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Chair, Expert Panel  
Religious Freedom Review  
Department of the Prime Minister and Cabinet  
Parliament House  
Canberra ACT 2600

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## Freedom of Religion Review — Ethical Decision Making

Dear Mr Ruddock and Panel,

Thank you for the opportunity to contribute to the Department of the Prime Minister and Cabinet's Religious Freedom Review. This submission seeks to contribute to the consideration of the **process of this review** and how it reaches its determinations in terms of *equitable* and *ethical* approaches.

The Terms of Reference to the Panel are very broad, and in some respects ill-defined. Therefore, this submission also attempts to **refine concepts** and **define scope** relevant to contemporary Australian society.

This submission shall attempt brevity by restricting its remarks largely to two current debates in Australian politics in relation to 'religious freedom': the legalisation of **marriage equality** (ME); and the legalisation of **voluntary assisted dying** (VAD) for the terminally ill in restricted circumstances.

It will also attempt to remain brief by referring largely to **Christian religion**, Australia's largest category of faith, while remarks may apply to other faiths more generally.

Ten **recommendations** are made to the Panel for its consideration to help achieve equitable, ethical and defensible outcomes.

Thank you again for the opportunity to participate in this deliberation.

Yours sincerely

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# Terms of Reference

This submission addresses the inquiry's Terms of Reference, which are:<sup>1</sup>

## Objective

The Panel shall examine and report on whether Australian law (Commonwealth, State and Territory) adequately protects the human right to freedom of religion.

## Scope

In undertaking this Review, the Panel should:

- Consider the intersections between the enjoyment of the freedom of religion and other human rights.
- Have regard to any previous or ongoing reviews or inquiries that it considers relevant.
- Consult as widely as it considers necessary.

# 1. Broaden the unethically narrow inquiry base

While imputing no disrespect to the Panel's expert legal members, it is worth noting the process of this inquiry is profoundly less extensive and robust than other inquiries or consultations on similarly important matters.

It is customary for proposals of controversial social policy change, and where an outcome may be *legislative* change that affects all citizens, to be driven by inquiries conducted by an appropriate *Parliamentary Committee*.

For example, in 2016 the Minister for Foreign Affairs the Hon. Julie Bishop asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to investigate 'the status of the human right to freedom of religion or belief.'<sup>2</sup>

Also, in Victoria and Western Australia, parliamentary committees have inquired into voluntary assisted dying (VAD) law reform.<sup>3,4</sup>

This standard of consultation helps ensure cross-party contribution, and that the more extensive resources of Parliament are brought to bear.

Importantly, it also provides *parliamentary privilege* protection for submissions, meaning that contributors may be candid — though still within limits — while avoiding the usual legal restrictions on free speech. (See also Section 2 below on submission publication.)

In contrast, the Federal Government has chosen a simple, hasty Government-controlled path on this occasion. It has not sought to have the Parliament commission a Parliamentary Committee to conduct the inquiry.

Nor has the Government, so far, proposed a voter poll on religious freedom (RF), as it did for marriage equality (ME). The process for this RF inquiry therefore is categorically less substantial in resources and reach. Importantly, it fails to call on religious Australians to publicly argue their case as was required of the LGBTI community on ME.

This is a glaring, inequitable, political and unethical discrepancy in standards.

## Recommendations

1. That the Panel recommend a further and more detailed inquiry be conducted by a relevant Parliamentary Committee.
2. That the Panel recommend an equitable voter poll, similar to the one for Marriage Equality, be conducted so that Australians may voice their views directly on any proposed changes to religious freedoms.

## 2. Scrap unethical secrecy of submissions

Full public access to submissions and presentations arguing for and against major social issue law reform affecting all citizens is a critical dimension of robust democracy. Electors have a right to know what arguments are being put and by whom on such important social matters.

The Panel's recent determination that submissions will mostly be published is welcomed and to be encouraged.

I urge the Panel to ensure that *all institutional* submissions are published. It would be unconscionable for a religious or any other institution to argue, under *private privilege*, that they ought to be afforded additional rights in law to discriminate against others, affecting potentially large sections of the Australian public.

I also urge the Panel to ensure that all individual submissions are also published, *excepting only* those whose publication may pose risks of legal prosecution for their authors due to lack of Parliamentary Privilege protection.

