

## Appendix

### Context - Australia's international law obligations

#### Freedom of religion and belief

1. The obligations under international law which are proposed to be implemented into domestic legislation (at least in part) can be divided into two categories: firstly, freedom from discrimination on the ground of religion or belief; and secondly, freedom of religion.
2. In relation to the *International Covenant on Civil and Political Rights*<sup>1</sup> (ICCPR), article 2(2) requires the implementation of its international obligations into domestic law.

#### **Article 2(2)**

*Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

#### Freedom from discrimination on the ground of religion or belief

3. The key international law provisions concerning the freedom from discrimination on the ground of religion or belief are articles 2(1) and 26 of the ICCPR.

#### **Article 2(1)**

*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race,*

*colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status.*

#### **Article 26**

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status. [emphasis added]*

4. The Human Rights Committee has observed that that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are

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<sup>1</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.<sup>2</sup>

5. Article 20 of the ICCPR is also relevant to the Bill which provides statutory protection to statements of belief from claims of discrimination. It should be noted, however, that Australia has reserved the right not to introduce further legislative provisions with respect to article 20.<sup>3</sup>

#### **Article 20**

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

6. Article 24 of the ICCPR extends to children freedom from discrimination on the grounds of religion. Freedom from discrimination on the ground of religion is also found in article 2 of the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> (ICESCR), and article 2 of the Convention on the Rights of the Child<sup>5</sup> (CRC).

#### **Freedom of religion and belief**

7. The primary source for the right to freedom of religion and belief is provided by article 18 of the ICCPR:

#### **Article 18**

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their*

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<sup>2</sup> Human Rights Committee, General Comment No 18 'Non-discrimination', 37<sup>th</sup> session (1989), [13].

<sup>3</sup> The instrument of ratification of the ICCPR deposited for the Government of Australia with the Secretary-General of the United Nations contained the following reservation relating to article 20: 'Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters'.

<sup>4</sup> Opened for signature 16 December 1966, 993 UNTS (entered into force 3 January 1976).

<sup>5</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

*children in conformity with their own convictions.*

8. The United Nations Human Rights Committee (**HRC**) has remarked that:

*Article 18 protects theistic, 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. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.*<sup>6</sup>

9. The freedom to have or to adopt a religion or belief entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief or to adopt atheistic views, as well as the right to retain one's religion or belief.<sup>7</sup> The freedom to have or adopt a religion or belief is absolute and is not capable of being subject to limitation: article 18(2) of the ICCPR. As noted by the HRC, article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat or physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by other provisions of the ICCPR, are similarly inconsistent with article 18(2).<sup>8</sup>
10. The freedom to manifest religion or belief, may, as stated under article 18(1), be exercised 'either individually or in community with others and in public or private'. The HRC has observed that it includes not only ritual and ceremonial acts, but customs such as the observance of dietary regulations, wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.<sup>9</sup> In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.<sup>10</sup>
11. Whereas the freedom to have or adopt a religion or belief is absolute, the freedom to manifest one's religion or beliefs may be subject to limitation as indicated in article 18(3) - that is, as prescribed in law, and where necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the ICCPR, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.

<sup>6</sup> Human Rights Committee (**HRC**), *CCPR General Comment No 22: Article 18 (Freedom of Thought, Conscience of Religion)*, UN Doc CCPR/C/21/Rev.1, 48<sup>th</sup> sess (30 July 1993) (**General Comment No 22**), [2].

<sup>7</sup> Ibid, [5].

<sup>8</sup> Ibid, [5].

<sup>9</sup> Ibid, [4].

<sup>10</sup> Ibid.

