

**Submission
No 40**

**ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND
EQUALITY) BILL 2020**

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Submission to the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedom and Equality Bill 2020) – “the Bill” - Exposure Draft

Background

1. I make this submission from the perspective of someone who was for approximately three years (2015-2018) the National Spokeswoman for Marriage Alliance. This was an independent, not-for-profit organisation which provided information and a public face for the ‘No’ campaign to the question featured in a national postal survey on the option of whether the Federal Marriage Act ought to be changed to allow same-sex couples to marry.
2. During those years in which I held that role, the programme known as “Safe Schools” was rolled out across Australia, an asserted anti-bullying programme which did not address the full range of reasons for bullying, (which can be for diverse reasons including ethnicity, religion, poverty, physical features or impediments) but which instead focussed upon sexual issues and content, and which gave rise to widespread parental concern about abrogation of the role of parents in communication of intimate matters to their own children. There was also particular concern about the couching of innocent sexual growth and discovery, shaping of individual morality and character formation, in a controversial and narrow bullying context. Ironically, students who raised concerns with the content (those from traditional migrant backgrounds or religious backgrounds, or both) were singled out, exposing them to bullying. I was advised of these instances by aghast parents.
3. My duties whilst spokeswoman of Marriage Alliance included speaking publicly, communicating with media outlets and providing regular emails to those on the database. People would approach me in person to share their troubling experiences at work, school, university and so on, in relation to the issue of religious freedom. In that period, I also received countless communications from concerned members of the public on that topic.
4. In that time, I also addressed in person the “Ruddock Review” into Religious Freedom and provided a written submission. One of the formal recommendations made by the panel was to have the issue of religious freedom addressed via state anti-discrimination legislation¹.
5. There were also a number of disturbing incidents which occurred in that period which convinced me that the acceptance of difference, enjoyment of variety in ethnicities, and an underlying respect for diverse faith traditions - all of which had been hallmarks of our laid-back, successful, pluralistic society - were no longer a feature and that protection for religious freedom was needed.
6. Much as I believe, as a legal philosopher, that the concept of not allowing discrimination against *any* person for *any* reason ought be the guiding principle for law-making in this area, rather than the itemisation and nomination of certain categories of people for special protection (an approach which will always leave out certain people and itself can create loopholes), I accept that we are operating within a paradigm where the

¹ Religious Freedom Review - Report of the Expert Panel Recommendation 16:

New South Wales and South Australia should amend their anti-discrimination laws to render it unlawful to discriminate on the basis of a person’s ‘religious belief or activity’ including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for the appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.

present NSW Anti-Discrimination law is the status quo, and therefore the gap in it requires addressing and given that context, is overdue for addressing. In short, it covers race, sex, sexual orientation or transgender status, marital status, disability, age and so forth... but omits religious belief or activity.

7. For clarity: in my view, people ought to treat each other with respect simply because they are fellow human beings, and not because they are a particular “category” of human being. We ought to be at the stage where NSW law no longer needs to be crafted as “anti-discrimination” against particular categories of people who are identified (or “bagged and tagged”) as units of a collective group. The law ought to simply require that *no* person is to be treated disadvantageously compared to another due to *any* feature or characteristic, “category” or activity, and that penalties apply for breach.
8. The trajectory for anti-discrimination law in Australia is backward, rather than advanced. Roman law was advanced. It understood and embraced concepts. Germanic law (or ‘barbaric law’) did not. Roman law understood the *concept* that, for example, **to take a life was wrong**, whereas Germanic law (or barbaric law) was more primitive than conceptual, and required that you had to have a particular law to specify that “you must not kill your manservant”, “you must not kill your neighbour”, “you must not kill your relative” and “you must not kill your fellow worker” and so on. The list of categories not only became endless, it also created loopholes. For example, it would not include protection of the person who delivered the pink flowers to the front door on a Tuesday. This then becomes an exposed area, or loophole, because that category of person was not specifically covered. In this same fashion, the anti-discrimination law is adding more and more categories of person to the list, and in doing so, omitting others – which is unfair and is in itself discriminatory. By way of comparable conceptual example, at one stage in NSW the trains and buses asked people to give up certain seats for “elderly, disabled, pregnant, injured... the list went on and had to be constantly added to (should it have added “unwell”? What about “fatigued” or “obese”?). The signs now read: “Courtesy seat. Please offer this seat if someone needs it more”. This sign indicates a major advance jurisprudentially, as it indicates an understanding of the *concept* the law embraces and effectively covers, and without loopholes.
9. Given the proposition that the Parliament considers that the Anti-Discrimination Law is still regarded as necessary, and its style requires categories, then the Bill (for religious freedom to be added to the list of categories already covered) must be supported for inclusion. One day, like the conceptually-aware train & bus signs, this whole law ought to be revised.

