



**POSTAL ADDRESS**  
GPO Box 2041  
Brisbane  
QLD 4001

## HUMANIST SOCIETY OF QUEENSLAND

### SUBMISSION

#### HUMAN RIGHTS SUB-COMMITTEE

#### JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

### **Inquiry into the Status of the Human Right to Freedom of Religion or Belief**

#### PRELIMINARY COMMENTS

The Humanist Society of Queensland (HSQ) advocates a truly open and secular society, where people are willing to work with others of different beliefs for the common good. We advocate a secular government, that is, one that does not favour any particular religious or other personal beliefs (see Terms below) over another. We see the state as upholding the right for everyone to maintain the personal beliefs of their choice, and to practice these subject to the need to protect public security and health, and the rights of others. HSQ seeks to educate our members and the public about the humanist tradition and the positive contribution it has made to our society. Our vision is of a world in which all individuals are treated fairly regardless of ethnicity, sex or system of belief.

We are affiliated with the Council of Australian Humanists Societies and the International Humanist and Ethical Union.

HSQ questions the agenda behind the Inquiry, given the extremely broad terms of reference, its concentration on religion and the short time-frame for submissions which span the Christmas holiday break. Given these conditions, our submission will concentrate on the fourth term of reference, addressing Australian efforts, including those of Federal, State and Territory governments and non-government organisations, to protect and promote the freedom of religion or belief in Australia. Due to the limited time for submissions, this will be necessarily restricted.

A copy of my book, *Freedom From Religion: Rethinking Article 18*, is enclosed, which I donate to the Parliamentary Library. This deals with the application of Article 18 *Universal Declaration of Human Rights* ('UDHR') and the *International Covenant on Civil and Political Rights* ('ICCPR'). It is published by Cilento Publishing, Sydney, 2015, available from Amazon.

## SUMMARY OF SUBMISSION

We submit that:

1. Article 18 of the *Universal Declaration of Human Rights* ('UDHR') and *International Covenant on Civil and Political Rights* ('ICCPR') establish the right to both religious and non-religious beliefs;
2. Australian law adequately protects the right to hold and manifest a religious belief, but does not adequately protect the non-religious from discrimination on the basis of their beliefs. Exemptions from anti-discrimination law based on religious belief are too broad and legislation should be amended to ensure discrimination is restricted to conduct directly related to protecting the manifestation of personal belief;
3. Entanglement of the state with religious interests means that government activities exert an unwanted religious influence on the non-religious;
4. Government funding of, and entanglement with, religious institutions and practices compromise the separation of religion and state required in a secular liberal democracy.

We point to the recently adopted Constitution of Fiji, which spells out the appropriate nature of belief freedoms in a secular nation, as an example of what we submit is necessary legislation establishing both freedom of, and freedom from, personal belief.

### **Terms used in this Submission.**

**'Belief Freedoms'** refers to those freedoms established by Article 18 of both the UDHR and ICCPR, including the limitations that apply to them.

**'Personal belief'** refers to what is meant by 'religion or belief' in Article 18 of both the UDHR and ICCPR. Personal beliefs include personal existential and prescriptive beliefs. *Personal existential beliefs* constitute a worldview or philosophy, secular or religious, about the nature of existence, and our individual relationship to the natural, social and political environment. *Personal prescriptive beliefs* involve values that follow from these existential beliefs, and influence personal behaviour.

**'Personal morality'**: Personal existential and prescriptive beliefs give rise to personal morality: the principles which guide individuals in their personal activities. It may be religious or non-religious in nature.

**'Public Morality'**: establishes the requirements for citizenship of the state, where the public interest (such as public welfare, autonomy, equality, the rule of law and protection of the rights of others) is concerned. The rights and duties flowing from personal existential and prescriptive beliefs may conflict with the political rights and responsibilities as established by the international human rights instruments. They establish whether government is by consensus (in democracy) or by fiat (in dictatorship or theocracy).

