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RELIGIOUS FREEDOM REVIEW SUBMISSION
~ : https://pmc.gov.au/domestic-policy/religious-freedom-review/submission ~

PART ONE

Notwithstanding the loaded terms-of-reference that imply religious freedom as being somehow constrained and that those constraints are preventing "free" exercise of the observation of faith and that this now requires a Federal legislative remedy, **the fundamental question that need be resolved before any such inquiry begins is:**

Is it permissible for the Federal government to make any law "with respect to religion" which is forbidden under s 116 of the "Constitution"
(Constitution of Australia Act)?

The answer to that question is NO:
a) S 116 prohibits federal parliament making any law "with respect to religion"; (and)
b) the breadth of the prohibition was articulated in 1943 by the High Court in ***Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth ("Jehovah's Witnesses case") [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943)***.

An inquiry such as this one conducted in the full knowledge of the prohibition under s 116 is either:
a) a political indulgence (lip service) to placate faith communities' shrill objections to laws that "limit" their religious observance, who, on religious grounds, object to same sex marriage, terror laws, "lack of respect" for their religion, the lack of, what they claim, is insufficient "protection" of "the divine" (blasphemy laws) etc, all of which they claim constitute a constraint on their freedom to observe, exercise and "enjoy" their faith – as the tenets of various faiths require they act against homosexuals, atheists, "blasphemers", etc); or
b) is being conducted by the Federal Parliament with a view to actually passing laws on religion because Parliament intends to breach s 116 of the "Constitution" (even if this means using the states as proxies) in the hope that no-one notices; or

c) the Federal government (or individual ministers of the government) has been emboldened by the increasingly strident pronouncements made by individual judges extolling their religiosity and championing of “law” as a religious institution. Examples include Emilios Kyrou (Victoria) [APPENDICES 1 & 2], Marilyn Warren (Victoria) [APPENDIX 3], the pronouncements made by the Greek Orthodox Church on “the Law” and Christianity [APPENDIX 4], as well as rulings made by judges of the High Court, Nettle – when he was still sitting as judge in the State court (Victoria). Nettle ruled that criticism of religion (its tenets) is prospectively defamatory of the believer (Nettle, Catch the Fire, 2006).

PART TWO

Additionally there exist problematical elements regarding this inquiry which arise from the fact that Article 18 of the **ICCPR** is inextricably tied to Article 19.

Freedom to form opinions, the right to receive an impart information, the expression of ideas are protected – but the freedom to hold opinions on the one hand, and hold religious beliefs on the other does not make it corollary that this constitutes a “right” to exercise discrimination or to incite hatred on the grounds that since this is what is called for in the tenets of various religions, and is what is “believed” that the “free exercise” of religion gives faith-believers the right to act on such beliefs [1]. The conclusions by the United Nations in “**General Comment 34 of 2011**” regarding Article 19 of the **ICCPR** is directly central to this inquiry as it relates the freedom to holding an opinion, along with religious freedom. Exercise of “religious freedom” is not possible without violating human rights.

I emphasise to this panel that the International Treaties to which Australia is a signatory cannot be twisted either by you or the Federal government or even the judges of the High Court. The interpretation of treaties is bound, not by your spin, but by another treaty to which Australia is

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[1] ie, The Koran and hadith incites hatred against Jews, the Koran hatred against Christians, the New Testament hatred against Jews, Old Testament hatred against homosexuals, etc. There is no justification to legalising hatreds because they form part of a religious belief.

signatory, the **Vienna Convention on the Law of Treaties** ("Australian Treaty Series 1974 No 2"): Articles 31 and 32 [2].

This being so means that the 29 December 2014 report regarding Article 18 by the Human Rights Council made to the General Assembly of the United Nations, the "***Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt***" ("**GE.14-25087**") cannot be disregarded when consideration is given to the "freedoms" being sought by the faith communities which are inconsistent with the human rights of the **ICCPR**, including Article 18.