Of deep concern to robust democracy is the Panel's decision to conduct secret hearings.<sup>5</sup> While there may be justifiable exceptional reasons for a tiny minority of select appearances to remain confidential, it is unethical for an inquiry into major public policy reform to hold private hearings as a matter of course.

That a *formal* Panel established by the Prime Minister's office for major policy review should routinely facilitate "*informal* submissions," as Chair Ruddock describes them, is a travesty of process. The Chair also reports "issues with resourcing" as a reason not to record and publish appearance transcripts. Given the effort required to facilitate an appearance, recording it is a minor rather than a genuine resourcing matter. If it were a genuine resourcing matter, a Parliamentary rather than Prime Ministerial inquiry would be the appropriate solution (see Section 1).

The appropriate course of action for the Panel is to publish both written submissions and transcripts of witness appearances. Failure to do so is very likely to result in public distrust and rejection of the Panel's final report.

A Parliamentary Committee inquiry would address these fundamental flaws in the current process.

### Recommendations

3. That the Panel publish *all* institutional written submissions, and all private submissions except those that may give rise to risk of legal prosecution of their authors.
4. That the Panel record and publish transcripts of all witness appearances.

### 3. Reject unethical implicit 'adequacy' bias

The inquiry's Terms of Reference state that the Panel shall investigate whether current law in Australia:

"...**adequately protects** the human right to freedom of religion." [emphasis added]

The clause "adequately protects" reveals implicit bias: the restricted view that current protections for RF in Australia may be *inadequate*, or merely adequate. It fails to directly address the possibility that current protections for RF may be too high. Reasons for raising this point will become evident in later sections of this submission.

There is a modifier to the bias. The Terms also state that the Panel shall:

"Consider the intersections between the enjoyment of the freedom of religion and **other human rights**."

However, the Terms don't define the scope of "other human rights". It may be that the Government intended other human rights like those included in international covenants on human rights,\* such as personal liberty, food, clothing and housing, social security, freedom of movement and freedom from servitude and cruel or degrading punishment.<sup>6</sup>

Freedom of conscience is also a foundational principle of other internationally recognised rights such as economic and social development, education, just conditions of work, and privacy. Thus, while religion is a facet of human expression additionally recognised in international covenants, freedom *from* religion is as much a matter of conscience as freedom *of* it.

Therefore, it is a primary duty of the Panel to examine and report on human rights in relation to freedom *from* religion and its practice, not merely of religion itself.

Recent indications suggest that the Panel may be leaning heavily towards the intent of increasing RF, while failing to adequately explore freedom *from* religion and true balancing of a range of human rights. To do so would be unethical, a breach of the broader intent of the Panel's Terms of Reference and a betrayal of Australians' trust in the review.

#### Recommendations

5. That the Panel expressly resolves that its Terms of Reference include amongst 'human rights' the right to freedom *from* religion, not merely *of* religion.
6. That the Panel expressly consider and report on specific situations where lawful rights to religious freedom may currently be *excessive* and to recommend any necessary changes to legislation to address the imbalance.

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\* The Federal Government's intentions are somewhat ambiguous since the Commonwealth does not have a Bill of Human Rights.

## 4. Adequately define “freedom of religion”

The Panel’s Terms of Reference fail to describe what the Government intends or imputes by the phrase “freedom of religion”.

Australian Commonwealth, State and Territory laws make no *thought* or *belief* unlawful. That is, our laws convey freedom of cognitive faculties and do not serve as a state-backed ‘thought police’.

Rather, our laws describe limits on *behaviour*, that is, personal and institutional conduct that is mandatory (e.g. drive on the left), permitted (e.g. undertake a pregnancy termination), or prohibited (e.g. murder); and to define what punishments shall be applied by the state for transgression of mandatory or prohibited conduct.

### Australian constitution

At least at the federal level, the Australian Constitution, section 116 states that:

“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.”

This confirms that the scope of the law is limited to behaviour: excluding thought and belief.

### Equity in freedoms

This submission argues that it is the intersection of and disputes about the *exercise* and *observance* (that is, *behaviour*) amongst the religious and between the religious and *non-religious* in Australia, that is the substance of the Panel’s deliberation.