Public morality shapes how we relate to the state and society in general, as expressed by the UDHR and ICCPR because it is based on liberal democratic principles — those that everyone can accept in a liberal democratic society. It makes room, subject to the safety, health and human rights of all, for the exercise by individuals of their private morality.

Public morality set out by the UDHR (which has been adopted by all governments except Taiwan, Kosovo and the Vatican), provides that sometimes how we manifest our religious or

other personal beliefs may be restricted by the public interest. This includes upholding personal autonomy and equality for all, regardless of race, religion or other existential belief, gender, or sexuality. In other words, the right to freedom *from* the influence of religion or belief is just as strong as the right to freedom *of* religion or belief.

## SUBMISSION

### **1. Article 18 of the Universal Declaration of Human Rights ('UDHR') and International Covenant on Civil and Political Rights ('ICCPR') establish the right to both religious and non-religious beliefs.**

HSQ notes that the Joint Standing Committee's Report *Conviction with Compassion 2000* (CwC Report) states the views of a submission that

*[N]either the Universal Declaration of Human Rights (UDHR), nor the International Convention on Civil and Political Rights (ICCPR), included the right not to believe. These omissions have been interpreted as discrimination against non-belief and non-believers....*

*In particular situations, the right not to believe becomes an issue. ....*

*If the ICCPR only makes provision for the right to believe, it is from CERD that the right not to believe has been claimed. ....*<sup>1</sup>

We submit that this interpretation of the UDHR and ICCPR is wrong. There is clear evidence that Article 18 in both cases applies to non-religious beliefs.<sup>2</sup>

The UN *General Comment 22* on Article 18 UDHR (par 2) states that it applies to 'non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.' The terms 'belief' and 'religion' are to be 'broadly construed'. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>3</sup> Hence the conclusion that 'religion or belief' refers to all personal beliefs as described above.

There is an absolute right to 'hold opinions without interference' and not to be forced to join an association. There is a similarly limited right to express and manifest ideas, as endorsed by the rights to speech, expression and association.<sup>4</sup> As it stands, with their specific references to conscience and religion, Article 18 of both the UDHR and ICCPR are commonly taken to apply only to religion, or at best confuses the nature of 'belief' and imply that religion warrants some sort of priority.

#### ***Article 18 is often misrepresented***

We submit that Article 18 of both the UDHR and ICCPR are thus either misunderstood or misrepresented as providing special status to religion. This has been clearly refuted by the United Nations General Assembly and the UN Human Rights Committee.

---

<sup>1</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Subcommittee *Compassion with Conviction 2000* pars 2.15 – 2.17

<sup>2</sup> See Wallace, M *Freedom From Religion: Rethinking Article 18*, (2015) Cilento Publishing, Sydney. , (2015)

<sup>3</sup> The European Court of Human Rights, considering the similarly worded Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, (1953) stated that 'it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.' *Kokkinakis v Greece*, 25 May 1993, Series A no. 260-A, §31

<sup>4</sup> Arts. 19, 20, 21 UDHR and 19,21,22 of UDHR and ICCPR.

There is no question we need belief rights, with guidelines, resolutions and charters of freedom that apply to religious and non-religious self-determination equally. But when given the authority of internationally recognised and enforceable rights and obligations, those rights should be expressed as a function of the rights to freedom for all ideas, speech, assembly and association. The rights to freedom of speech, assembly and association are subject to similar limitations to Article 18 rights.

### *Limitation of the belief rights*

To ensure that political rights are available equally to everyone, it is essential that the expression of one's beliefs do not impinge on the rights or welfare of others. Individuals have as much right to freedom from the influence of others' personal beliefs as they have a right to hold and manifest their own personal beliefs.

Thus we submit that belief freedoms are intended to ensure that no-one imposes their existential or prescriptive beliefs on others. It ensures both freedom *of*, and freedom *from*, 'religion or belief'. This can only happen through separation of religion or other personal beliefs and the state.