The UN Rapporteur's report when applied to the context of the particular "freedoms" sought by faith communities with regard to the same sex marriage debate and the "right" sought to discriminate on religious grounds, makes it evident that what faith communities seek is permission to breach the human rights of others because breaching the human rights of (for example) the LGBTQI "community" constitutes part of their faith's tenets, their "belief", which they claim they have the right to exercise. This is clearly impermissible under Article 18 of the **ICCPR** per the Rapporteur's report at "2":

> "In its resolution 25/12, **the Human Rights Council condemned 'all forms of** violence, **intolerance and discrimination based on** or in the name of **religion or belief**, and violations of the freedom of thought, conscience, religion or belief, **as well as any advocacy of religious hatred that constitutes incitement to discrimination**, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means'"

Yet this is precisely what the faith communities seek.

With regard to other "constraints" imposed on faith communities that prohibit those of faith being able to retaliate against individuals who critique or mock tenets of their faith (whether they are outside or inside the faith), the Rapporteur concludes in the negative at "7":

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[2] SECTION 3: INTERPRETATION OF TREATIES

Article 31
General rule of interpretation

1. 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes …[etc]

Article 32
Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

> "violence in the name of religion also affects followers of the very same religion, possibly also from a majority religion, in whose name such acts are perpetrated. Voices of moderation or critics who actively oppose the abuse of their religion for the justification of violence bear an increased risk of being accused of 'betrayal' or 'blasphemy' and having retaliatory penalties inflicted upon themselves."

Accordingly: it is inconsistent with Article 18 for faith communities to seek the right to prosecute cases of "blasphemy", or call for respect of their religion and its tenets, by claiming that preventing them the capacity to prosecute those who show no respect is a constraint on their full religious observance. (This aside from the Australian "Constitutional" context where such calls by faith communities constitute no less than a demand for compulsory religious observance to be imposed on those with no faith or of other "faiths" which is prohibited by s 116 of the "Constitution".)

The Rapporteur states at "42":

> "the State should repeal anti-blasphemy laws, anti-conversion laws and criminal laws that discriminate against certain people according to their religious affiliations or beliefs or criminalize their "dissident" practices."

and at "94":

> "**States should repeal** anti-blasphemy laws, anti-conversion laws and **any other discriminatory** criminal **law provisions, *including those based on religious laws.***"

a) it is inconsistent with Article 18 to seek to introduce any form of blasphemy law to protect religion; and
b) laws based on religion (ie, Sharia) should be repealed (notwithstanding this panel, ie, Aroney, who has called for their introduction!)

With especial consideration of blasphemy laws that seek to protect religion itself – a proposition championed by Greek Orthodox Christians as well as Muslims – religion is not human and thus human rights laws and human rights protections do not apply to it. It is an asinine proposition that is contrary to human rights and seeks to subvert human rights in order to protect the mythological, non-human and non-existent "divine".

As is self-evident, what faith communities claim constrains their right to fully partake in their religion and fully observe their religions' tenets, would, if permitted to be exercised, constrain those not of their faith and those with no faith at all. Calling for religious laws (ie Sharia) is inconsistent with Article 18. To permit discrimination (ie, against homosexuals), etc, on the grounds that prohibiting discrimination constitutes a constraint to the freedom to observe faith is also inconsistent with Article 18. It is not up to this panel to decide how it's going to interpret Article 18 – the **Vienna Convention on the Law of Treaties**, Articles 31 & 32, does not give this panel or the Federal government or the High Court this option.

Even if such a law were to first be successfully passed by parliament, and then subsequently survive the High Court, and then be successfully prosecuted within Australia, it would ultimately fail when the victim of the religion-law Petitions Geneva. Australia will be in breach of its human rights obligations

under the **ICCPR**, and the victim of the law will have the right to remedy under Article 2 (3) of the **ICCPR**.