Indeed, the largest ‘faith’ group identified by the 2016 Australian Census was “no religion”, at nearly a third of Australians, 30.1%. This is a considerably larger group than the next-largest faiths, “Catholic” at 22.6% and “Anglicans” at just 13.3%. It would therefore be **egregiously unconscionable and unethical** for the Panel to overlook, ignore or sideline the *freedoms* of non-religious Australians where those freedoms are, or are proposed to be, restricted or extinguished by religious “exercise” or “observance”.

### Recommendations

7. That the Panel defines precisely, in respect of this inquiry, what “freedom of religion” is, and, in light of “other human rights” that the definition includes by equity “freedom *from* religion.”

## 5. Define coherent *principles* for setting boundaries

Section 116 of the Australian constitution states that:

“The Commonwealth shall not make any law ... for prohibiting the free exercise of any religion...”

A key task for the Panel is to determine the meaning of “free exercise”.

### What is “free exercise”?

Clearly, the term “free” in this context is intended to mean “unhindered” rather than “without cost”; and “exercise” means “to make use of” or “put to use”, meaning to implement in practice.

The term “any religion” means, by reference to the context and wording of the whole section, a “religious denomination or creed.”

Thus, the Australian constitution seems to say that the practice of religion by a religious denomination or creed cannot be hindered by federal legislation. This is would be a broad protection indeed.

However, the constitution’s interpretation in practice has been narrower. For example, no matter how ‘conscientiously’ the religious belief to do so is held, it is unlawful for one religion to incite hatred against another; to harass persons within a certain distance of abortion clinics (state rather than federal law); or to employ cruel and inhumane means to kill animals even for purposes of worship.

The “free exercise of any religion” is clearly not interpreted to mean without limit. Nor should it. Permission granted to any person to flout laws that hold for others, simply on the basis of a claimed belief or conscience, is an invitation to disregard law altogether: to plump for anarchy.

### Mandatory coherent and defensible *principles* for discrimination

Given that there must be limits, it is critical that the Panel clearly and expressly articulates the *principles* (not mere axiomatic or currently normative claims) upon which it decides to set or reset any boundaries.

If the Panel proposes that religious persons or institutions providing commercial services to the public (rather than exclusively in a context of worship – see Section 6) may discriminate against certain people on grounds that don’t qualify for non-religious reasons, it is mandatory that it explain coherent reasons why.

For example, if the Panel proposes that commercial (rather than worship-only) service providers may refuse a marriage service to a same-sex couple, it must articulate sound and coherent *principles* by which it proposes to:



- Exclude the right to discriminate against interracial or divorcee weddings, or for couples whose age gap is deemed inappropriate, or any other conscientiously-held religious belief;
- Exclude the right for the religious to refuse not only supply of the wedding ceremony, but the reception, subsequent wedding anniversary travel, catering or accommodation, any kind of photography at any time that records the married nature of the couple, supply of repairs to the married couple's home, and so on;
- Facilitate the right to discriminate for conscientious religious claims but not for conscientious non-religious ones (see Section 6: Religious conscience is not 'special').

### **Mandatory coherent and defensible *principles* for observance**

If the Panel recommends the right to observe some religious beliefs (e.g. discrimination against same-sex couples, and not only in marriage but in employment), it must offer coherent *principles* that justify the *exclusion* of the observance of other religious and conscientiously-held beliefs, for example to at the same time prohibit:

- the right to arranged marriages or marriage of minors;
- the right to cruel and inhumane slaughter of animals;
- the right of a Jehovah's Witness doctor to refuse to administer a life-saving blood transfusion to a patient who wants it;
- the right of a religious doctor to administer medical interventions they conscientiously believe the patient *should* have, but which the patient doesn't want;
- the right for a man to have two wives (Genesis 4:19, 1 Samuel 1:2, 1 Chronicles 4:5, 2 Chronicles 24:3);
- the right to require women to remain silent, to subjugate themselves to men, and to never attempt to teach men (1 Timothy 2:11-12);
- the right to buy slaves (Exodus 21:2) and to require slaves to serve their masters, no matter how cruel, with respect (1 Peter 2:18);
- the right to kill a person who curses his father or mother (Exodus 21:17, Leviticus 20:9);
- the right to dash one's enemy's infants against the stones (Psalms 137:9);
- the right to require that a man who rapes a (female) virgin to pay the victim's father 50 shekels (around \$500) and marry the victim for life (Deuteronomy 22:29);
- the right of a man to send his female partner out to be gang raped, and when she returns and dies of her injuries on his doorstep, to cut her body into pieces and send them across the land (Judges 19:25-29);
- the right of a head of state to require the man seeking the hand of his daughter to slaughter 100 heathens and supply their foreskins as payment; and for the man to slay and supply 200 instead (1 Samuel 18:25-27).