**2. Australian law adequately protects the right to hold and manifest a religious belief, but does not adequately protect the non-religious from discrimination on the basis of their beliefs. Exemptions to anti-discrimination law based on religious belief are too broad and legislation should be restricted to conduct directly related to protecting the manifestation of personal belief.**

### *No Prohibition of Religion*

There are no laws explicitly banning religious belief or practice in Australia, nor are there laws prohibiting the holding or practicing personal beliefs, apostasy or blasphemy. This is subject to the exception of necessity appropriate for a democratic nation. There are also no laws explicitly mandating the adoption or practice of a particular personal belief.

The Law Council of Australia advised in 2000 that it has not identified 'any laws imposing any specific restriction on the freedom of religion' It concluded that 'Generally speaking, Australians are not constrained in the exercise of religious freedom.'<sup>5</sup> We submit that this is still the case.

### *Anti-Discrimination Legislation*

Anti-discrimination law across Australia generally prohibits discrimination on the ground of religion.

We are concerned that there is no explicit prohibition of discrimination on the ground of absence of a particular personal belief (although that is implied). We submit that the law prohibit discrimination on the ground of religion should be broadened to include non-religious belief and practice.

The Law Council warned that 'any specific encroachment [of religion] is likely to arise in balancing religious freedom with other protected freedoms, such as freedom of speech'.<sup>6</sup>

---

<sup>5</sup> *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (ALRC Interim Report 127) 2009,

<sup>6</sup> *Ibid* 4.39.

The question of freedom of speech (notably s.18C Racial Discrimination Act) has been addressed by the Government elsewhere. We address the prohibition of discrimination on the grounds of religion.

We submit that by permitting discrimination on the basis of , for example, not ‘offending the sensibilities’ of religious practitioners’ or of maintaining a religious ‘ethos’ allows the balance to be skewed in favour of religion, government is often entangled with religion. We maintain that the ‘liberty-equality’ conceptual dichotomy which prioritises the integrity of religious practice, ‘ethos’ or ‘sensibilities’ such as in ‘faith-based’ schools, hospitals and charities, rests on the conceptually flawed priority of religious freedom itself. This overlooks the necessary dependence of religious freedom on non-discrimination. ‘Positive discrimination’ towards certain religious groups on the ground of upholding their religious ‘freedom’ should only apply where actually *necessary* to guarantee that religious freedom.<sup>7</sup>

Those that argue, as did the Community and Family Rights Council, that Christians have come under increasing persecution from bodies such as ‘abortionists, porn merchants, sex liberationists, radical feminists, homo-sexuals (*sic*), alternative educationists, and left wing radicals’<sup>8</sup> ignore the fact that they themselves are not required to participate in such unwanted activity, and that others have the right to agitate for such activities. They are not being persecuted, as the right to participate in their own beliefs is not being questioned, and they should grant the same rights to others.

#### ***Alleged persecution through discrimination***

We point to the example of those in the business of offering goods and services to the public who wish to refuse services for personal conscience reasons. We submit that all who act according to the law should be treated with equal consideration. For example, we support the decision of the Northern Ireland Court of Appeal which rejected the refusal of a baker to produce a cake with the slogan ‘Support Gay Marriage.’<sup>9</sup>

The court determined that ‘the relevant provisions prohibiting discrimination in the provision of services on the ground of religion were necessary in a democratic society and were a proportionate means of achieving the legitimate aim of protecting the rights and freedoms of the respondent to access to services. To do otherwise would be to

...allow religious belief to dictate what the law is. The [bakers] were entitled to continue to hold their genuine and deeply held religious beliefs and to manifest them, but this must be done in accordance with the law and that included not manifesting them in the commercial sphere if the manner of doing so was contrary to the rights of others.