Points in relation to the Bill

10. I acknowledge that a number of eminent outfits have put in comprehensive and worthwhile submissions on this exposure draft and I do not wish to unnecessarily repeat the matters they have raised.
11. I have sighted and agree with the submissions made by the **Australian Christian Higher Education Alliance (ACHEA)**.
12. I have sighted and agree with the submissions made by **The Catholic Archdiocese of Sydney**.
13. I wish to make a few additional observations, from the perspective of legal philosophy (Jurisprudence).
14. The starting-point is that it is the long-established proper role of government to responsibly attend to the matters for which it has authority delegated to it by the public - a paramount duty being to protect, via law

and practice, the naturally-occurring rights of the citizenry². This also gives practical effect to the Hohfeldian analysis of such rights not existing in a vacuum, but creating corresponding duties upon others.³

15. The Bill satisfies the s 5 requirement, permission and expectation inherent in the NSW Constitution Act of 1901 “that the Legislature shall, *subject to the provisions of the Commonwealth of Australia Constitution Act*, have power to make laws for the peace, welfare, and good government of New South Wales **in all cases whatsoever.**”
16. For fullness of analysis, s116 of the Commonwealth Constitution requires that the Commonwealth, via a fourfold stricture, in essence may not legislate in respect of religion (and thus it is akin to a constitutional guarantee of freedom of religion, recognising that legislation could only narrow what is an otherwise untrammelled, inalienable human right).
17. State legislation is subject to the Commonwealth and is invalid to the extent of any inconsistency (s109)⁴. Since there is Federal legislation on the subject-matter of religious freedom (ie The Constitution addresses the issue)⁵ and its deductive conclusion that legislating would curtail the freedom is, arguably, a conceptual ‘covering of the field’ by the Commonwealth, when considering the three-fold test:
 - i. is it impossible to obey both laws?
 - ii. does one law confer a right which the other purports to take away?
 - iii. does the federal law cover the field in question?

In short, for the Constitution to require silence, inaction, or, to be more precise, ‘no establishment’, ‘no imposing’, ‘no prohibition’, or ‘no test’ on any topic, on the part of the Commonwealth Parliament, arguably amounts to a positive duty or legislative requirement, in this case honoured in the non-enactment. The debate lies in whether this curtailment of the Federal Parliament then affects the ability of a State to validly enact in an area which has been ‘dealt with’ by the Commonwealth. The way to ‘save’ the power of the state in this context and the authorised status of the Bill, might be to note that the neglect of the Commonwealth to enact legislation on the topic of religious freedom (for whatever reason, Constitutional or otherwise) leaves the state of NSW duty-bound under s5 of the NSW Constitution to address this area which has been omitted from the matters provided for ie the peace, welfare and good governance of NSW, to fulfil the duty of government.

Historical analysis

18. If the Committee members considering the Bill are to properly comprehend what the Bill seeks to protect, the discourse and considerations surrounding the topic of religion must take into account the magnitude of that topic and its extraordinary history in humankind. If it is not accurately diagnosed (that religious freedom is imperilled, and comprehend all that this entails for our civilised selves), then there is a risk that the remedy (sought to be provided by the Bill) will not be adequately championed nor brought to fruition.
19. Religious freedom is a basic, natural human right.

² See writings of Socrates; John Locke; Alexis de Tocqueville et al. (Titles of various works available if requested).

³ <http://classic.austlii.edu.au/au/journals/MurUEJL/2005/9.html> (Accessed 19.08.20) Lazarev, Nikolai “Hohfeld’s Analysis of Rights: An Essential Approach to a Conceptual and Practical Understanding of the Nature of Rights” [2005] MurUEJL 9