There is one international "agreement" that incorporates law based on religion, Sharia, at the expense of human rights. It is a construct made by the OIC, and is incompatible with the **ICCPR** as all "rights" stem from Sharia. AUSTRALIA IS NOT A MEMBER OF THE OIC, AND IS NOT A SIGNATORY TO IT (**Cairo Declaration on Human Rights in Islam**).

PART THREE

HOWEVER,
this entire discussion is moot. **Federal Parliament is given no right in the "Constitution" to make law with respect to religion per s 116**.

S 116, in ***Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth ("Jehovah's Witnesses case") [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943)***.

Latham (Chief Justice at the time) at [2] makes clear the scope of s 116:

> "s. 116 is an express prohibition of any law which falls within its terms. The section deals with laws which in some manner relate to religion... Section 116 ... cannot be regarded as prescribing the content of laws made with respect to religion upon the basis that the Commonwealth Parliament has some power of legislating with respect to religion. Section 116 is a general prohibition applying to all laws, under whatever power those laws may be made. It is an overriding provision. It does not compete with other provisions of the Constitution so that the Court should seek to reconcile it with other provisions. It prevails over and limits all provisions which give power to make laws.
> Accordingly no law can escape the application of s. 116 simply because it is a law which can be justified under ss. 51 or 52, or under some other legislative power. All the legislative powers of the Commonwealth are subject to the condition which s. 116 imposes."

For the Federal government to even consider enacting laws with respect to religion it would first have to call a referendum to change s 116. A referendum to permit making laws specifically "with respect to religion" would likely fail.

The Federal government could, by contrivance, seek to introduce law with respect to religion claiming its right to do so arises under s 51 xxix "external affairs" of the "Constitution". Australia is already signatory to the "***Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief***" (legislation doc. no. "F2009B00174").

And having already signed the declaration, it could be said that the Federal government has in effect already given such rights with regard to religion without having legislated the principles of the declaration into domestic law.

In “Teoh” (***Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ("Teoh's case") [1995] HCA 20; (1995) 128 ALR 353; (1995) 69 ALJR 423; (1995) EOC 92-696 (extract); (1995) 183 CLR 273 (7 April 1995)***), Mason and Deane at [26] ruled,

> “the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party(6), at least in those cases in which the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law.”

and, at [34]

> “**ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act**(17), particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights”

If it can be said, per Teoh, that signing this declaration was not “platitudinous”, then it could constitute “the making law with respect to religion” in breach of s 116.

Alternatively the Federal government might seek to introduce laws based on such a declaration *surreptitiously* using the states as its proxies, which have no equivalent prohibition. But would that be constitutional...? It would mean that the Federal government signed an international covenant with the intention to “make laws with respect to religion” knowing that by using the states as its proxies in might bypass the constitutional prohibition... Whether such a cynical move would succeed in the High Court is open to the question of how cynical the current judges of the High Court are, and to what extent those judges decide they are bound, if at all, by Clause 5 of the Constitution which they alone give themselves an unfettered right to decide.

PART FOUR

ARTICLE 18 OF THE **ICCPR** IN THE CONTEXT OF THE “CONSTITUTION”

At first sight it might appear that Article 18 of the **ICCPR** and the “***Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief***” could have scope in being made into domestic law under s 51 xxix “external affairs” of the “Constitution”. However, ***Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth ("Jehovah's Witnesses case") [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943)*** shows that Federal governments cannot make laws “with respect to religion”, even if they are laws made using powers in different parts of the “Constitution” for which Parliament has the right to make laws.

To repeat, Latham at [2]:

"...Accordingly no law can escape the application of s. 116 simply because it is a law which can be justified under ss. 51 or 52, or under some other legislative power. All the legislative powers of the Commonwealth are subject to the condition which s. 116 imposes."

PART FIVE

ARTICLE 18 (3) OF THE ICCPR IN THE CONTEXT OF THE "CONSTITUTION" - the question of restricting absolute "freedom".

> Article 18
>
> 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**.

