Public submission to the Senate Legal and Constitutional Affairs Legislation Committee
Inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018

Radicalized anti-discrimination legislation threatens religious freedom

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Introduction

A more honest title for this Bill would be

> **Religious Discrimination (Institutionalizing Discrimination against Students with Traditional Beliefs on Sexual Morality) Bill**

Regrettably, this Bill is not about removing sexual discrimination against students: it is about imposing religious discrimination against students who genuinely wish to attend and to benefit from institutions that teach and uphold traditional religious beliefs on sexual morality.

Students who attend a faith-based institution are not to be permitted to be taught in peace the fullness of their faith among other students who also are prepared to learn from and to respect that same faith and who will try to uphold the integrity of its moral precepts.

The irony of this proposed amendment to the Sex Discrimination Act 1984 is that it was never designed 'to remove the capacity of bodies established for religious purposes that provide education to directly discriminate against students on the basis of their sexual orientation, gender identity or intersex status'.

Rather it was designed primarily 'to remove the capacity' of these educational bodies to 'directly' teach the moral truths of their faith regarding the morality of certain sexual behaviours and values. This Bill was never about discriminating against students on the basis of their sexual 'status'. No respectable religious-based educational institution indulges in that kind of personal discrimination or tolerates any 'bullying' of any student on any grounds whatsoever. No matter how one's sexual 'identity' may be personally and privately

perceived, all students are taught to act kindly and to live chastely according to the moral principles of the shared faith professed by the students and their teachers. What the Bill is really about is this: it is about discriminating against those members of teaching bodies established for religious purposes who will not compromise their traditional religious and moral beliefs regarding sexuality in order to accommodate the newly created aberrant dogmas of gender/identity ideology.

The distorted ideologically-driven theory behind this Bill alleges, in effect, that the teaching of traditional sexual morals and ethics constitutes unlawful discrimination against those students who wish to attend the faith-based institution but who knowingly and purposefully will take mortal offence or umbrage at the moral teachings of that faith.

The Bill is an illegitimate attempt to introduce and impose on religious institutions (with penalties for non-compliance) a new quasi-religious theory of sexual morality that is designed to override and to outlaw as discriminatory the teaching and holding of traditional sexual mores.

This Bill is seeking to take non-discrimination law to new and disturbing levels that will destroy religious freedom. The abusive politics of ever-expanding anti-discrimination law, especially in regard to sexual and moral matters, is being crafted to advance a dubious new development emerging from gender/identity ideology. The Bill attempts to impose on all students in religious institutions a new quasi-religion, a secularist faith system teaching that the most heinous of all sins is discrimination. Opportunities to commit these sins are infinite—every moral or ethical *distinction* has the potential to be treated by law as *discrimination* against some victim group. The sad irony is that the most severely harmed genuine victims are increasingly short-changed under this massively unmanageable perversion of the rule of law. In the meantime, unbounded proliferation of anti-discrimination laws are themselves generating new injustices of a discriminatory nature.

Homogenizing humanity, demonizing differences of thought, sanctifying sameness—these are the unacceptable demands of an absurdly exaggerated new concept of illegal and punishable discrimination. This absurdity, in its design, has the potential to involve the rule of law in a despicable derogation from the universally agreed inherent and non-derogable right of every human being to exercise

(1) freedom of religion, conscience and belief;
(2) freedom of association;
(3) freedom of speech, particularly the freedom of religious minorities to preserve, to retain and to teach their own language of morality in regard to sexuality matters.

It is totally unacceptable for the rule of law to endorse the mischievous fiction that all human beings, irrespective of their religious beliefs, should be forced, for example, to recognize same-sex copulation practices as morally good. Nor is it right for traditional religious teaching on sexual morality to be curtailed as unlawfully 'discriminatory' or for free speech on moral issues to be condemned as 'hate speech'. It is not acceptable for this proposed Bill to recharacterize freedom of association exercised by religious-based teaching institutions as 'offensive' to those students who might have sought admission without any intention of respecting or even tolerating the values openly proclaimed by the institution.

The attempted reduction of every human being's religious freedom to protection of only those tenets of faith that can be deemed to be non-discriminatory is unworkable in an artificially constructed climate where victimhood is fast becoming a badge of honour to be utilized to advance and to enforce conformity to each new ideological dogma concocted from the cruel cultivation of gender/sexual dysphoria.

The whole aim of this proposed Bill is to tamper with the freedoms of religion, conscience and belief of both students and staff in religious based teaching institutions by recasting the teaching of traditional sexual ethics and morals as offensive discrimination against another group of students and teachers who have espoused the brand new sexual/gender orthodoxies.