⁴ Commonwealth of Australia Constitution

⁵ The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

20. Since the beginning of time, humans have pondered the existential questions of “How and why am I here?” and “What happens when I die”?
21. In case there is any doubt about how high the stakes are, political philosopher Hannah Arendt writes: “To lose the appetite for meaning we call thinking and cease to ask the unanswerable questions” (such as those posed in the above paragraph) “[would be to] lose not only the ability to produce those thought-things we call works of art but also the capacity to ask all the answerable questions upon which every civilisation is founded.”⁶The unanswerable questions, related to producing art and to producing *civilisation*, are demonstrably and intrinsically linked. (Consider the horrified response, on the part of the entire world, to the fire in Notre Dame Cathedral in Paris, for example). The product of faith in art and architecture is the product of a heightened level of civilisation, and descent into barbarism is also marked by a denuding and degeneration in these spheres.⁷
22. Freedom of religion, as already stated, is a human right in and of itself. However, a key benefit of that freedom (and hence a common good about which Parliament legitimately could involve itself) is that it (said freedom) permits and promotes expression of the deeply human impulse to manifest beliefs (spiritual, religious, or poetic) in the form of artworks. That is, to depict, explore, interpret, represent, not just traditional beliefs of the major religions but those essences of life that are ineffable; those shared truths that are beyond the purview of language. Individual beliefs may be enshrined in paintings, literature, plays, films, music and architecture through their own particular languages, but they also encode broader societal and cultural values of the day. Over time, works that prove themselves enduring offer a rich cultural heritage to present and future generations.
23. In Australia, we are well-versed in understanding the importance and reverence that is accorded to the spiritual beliefs and practices of Aboriginal Australians. Similarly, the importance of their artworks, mythologies, knowledge of narratives and history to their sense of identity and well-being.
- 24. So it is for all races in humanity.**
25. Furthermore, the questions about life - and its corollary, death, remain the greatest mysteries of our human existence.
26. In prehistoric times and in ancient history, ascertained both anthropologically and in still-existing records, humans have sought to make sense of their world and also the idea of a nether world, and the import of human behaviour when operating within this paradigm.
27. The earliest legal codes still in existence include the Code of Ur-Nammu (2100–2050 BC)⁸ and the Code of Hammurabi (1754 BC)⁹. They were influenced by the doctrines of ancient religions. The key distillations from these Codes is that they reveal conceptual understanding of the worth of human bodily integrity and human life, and also that they specified proportionality – a civic, merciful appropriately retributive response to crime, rather than a more barbaric, disproportionate, ‘scorched-earth’ style of revenge. ‘Eye for an eye’ as a yardstick of matching the gravity of the crime to the severity of the sentence, for breaches of the law. It was considered proportionate and biblical in origin.

⁶ Arendt, Hannah *The Life of the Mind*, (Harcourt Brace Jovanovich: NY USA 1977-8)

⁷ Scruton, Roger “Beauty and Desecration” http://www.city-journal.org/2009/19_2_beauty.html (Accessed 21.08.20)
 “Philosophers of the Enlightenment saw beauty as a way in which lasting **moral** and **spiritual** values acquire sensuous form.”

⁸ Fragments preserved in Istanbul museums

⁹ Preserved in the Louvre Museum, Paris, France.

28. Despite having, at the time, absolute power over their subjects, even these early law-makers recognised that there were important referential moral doctrines to be drawn from religious works - and vice versa. The content in the Ten Commandments in Mosaic law was and remains well-known.
29. The power of religion was recognised in ancient times, and its ability to provide a haven from the absolutist power of the state was realised also. Consequently, many ruling regimes over time have sought to limit it, or to decree which beliefs have a mandate or which do not. Despite rulers, strictly speaking, being the servants of the people whom they govern, and having a duty to protect their basic human rights, some ruling regimes have neglected this duty - unwittingly, negligently or deliberately.
30. In Ancient Rome, following sustained abuses - such as seizure of Christians' property and ill-treatment of them, even to the point of murdering them for entertainment in the Colosseum - The **Edict of Milan** was negotiated between the Roman emperors Constantine I and Licinius. It was issued by Constantine in AD 313, and it not only restored all Church property that had been taken during the persecution, but it granted the freedom to practise Christianity and other religions within the Empire. This was to be a massively strengthening move in the empire and in 330AD the Roman Emperor Constantine I chose Byzantium as the site of a "New Rome" with the capital city Constantinople and the predominant religion, Christianity¹⁰. It was to prove the greatest and most influential empire in known human history, lasting for 1000 years. The institutions and culture of Rome had a profound and lasting influence on the development of language, religion, art, architecture, philosophy, law, and forms of government in the vast territory it governed, and well beyond.
31. The power of religion has been recognised – sometimes even by its detractors, who have employed what they have deduced to be its most compelling characteristics. Accordingly, certain modern political movements¹¹ have adopted quasi-religious messaging, rituals, "moral" concepts of right and wrong, "heresy", "sin and sinners", absolutism, remorse, as well as acts of repentance and "absolution". Heretics are named, shamed and cast out. This shows recognition of the power of casting a topic in religious terms – it then becomes a topic about which humans can become fervent. It also demonstrates that some topics which are not matters of the soul can mistakenly be treated with reverence, and that any law dealing with religion, must firmly protect *genuine* religion – as this Bill sets out to do.
32. This phenomenon demonstrates that the techniques identified as being powerful historically in a religious context are now being employed for *political* purposes and causes¹², at the same time as eradicating the healthy expression of actual, beneficial, religious belief.¹³
33. It is the recognition of the power of human religious belief, which also brings with it, unfortunately, animosity from some quarters - who see religion as a competing political force, rather than a beneficial personal moral code, a civilising influence on law and culture, and a response to the great mysteries of existence.
34. And yet religion is an essential part of the experience of being human, and always has been.