Limitations must be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>11</sup>

12. Article 18(4) provides for the liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own views. This liberty cannot be restricted.<sup>12</sup>
13. Article 27 of the ICCPR has a relatively high degree of crossover with article 18. This provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The HRC considers that information as to respect for the rights of religious minorities under article 27 is necessary to assess the extent to which the right of freedom of thought, conscience, religion and belief has been implemented by States parties.<sup>13</sup>
14. The HRC has further noted that measures which discriminate against adherents of minority religions, or non-believers, such as measures restricting eligibility for government services to members of the predominant religion, or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.<sup>14</sup>
15. The primary protections given in article 18 of the ICCPR also apply to children under article 14 of the CRC. Article 14(1) of the CRC states that the children's rights to freedom of thought, conscience and religion shall be respected. Under article 14(2), the rights and duties of parents/guardians to provide direction to the child in the exercise of his or her rights consistent with the evolving capacities of the child is to be respected.<sup>15</sup> Article 30 of the CRC extends the protections given to minority groups in article 27 of the ICCPR to the children of minority groups.
16. Both the *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>16</sup> (ICERD) and the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>17</sup> (CEDAW), provide protection against racial and sex discrimination in the enjoyment of freedom of religion.<sup>18</sup>

### ***Declarations***

17. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief<sup>19</sup> **(the Religious Discrimination**

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<sup>11</sup> Ibid [8].

<sup>12</sup> Ibid, [8].

<sup>13</sup> Ibid, [9].

<sup>14</sup> Ibid, [9].

<sup>15</sup> Also relevant is article 12(1) of the CRC, which provides that States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

<sup>16</sup> Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

<sup>17</sup> Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>18</sup> ICERD, art 5; CEDAW, arts 1-3.

<sup>19</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Res 36/55, UNGAOR, 36th sess, UN Doc A/36/684 (1981).

**Declaration)**, adopted by the United Nations General Assembly, is not a treaty, but is a valuable tool for interpreting the scope of article 18 of the ICCPR. The AHRC's functions include inquiring into Commonwealth acts or practices which may be inconsistent with human rights. 'Human rights', as defined by the AHRC Act, refers to the Religious Discrimination Declaration, as well as relevant rights in the ICCPR.<sup>20</sup> The Declaration prohibits unintentional and intentional acts of discrimination and defines discrimination in article 3 as:

*Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.*

18. Article 6 of the Declaration stipulates that the religious community's joint or shared expression of its beliefs is protected equally with the individual's right and protects manifestation of religion or belief including, but not limited to:

- worshipping and assembling, and maintaining places for this purpose;
- establishing and maintaining charitable or humanitarian institutions;
- practising religious rites and customs;
- writing and disseminating religious publications;
- teaching of religion and belief;
- soliciting voluntary financial support;
- training and appointment of religious leaders in accordance with the requirements and standards of the religion or belief;
- observing religious holidays and ceremonies; and
- communicating with individuals and communities on matters of religion and belief.

19. Also relevant is the United Nations Declaration on the Rights of Indigenous Persons<sup>21</sup> (**UNDRIP**), another declaration adopted by the United Nations General Assembly, for which Australia formally announced its support on 3 April 2009. While not a treaty, its articles echo many of the rights articulated in legally binding human rights treaties, but with a specific focus on indigenous peoples. Further, many of its provisions reflect customary international law. Under article 12(1) of the UNDRIP:

*Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and*

<sup>20</sup> *Australian Human Rights Commission Act 1986* (Cth) (**the AHRC Act**), ss 3 (definition of 'human rights'), 11(1)(f), 20(1), 47; *Human Rights and Equal Opportunity Commission Act 1986* - Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief, 8 February 1993, at <https://www.legislation.gov.au/Details/F2009B00174>.

<sup>21</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex (**UNDRIP**).

*cultural sites; the right to the use and control of their ceremonial objects;  
and the right to the repatriation of their human remains.*

### ***Propagation of religious beliefs***

20. The propagating of religious beliefs to others has been recognised as guaranteed by article 18(1) of the ICCPR, while subject to the limitations in article 18(3). The HRC has stated that:

*For numerous religions ... it is a central tenet to spread knowledge, to propagate their beliefs to others and to provide assistance to others. These aspects are part of an individual's manifestation of religion and free expression, and are thus protected by article 18, paragraph 1, to the extent not appropriately restricted by measures consistent with paragraph 3.<sup>22</sup>*

### **Religious schools**

21. Article 24 of the ICCPR extends to children freedom from discrimination on the grounds of religion. Freedom from discrimination is also found in article 2 of the ICESCR, article 2 of CRC.