The Bill utilizes a very clever but dishonourable ploy:

(1) The instigators of this Amendment Bill have set it up so that religious-based teaching institutions must accept and retain without discrimination all students irrespective of any openly displayed sexual moral codes or practices contrary to or even hostile to the school's religious ethos ;
(2) Once such disaffected students are accepted and retained under anti-discrimination law, then the trojan horse deception unfolds as religious based institutions are required by law to 'respect' disruptive sexual behaviours, exhibitionist

demonstrations of in-your-face alternative moral codes and anti-religious sentiments and practices, openly displayed by these students. The potential outcome is that in the teaching and encouragement of traditional religious and moral values in a religious based teaching institution, extreme care must be taken to avoid 'offending' those students who have no wish to be taught traditional values. Such students might, at the instigation and manipulation of ideologues in higher places, campaign militantly or disruptively to demand the teaching and the acceptance of different values that conflict openly with the religious ethos of the religious based institution.

(3) In the event of such offence being duly taken and recorded, the religious based teaching institution is then charged with unlawful discrimination.

In effect, the rule of law is to be misused in order to coerce universal endorsement of novel ideological concepts of new theories of sexual ethics and morality: religious based teaching institutions which fail to endorse the new sexual ethics are to be subjected to discrimination charges and, if found guilty, are to be punished.

1. Dangers of unfettered expansion of anti-discrimination laws

The haste with which this Bill is being advanced should set off alarm bells. Crude new social norms should not be so hastily codified into anti-discrimination laws. Such ill-considered laws empower ideologues to intimidate and to silence those who would publicly criticize and challenge the imposition of the teaching of these new sexual 'norms' on religious based educational institutions. In times of turbulent social change under the heady influence of virulent new ideologies, legislatures must not use the raw power of the State to coerce 'new rights' which require the trashing of the old rights of religious freedom, freedom of association and freedom of religious minorities to use their own language and to maintain and to hand on to their children their own traditions and cultural norms.

Legislatures must not brand as discrimination public expression of the language of traditional rights and freedoms that are deemed to 'offend' against the sensibilities of the proponents of the 'new' ideologically correct language.

New ideologically driven legislation seeks in effect to purge the public square of the traditional freedoms of speech, conscience and association and to impose penalties on those who decline to adopt the new language of these newly-coined 'rights'.

This new gender/identity ideology, like Nazism and Communism, reveals itself as totalitarian in its nature—especially in its proponents' determination to use the force of the law to eliminate religious opposition to its new secularist dogmas.

As Hannah Arendt in *The Origins of Totalitarianism*, discerned with penetrating wisdom:

> *The ideal subject of totalitarian rule is not the convinced Nazi or the convinced Communist, but people for whom the distinction between fact and fiction (i.e., the reality of experience) and the distinction between true and false (i.e., the standards of thought) no longer exist.*

Conformity to the newly constructed orthodoxy relies on the law imposing a new language of compulsory non-discrimination. Imposition of the new language muddies the distinction between fact and fiction, and removes permission to articulate any of the age-old established distinctions between true and false.

Any religion or belief that purports to be able to discern or to distinguish between right and wrong in any way contrary to the new ideologically correct values is to be targeted as being unlawfully discriminatory.

We regress to the oldest temptation in the world—to tamper with reality—to refuse to use our intellect and reason with integrity to recognize the reality of experience—the profound difference between what is good and what is harmful.

Sooner or later, the abusive politics of ever-expanding anti-discrimination legislation will bring us to intolerable levels of faulty justice.

And eventually we shall reach the absurdity that no one may bring belief in God and matters of faith into the public discourse or seek to promulgate and to obey the natural law because such things offend the sensibilities of those who can't believe in God or those who reject the natural law.

Uncritical embrace and unfettered expansion of anti-discrimination law sets us up for an unlawful coup that classifies as offences to be prosecuted all public recognition of differences not approved by the new ideological exaggeration of non-discrimination.

2. Disrespecting the non-derogable human rights status of religious freedom

Under international human rights law, there is a universally agreed set of non-derogable principles upon which 'lawful' encroachment cannot be justified. The human right to freedom of religion or belief belongs to this category.

Religious rights and freedoms have been accepted and recognised by the international community of States as peremptory norms, as *jus cogens* in nature by virtue of their presence in the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR). It is the universal nature of non-derogable human rights that States parties to the *ICCPR* may not derogate from them, not even 'in times of national emergency'. Article 4 of the *ICCPR* establishes religious freedom as a non-derogable right. It guarantees a rightful immunity from coercion of interior and/or exterior acts contrary to conscience or belief.