The Court held that the bakers are not deprived of their right to manifest their religion in their private life, nor of their right to free speech. But when it comes to their treatment of fellow human beings, they should respect the right of all individuals to equal recognition before the law. You can provide a forum for the public to express views and beliefs, but should not discriminate in the messages you carry on the grounds of (legal) religious or other personal life-stance.

---

7 See, e.g., Eoin Daly, Tom Hickey, 2011, *Religious freedom and the ‘right to discriminate’ in the school admissions context: a neo-republican critique* Society of Legal Scholars, Blackwell Publishing, Oxford

8 Joint Standing Committee on Foreign Affairs and Trade, *Conviction with Compassion* 5.13

9 *Gareth Lee v Colin McArthur, Karen McArthur and Ashers Baking Company Limited* (24/10/16). See [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5b2016%5d%20NICA%2039/j\\_j\\_MO\\_R10086Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2016/%5b2016%5d%20NICA%2039/j_j_MO_R10086Final.htm)

Bakers are perfectly at liberty to refuse to fulfil an order for the cake with the pro-same sex marriage message, the court said. But if they are to be non-discriminatory, they should also refuse one with a pro-opposite-sex marriage too. They should either make cakes with any religious, political, or other such message, or refrain from any such message at all.

### **3. Entanglement of the state with religious interests means that government activities exert an unwanted religious influence on the non-religious.**

Worldwide, there is no nation that has a true separation of religion and state:

[I]t is estimated that of the world's nations there are about 10 theocratic states that mandate, prohibit, or interfere with the practice of alternative beliefs. Over 40 states have a specific religion officially established by government with varying toleration of others and, where relevant, these generally require the monarch, head of state or government to be of a given religion. There are at least 113 states (nominally secular or otherwise) without an established religion or belief, with varying state accommodation of religion, such as Australia the US, France and Turkey). Some states show varying degrees of hostility to religion or belief, or subject particular beliefs to state control or suppression. State-belief relationships are hard to categorise, as they are volatile, changing over time, as witnessed by the recent Middle East political disturbances, so these figures are generalisations only.<sup>10</sup>

Across the globe, belief freedoms have been rejected altogether by some governments. For example, despite membership of the UN and adopting the UDHR, the 50 member states of the Organisation of Islamic Conference have adopted the *Cairo Declaration on Human Rights in Islam* (1993) that makes all human rights subject to 'Islamic Shari'ah', thus establishing state-enforced religious practice. This equates citizens' rights with particular religious dictates, and is in effect theocracy. Some states suppress the adoption of any personal belief and are thus dictatorships.

This is a misuse of the right to belief freedom. It ignores the universally declared position that the freedom to practise one's beliefs does not apply when it encroaches on the rights of others, or when limits are considered necessary for public health, to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society.<sup>11</sup>

#### ***An 'overlapping political consensus' rather than theocracy***

We endorse the theory of John Rawls that the best way for the equal opportunity to practise a religion or belief by everyone in a pluralist society is through secular liberal democracy, where all beliefs are valued equally, and government and religion are separate. Government based on a common philosophical life stance is impracticable. Rather, equal human rights for all are maximised by society based on an overlapping *political* consensus through the process of liberal democracy exercising human rights and the rule of law.<sup>12</sup>

Belief freedoms are intended to ensure that no-one imposes their existential or prescriptive beliefs on others. It ensures both freedom *of*, and freedom *from*, 'religion or belief'. This can only happen through separation of religion or belief and the state.

---

10 Wallace, M *Freedom From Religion: Rethinking Article 18*, (2015) Cilento Publishing, Sydney. , (2015), 113.

11 Article 29 UDHR; Article 18 ICCPR.

12 See, e.g. Rawls, John (2003) *Justice as Fairness: a Restatement*, Cambridge, Belknap Press.

The effect of misrepresenting Article 18 has been to provide unwarranted widespread expectation and pressure for unmitigated freedom to follow religious or cultural practices. It has been used to promote sectarian interests, influence and power, unquestioning access to government resources and policy, and to demand associated immunity from the general law.