Clearly, if the Panel argues that *any* religious observance special rights are to be justified on the basis of “freedom of religion”, it must establish and articulate sound and coherent *principles*, rather than merely axiomatic or normative claims, for why not *all* of them are justified.

## Recommendations

8. That the Panel, if it supports *any* lawful exemptions from the general applicability of laws on the basis of religion, establishes and articulates coherent, robust and defensible *principles* for such exemptions, and not rely merely on axiomatic or currently normative religious claims about some beliefs but not others.

## 6. Acknowledge that religious conscience is not 'special'

Many claims of religious belief or conscience are axiomatic. For example, in its submission to the Federal Parliament Committee inquiry into "freedom of religion" commissioned by the Hon. Julie Bishop, the Australian Catholic Bishops Conference claims categorically that:

"religious belief provides the origin of human rights."<sup>7</sup>

Clearly, this belief itself is not held by the largest 'faith' group of Australians: "no religion." The Bishops' claim also conceives that the non-religious are themselves either disinterested in or incapable of formulating valid human rights, revealing significant hubris amongst these clerics.

It is claims such as the Catholic Bishops' which contribute to the attitude in some social circles that religious beliefs and conscience are of a special class or standard — deserving to be accorded unique significance and to prevail over non-religious belief and conscience where there are conflicts.

### No special class or standard exists

In order to justify, where there are conflicts of freedom, state-sponsored restrictions to the freedoms of others by the "exercise" and "observance" of religion, the Panel must establish that religious belief and conscience is of a superior class or standard from non-religious belief and conscience.

However, multiple forms of evidence clearly demonstrate that this is not so. For example, religiosity correlates with increased belief in fake news and conspiracy theories,<sup>8,9,10</sup> and there is ample evidence of clear violations of moral behaviour amongst the religious:

**Example 1:** The recent royal commission into institutional responses to child sexual abuse found that *more than half* (57.9%) of all child sexual abuse cases reported to it *occurred in religious institutions* — committed by *thousands* of religious perpetrators.<sup>11</sup> A considerable majority (61.8%) occurred within a single religious denomination: the Catholic church. Clearly, "good conscience," ethical behaviour and the human right to be free of predatory sexual conduct were absent from religious institutions *more* than they were absent from secular ones; and this at the clerical (most religious) rather than merely lay level. Catholic clergy also continue to argue, against the clear values of most Australians, that the mere *concept* of the confessional is more important than the *actual* safety of *actual* children, in relation to reporting of offenders. Some clergy have stated that they would willingly go to jail for holding the confessional confidential when state laws *require* disclosure of child sexual abuse.<sup>12</sup>

**Example 2:** Domestic violence is a major moral, legal and social problem in contemporary Australian society, and the religious are not immune. The Anglican, Uniting and Baptist churches have acknowledged that they have a serious domestic violence problem amongst their members, *including amongst their clergy*.<sup>13</sup> Like child sexual abuse, it's taken media exposure, not 'natural religious conscience,' for churches to begin to act.

**Example 3:** The religious often believe themselves to hold superior moral values and exhibit more moral behaviour than the non-religious. However, despite *self*-reports of higher honesty amongst the religious (for example, less intention to cheat in college tests),<sup>14</sup> numerous studies show that in *practice* they cheat at the same rate<sup>21, p385</sup> — or even considerably more<sup>15</sup> — as the non-religious. Some research suggests that the highly religious and the non-religious have similar negative attitudes towards cheating, while the ‘somewhat’ religious accept cheating to a much greater extent.<sup>16</sup>

**Example 4:** US President Donald Trump’s spiritual advisor and wealthy evangelist Gloria Copeland recently argued against flu inoculation, stating that people should instead “inoculate yourself with the word of God” and pray not to get the flu.<sup>17</sup> This immoral promotion rejects substantial scientific evidence that prayer doesn’t help medical conditions (and in fact may in some cases exacerbate them),<sup>18</sup> and that failure to vaccinate negatively impacts the wellbeing of broader society.<sup>19</sup> Indeed, the religious *inconsistently* make more attributions to God when religious behaviour coincides with positive health outcomes, but avoid God attributions when religious behaviour coincides with negative health outcomes.<sup>20</sup>