Article 18 (3) of the **ICCPR** is prefigured by the High Court in ***Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth ("Jehovah's Witnesses case") [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943)***.

Rich:

> "Freedom of religion is not absolute. It is subject to powers and restrictions of government essential to the preservation of the community. Freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal."

and Starke at [3]:

> "The liberty and freedom predicated in s. 116 of the Constitution is liberty and freedom in a community organized under the Constitution. The constitutional provision does not protect unsocial actions or actions subversive of the community itself. Consequently the liberty and freedom of religion guaranteed and protected by the Constitution is subject to limitations which it is the function and the duty of the courts of law to expound. And those limitations are such as are reasonably necessary for the protection of the community and in the interests of social order. Therefore there is no difficulty in affirming that laws or regulations may be lawfully made by the Commonwealth controlling the activities of religious bodies that are seditious, subversive or prejudicial to the defence of the Commonwealth or the efficient prosecution of the war."

On face value it could be said that government has one right available to it which is consistent with both the "Constitution" (s 116) and the Article 18 (3) of the ICCPR. However, such a conclusion is in error.

PART SIX

IRRECONCILABLE – INTERNATIONAL OBLIGATIONS VERSUS THE "CONSTITUTION"

Though Article 18 (3) of the **ICCPR** gives its signatories the right to make laws that limit unfettered observation of religion, Australia has NO capacity to in any way to limit religious observation because the interpretation of s 116 of the "Constitution" in ***Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth ("Jehovah's Witnesses case") [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943)*** prohibits making any law "with respect to religion", even if it can be justified doing so under a different part of the "Constitution", Latham [5], & [2], (below).

Latham at [5]:

> "It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not interfere with religious *opinions*, it nevertheless may deal as it pleases with any *acts* which are done in pursuance of religious belief without infringing the principle of freedom It appears to me to be difficult to maintain this distinction as relevant to the interpretation of s. 116. **The section refers in express terms to the *exercise* of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.**"

Latham at [2]:

> "***no law can escape the application of s. 116 simply because it is a law which can be justified under ss. 51 or 52, or under some other legislative power. All the legislative powers of the Commonwealth are subject to the condition which s. 116 imposes.***"

Any Federal law that limits the exercise of religious observance or practice (notwithstanding Starke (at [3]) and Rich who, in the same judgment, write that Federal laws can limit religious observance and practice in some circumstances) is unconstitutional.

Every single law made by Federal Parliament where that law can prospectively be shown to limit a believer's capacity to freely practice their faith (according to the tenets of the faith) or where it codifies law to enable practice of faith, is rendered void by s 116, even if such laws are enacted under a different section of the constitution. Examples of laws invalidated per Latham at [2] are:

1) The "Constitution", **s 51 xxi "marriage"**, gives to Federal Parliament the sole right to make law with respect to marriage. However, marriage laws affect religious views and actions based on those views. The amendment of the marriage act that, for instance, permits homosexual marriage, prohibits polygamous marriages, condones what is objectionable to faith communities, legitimises what is objectionable to faith communities and restricts members of faith communities from openly discriminating or vilifying homosexuals, thereby denying faith communities to freely act according to

their religious tenets (such as can be found in Leviticus [3]);

2) The "Constitution", **s 51 xxix "external affairs"** gives Federal Parliament the right to make laws according to the international covenants Australia is signatory to. As such Australia has legislated into law, statutes criminalising the taking of hostages, **CRIMES (HOSTAGES) ACT 1989 - SCHEDULE Schedule--International Convention Against The Taking Of Hostages**, which in part reads:

Section 3

The States Parties to this Convention ,

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

However, this runs afoul s 116 of the "Constitution" per Latham at [2] because the taking of hostages for ransom is a tenet of Islam in the Koran[4] and hadith[5];

3) The "Constitution", **s 51 xxix "external affairs"** gives Federal Parliament the right to make laws according to the international covenants Australia is signatory to. As such Australia has signed into force the **ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT Rome, 17 July 1998** in which Article 6 criminalises genocide:

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT Rome, 17 July 1998

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[3] ""Do not lie with a man as one lies with a woman; that is detestable ..." Leviticus 18.22-23

"If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads." Leviticus 20.13

[4] "When you meet the disbelievers in battle, strike them in the neck, and once they are defeated, bind captives firmly - later you can release them by grace or by ransom..." Mahummad, 47.4, Haleem translation

[5] Sahih Bukhari Volume 009, Book 083, Hadith Number 050.