Indeed, no domestic human rights legislature can withdraw legal protection of a non-derogable right. States parties to the *ICCPR* are obliged to reject any part of domestic law that purports to authorise the abuse of the non-derogable human rights set out in the *Universal Declaration* Article 18 and the *ICCPR* Articles 18 and 27 or the removal of legal protection for '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'.

In this respect, it was totally invalid to introduce legislation under s 38(3) of the Sex Discrimination Act 1984 (Cth) (SDA) that pretended to necessitate the downgrading of the universal, inherent and inalienable religious rights to a mere 'exception' granted graciously (and as it has turned out temporarily) by an incumbent government. To propose such legislation was to attack the fundamental human rights principle of inherency. The

freedoms of religion, belief and conscience inhere in our humanity—they are not in the arbitrary grant or withdrawal of any government.

Regrettably, all domestic legislation directed towards imposing constraints on religious and conscience freedoms are also in contravention of ICCPR Article 5 (1):

> *Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.*

Genuine human rights advocates must reject the current campaigns around the world that have been mounted by ideologically driven groups to pressure persons of faith in their Churches and their teaching establishments into apostatising their beliefs on such serious moral issues as the immorality of practices such as sodomy. Teachers must not be coerced against their conscience into teaching children ideological theories of sexuality and sexual practices that offend against their own conscience and moral beliefs. Such campaigns are fundamentally in contravention of the object and purpose of the Covenant. They seek to destroy non-derogable rights and freedoms and to limit them to a greater extent than is provided for in the present Covenant.

It is an accepted principle of international human rights law that **localized majorities may not pass laws in violation of non-derogable human rights**. [1]

There are strict limits to a State's democratic authority to tamper with established norms of non-derogable rights such as religious freedom.

3. Coercing religious affiliation to conform to new pieties

To the extent that our legislative and judicial authorities engage in expanding these non-derogable norms in such a way as to radically *change* the norms in the process, then, of logical necessity, the universally agreed founding principles of modern international human

[1] See, for example: **'**The Word 'Laws' in Article 30 of the American Convention on Human Rights', Advisory Opinion OC-6/86, May 9, 1986, Inter-American Court of Human Rights, (Series A), No. 6 (1986). para. 22.

rights law are being undermined. For example, in expanding the right to life norm to include a putative right to abortion, they delete the inalienable right to life of the unborn child in the process.[2] In requiring doctors to perform or to outsource abortions on these tiniest patients, they retract the doctor's right and freedom to hold a religious and/or conscientious belief without threat of punishment. They are engaged not simply in auxiliary expansion of recognized rights but in *deletion* of recognized rights, *replacing* the right to life of the unborn child with a woman's alleged right to abortion. They are engaged also in replacing every child's right as far as possible to be raised and cared for by the child's own mother and father[3], with a contrarian new 'right' for same sex-couples to marry and to found motherless and fatherless families through artificial acquisition.

Increasingly, legislatures are introducing laws aimed at coercing religious affiliation to conform to new pieties. Slick power plays are being employed to delete common law values which upheld for so long the traditional rights and freedoms that provided invaluable necessary protection for the most vulnerable among us and that maintained the common good.

Over-extended anti-discrimination laws currently being introduced in countries such as Canada exploit the confusing flux of radical new aberrations. The purpose of radical new laws is to replace the tried and true protections of noble common law traditions with faulty novel theoretical values tossed up by untested new ideologies which trespass grievously against the most vulnerable, especially the children. State endorsed indoctrination of children in new gender theory and perverse sexual mores that contradict the tenets of their parents' religion or beliefs is contrary to Article 18 (4) of the ICCPR:

> *The States Parties to the present Covenant undertake to have respect for the liberty of parents and...to ensure the religious and moral education of their children in conformity with their own convictions.*

No democracy can justify anti-discrimination legislation that punishes those who wish to remain faithful to the original universally agreed human rights obligations.

[2] See Rita Joseph: 'Human Rights and the Unborn Child', Lieden & Boston, Martinus Nijhoff Academic Publishers, 2009)
[3] Convention on the Rights of the Child, Article 7.

4. Denying religious minorities free use of their own language

It is time for the Australian legislature to recall its international commitment to the principle that for each religious group, there exists a language of faith, a language of morality that belongs to the realm of individual conscience, a language which the State may not seek to outlaw.