**Example 5:** While religion can at times facilitate tolerance and positive behaviour, it can also generate intolerance, prejudice and physical violence:

“Anti-Semitism is still preached from some pulpits. The Christian-based Ku Klux Klan, still in existence in regions of the South, spreads hatred of blacks, Jews, and Catholics. Many wars and other violent conflicts in today’s world are religiously based: Shiites and Sunnis battle in the Middle East; Catholics and Protestants still sporadically clash in Northern Ireland; Sikhs and Hindus die in violent conflicts in India; ethnic and religious “cleansing” occurred in Bosnia (of Muslims by Christians) and now in Sudan (of Christians by Muslims); the Taliban in Afghanistan has taken away women’s rights and has also attacked Western aid workers for being open about their Christian beliefs; extremist Palestinian Muslim groups send suicide bombers to kill Israeli civilians; and Israeli Jews respond with military violence against Palestinians. The list could go on.”<sup>21, p381</sup>

Clearly, **religion does *not* mandate superior moral thought or conduct** compared with the non-religious, as claimed by the Australian Catholic Bishops Conference:

“Religion is a natural human good which contributes to and fosters the flourishing of the human person and their physical, social, emotional and spiritual wellbeing.”<sup>7</sup>

Indeed, copious evidence demonstrates that the religious conscience is, in practice, compared with the non-religious, neither special nor superior.

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<sup>†</sup> We’ll set aside for now the obvious conceptual advantage, but religious avoidance, of praying that God *eliminate* the flu rather than merely ensure that people don’t succumb to it.

## Reject special pleading

Beliefs can be held sincerely and in 'good conscience' whether religiously founded or not. Indeed, secular ethics conscientiously develops and reflects on its own moral frameworks without reliance on religion.

Further, religions themselves change stance on their own beliefs from time to time. For example, the Catholic church in 2007 changed its mind on 'limbo', the place unbaptised children were said to go when they died. Then Cardinal Ratzinger said limbo should be abandoned because it was "only a theological hypothesis".<sup>22</sup> Given how fervently the Church previously pursued the concept of limbo, it is unclear what other "theological hypotheses" may be abandoned, altered or adopted in the future. On what basis then may an institutional (see *Institutional Versus Individual Conscience*) theological hypothesis be argued as a foundational belief of religion and deserving of special protection?

Thus, with theological revisionism and religion's failure to ensure moral *behaviour*, there is no *principled* argument for a special "pride of place" accorded to religious belief and conscience relative to the plethora of private choices, commitments and practices of the citizenry.<sup>23</sup>

Singling out only religious belief and conscience to enjoy rights to discriminate against others while denying others the right to discriminate against the religious is *special pleading*: it's unjustifiable and **holds no moral authority** in secular society.

## Discard faux 'institutional conscience'

Of central importance to protection of religious conscience is whose conscience it is to be protected: individual or institutional.

There are sound reasons to reject special rights for institutional religious conscience even more than individual religious conscience, because institutional conscience is fundamentally flawed: it's a fabrication.<sup>24</sup> An institution, for example a hospital, is not a real person: it's a legal construction, and a legal construction cannot have a real conscience. Conscience is something that exists in the mind of a natural person, with four key characteristics:

- a. it is inherently human;
- b. it reflects private, internal judgement;
- c. it is predicated on recognition of the autonomous moral agent whose freely-made judgements are worthy of respect and whose infringement is an infringement on the agent's humanity; and
- d. it compels the person to act or refrain from acting.<sup>24</sup>

Codes of Conduct and other guiding documents containing 'moral rules' are not conscience, either: they are merely dictates over others' behaviour. Many members of the institution may disagree with some of its dictates. For example, the impeccable 2016 Australian Election Study conducted through Australian National University found that most Australian Catholics (74%) and Anglicans (79%) expressly disagree with their Bishops' opposition to

VAD.<sup>25</sup> For ME, a significant majority of Catholics (73%) and Anglicans (63%) also disagree with their Bishops' opposition.

Obviously, an institution's dictates may not even be crafted by its employees and clients, but by remote others. The Vatican for example demands that its own dictates about health care take precedence over, and sometimes extinguish, the real conscience of actual doctors and patients in Catholic healthcare facilities in Australia.