22. As noted, article 18(4) of the ICCPR provides for the liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own views. This liberty cannot be restricted.<sup>23</sup> The HRC has commented that:

*The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.<sup>24</sup>*

23. Article 13 of the ICESCR complements article 18(4) of the ICCPR by providing a similar protection in relation to freedom of religion protections to education. Article 13(3) of the ICESCR provides that:

*The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

24. Article 13(4) states that 'no part this article [article 13] shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct

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<sup>22</sup> HRC, *Views: Communication No 1249/2004*, 85<sup>th</sup> sess, UN Doc CCPR/C/85/D/1249/2004 (21 October 2005) [7.2] (***Sister Immaculate Joseph v Sri Lanka***); see also European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion*, Council of Europe, 30 April 2019 [112]-[113].

<sup>23</sup> *Ibid*, [8].

<sup>24</sup> HRC, General Comment No 2, [6].

educational institutions, subject always to the observance of the principles set forth in paragraph 1 of article 13 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State. Article 13(1) in turn states that:

*States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

25. It has been stated that the State may be obliged to tolerate separate schools if that is necessary to respect the religious and philosophical convictions of parents.<sup>25</sup> This does not go so far as to require that religious schools be exempt from non-discrimination laws when acting in accordance with their own faith.

### **Freedoms of opinion and expression**

26. Under article 19(1) of the ICCPR, everyone has the right to hold opinions without interference. While freedom of opinion under article 19(1) is absolute, 'the absolute nature of the right ceases once one airs or otherwise manifests one's opinions'.<sup>26</sup>

27. The right to freedom of expression is contained in article 19(2) of the ICCPR which provides that this right includes:

*freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.*<sup>27</sup>

28. Article 19(3) of the ICCPR provides that the exercise of the rights provided for in article 19(2) carries with it 'special duties and responsibilities'.<sup>28</sup> It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- for respect of the rights or reputations of others; and
- for the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>29</sup>

29. The HRC has concluded that the obligations in articles 19 and 20 are 'compatible with and complement one another'.<sup>30</sup>

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<sup>25</sup> *Kjeldsen, Busk Madsen and Pedersen v Denmark* [1976] 1 EHRR 711.

<sup>26</sup> Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials*

*and Commentary* (Oxford University Press, 3<sup>rd</sup> ed, 2013) (Joseph and Castan), 591.

<sup>27</sup> ICCPR, art 19(2).

<sup>28</sup> *Ibid*, art 19(3).

<sup>29</sup> *Ibid*.

<sup>30</sup> HRC, *General Comment 34 -Article 19: Freedoms of opinion and expression*, 102<sup>nd</sup> sess, UN Doc.

## Other relevant rights

30. Broader human rights which are highly relevant to the Bill include:

- the right to equality and non-discrimination - a fundamental human right that is essential to the protection and respect of all human rights. As discussed, article 26 of the ICCPR guarantees equal protection of the law and equality before the law and requires States to prohibit and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. As well as including the attribute of religion, the phrase 'other status' has been interpreted by human rights treaty bodies to include sexual orientation;<sup>31</sup>
- the right to privacy and reputation – article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. It also prohibits unlawful attacks on a person's reputation.<sup>32</sup> It provides that persons have the right to the protection of the law against such interference or attacks;<sup>33</sup>
- the right to work – is most comprehensively set out in article 6(1) of the ICESCR and various ILO conventions. This recognises the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted. State parties have obligations to safeguard this right, including the immediate obligation to guarantee that it will be exercised without discrimination of any kind;<sup>34</sup> and
- the right to education – article 13 of the ICESCR recognises the right of everyone to education. 'Education is both a human right in itself and an indispensable means of realising other human rights'.<sup>35</sup> State parties must take steps to the maximum of their available resources with a view to achieving progressively the full realisation of this right.<sup>36</sup> They must further guarantee that this right must be exercised without discrimination of any kind.<sup>37</sup>

## Resolving tensions

31. It is a well-established principle of international law that human rights are interrelated, interdependent and indivisible. The Vienna Declaration and Programme of Action, adopted in 1993 by 171 states (including Australia),

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CCPR/C/GC/34 (12 September 2011) [52].