Other governments overlook Article 18's limitation provision to a greater or lesser degree, in which case it has become a pretext for demanding privileged treatment, enhancing the economic, social and political influence of religion.

***4 Government funding of, and entanglement with, religious institutions and practices compromises the separation of religion and state required in a secular liberal democracy.***

In Australia, we quote the still-relevant view of the Human Rights and Equal Opportunity Commission Report of 1988 that, while there is freedom to practice one's personal beliefs,

As a matter of history and convention, however, woven into the fabric of Australian life and culture is an underlying thread which creates an impression that, in substance, Australia's national religion is Christianity, albeit of a vaguely non-denominational nature. Many areas of civic life are affected. Exclusively evoking Christian symbolism on civic occasions potentially marginalises a significant number of Australians.<sup>13</sup>

The presumption that Article 18 rights give religion special status results in interweaving of government with religious institutions and practices in other ways. This approach includes the influence of religious interest groups on government policy and law-making, adoption of faith-based law, and the imposition of religious practices and teachings in non-religious environments (such as government proceedings and public schools), and pressure for the refusal of providing employment and general services based on religious belief. Some specific areas of religious-state entanglement are as follows:

***Tax exemptions and government funding***

Encroachment of religious beliefs on the non-religious results from tax exemptions and funding of religious and similar institutions and/or activities. We are not concerned with state funding of purely charitable activities, but we are concerned that government grants substantial financial favours based on personal belief.

It is claimed that tens and possibly hundreds of millions of dollars of taxpayers' money in government grants to religious organisations, perhaps the most infamous being the provision of funding and facilities for the recurrent international World Youth Day gatherings held by the Catholic Church in different countries. It is reported, for example, that the Australian Commonwealth Government contributed \$55 million for the Catholic Church's week-long 'World Youth Day' Rally ('WYD') in 2008 as well as formally associating itself with the activity. The NSW Government chipped in an extra \$100 million (the Government would not reveal the true amount). The Commonwealth committed \$35 million towards security and visa costs, with an additional 'pledge of \$20 million to help relocate racehorses from

---

13 Human Rights and Equal Opportunity Commission, *Article 18 Freedom of Religion and Belief* Commonwealth of Australia 1998 Section 4.3 p.92  
[https://www.humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/religion/article\\_18\\_religious\\_freedom.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/religion/article_18_religious_freedom.pdf),

Randwick<sup>14</sup>. This was not considered a breach of Article 18 ICCPR despite the resulting discrimination.<sup>15</sup>

Federal and State governments allow blanket exemption from taxation from all major forms of church income. The ‘advancement of religion’ is considered in itself a charitable purpose, automatically making the ‘advancement of religion’ (religion being based on belief in the supernatural) charities.<sup>16</sup>

The total cost of concessions to registered religious organisations in Australia was estimated to exceed \$31 billion in 2009, money that would have otherwise gone into consolidated revenue.<sup>17</sup> To what extent this figure includes non-religious activity is unknown. The exemption of religious institutions from the same financial reporting requirements that apply to other charitable organisations makes accuracy difficult. It also means they are not accountable for the extent and use of their wealth.

Governments have outsourced and funded many of their welfare responsibilities to Church-based agencies that may use their work as a ‘religious mission’, seeking to influence the recipients of their services. These welfare agencies are also often granted exemption from anti-discrimination legislation in hiring staff and conditions of work.

