86, 57 DR 81 (Dec 1988), 88; *A.R.m. Chappell v UK,* No. 12587/86, 53 DR 241 (Dec. 1987), 246; *Iglesia Bautisti 'El Salvador' and Ortega Moratilla v Spain* No. 17522/90 72 DR 256 (Dec 1992).
[89] *Cha'are Shalom Ve Tsedek v. France* [GC], No. 27417/95, 27 June 2000.
[90] *Human Rights Committee, General comment No. 22 (48) (art. 18),* 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993), [1].
[91] Carolyn Evans, *Legal Protection of Religious Freedom in Australia* (Federation Press, 2012) 35.

Article 6 of the 1981 Declaration, a statement by the General Assembly that has been utilised by the Human Rights Committee in interpreting the scope of Article 18's protections, recognises a range of rights that are by their nature necessarily expressed through corporate vehicles.[92] These include the right 'to establish and maintain appropriate charitable or humanitarian institutions', the maintenance of places of worship, and the observance of ceremonies and holidays.[93] In 2005 the United Nations Human Rights Committee (UNHRC) found that Sri Lanka had breached both Articles 18 (freedom of religion) and 26 (freedom from discrimination) by refusing the incorporation of an Order of Catholic nuns whose activities included providing 'assistance to others' as a 'manifestation of religion and free expression'.[94] The complaint was brought by eighty individual sisters, reflecting the procedures under the Optional Protocol, which permit of individual complaints only. The UNHRC concluded that incorporation of the order would better enable them to realise their objects, and failure to permit incorporation restricted freedom of religion.

Furthermore, religious freedom is not the only individual right recognised as incorporating a collective expression for its full enjoyment under the Covenant. As leading jurist Manfred Nowak also acknowledges, the communal and associational aspects of religious freedom are further supported by Article 22. Article 22 protects the 'right to freedom of association with other people.' Nowak explains that this right includes the collective right of an existing association to represent the common interests of its members.[95] Freedom of association becomes a nonsense if it cannot be exercised through legally incorporated persons.

The Human Rights Committee has recognised that the freedom of expression under Article 19 necessitates protections to incorporated 'commercial and community broadcasters' or media.[96] Such is in recognition of the fact that the legitimate exercise of certain individual Covenant rights can only be fully enjoyed through the grant of protections to incorporated entities. Article 18.4 recognises the liberties of 'parents' in the religious and moral education of their children. Article 23 recognises the family as 'the natural and fundamental group unit … entitled to protection by society and the State.' Again, the Human Rights Committee recognises that 'the persons designed to be protected [by Article 27] are those who belong to

[92] *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v Sri Lanka,* Communication No. 1249/2004, U.N. Doc. CCPR/C/85/D/1249/2004 (2005) [7.2].
[93] UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, Article 6.
[94] *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v Sri Lanka,* Communication No. 1249/2004, U.N. Doc. CCPR/C/85/D/1249/2004 (2005).
[95] Manfred Nowak, *CCPR Commentary* (Engel, Kehl am Rhein, 1993) 386–9.
[96] United Nations Human Rights Committee, *CCPR General Comment No 34 Article 19: Freedoms of opinion and expression,* UN Doc CCPR/C/GC/34 (12 September 2011) [39].

a group and share a common culture, religion and/or language'.[97] Article 1 explicitly recognises the collective rights of 'peoples' (although, as noted above, the machinery of the Optional Protocol prevents this right being the subject of a complaint to the UNHRC). In addition, although the ICCPR is the primary instrument on which the RDB seeks its authority (relying on the external affairs power), it also lists the Convention on the Rights of the Child as an instrument to which it 'gives effect' in clause 58. Aroney and Parkinson note that Articles 3.2 and 5 concerning the 'responsibilities, rights and duties of parents' and 'the members of the extended family or community as provided for by local custom' 'reflect an understanding that individual rights are often exercised within a social context.'[98]

In short, the underlying principle within the United Nations jurisprudence is that things done to corporate entities can impact on the religious freedom or other human rights of individuals. To that extent, the jurisprudence under the ICCPR recognises both the individual and collective dimensions of religious manifestation. Given the propensity of religious belief to inspire collective effort, to fail to so recognise would provide incomplete protection. As recognised by the ECHR, the principle that human rights are enjoyed by individuals does not preclude the ability of a corporate body to initiate a religious discrimination complaint as a litigant due to the impact upon the religious exercise of its members.