<sup>31</sup> HRC, *Views: Communication No 488/1992* 50th sess, CCPR/C/50/D/488/1992 (1992) (**Toonen v Australia**); HRC, *Views: Communication No 941/2000*, 78th sess, CCPR/C/78/D/941/2000 (2003) (**Young v Australia**) [10.4]. Article 2(1) of the ICCPR further requires that State parties undertake to respect and ensure to individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, without distinction of any kind, including on the basis of sex, religion, or other status.

<sup>32</sup> ICCPR, art 17(1).

<sup>33</sup> *Ibid*, art 17(2).

<sup>34</sup> ICESCR, arts 6(1) and 2(2). See Economic and Social Council, *General Comment 18 – Article 6: The right to work*, 35<sup>th</sup> sess, UN Doc. E/C.12/GC/18 (6 February 2006) [19].

<sup>35</sup> Economic and Social Council, *General Comment 13 – Article 13: The right to education*, 21<sup>st</sup> sess, UN Doc. E/C.12/1999/10 (8 December 1999) [1].

<sup>36</sup> ICESCR, art 2(1).

<sup>37</sup> *Ibid*, art 2(2).



affirms at article 5 that:

*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.*

32. Under international human rights law, certain human rights are absolute, and no limitation upon them is permissible.<sup>38</sup> For all other human rights, limitations may be imposed, provided certain standards are met. As noted above, the right to freedom of thought, conscience and religion, and the right to hold opinions, are absolute. On the other hand, the right to manifest one's religion or to freedom of expression can be subject to limitations.
33. Where limitations are permissible, consideration must be given to the principles on which such limitations are justifiable. The Law Council notes that, while freedoms of religion and expression are fundamental human rights and should be protected by law, they should not be protected at the expense of other rights and freedoms. There is also a fundamental right of each individual to respect for their personhood and dignity on the basis of equality. Any limitation on that must be clearly shown to be necessary and proportionate.
34. Article 18(3) of the ICCPR is important because it provides a clear limitation on the manifestation of one's religion or beliefs. The limitation is that which applies to many other human rights and is governed by the principle of proportionality. Article 18(3) specifically refers to limiting the freedom of religion and belief to protect the 'fundamental rights and freedoms of others.' The HRC has provided some guidance as to the interpretation of article 18(3):

*In interpreting the scope of permissible limitation clauses [to article 18], States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 16.*<sup>39</sup>

35. Importantly, the mechanism used for determining the balance is that of proportionality, which is a well-established principle of international law embodied in the above limitation. In general, a State must only interfere with a person's rights if it is proportionate to the legitimate aim pursued.<sup>40</sup> Certain 'permissible limitations' have been placed on freedom of expression, for example.<sup>41</sup>
36. In the context of European human rights law, it has been said that:

*A limitation upon a right, or steps taken positively to protect or fulfil it, will not be proportionate where this is no evidence that the state institutions have balanced the competing individual and public interests when deciding on the limitation or steps, or where the requirements to be met to avoid or benefit from its application in a particular case are so high as not to permit*

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<sup>38</sup> See the Law Council's *Policy Statement on Human Rights and the Legal Profession: Key Principles and Commitments*, May 2017, [19].

<sup>39</sup> HRC, *General Comment No 22*, [8].

<sup>40</sup> *Handyside v the United Kingdom* [1976] Eur Court HR 5 (**Handyside v UK**), [48] and [49].