There is no defensible reason to insert a Roman (or other) institutional clergyman into the therapeutic medical relationship between a doctor and patient in an Australian healthcare facility. The insertion is particularly offensive where the institution receives funding from the secular public purse, while demanding that all doctors and patients adhere to religious healthcare dictates with which they may strongly and conscientiously disagree.

The corollary of requiring a secular medical doctor to abide by the pseudo-conscience of a religious medical institution, is requiring a religious doctor to abide by the pseudo-conscience of a secular institution, for example, being required to provide services with which the doctor conscientiously disagrees. Demanding the former while refusing the latter is moral hypocrisy.

Institutional pseudo-conscience is especially egregious when the Catholic or other religious healthcare facility is the only facility the patient may reasonably access without undue burden, blocking the patient from accessing healthcare options to which they are lawfully entitled and which doctors in the facility may be willing to provide, such as fertility control services or voluntary assisted dying.

Even religious institutions' own clerics often disagree with institutional pseudo-conscience (doctrine), though sometimes they express their opinions only in retirement. Examples include Catholic theologian and author of "A Dignified Dying" Hans Kung, Catholic Fr Jacques Pohier, Johannesburg and Capetown Archbishop Desmond Tutu, former Archbishop of Canterbury Lord George Cary, former Dean of St Paul's Cathedral Right Rev. Dr W. Inge, President of the Union Theological Seminary Henry Sloan Coffin, Baptist Riverside Church pastor Harry Emerson Fosdick, former Moderator of the NZ Presbyterian Church Rev. John Murray and NZ Presbyterian Minister Rev. Glynn Cardy, Baptist Minister Rev. Trevor Bensch, Uniting Church Executive Minister Rev. Dr Francis McNab, Baptist Minister Rev. Dr Craig de Vos, Anglican Canon Rosie Harper, and Church of Scotland Minister Rev. Scott McKenna, who all support VAD.

On the Panel itself, Fr Frank Brennan is on the public record disagreeing with Catholic doctrine banning ME.<sup>26</sup> In all these cases, institutional pseudo-conscience extinguishes the real conscience and right of even senior members to express or observe their own conscientiously-held beliefs.

For these reasons, **institutional religious conscience is especially unsound, hypocritical and damaging**. It deserves to be *rejected* by the Panel, the Government and the Parliament, including where the institution is funded to any extent by the secular public purse.

A reasonable exception may be entertained with respect to institutional facilities whose *sole* purpose is worship — only to observe and exercise the religious doctrines of a denomination or creed — but which do *not* provide general non-religious services (e.g. health care, education or emergency housing) to the public, or draw on the public purse.

However, this raises again the issue of equitable reciprocity. If a religious institution is permitted to discriminate against others on the basis of its pseudo-conscience, non-religious institutions must be afforded the right to *similarly* discriminate against the religious according to their own pseudo-conscience.

For example, it is currently lawful for a religious school to dismiss an employee for entering into a same-sex marriage merely on the conscientious grounds of disapproving of the employee's private life, when the employee's marital status is of no relevance to the performance of her duties (e.g. accountant). However, it is currently unlawful for example, for an atheist association to similarly dismiss an employee — on the conscientious grounds of disapproving of the employee's private life — who has adopted or begun practicing a religion.

This is an egregious and indefensible inequity and must be corrected by withdrawing support for special exemptions in relation to institutional pseudo-conscience.

## **Adopt two equitable and defensible principles**

To assist resolving cases where religious and non-religious consciences come into conflict, the Panel can make two simple, coherent, defensible and equitable recommendations:

That religious conscience may prevail over non-religious conscience in places and situations whose only purpose is religious worship of a specific denomination or creed, but that in places where non-religious services (such as healthcare, education, emergency housing, or function catering) are provided to the public or are funded in any part by the public purse, religious conscience shall not be permitted to limit or extinguish other consciences.

and...

That to the same extent that religious conscience is permitted to discriminate against the freedoms of others, others must be permitted to conscientiously discriminate against freedoms of the religious.

## **Recommendations**

9. That the Panel expressly acknowledge that religious conscience is *not* a special class or standard of conscience.
10. That the Panel specifically reject the fabricated notion of 'institutional conscience' and deny special exemptions from general laws based on it, except potentially in the specific context of worship-only religious practice, that is, where general services (such as civil marriages, health care or education) are *not* being provided to the public *nor* financed in any part by public funds.