Rights of religious minorities—freedom of association and the right to use and to teach to their children their own language—should never have been treated as exceptions to any new anti-discrimination law. These rights must be recognised as fundamentals in any proposed law.

Free expression of conscientiously held tenets of faith and morals and the freedom to live, either alone or in community, according to these tenets may not be mischaracterised by any domestic State or Federal law as culpable discrimination against those who do not hold those beliefs. The language of 'marriage' as between one man and one woman and the religious beliefs and actions associated with this language of 'marriage' are not to be denigrated or outlawed as discrimination. The teaching that homosexual practices are sinful is not to be misrepresented and punished as 'hate speech' or homophobia or sexist discrimination.

Anti-discrimination laws may not be mounted to punish the public use of a religiously based moral language:

> *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture,* to profess and practise their own religion, or to use their own language. (*International Covenant on Civil and political Rights ICCPR* Article 27)

ICCPR Article 27 has particular pertinence here in that it does not permit the ruse of introducing anti-discrimination laws in order to prohibit religious minorities from using and teaching their own language of morality in their own religious-based educational establishments.

This should rule inadmissible current vociferous attempts to 'police' the biblically–based language of Christians and to deny them expression of the long-held beliefs that 'marriage' can only be between one man and one woman and that certain homosexual practices are sinful, spiritually harmful or immoral.

5. Coerced secularism prohibited by the International Covenant

In fact, there is no justification for applying coercive anti-discrimination laws to religious beliefs about marriage, the family and sexual morality. Indeed, such coercion is directly prohibited in ICCPR Article 18 (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.*

To this end, it is invalid that so-called sexual discrimination legislation should attempt to coerce those who hold religious beliefs on sexual morality into adopting the contrary sexual values of the new quasi-religious 'secularism'. In fact, while our international human rights conventions must uphold religious rights and freedoms, they are 'not empowered to bully States into secularism or to coerce countries into schemes of religious neutrality.' [4]

As Grégor Puppinck, Director of the Strasbourg-based European Centre for Law and Justice, observed:

> *Secularisation is exclusive because it favours a secular belief system to the exclusion of all other beliefs, especially religious beliefs, while the principle of neutrality is inclusive because it allows both religious and secular beliefs in the public space.* [5]

Indeed, alleged 'sexual discrimination' legislation must not be permitted to impose a legal duty on anyone who holds a religious belief contrary to any new allegedly anti-discrimination legislation to accept secularism as a national religion that overrides all other religions.

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[4] See the concurring opinion of Judge Giovanni Bonello in judgment at Strasbourg 18 March 2012 in the case of *Lautsi and Others v. Italy*, the European Court of Human Rights.

[5] Grégor Puppinck, amicus curiae intervention before the Grand Chamber in the case of *Lautsi v. Italy*, better known as the Crucifix Case. Expert for the Council of Europe, he is a member of the Committee of Experts on the Reform of the European Court of Human Rights.

Attempts to coerce regular Australians through the heavy hand of the law to approve the new sexual/gender doctrines adopted under secularism must be rejected as impermissible. Such approval may not be exacted through imposition of restrictions on free expression of their beliefs via legal threats of anti-discrimination. In particular, aged persons who have lived all their lives in communities that have respected their religious beliefs and allowed and helped them to practice their faith openly and faithfully must not now be coerced into living in a 'secularist' community that is enforced by law to ensure adoption of 'secularist' doctrines of sexual morality. Reasonable people of good will cannot fail to recognize that these new quasi-religious doctrines offend against the consciences of persons of many other religions who sincerely believe that some of the sinful practices and beliefs newly adopted by 'secularism' remain deeply offensive to their God.

In interpreting religious rights and freedoms in the founding international human rights instruments, Australia is still solemnly bound by the 'ordinary meaning' test; and in cases of doubt, is required to examine the *travaux préparatoires* to the *Conventions* in order to ascertain the meaning that was agreed at the time, in accordance with the rules of interpretation in the *Vienna Convention on the Law of Treaties*.[6] This requirement of international human rights law invalidates any attempt by new ideologically driven sexual/gender anti-discrimination legislation to render ineffective religious rights and freedoms through ideological re-interpretation of the original agreed language defining religious rights and freedoms in the *Universal Declaration* and *International Covenant on Civil and Political Rights.*

Radical revisionism to the extent proposed by extended 'anti-discrimination' legislation in order to legally enforce the proposed imposition of 'secularist' sexual morality on persons being taught in religious-based schools and higher institutions is incompatible with the obligations of States and of courts of justice (at all levels) to comply with the 'ordinary meaning' test. The 'ordinary meaning' criterion is in itself a strong argument in favour of an expectation that all new Commonwealth legislation will most carefully avoid giving the universally agreed religious rights provisions a meaning which plainly thwarts the drafting intention behind the States' original commitment.