It is impossible to accurately estimate church wealth from its disparate sources (including donations, bequests, government funding, foregone taxes, property, artworks, buildings and income).<sup>18</sup> Governments demand varying degrees of financial accountability on the part of religious bodies, exempting them either partially or fully from reporting, so the extent of their wealth and how it is spent is not readily available. Some money purportedly acquired for specified charitable activities may be sent overseas e.g. to the Vatican for dispersal through secretive channels, or even to religious extremists fighting sectarian wars.<sup>19</sup>

### ***Commercialisation of charity***

The ‘commercialisation’ of charitable activities by religious or other groups has led to an industry with an increasingly high management sector, with well-subsidised personnel and property, and a corresponding increase in political and social influence. This gives them a commercial edge over non-religious enterprises. It has been reported, for example, that in

- 
- 14 Morris, Linda (2007) ‘Taxpayers’ \$95m bill for World Youth Day’ *The Sydney Morning Herald*, 16/11/07 <http://www.smh.com.au/news/national/taxpayers-95m-bill-for-world-youthday/>.
- 15 Article 26 ICCPR (prohibition of discrimination on the ground of, inter alia, religion). Discrimination occurs whether it is either favourable or non-favourable.
- 16 Section 23(e), *Income Tax Assessment Act 1936*. The High Court has held that religion involves belief in the supernatural: *Church of the New Faith v. Commissioner of Pay-roll Tax* (Vic), (1983), 154 CLR 120. See also Australian Government Tax Office website, criteria for tax exemption.
- 17 Perkins John and Gomez, Frank (2009) ‘Taxes and Subsidies: the Cost of “Advancing Religion”’, *Australian Humanist* No. 93 Autumn 6-8, see <http://home.alphalink.com.au/~jperkins/TaxesAndSubsidies.htm>.
- 18 Ferguson, Adele (2005) ‘Charity Inc.’ *Business Review Weekly* (Sydney), 24-30 March, 45 The income from non-religious activity (including commercial properties and private enterprises such as hospitals and nursing homes), would constitute a substantial proportion of this income and thus of public revenue foregone in taxes.
- 19 For example see Wallace (2007) 105ff re the Vatican and wealth. Examples of charities accused of ties to terrorism by the US in 2007 can be found at [http://en.wikipedia.org/wiki/List\\_of\\_charities\\_accused\\_of\\_ties\\_to\\_terrorism](http://en.wikipedia.org/wiki/List_of_charities_accused_of_ties_to_terrorism).



Australia: ‘The five big churches had revenue of more than \$21.7 billion in 1994’.<sup>20</sup> The Sydney Catholic Archdiocese has a net worth of \$1.24 billion in 2014.<sup>21</sup>

### ***Prayers in Parliament and religious sponsorship of government activities.***

Prayers are said in Parliament and other government proceeding, and the Parliamentary and Judicial year are commenced with church services at which judges and members of Parliament accept exhortations to apply their religious beliefs to their administration of government business. Ministers have officially associated themselves with religious activities of many denominations by supporting religious conferences and gatherings, and offering financial assistance for these and other activities.

We agree with the UK National Secular Society that efforts to unreasonably extend the legal concept of 'reasonable accommodation' and 'conscience' give greater protection to those expressing a (normally religious) objection should be resisted. Conscience opt-outs should not be granted where their operation impinges adversely on the rights of others.

### ***Schools***

According to the *Sydney Morning Herald*, over 150 private schools [most of which are religious] ‘are being over-funded by hundreds of millions of taxpayer dollars each year at the expense of other public schools.’<sup>22</sup> In addition is the availability to religious schools of funds from religious institutions accrued from tax exemptions. This results in a divisive and unequal education system.

The federal government has devoted up to \$700 million for programs providing religious chaplains in public schools, mainly by Christian organisations. Some State governments either fund or mandate religious instructions in schools. Taxpayer funding also goes to religious instruction in government schools. We submit that those who do not hold religious beliefs should not be paying for the propagation of religious belief.

The federal government has devoted up to \$700 million for programs supporting the propagation of religious belief with the placing of religious chaplains in government schools promoting mainly Christian values as part of government education.