To provide a concrete and pertinent example, where a government limits the expression by a religious institution of its traditional view of marriage, this imposes a limitation on the effective exercise of the rights of the members of that institution through their designate representatives. It limits the ability of the members to define the particular religious character and ethos of the institution that they have chosen to create, what Aroney and Parkinson term 'the right to shape the identity and culture' of their religious institution.[99] This is the kind of limitation that would enliven Article 18, in conjunction with Article 26, providing the rudimentary elements sufficient to seek a determination within a domestic court as to whether direct or indirect discrimination had occurred under legislation giving effect to the external affairs power. As Aroney and Parkinson assert 'if legislative approaches to discrimination policy are to be consistent with the full range of human rights that ought to be recognised and protected, then they should equally recognise and respect the communal aspects of the international human rights standards and their associated jurisprudence.'[100] Applying this framework, there is a strong argument that the Commonwealth may provide corporate religious bodies with the ability to make a discrimination complaint on the basis that the Commonwealth is enacting a law that implements obligations in a treaty, or secures benefits under a treaty.

---

[97] United Nations Human Rights Committee, *CCPR General Comment No 23: Article 27 (Rights of Minorities),* UN Doc CCPR/C/21/Rev.1/Add.5 (26 April 1994) [5.1], [5.2].
[98] Nicholas Aroney and Patrick Parkinson, 'Associational Freedom, Anti-Discrimination Law and the New Multiculturalism' (2019) 44 *Australasian Journal of Legal Philosophy* 1, 9.
[99] Ibid 12-13.
[100] Ibid 19-20. See also Rex Ahdar, 'Companies as Religious Liberty Claimants' (2016) 5(1) *Oxford Journal of Law and Religion* 1.

In terms of applying the *Industrial Relations* case specifically, Article 18(1) provides a precise obligation. The manifestation of belief through worship, observance, practice and teaching in community with others is protected, including public sharing and the promulgation of religious beliefs.[101] Furthermore, the UN *Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief* states that the right to freedom of religion includes freedom to worship and assemble, establish charitable and humanitarian institutions, and appoint appropriate leaders consistent with the requirements and standards of the religion.[102] It follows that there is a close connection between Article 18 and other fundamental human rights including freedom of association (Art 25). Freedom of religion in conjunction with freedom of association under the ICCPR thus protects the right to found an association based on a common purpose, the right of that association to be recognised as and function as a distinct legal person, and the right of such an association to select and regulate members of the association in accordance with the common interest of the association, including expulsion of those who breach the terms of the association.[103] International law therefore prescribes a clear right to freedom of religion which includes freedom to manifest religion in in community with others. Manifesting religion in community with others entails the creation and continuance of incorporated and unincorporated religious associations which function as distinct legal persons for a common purpose. Since persons form and incorporate religious associations as a function of exercising their rights of freedom of religion and association, the right entails an obligation not to discriminate against such bodies, which in turn presumes the ability of such bodies to seek redress in the event of such discrimination. The right also correspondingly entails the ability of religious individuals to seek redress against a body in the event of discrimination.

The Bill is also reasonably capable of being considered appropriate and adapted to implementing the relevant international law obligations. As intimated above, the purpose of the Bill in this respect is to protect the religious freedom of religious corporations by protecting them against discrimination in their own right. The Bill may legitimately implement these specific obligations by empowering religious corporations as litigants in religious discrimination matters. The obligations include the 'right of a group to a legal framework making possible the creation of juridical persons' and 'the collective right of an existing association to represent the common interests of its members'; these two rights necessarily entail the ability of religious corporations to sue in their own right, including in

[101] Nicholas Aroney, 'Can Australian Law Better Protect Freedom of Religion?' (2019) 93(9) *Australian Law Journal* 708, 711.
[102] Ibid 711-712; *Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief*, GA Res 36/55, UN GAOR, 36th sess, 73rd plen mtg, Supp No 51, UN Doc A/RES/26/55 (25 November 1981) Art 6.
[103] Aroney, Protect Freedom of Religion (n 101) 712; Manfred Nowak, *CCPR Commentary* (Engel, Kehl am Rhein, 1993) 386-389; Julian Rivers, *The Law of Organized Religions: Between Establishment and Secularism* (Oxford University Press, 2010) 34-38.

relation to discrimination claims.[104] 'Religious communities need to be able to secure legal personality status within a society in order to exercise many of their collective religious freedoms'.[105] Articles 22 and 27 of the ICCPR also protect the right of freedom of association in community with others. As noted above, Article 6 of the 1981 Declaration concordantly affirms an array of freedoms which are communal in expression and necessitate the recognition of legal personality, such as the maintenance of places of worship and the establishment of charitable institutions. The overlapping protections of the ICCPR and 1981 Declaration demonstrate that under international law, freedom of religion requires freedom from religious discrimination, and freedom from religious discrimination in turn requires the capacity to be a litigant.[106] As Aroney concludes:

> … since international human rights law recognises that religious freedom extends to the establishment and maintenance of religious, charitable, humanitarian and educational institutions, and the right to establish associations with like-minded people includes the right to determine conditions of membership and participation within such organisations, consideration should be given to protecting freedom of religion in the context of anti-discrimination laws [which includes the ability of such bodies to make discrimination claims].[107]

Furthermore, the Commonwealth can empower religious corporations as litigants through exercising the corporations power. Section 51(xx) of the Constitution enables the Commonwealth to make laws with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. These kinds of corporations are known as 'constitutional corporations'. This presents two questions relating to the constitutional validity of the Bill's empowerment of corporations as litigants: first, are religious corporations constitutional corporations, and second, does the corporations power extend to authorising the definition of religious corporations as litigants.[108] Fundamentally, the corporations power does enable the Parliament to protect religious constitutional corporations from discrimination, and enables Parliament to prevent religious constitutional corporations from discriminating against others, and this is within the core of the corporations power.

A religious corporation will be a constitutional corporation if it is formed outside the limits of the Commonwealth of Australia under the law of a foreign nation, but operates within

---

[104] Nicholas Aroney and Patrick Parkinson, 'Associational Freedom, Anti-Discrimination Law and the New Multiculturalism' (2019) 44 *Australasian Journal of Legal Philosophy* 1, 8.
[105] Ibid 10.
[106] Ibid 11; See the discussion in Paul Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press, 2005) 235-292.
[107] Aroney, Protect Freedom of Religion (n 101) 720.
[108] See Nicholas Aroney and Matthew Turnour, 'Charities are the new Constitutional Law Frontier' (2017) 41 *Melbourne University Law Review* 446, 475-481 for a similar analysis.

Australia.[109] Alternatively, a religious corporation will be a constitutional corporation if it is a trading or financial corporation which is formed within and operates within the limits of the Commonwealth. The test is whether trading or financial activities form a substantial or significant proportion of the corporation's activities.[110] It is not necessary that such activities are the predominant activities of the corporation.[111] This will obviously be a question of fact in individual cases, and the constitutive purposes of the corporation are particularly relevant where the corporation is newly formed and/or has not yet undertaken any activities.[112] Aroney and Turnour observe that while such trading or financial activities are usually for the purpose of earning money, it is not essential that the corporation be seeking to make a profit:

> it has been held that a constitutional corporation's dealings may be marked by a degree of altruism which is not compatible with a dominant objective of profit-making... on this basis, sporting clubs, universities, public utilities, government agencies, and charities, such as the Australian Red Cross, have been held to be trading corporations within the meaning of s 51(xx). Even if corporations are formed primarily for charitable purposes and do not have trading activities as their most important objective, provided that a sufficient proportion of their activities are of a trading character, they will be considered to be constitutional corporations.[113]

This point is obviously relevant for religious corporations. The majority would not have profit as their primary objective and would have more altruistic and community-oriented activities, but if a significant proportion of their activities are trading or financial activities, then they too will be constitutional corporations. Conversely, it should be noted that where religious corporations engage in mainly religious or charitable activities, and not trading or financial activities, they would not come within the scope of the corporations power.

In terms of the extent of the corporations power, the High Court has taken a very broad approach. The Court has upheld legislation not only with a connection to the trading or financial activities of corporations, but also to the trading or financial corporations themselves. 'The Court has also upheld legislation that prohibits conduct by some other party that is intended or likely to cause loss or damage to a constitutional corporation.'[114] There must be a 'sufficient connection' between the law and the constitutional corporation, and more recent cases have indicated that a sufficient connection is established where a law imposes a duty or confers a right upon a constitutional corporation, singling it out as 'an

[109] *New South Wales v Commonwealth ('Incorporation Case')* (1990) 169 CLR 482.
[110] *R v Federal Court of Australia; Ex parte The Western Australian National Football League (Inc)* (1979) 143 CLR 190, 233 ('Adamson's Case'). See Christopher Tran, 'Trading or financial corporations under section 51(xx) of the constitution: A multifactorial approach' (2012) 37(3) *Monash University Law Review* 12.
[111] *Commonwealth v Tasmania* (1983) 158 CLR 1.
[112] *Fencott v Muller* (1983) 152 CLR 570.
[113] Aroney and Turnour (n 108) 476.
[114] Ibid 477.