[6] *Vienna Convention on the Law of Treaties* Articles 31 and 32(b)

Current public opinion, deceived by relentless propaganda, is no basis for changing universal human rights protections for marriage and children solemnly agreed in the Conventions to which Australia is a party. To tamper with the meaning of 'marriage' is to tamper with those protections. Such distortion of true meaning contravenes the 'ordinary meaning' test required by Article 31 (1), General rule of interpretation of the Vienna Convention on the Law of Treaties (1969):

> *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

Our foundation international human rights instruments were not concerned with establishing radical new institutions and then pursuing this kind of institutional 'equality'—they knew it could not be justified—they understood and respected the limits of human rights law.

Religious-based institutions must retain the right to teach the original and enduring truths about marriage. It is immensely significant that Article 16 of the *Universal Declaration* concerning the right to marry and to found a family deliberately omits: 'sex or other status'. The non-discrimination clause extends only to 'race, nationality or religion'.

The drafters of the UN Human Rights Conventions were very careful to spell out the grounds for non-discrimination in the 'right to marry and to found a family' articles—'sex' was excluded precisely because a difference of sex, a man and a woman is a distinction—a discrimination—*necessary* to the very meaning of marriage.

Conclusion *…relying humbly on the blessing of Almighty God*

In the looming conflict between the new sexual/gender ideology being adopted and imposed by our increasingly secularist legislatures and the traditional religious-based values upon which our country was founded, our historical origins and our heritage should be recalled for re-appreciation. Slowly but ominously, secularism is shaping up to be an overriding mega-religion with a specific set of doctrines, tenets and beliefs manifested currently to include the esoteric new ideological doctrines of 'same-sex marital

relationships' and 'gender identity'. This quasi-religious secularism may not be legislatively forced onto any Australians who are entitled to continue to exercise their traditional religion freely, in community and in public with others of the same faith. **Any proposed legislation to remove the religious freedoms of belief and conscience and association of the staff members and the students of a faith-based teaching establishment is unconstitutional** on the grounds that the Commonwealth may not legislate in respect of religion:

> *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.*

The Commonwealth must not make any anti-discrimination law that imposes on all Australians a duty to adopt and publicly support new 'secularist' dogmas of sexual morality.

When such new dogmas contrast in a radically offensive way with the established moral norms of existing religiously based communities, every Australian has a right to retain those norms without being subjected to anti-discrimination laws. Every Australian has that inherent right—this right may not be reduced to a mere *exemption* which may then be revoked as is being proposed in this Bill: *2 Subsection 38(3) 13 Repeal the subsection*.

Fortuitously, our Constitution declares unequivocally right at the start that we are a people *relying humbly on the blessing of Almighty God.*

Constitutional hermeneutics confirm a commitment by the original framers of the Australian Constitution to a moral philosophy that recognizes objective moral truth laid down by a higher authority, and to a natural law that upholds human dignity and human rights.

This preambular agreement governs the whole text of the Australian Constitution and is to be applied by the Parliament to all law making—

> *The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth… (Section 51)*

Clearly, operative provisions must be read *consistently* with the preambular paragraphs, which set out the themes and rationale of the Constitution. They are to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Constitution in their context (*i.e*., in the context of its preamble in addition to the text). The

power of the Parliament to make laws (including laws that protect religious freedom) is 'subject to the constitution' and that power is to be exercised in a humility that relies on the blessing of Almighty God.

Attempts to reconstitute Australia as a purely secular society carries an inherent danger. When we try to diminish the heritage of our religious values, we diminish ourselves.

> *It is man himself who ends up being reduced, for the specifically human questions about our origin and destiny, the questions raised by religion and ethics, then have no place within the purview of collective reason as defined…and must thus be relegated to the realm of the subjective.*
>
> *The subject then decides, on the basis of his experiences,… and the subjective 'conscience' becomes the sole arbiter of what is ethical…ethics and religion lose their power to create a community and become a completely personal matter. This is a dangerous state of affairs for humanity…*[7]

Those who seek to exclude religion and religion–based ethics from the 'collective reason' of communities, parliaments and the law courts, are bent on destruction of essential and unifying community values that are our true heritage.

This Bill must be defeated.

[7] Pope Benedict XVI, 'Three Stages in the Program of Dehellenisation', University of Regensburg, September 12, 2006