Sahih Bukhari Book 83. Blood Money (Ad-Diyat)

Narrated By Abu Juhaifa : I asked 'Ali "Do you have anything Divine literature besides what is in the Qur'an?" ... we have nothing except what is in the Quran ...and what is written in this sheet of paper." I asked, "What is on this paper?" He replied, "The legal regulations of Diya (Blood-money) and the (ransom for) releasing of the captives, and the judgment that no Muslim should be killed in Qisas (equality in punishment) for killing a Kafir (disbeliever)."

Entry into force Generally: 1 July 2002 Entry into force for Australia: 1 September 2002
AUSTRALIAN TREATY SERIES [2002] ATS 15
Article 6 Genocide
For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group...

Additionally, the "Constitution", **s 51 vi "the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth"** gives Federal Parliament the power to create laws concerning defence in order of "maintaining the laws of the Commonwealth", under which laws regarding terrorism and genocide have been made in the **CRIMINAL CODE ACT 1995 - SCHEDULE The Criminal Code** (which also legislates against terrorism):

Chapter 5 -- The security of the Commonwealth
Part 5.1 -- Treason, urging violence and advocating terrorism or genocide Division 80 -- Treason, urging violence and advocating terrorism or genocide

Subdivision C--Urging violence and advocating terrorism or genocide

80.2A Urging violence against groups

Offences
(1) A person (the ***first person***) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the ***targeted group***); and

(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion;

80.2D Advocating genocide

(1) A person commits an offence if:
(a) the person advocates genocide; and
(b) the person engages in that conduct reckless as to whether another person will engage in genocide.
Note: There is a defence in section 80.3 for acts done in good faith. Penalty: Imprisonment for 7 years.

However, both statutes run afoul s 116 of the “Constitution”. The hadith proclaim the genocide of the Jews to be a necessary precursor to “Judgment Day”[6] making it a necessary article of faith (Sharia).

The call to commit the genocide of the Jews was in recent times praised as the laudable objective for Muslims to pursue by the current so-called “Grand Mufti of Australia” Ibrahim Abu Mohamed [APPENDIX 5] (who should have been prosecuted and jailed).

A plethora of Federal laws, not limited to the preceding examples, in some way infringe on the “free exercise” of faith. These restrictions are unlawful according to s 116 according to Latham at [2].

International Covenants, though permitting for the prohibiting of actions called for in religious tenets, does not translate to permitting Federal Parliament to pass laws with regard to those treaties, by having singed such treaties, because s 116 prevents it doing so.

As it stands, there is no capacity to introduce laws consistent with Article 18 (3) of the **ICCPR** because of the “Constitution”. And the only reason that the laws prohibiting Muslim acts of piety (terrorism), per the Koran and hadith, continue to stand is due to the Islamic community denying any link of the tenets of their religion to terrorism, and successive Federal governments’ willingness to accept this claim for fear of terror laws being rendered unconstitutional per s 116. It is convenient for Federal governments (both Liberal and Labor) to claim that actions described as terrorist were not religious in nature, but are instead a “distortion” of the religion. However, these government proclamations are not accurate.