We submit that all pupils should have a statutory right to education in a secular school environment, without discrimination regarding personal belief. There should be no formal role for religious institutions in government schools, and schools should not be able to discriminate against staff on the basis of religion or belief, sexual orientation or any other protected characteristics, where their belief is not an inherent part of their work. Government policy should be aimed at a truly inclusive secular education system. No publicly funded school should be statutorily permitted to promote a particular religious position or seek to inculcate pupils into a particular faith.

Religion should not be prioritised over the teaching of non-religious worldviews, and secular philosophical approaches, and should be part of a broad range of religious and non-religious worldviews, possibly including basic philosophy. No students should be excluded from consideration in all aspects of the school day by segregation on the basis of belief.

---

<sup>20</sup> Ferguson, Adele ‘Charity Inc.’ *Business Review Weekly* (Sydney), 24-30 March, 45.

<sup>21</sup> Testimony by Cardinal George Pell to the Royal Commission on Institutional Child Abuse: the funds are ‘ultimately controlled by – owned by, if you like – the archbishop of the day’: *Sydney Morning Herald*, March 25, 2014.

<sup>22</sup> *Sydney Morning Herald* October 1 2016 see [here](#).

### *Australia a 'soft theocracy'*

These examples of state entanglement with religion shows that the Commonwealth and States of Australia, rather than exhibiting separation of state and 'religion or belief', constitute what Max Wallace, calls 'soft theocracies': 'where church and government purposes coincide to garnishee taxpayers' money and resources, structurally through tax exemptions and functionally through grants and privileges'.<sup>23</sup>

## CONCLUSION

### *Legislation of state secularism*

We submit that the way to ensure belief freedom is to formally establish a clearly defined state secularism by legislation (preferably by constitutional provision) with these obligations spelt out in some detail for them to be clear and effective.

We point to the recently adopted Constitution of nearby Fiji as an example of the clear and detailed exposition of secularism, drawing a clear distinction between government and religion, and clarifying the rights and obligations of Article 18. This small regime sets out a model for belief rights, something its larger neighbours have failed to do:

1. Freedom to adopt and practice a belief (defined to include all personal worldviews) is declared a founding principle of the state;
2. The state is declared secular;
3. Belief is declared to be private;
4. A person shall not be compelled to
  - a) act against his or her conscience,
  - b) take an oath contrary to his or her belief,
  - c) receive religious instruction contrary to his or her belief, (or that of parents if a child) or
  - d) participate in religious observance against his or her beliefs (or that of parents if a child);
5. The above provisions are subject to limitations similar to those in Article 18.
6. State-belief separation is specifically prescribed. This means that all persons holding a public office,
  - a) must regard *all* beliefs as having equal significance,
  - b) must not mandate the holding or practice of any belief,
  - c) must not benefit by any means any particular belief or any institution in advancing any particular belief.

---

<sup>23</sup> Wallace, Max (2010) *Realising Secularism: Australia and New Zealand* Australia and New Zealand Secular Association; *Soft Theocracy*, presentation at the Australian Humanist Convention, Brisbane, 29 May 2016. Posted on YouTube 30 September 2016.

7. No Person shall assert any belief as a legal reason to disregard the Constitution or any other law.

The Commission tasked with drawing up the draft Constitution stated that [T]he separation of state from religion and culture does not mean that the state is opposed to religion and culture. On the contrary, this separation is in the interests of religion and culture, freeing them from the regulation by the state. Culture is always evolving and it is only in this way that it will remain relevant to the people and enable them to cope with changing social and economic circumstances. In other words, culture and religion will be responsibilities predominantly of civil society.<sup>24</sup>

We commend this approach to the Committee (only applying to all personal beliefs as well as religious ones)

Meg Wallace

President

---

24 Draft Constitution: The Explanatory Report p (2012), 52,  
[http://www.fijileaks.com/uploads/1/3/7/5/13759434/thursday\\_the\\_explanatory\\_report\\_two-4.pdf](http://www.fijileaks.com/uploads/1/3/7/5/13759434/thursday_the_explanatory_report_two-4.pdf)