## Conclusions

The Panel's Terms of Reference and its conduct published to date indicate that **this inquiry's procedural base and process are far too narrow**. A **Parliamentary Committee inquiry** followed by a **public vote on religious freedoms** would be the appropriate manner for the Federal Government to **demonstrate consistency of equity in its deliberations** on important social policy. Failure to do so would only **confirm Government bias**.

The Panel's moves to **publish submissions** is to be **commended**, and *all* institutional and most personal submissions should be published. However, the Panel's approach to entertaining and encouraging **private appearances** without recording or transcript is to be **condemned** as a serious transgression of proper and transparent public consultation. Failure to publish appearance transcripts would **amplify perceptions of Government and Panel bias**.

The Government's Terms of Reference additionally convey **implicit bias** by requesting the Panel consider whether "freedom of religion" is "**adequate**", overlooking the real and present condition of its **excessiveness in some contexts**. **Repeated forms of bias will undermine public confidence** in the Panel's consultation, its report, and the Government.

The Panel must also expressly and carefully **define "freedom of religion"** given the lack of clarity from the Government, especially noting that the Terms of Reference include by explicit deduction **the equal right to freedom from religion**.

If the Panel recommends in favour of *any* special legal exemptions in regard to "freedom of religion", it *obliged* to publish **express, coherent and reasoned principles** for (a) allowing exceptions for **some religious beliefs but not others**, and (b) **allowing exceptions for beliefs held in 'good conscience' by the religious, but not the non-religious**. To **retain credibility**, the Panel must **refrain from arbitrary arguments such as axiomatic and normative claims**.

The Panel must also expressly recognise that **religious conscience is not a special class or standard of conscience** and that arguing for **protection of religious but not non-religious conscience** is an **unjustifiable form of special pleading**. Multiple sources of evidence show that **the religious are, on average, no more (and sometimes less) moral**, and rather less rational, than the non-religious.

Additionally, the Panel must recommend the **abolition of the legal recognition of 'institutional conscience'**, a **fabricated pseudo-conscience** that allows remote persons (such as a **religious head office**) with no direct and proper right to insert itself into local, private relationships (such as the therapeutic relationship between a doctor and her patient), **to dictate prejudices and discrimination**, and to **arbitrarily deny citizens access to lawful conduct or opportunities in which they wish to participate**. A reasonable exception to this is to allow exemptions only within religious facilities whose *only* purpose is worship — expressly excluding those that deliver non-religious services (such as health care, education or emergency housing) to the general public, or which derive any income from the public purse.

I **commend** these **ethical procedural considerations** to the Panel and the Government.



## Summary of recommendations

1. That the Panel recommend a further and more detailed inquiry be conducted by a relevant Parliamentary Committee.
2. That the Panel recommend an equitable voter poll, similar to the one for Marriage Equality, be conducted so that Australians may voice their views directly on any proposed changes to religious freedoms.
3. That the Panel publish *all* institutional written submissions, and all private submissions except those that may give rise to risk of legal prosecution of their authors.
4. That the Panel record and publish transcripts of all witness appearances.
5. That the Panel expressly resolves that its Terms of Reference include amongst 'human rights' the right to freedom *from* religion, not merely *of* religion.
6. That the Panel expressly consider and report on specific situations where lawful rights to religious freedom may currently be *excessive* and to recommend any necessary changes to legislation to address the imbalance.
7. That the Panel defines precisely, in respect of this inquiry, what "freedom of religion" is, and, in light of "other human rights" that the definition includes by equity "freedom *from* religion."
8. That the Panel, if it supports *any* lawful exemptions from the general applicability of laws on the basis of religion, establishes and articulates coherent, robust and defensible *principles* for such exemptions, and not rely merely on axiomatic or currently normative religious claims about some beliefs but not others.
9. That the Panel expressly acknowledge that religious conscience is *not* a special class or standard of conscience.
10. That the Panel specifically reject the fabricated notion of 'institutional conscience' and deny special exemptions from general laws based on it, except potentially in the specific context of worship-only religious practice, that is, where general services (such as civil marriages, health care or education) are *not* being provided to the public *nor* financed in any part by public funds.

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