The existence of the “Constitution’s”, s 116, makes Australia’s signing of the **ICCPR** an obvious act of cynicism because Australia could never fulfil its obligations without violating the “Constitution”. Articles 26 and 27 of the **Vienna Convention on the Law of Treaties** show Australia is in breach of its International Obligations because its “Constitution” forbids it exercising what is required according to the covenants it has signed:

> SECTION 1: OBSERVANCE OF TREATIES
>
> Article 26
> *Pacta sunt servanda*
> **Every treaty in force is binding upon the parties to it and must be performed by them in good faith**.
>
> Article 27
> Internal law and observance of treaties

[6] Sahih Muslim Book 041, Hadith Number 6985.
Sahih Muslim Book 41. Turmoil And Portents Of The Last Hour

Chapter : The Last Hour would not come until a person would pass by a grave and wish that he should have been the occupant of that grave because of this calamity.

Abu Huraira reported Allah's Messenger (may peace be upon him) as saying: The last hour would not come unless the Muslims will fight against the Jews and the Muslims would kill them until the Jews would hide themselves behind a stone or a tree and a stone or a tree would say: Muslim, or the servant of Allah, there is a Jew behind me; come and kill him

> **A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty**.

A referendum to change the "Constitution" is urgently needed. Central elements of the government's power under s 51 of the "Constitution" are gutted by s 116. However, using a referendum as an opportunity to also introduce laws to permit religion-based law would violate Australia's obligations under the International treaties it is signatory to.

PART SEVEN

State governments, unlike the Federal government have no constitutional constraint in making laws with respect to religion, and have as a consequence legislated into domestic law statutes in violation of the principles of the various international covenants they claim to derive these laws from.

Victoria is the prime example. It is a state that has created laws which though permitted domestically, run afoul international covenants. Specifically, Victoria breaches Australia's commitment to International covenants with the **Racial and Religious Tolerance Act 2001**.

Current Victorian law protects religion to the extent that it can permit for my being prosecuted by various faith communities because of the contents of this submission.

Article 19 of the ICCPR guarantees me the right to impart information, or refer to information already imparted. This includes the Koran and hadith. However, the Victorian law makes it a criminal offence to access information already imparted.

Simply because Islam, in the hadith (for instance), calls for the act of genocide to be done by Muslims as an exercise of their faith, and that such a call is likely to, and should elicit hatred and serious contempt of those who hold such ideas (Muslims), and elicit hatred of those who defend as their right to hold such ideas (Muslims), my reference to the hadith is a crime in Victoria. Indeed, such ideas as expressed in the hadith are sufficiently reprehensible that International Covenants are written to prohibit them and are legislated against in Federal law based on those International Covenants.

But in Victoria imparting information on the Koran or hadith which is true [7], is defined as “extreme” behaviour constituting “vilification” under s 8 of Victoria’s **Racial and Religious Tolerance Act 2001** which is punishable with a 6 month jail sentence:

[s] 8 Religious vilification unlawful

(1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

Note

Engage in conduct includes use of the internet or e-mail to publish or transmit statements or other material.

(2) For the purposes of subsection (1), conduct—

(a) may be constituted by a single occasion or by a number of occasions over a period of time; and

(b) may occur in or outside Victoria.

25 Offence of serious religious vilification

s. 25

(1) A person (the offender) must not, on the ground of the religious belief or activity of another person or class of persons, intentionally engage in conduct that the offender knows is likely—

(a) to incite hatred against that other person or class of persons; and

(b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.

Note

Engage in conduct includes use of the internet or e-mail to publish or transmit statements or other material.

In the case of a body corporate, 300 penalty units;

In any other case, imprisonment for 6 months or 60 penalty units or both.

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[7] **Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc [2006] VSCA 284 (14 December 2006)**

Nettle at [36]
The problem with that is that **the verity of** Pastor Scot’s **statements about the religious beliefs of Muslims was irrelevant to the matters in issue.** The question for the purposes of s.8 was whether what was said by Pastor Scot taken as a whole and in context was such as to incite hatred of or other relevant emotion towards Muslims on grounds of their religious beliefs. Whether his statements about the religious beliefs of Muslims were accurate or inaccurate or balanced or unbalanced was incapable of yielding an answer to the question of whether the statements incited hatred or other relevant emotion. Statements about the religious beliefs of a group of persons could be completely false and utterly unbalanced and yet do nothing to incite hatred of those who adhere to those beliefs. At the same time, **statements about the religious beliefs of a group of persons could be wholly true and completely balanced and yet be almost certain to incite hatred of the group because of those beliefs**.

