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Our ref: (VK: Gen)

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Dear Mr Smithers

### **Religious Freedom Review**

Thank you for the opportunity to provide comments on the Religious Freedom Review. Queensland Law Society appreciates being consulted on this important issue.

This response has been compiled with the assistance of the Queensland Law Society policy committees, whose members include academics, and whose expert knowledge in this area is highly regarded by the legal profession.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

### **Is there any need for strengthening of religious freedoms in Australian domestic law, and the most appropriate method of such implementation?**

The protection of human rights in Australia, including freedom of religion, is limited. Australia is the only Western liberal democratic nation without comprehensive statutory or constitutional protection of human rights.

State and federal anti-discrimination laws and common law provide some protection, however only the ACT and Victoria have established specific human rights legislation. With respect to freedom of religion, section 116 of the Constitution of Australia precludes the Commonwealth of Australia from making laws for establishing any religion, imposing any religious observance,

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or prohibiting the free exercise of religion. This constitutional right has been interpreted narrowly by the High Court.

QLS acknowledges the growing argument for the establishment of further legal protections from discrimination, both for and from the impacts of religious belief. This argument contends that there is a need to strengthen protections in Australian legislation, either through amendments to existing legislation or through the introduction of a standalone statute such as a Human Rights and Anti-Discrimination Bill.

In our view, the protection of religious freedoms, as well as other individual rights would be strengthened through the introduction of this legislation.

### **Comment on the approach towards reconciling religious freedoms with competing rights and laws, most notably Australia's existing anti-discrimination framework**

The balance between the exercise of religious freedom and individual right to freedom from discrimination is can be observed in existing Commonwealth laws, including:

- anti-discrimination laws under the *Sex Discrimination Act 1984* (Cth), *Age Discrimination Act 2004* (Cth) and *Disability Discrimination Act 2004* (Cth);
- workplace relations laws under the *Fair Work Act 2009*;
- solemnisation laws under the *Marriage Act 1961* (Cth); and
- counter-terrorism offences under the *Criminal Code Act 1995*.

While these statutes strike a somewhat measured balance between rights, their existence and protection remain piecemeal, limited and vulnerable to abrogation.

### **Anti-discrimination Laws**

QLS acknowledges the contention sometimes raised by religiously affiliated organisations that some parts of anti-discrimination law conflict with religious freedom by prohibiting some conduct which may be associated with religious belief. This includes discrimination by religious organisations on the basis of attributes such as gender or sexual orientation.

QLS submits that existing range of exemptions under anti-discrimination law available to religious organisations are already excessive in some circumstances.

Existing Commonwealth laws already provide broad exemptions to anti-discrimination legislation for religious organisations. QLS supports exemptions that allow religious bodies to carry out and comply with religious practice and observance. However, any further exemptions would be excessive and would not be supported by QLS.

Specifically, QLS does not support exemptions that provide for discrimination based upon personal and innate attributes in commercial services. Where a religious body offers commercial goods, services or facilities, and those goods or services are not directly supporting the doctrines of a particular faith, any anti-discrimination exemption should be limited.

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In our view, anti-discrimination exemptions should be replaced with a general limitations defence which outlines the necessity, reasonableness, proportionality and legitimacy of the exemptions. This general limitations defence would allow a balancing of rights in cases where the individual's rights may be in conflict with the rights of another.

Finally, there is a general lack of transparency on behalf of religious organisations in relation to the operation of current exemptions and there is a risk that individuals engaging with these organisations may be unaware of the potential of discrimination.

### **Comment on the interaction between religious freedoms and freedom of speech**

It is well recognised in international and domestic legal discourse that no rights are absolute and that, in their application, competing rights must be balanced against each other. The process of balancing rights, that is limiting certain rights for the purpose of protect others, can be accommodated in existing legal structures. Commonly, balancing human rights involves consideration of whether an imposed limit:

- a) has a legitimate aim (the limitation must reflect a concern that is pressing and substantial in a free and democratic society and must have a specific purpose, rather than being based on a general concern);
- b) is reasonable (the limitation must not be arbitrary, irrational or ineffective); and
- c) is proportionate (there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised).

The right of a person to exercise his or her freedom of religion must be balanced against the rights of an individual who will be impacted by that exercise.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin by phone on (07) 3842 5872 or by email to [V.Krulin@qls.com.au](mailto:V.Krulin@qls.com.au).

Yours faithfully



Ken Taylor  
**President**