¹⁰ Christianity became the official religion of the Roman Empire

¹¹ such as the global anthropological climate change movement. Language used in relation to it commonly refers to "believing in" climate change, despite belief being anomalous in the context of quantitative science. In contrast, those who challenge climate-change are cast as "deniers", a word which has particular meaning to people of Jewish faith, whose brethren suffered horrifically in the Holocaust and whose pain is exacerbated by those who deny it and for whom the word is evocative. With climate change, there is even a significant virginal figure (who is regarded as faultless and venerated by masses), the imperfect mortal Greta Thunberg. There are a number of books written specifically on the method of how to proselytise the correct environmental attitude.

¹² Such as the Black Lives Matter (BLM) crowd in America being guided by rally leaders to denounce their "white privilege" (ie denounce the particular melanin levels in the skin they were born with), whilst extending outstretched arms and bearing mournful faces.

¹³ <https://www.forbes.com/sites/nicolefisher/2019/03/29/science-says-religion-is-good-for-your-health/#3e8579833a12> (Accessed 20.08.20)

35. No matter how much there has been sectarianism, persecution and repression, religious belief has always survived. If anything, oppression makes it thrive more. Humans die for their faith, the world over, and they always have - throughout history.
- 36. The emergence of understanding of what constitutes truly civilised behaviour, how to accommodate difference and live peacefully - even where people may disagree and hold strongly-held beliefs - is the greatest advancement of human civilisation and is the hallmark of a truly civilised, respectful society.**
- 37. This achievement has as profound an impact upon quality of life, and is as life-saving, and thus is also as noteworthy, as humankind's scientific inventions and discoveries.**
38. This achievement is very recent on the time-line of world history. It was predominantly a Western phenomenon that people could choose freely what religion they wished to follow. It was a product of the developments in philosophy which saw thinkers argue for the right to have their own thoughts and determine their own lives both present and future, including the best pathway to positive results in the after-life. Accompanying religious freedom came the vital element of trust. Trust between even people with different beliefs and backgrounds (because the deadly risk and consequence of betrayal was removed), and hence a multiplicity of ideas and innovations became able to occur, which led to great leaps in prosperity. (This connection between religious freedom and economic prosperity is measurable and marked)¹⁴
39. Early philosophers included Augustine of Hippo¹⁵ (who coined the term "Just War", now the basis of Just War Theory and The Geneva Conventions) and whose impressive body of work was added to by Thomas Aquinas¹⁶ who identified the various types of law and whose work considerably advanced both the understanding of natural law and naturally occurring human rights (such as the right to think, speak, associate, believe, procreate, and own one's own property, all concepts incorporated into international customary and codified law). Desiderius Erasmus¹⁷ was a thinker whose contemplations helped usher in The Reformation; and the ethics and courage of Thomas More¹⁸, whose vision of Utopia, his incorruptibility and his ultimate principled martyrdom, still set the example for ideals in public life.¹⁹
40. John Milton wrote in 1644 his *Areopagitica*, in defence of the publication of books, a piece described as one of history's most influential and impassioned philosophical defences of the **principle** of a right to freedom of speech and expression. Religious freedom falls within this principle. Because if you cannot express your faith, or if it is only permitted in private or behind walls, you cannot claim to have a free society.
41. The concept of tertiary education was given its impetus by Catholic and Christian churches who were committed to higher learning, discovery and truth. The Catholic Church became a highly progressive force - unifying people, educating, building magnificent cathedrals, sponsoring genius artists - and starting the world's first universities.
42. In Italy in 1088, the University of Bologna was founded by the Catholic Church (the oldest university in the world). Oxford University in the UK was founded in 1096 and has Christian origins, as does Cambridge

¹⁴ <https://www.weforum.org/agenda/2014/12/the-link-between-economic-and-religious-freedoms/>

(Accessed 19.08.20)

¹⁵ 354-430 AD

¹⁶ 1225-1274 AD

¹⁷ 1466-1536 AD

¹⁸ 1478-1535 AD

¹⁹ A longstanding role model for legal practitioners in the Catholic Tradition, St Thomas More is the official Patron Saint of Statesmen and Politicians.