object of statutory command'.[115] In effect, this means that if a law regulates or instructs constitutional corporations, that law will be supported by the corporations power. The power therefore also extends to the business relationships of constitutional corporations, and to 'persons by and through whom they carry out business function and activities'.[116] As Gaudron J observed (again in dissent, and again endorsed by the majority in *Workchoices*):

> I have no doubt that the power conferred by s 51(xx) of the Constitution extends to the regulation of the activities, functions, relationships and the business of a corporation described in that sub-section, the creation of rights, and privileges belonging to such a corporation, the imposition of obligations on it and, in respect of those matters, to the regulation of the conduct of those through whom it acts, its employees and shareholders and, also, the regulation of those whose conduct is or is capable of affecting its activities, functions, relationships or business.[117]

In particular, the case of *Actors Equity* held that the corporations power supports laws regulating what third parties may do with respect to trading or financial corporations.[118] In that case, a provision of the *Trade Practices Act* protected a corporation against a secondary boycott (e.g. by trade unions). The High Court unanimously held that laws imposing obligations on people in connection with their interactions with trading corporations are valid. As noted by Gibbs CJ for the Court, the legislative purpose upheld was the protection of corporations: 'the conduct to which the law was directed is conduct designed to cause, and likely to cause, substantial loss or damage to the business of a trading corporation… A law may be one with respect to a trading corporation, although it casts obligations upon a person other than a trading corporation'.[119]

Hence, categorising religious constitutional corporations as litigants under the Bill can be supported by the corporations power on two related grounds. First, following *Actors Equity*, the Bill protects religious constitutional corporations from loss or damage resulting from discrimination against them, casting obligations on third parties not to discriminate against

---

[115] *New South Wales v Commonwealth* (2006) 229 CLR 1, 115–16 [179]–[181], 121 [198] ('Workchoices'). C f. Tony Blackshield, 'New South Wales v Commonwealth: Corporations and Connections' (2007) 31 *Melbourne University Law Review* 1135. It is arguable in principle that a law preventing discrimination against constitutional corporations has a sufficient connection to those corporations. See also T Glover 'Characterisation of Corporations for Constitutional Purposes' (2009) 20 *Public Law Review* 5.

[116] *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323, 365 (Gaudron J). Justice Gaudron was in dissent, but her judgment was subsequently endorsed by the majority in *Workchoices* 114–15 [178].

[117] *Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union* (2000) 203 CLR 346, 375 [83], quoted in *Workchoices* 114–15 [178]. In addition, the definition of 'entity' from the *Australian Charities and Not-for-profits Commission Act 2012* captures incorporated and unincorporated bodies and the full range of trusts, partnerships etc, which are prevalent in the not-for-profit sector. The ACNC Act clearly proceeds on the basis that Constitutional power exists to regulate these entities. There is no relevant distinction that would preclude the same assumption from applying to the protection of these bodies from religious discrimination.

[118] *Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd* (1982) 150 CLR 169 ('Actors Equity').

[119] Ibid 183.

them. Second, following *Workchoices* more broadly, the Bill makes religious constitutional corporations the object of statutory command by regulating the potentially discriminatory actions of religious constitutional corporations and those who engage with them. Specifically, religious constitutional corporations cannot discriminate and cannot be discriminated against by other persons. This confers a right upon religious constitutional corporations to not be discriminated against and an obligation upon the actions of religious constitutional corporations not to discriminate. Therefore, to confer protection from discrimination on a religious constitutional corporation, and to prevent such corporations from discriminating, is within the core of the corporations power and not its incidental scope.

Hence, international law obligations protect the freedom of individuals to manifest their belief in community with others through forming incorporated or unincorporated associations. The protection necessarily entails protection against discrimination, which requires the ability of such associations to be litigants in their own right as a corporate representation of their members, and this is recognised in both the domestic jurisprudence of nations and in the international law jurisprudence of the United Nations and European Union. For Australia's purposes, this means it is constitutionally permissible for the Bill to empower religious corporations as litigants by relying on the treaty aspect of the external affairs power. In addition, it is constitutionally permissible in the alternative for the Bill to empower religious corporations as litigants by relying on the corporations power. The corporations power extends to the protection of corporations against loss or damage from conduct against them, and may make corporations the object of statutory command by regulating those who interact with them. Empowering religious corporations as litigants in anti-discrimination law falls within this scope. Thus, there is no constitutional objection to empowering religious corporations as litigants in anti-discrimination law, and such empowerment gives full effect to existing international law obligations and jurisprudence pertaining to freedom of religion and association.

So overall, this suite of legislation should be supported as a very good start.

Thank you for your consideration.

Dr Alex Deagon SFHEA

Senior Lecturer, School of Law

Queensland University of Technology