<sup>41</sup> See Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc A/HRC/23/40 (17 April 2013) (**Special Rapporteur Report**), [28] and [29].

*a meaningful balancing process.*<sup>42</sup>

37. It is expected that domestic legislation which aims to implement international human rights obligations will utilise the principle of proportionality as part of an assessment of the necessity of a measure in order to determine whether a limitation on a right is justifiable.<sup>43</sup>
38. In the operation of article 18, a distinction has been drawn between having a religious belief and its manifestation, the first being an absolute right. The manifestation of religion or belief includes worship, teaching of those beliefs and observance of religious rituals and is not absolute 'as such activities can interfere with the rights of others, or even pose a danger to society'.<sup>44</sup>
39. Similarly, article 20 of the ICCPR, excerpted above, recognises that expression can be destructive in nature and may need to be limited.<sup>45</sup> Also relevant is article 5 of the ICCPR, which states that:
- (a) *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 recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*
  - (b) *There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

### **Domestic recognition of proportionate and balanced approach**

40. In further considering when limitations on human rights may be permissible, the Law Council endorses the analytical framework adopted by the Parliamentary Joint Committee on Human Rights (PJCHR). In general, where a provision appears to limit rights, the PJCHR considers whether and how:
- the limitation is prescribed by law;
  - the limitation is aimed at achieving a legitimate objective;
  - there is a rational connection between the limitation and the objective; and
  - the limitation is proportionate to that objective.<sup>46</sup>

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<sup>42</sup> Harris, O'Boyle and Warwick, *Law of the European Convention on Human Rights* (Oxford University Press, 3<sup>rd</sup> ed, 2014) 13 (emphasis added).

<sup>43</sup> In general, a State must only interfere with a person's rights if it is proportionate to the legitimate aim pursued.

Certain 'permissible limitations' have been set on freedom of expression, for example. See *Handyside v UK*, [48]-[49]; and the Special Rapporteur Report, [28]-[29].

<sup>44</sup> Joseph and Castan, 567 [17.15].

<sup>45</sup> *Ibid*, 626 [18.72].

<sup>46</sup> PJCHR Guide, 7-9. See the Law Council's *Policy Statement on Human Rights and the Legal Profession: Key Principles and Commitments*, May 2017, [19].

41. The Religious Freedom Review emphasised the 'equal status in international law of all human rights, including freedom of religion',<sup>47</sup> as well as the need for a balanced and proportionate approach.<sup>48</sup> It highlighted at the outset that:

*Importantly, there is no hierarchy of rights: one right does not take precedence over another. Rights, in this sense are indivisible. This understanding was absent from some of the submissions and representations the Panel received. Australia does not get to choose, for example, between protecting religious freedom and providing for equality before the law. It must do both under its international obligations.*<sup>49</sup>

42. Australian case law has also recognised the need for a balanced approach when tensions arise between the freedom to manifest religion, and other rights. For example, in *Christian Youth Camps Ltd & Ors v Cobaw Community Health Services Ltd & Ors*<sup>50</sup> (*Christian Youth Camps*), Maxwell P observed that:

*Article 18 draws a distinction between the freedom 'to have or to adopt' a religion or belief, and the freedom 'to manifest [that] religion or belief in worship, observance, practice and teaching'. Article 18 permits no limitation of any kind on the freedom to hold a religious belief. The freedom to manifest a religious belief, however, may be subject to limitations. As art 18.3 recognises, this freedom may need to be limited in order 'to protect ... the fundamental rights and freedoms of others'.*<sup>51</sup>

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<sup>47</sup> Religious Freedom Review, 1 (Rec 3).

<sup>48</sup> *Ibid*, 29 [1.60]; 59 [1.229]; 66 [1.260].

<sup>49</sup> *Ibid*, 13 [1.37].

<sup>50</sup> [2014] VSCA 75 (*Christian Youth Camps*).

<sup>51</sup> *Ibid*, [190] (Maxwell P).