University, founded in 1209. In France in 1257, Robert de Sorbon, a Catholic theologian, established the Maison de Sorbonne, to educate poor students, and it grew into the University of Paris.

43. One of the supreme advancements in the efforts to civilise humankind was The Peace of Westphalia in 1648, which (via its three treaties) yielded principles crucial to modern international relations, including the inviolability of borders, non-interference in the domestic affairs of sovereign states, but significantly - in practical and survival terms - the ability of states to thereafter determine religious practices within their own borders, eliminated some of the need for senseless battles which had been until that point, waged for multiple generations at a cost of millions of lives. Christians were permitted to practise their faith both in private and public, with conditions attached to the latter, even if it was not the dominant faith of the state.
44. European politics, philosophy, science and communications were radically reoriented during the years from the mid-1600s to the early 1800s, a movement referred to by its participants as the Age of Reason, or simply **The Enlightenment**. Philosophers such as John Locke (sometimes referred to as the Father of Liberalism), Immanuel Kant, Adam Smith, Mary Wollstonecraft and Thomas Paine all built on the work of earlier thinkers and contributed to the idea that humans were rational beings with individual human rights. Some of them had faith, some did not, but all believed that holding differing viewpoints ought to be permitted and encouraged, and rational society advanced considerably as a result of the yield of this cohort and its milieu.²⁰
45. Scientists such as Francis Bacon (responsible for what is termed ‘the scientific method’), Isaac Newton (gravity, laws of motion), Johannes Kepler (astronomy), Samuel Morse (telegraph, morse code), Gregor Mendel (genetics), Georges Lemaître (astronomy), all had a deep religious faith and contributed vastly to the world of science. It was their freedom to explore both realms which advanced their abilities to benefit the world. Stifling the expression of one’s full humanity in its best self, only serves to stifle the yield.

Contemporary Society

46. In Australia, arguably the best country in the world on numerous measures including standard of living, human freedom and quality of life, our history bears testimony to the input from religion.
47. In 1788, the first fleet landed in Port Jackson – Sydney Harbour - on 26 January 1788, headed by Arthur Phillip, who was to be Australia’s first Governor.
48. They encountered the Indigenous people who are believed to have inhabited the continent for some thousands of years. The traditional beliefs of the Indigenous people included The Dream Time, with the major spiritual entity being the Rainbow Serpent. (A number of Indigenous people have since converted to Christianity and other faiths, also).
49. Many of the 1788 arrivals were convicts, who would probably be described nowadays as from a severely disadvantaged background, some of whom had convictions for offences triggered by dire need, such as desperate poverty. Sir Arthur Phillip was a believer and held Christian views. One of the very first things he did when stepping ashore in Australia was open the Bible and take an Oath. He believed that only a nation founded upon and governed by laws based on God’s laws would be successful. Despite what would have been regarded as acceptable practice in the era, Sir Arthur Phillip declared there would be no slavery, that anyone killing an indigenous person was liable to be hanged, and even when he himself was speared,

²⁰ As noted in [The Friends of Voltaire](#) by Evelyn Beatrice Hall, Voltaire’s position was essentially “I disapprove of what you say, but I will defend to the death your right to say it.”

ordered no retaliation. This was at odds with elsewhere in the globe, and predated William Wilberforce's ultimately successful repudiation of slavery.²¹

50. The early settlers of that first century survived not only the horrific journey out here, followed by near-starvation once here, but despite often feeling ill and weak from revolting diseases, worked very hard to build the foundations of the extraordinary nation that we enjoy today.²²
51. The first written laws of the colony were naturally British and were based upon Judeo-Christian values. These laws incorporated Natural Law. Natural law is congruent with Judeo-Christian values and states that the law of the universe transcends cultures, is superior to man-made law, is discoverable by reason, and human-made law should correspond with it. These laws are those which value human life, the right to not be harmed or killed, the right to own property, to procreate, to have freedom of thought, speech, belief, and association - and so on.
52. The chaplain of the First Fleet, Richard Johnson, brought with him 100 Bibles, and celebrated a Christian service ashore on 3 February 1788. He was credited as being "the physician both of soul and body" during the 1790 famine, and was responsible for the general supervision of schools. He built a church (near what is now Macquarie Place), which burnt down in 1798. The oldest surviving Christian Church is the Ebenezer Church built in 1809, near Wilberforce, past Windsor in NSW.
53. Early leaders along the way included Governor Lachlan and Mrs Macquarie, who arrived in 1810. They were also Christians and infused these virtues into the establishment of colonial life. Macquarie's arrival dramatically improved the morals and prosperity of the colony, which had suffered under Governor Bligh. Macquarie re-invigorated the faith with Bible studies, church attendance and Christian groups. He encouraged exploration and put government money into public works and opened Australia's First Bank in 1817. He was the first to officially call our nation by its name, Australia. He was responsible for the colony changing from a penal colony to a free settlement. His tomb in Scotland (maintained by the National Trust of Australia) describes him as 'The Father of Australia'.
54. Another influential Australian pioneer was **Caroline Chisholm**, who lived from 1808-1877, and was raised an evangelical but converted to Catholicism, a woman who lived her faith and put her efforts into assisting migrant women and their families.
55. The first schools in Australia were faith-based schools. One of the oldest, the Anglican Kings School at Parramatta opened in 1832. Jesuit priests came to Australia in 1848 and started setting up schools, such as St Aloysius' College in 1879 and St Ignatius' College Riverview in 1880.
56. In the 1860s there was great concern in the colony of South Australia about the lack of education of children. In 1867, Mary MacKillop became the first sister and Mother Superior of the newly formed order of the Sisters of St Joseph of the Sacred Heart. In that same year, at age 25, she adopted the religious name Sister Mary of the Cross. In Adelaide, her order founded a new school at the request of the bishop. Her Josephite Order ended up opening and operating **over 100 schools** for the poorest of children across Australia. The

²¹ Slavery Abolition Act 1833 UK

²²Tim Flannery (ed) *Watkin Tench's 1788* (Text Publishing Melb Aust 2009)

Ted White (ed). *A Diary by Thomas Trotter - The Voyage to Australia* (1836) & Day Book Number 2 (1865 to 1869)

ISBN 0 9590824 0 9 & 0 9590824 1 7.

See also David M Welsh (ed) *James Morrill, 1864 17 Years Wandering Among the Aboriginals* (Published DMW, NT Aust 2006).

Of the 21 initial survivors of the shipwreck of a vessel *The Peruvian* in 1846, one man became the sole survivor and provided a detailed and valuable account of life in the seventeen years he lived amongst the Indigenous people, which was published in the 1860s.

sisters were the unpaid teachers. By the time of her death in 1909 her sisters, 750 of them, were teaching 12,409 pupils in 117 schools.

57. Our soldiers, sailors and airmen who fought in the Two World Wars were mostly Christian (90%) and there is overwhelming evidence from their lives and letters that they fought to *defend* our principles and freedoms. Their sacrifice is properly recognised and brought to fruition by this Bill. (As noted earlier, in an ideal society of mutual respect, such a Bill ought not be needed, but given that the Bill is needed, their supreme sacrifice will not be wasted).
58. We have always had an independent judiciary in Australia.
Our Tort law incorporates the concept of the Good Samaritan,
Our Contract and Equity law is based upon “Do Unto Others”²³.
Our Criminal law accords due process and incorporates the idea of Habeas Corpus, derived from our British Heritage, {the} Magna Carta of 1215. Underpinning it, is that People have *equal human dignity* and cannot lose liberty on anyone’s else’s whim, allegation or vendetta. Our sentencing philosophy takes into account not simply retribution, but also deterrence and rehabilitation. These are based upon Christian ideals of forgiveness and the hope of redemption. These important features of our legal system, which we prize, contrast with systems in countries which have little religious freedom.
59. I refer to the submissions of **The Catholic Archdiocese of Sydney** for the immense, incalculable, ongoing contributions made by the Catholic Church in areas such as charities, hospitals, hospices, youth groups, schools and tertiary education.
60. I refer to the submissions of the **Australian Christian Higher Education Alliance (ACHEA)** for the phenomenal work being done in the Christian tertiary college sector.
61. Yet despite all this outstanding contribution and legacy worthy of admiration, respect and gratitude, during the marriage campaign, Australia witnessed the inroads into our society and culture of a malign attitude held by aggressively militant anti-theists, *who do not wish to allow space for anyone else* and who seem ignorant of the great damage this does to the fabric of our society, our joy, and our civilised prospects as a state and nation.
62. I note that the Bill provides protection for people not having any religious conviction, belief, opinion or affiliation. I will address that point. There is an important difference between people who hold no religious belief (people who are perhaps agnostic or atheist), and those who are aggressively anti-religion. The Bill should provide no comfort for those who seek to oppress believers or additionally mistreat people who do not have belief but who themselves respect believers.
63. I further note that the Bill refers to “beliefs” and “activities”, and that it is difficult to provide legislative governance over a matter of the heart, mind and conscience, and which, by its very nature, requires an assessment and implies an accountability which is beyond governmental or earthly jurisdiction. “Activities”, being behaviour, fall observably within the jurisdiction. It is to the credit of the drafters and proposers that the effort is being made, notwithstanding that challenge.
64. John Millbank in his ‘Ontology of Peace’ points out correctly that peace is achieved not by domination of one over the other, *but by allowing space for each other*, to live alongside each other. He asserted ontological peace versus nihilistic ontological violence. And there are too many examples world-wide where the desire

²³ Matthew 7:12

to elbow out others results in violence against the believers, and destruction of their holy places or sometimes, by illegitimate and inflammatory commandeering of the latter²⁴.

65. Religion is adopted by people because they sense that all things are not simply material or corporeal but that there may also be a supernatural aspect to life - a divine force. In essence, it is an awareness that there are many inexplicable aspects to life which are beyond the realm of experience, science, and philosophy. Even if the totality of these were to be known, these fields of endeavour fall short of explaining human purpose and also the mystery of any after-life. There are disciplines within psychology and psychiatry which acknowledge objectively that the human condition *itself* includes a search for meaning. In essence, that we are physical, intellectual and also spiritual beings. And that even faced with death, where physical survival has been put at stake, in countless cases observed and recorded throughout history, religious belief has over-ridden the basic instinct for survival.²⁵ Oppression continues unabated, at great cost to countries in terms of peace and flourishing.²⁶
66. The existential questions posed, are answered by religion. People desire a guide to live by when making moral choices in this (present) life, but they also are concerned at a deep level with possible moral accountability, which could have an impact upon what and where their soul (or spirit) might endure in the next.
67. Given the immense significance of these ponderings and the peerless stakes involved, it is little wonder that humans are concerned about how they are treated in law, culture and society. This applies to the society in which they reside and this interest also extends to those cultures which end up having an impact (one way or another) upon their own societies (via historical ties, cultural heritage, immigration, growing economic influences or via various other subtleties).
68. Religious freedom is a paramount, non-derogable human right, in the same league as the right to life, and it may not be derogated by a government even in a state of emergency. It is at that precise moment when people are most focussed on the issues of life and death, and its importance is at the fore.

In Summary

69. Australia is one of the best societies in the world, with morality and religion featuring in positive manifestations reflected in our national character traits, societal customs and mores, rather than in ostentatious religiosity or piety. Australians expect people to be honest and decent, and their officials non-corrupt.
70. NSW has the distinction of being the first place where formal laws protecting people's human rights were enacted. The freedom of religion which has been a feature of our nation has allowed trust, which enables ideas to be shared freely, which in turn causes the flourishing of society. History and the contemporary geopolitical world show that there is a significant and measurable economic and social cost wherever religious freedom is curtailed. Society is reduced to a transactional, harsh society ruled by competing self-interest wherever morality, character development and ultimate spiritual accountability is stripped out. Sentiment and a mere desire for harmony becomes not enough to constrain self-interest.

²⁴ Hagia Sophia, Istanbul, in 2020

²⁵ Johnson, Todd M. & Zurlo, Gina. (2014). Christian Martyrdom as a Pervasive Phenomenon. Society. 51. 10.1007/s12115-014-9840-8

²⁶ Persecuted and Forgotten – A Report on Christians Oppressed for their Faith 2017-2019
<https://persecutedchristians.acninternational.org/>

71. The number of instances where freedom of religion has been in issue has showcased the division that is created where mutual respect and space for the other's beliefs is not protected in law.²⁷ All good societies have religious freedom as part of their fabric. Downtrodden societies tend to have oppression of religious freedom as a hallmark.
72. Equality is a measure, not a human right in itself. We are entitled to our rights and freedoms *in equal measure* to the next human being, who is likewise entitled. So 'religious freedom' and 'freedom to not have a religious belief' are rights held in equal measure, as proposed by the Bill. They are not oppositional rights. Equality is not a right. Each and every person is entitled *equally*. That is equality. A society is not free if zero number of its people, or if only *some* of its people, enjoy freedom. **All** must be free and must have freedom equally. One person's rights do not trump another's or displace another's.
73. In our efforts to achieve an orderly society where all can live peacefully alongside each other, we have sometimes jurisprudentially found ourselves in a situation not unlike, in some respects, (very fortunately not all) Germany in the 1930s and 1940s, where the law itself was able to be used to harm others. In the intense desire to control the thoughts and actions of others to prevent disorderly outbreaks of societal conflict during the higher priority of war waged against outside forces, making comments which were regarded as "divisive" was not permitted. This included negative or critical comments against the political leadership.
74. To summarise this scenario briefly, a woman reported her husband's negative comments about the Führer to the authorities, knowing that the sheer weight of the enforcement 'machinery' would cause considerable harm to her husband, for whom she no longer held love or affiliation. (He was not executed as expected, but was sent to the fighting front).
75. Following the war, she was charged with indirect deprivation of liberty, and found guilty in a court judgment of 27 July, 1949.²⁸ Liberty in this sense embraced that she had, via an indirect path, misused the legal system to achieve a malevolent aim, and via that punitive process had harmed him and also deprived him of liberty (or deprived him of options consistent with freedom). We are not, of course, bound by German Court precedents, however, we share with Germany a heritage of Western jurisprudence. One of the key principles is that morality ought to be enshrined in law (and unjust law is not law), and that the processes of courts and the legal system, must **not** be misused for private vendetta – which recognises *that this is a possibility*. The immorality of such a tactic has even been used to prevent a person from being admitted to practise in law, as it is regarded as so ethically egregious²⁹.
76. There is a real and ever-growing problem that people in Australia are, more and more, using the mechanisms of the legal system to oppress people of religious faith (notably Christian faith). This misuse is a form of lawfare, and it is because there is inadequate protection for people of faith.
77. If we further allow the recipe of respectful pluralism (which made Australia so remarkable) to deteriorate, our society will also deteriorate: in tenor, in quality of life, in enjoyability, and in prosperity.

²⁷ The harassment of Pansy Lai and Heidi McIver; Steve Chavura, Mark Allaby, sacking of party-girl Madeline; threatening of Mercure Hotel Staff; fire-bombing of the Australian Christian Lobby office and sending of malicious parcels; cases brought by individuals against religious outfits (eg Rachel Colvin v Baptist Christian College etc), and even assault (Astro Labe, of former PM Tony Abbott, during the marriage campaign), and the suicide of Wilson Gavin. More well-known cases include Archbishop Porteous, Israel Folau, Bernard Gaynor, Margaret Court, the boycott of Coopers' Brewery, the summoning of Dr David Van Gend to the Medical Board, Lyle Shelton to the Human Rights Commission, and so on. There are many other instances of harassment which do not become public.

²⁸ OLG Bamberg in SJZ 1950, 207

²⁹ Wentworth v NSW Bar Association (Court of Appeal 14.02.94, Unreported)

78. Thus this Bill providing an Amendment to the Anti-Discrimination Act must be carefully crafted in a manner which will facilitate the protection of the basic, natural, human right of religious freedom, and carefully guard against creating yet another mechanism which may ironically be then *misused* against those who hold a genuine religious belief. It must not favour people of particular religious belief over other religions, nor people with no belief over believers, either.

79. As Oxford Jurisprudence Professor JW Harris expressed it: "If we are to co-exist... we must look for an overlapping consensus: a shared political structure which makes room for competing deeper views by providing surface institutions."³⁰ He is contemplating everyone having space side-by-side, *not to the exclusion of others*.

80. In other words, we should be allowed to have churches, mosques and synagogues - but not simply be confined to them, we should be able to have groups who advocate causes or special interests, we should be allowed to be our free selves, not just in our homes, but in our workplaces, our universities, our media, our places of leisure, also. As a gay activist put it, convincingly: you ought to be allowed to bring your whole self to work.

81. If I may end on this note, quoting from the wise CS Lewis, who in his day was a renowned thinker on issues of law and morality, religion and society:

*"Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience."*³¹

I salute those who are co-sponsoring this important Bill and I recommend support of the Bill to the members of the Committee.

Sophie York

³⁰ JW Harris *Legal Philosophies* (Butterworths, 1997)

³¹ C.S. Lewis, *God in the Dock: Essays on Theology (Making of Modern Theology)*