Victoria illegally (according to International Covenants) protects faith communities and their leaders who call on their communities to commit criminal acts (as defined by domestic and international law), such as genocide, exempting those communities as well as their leaders from prosecution:

[s] 11 Exceptions—public conduct

(1) A person does not contravene section 7 or 8 if the person establishes that the person's conduct was engaged in reasonably and in good faith—

…

(b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for—

(i) any genuine … religious … purpose; or

(2) **For the purpose of subsection (1)(b)(i), a religious purpose includes, but is not limited to, conveying or teaching a religion or proselytising**.

The Victorian law further extends protection to faith communities by permitting the prosecution of any critic of religious tenets to defamation proceedings [8]. Victorian law illegally (under International protocols) overrides human rights in order to give faith communities what they seek: which is a suppression of the right of the wider public to receive and impart information on the tenets of various faiths and the right to form opinions about that information. Victoria breaches human rights in order to protect religions and their tenets from criticism. The **ICCPR** is clear. There can be no protection to criticism of religious tenets. Criticising religious tenets cannot be a "vilification". Victoria's laws are in contradiction with the **ICCPR**, meaning Australia has failed its international obligations:

Human Rights Committee 102nd session

Geneva, 11-29 July 2011

General comment No. 34

Article 19: Freedoms of opinion and expression

48. Prohibitions of displays of **lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant** ... **Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith**.

Emphasising Victorian incompatibility with the ICCPR – Victoria's misuse of Article 18.

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[8] **Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc [2006] VSCA 284 (14 December 2006)**

Nettle at [34] it is a matter for the law of defamation

The UN Human Rights Council “condemned” violence and discrimination called for by religion. However the faith communities who call for violence or discrimination (ie, against same-sex marriage) are permitted by law to sue and claim “vilification” on being criticised for holding such views. And the proof that “vilification” has been done in Victoria rests on the fact that the statement is true. This runs counter to both Articles 18 and 19. Article 18 is not intended to permit violence to be committed because it is part of a religion, nor does Article 18 permit any prosecution of critics of the tenets of various faiths that call for violence or discrimination. That is clearly the reason for the existence of Article 18 (3). The position of the UN with regard to Article 18 of the ICCPR is clearly articulated and unambiguous:

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2. In its resolution 25/12, the Human Rights Council condemned “all forms of violence, intolerance and discrimination based on or in the name of religion or belief, and violations of the freedom of thought, conscience, religion or belief, as well as any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means”

7. However, violence in the name of religion also affects followers of the very same religion, possibly also from a majority religion, in whose name such acts are perpetrated. Voices of moderation or critics who actively oppose the abuse of their religion for the justification of violence bear an increased risk of being accused of “betrayal” or “blasphemy” and having retaliatory penalties inflicted upon themselves.

11. Furthermore, homophobic and transphobic violence against lesbian, gay, bisexual and transgender (LGBT) persons may also be perpetrated in the name of religion. Those perceived as LGBT may be targets of organized abuse, including by religious extremists. Violence against LGBT persons includes brutal gang rapes, so-called “curative” rapes and family violence owing to their sexual orientation and gender identity.6 There is a strong connection

> between discrimination in law and practice, and incitement to violence in the name of religion and violence itself. Violence against women and against LGBT persons is often justified and given legitimacy by discriminatory laws based on religious laws or supported by religious authorities, such as laws criminalizing adultery, homosexuality or cross-dressing. The Human Rights Committee has noted with concern hate speech and manifestations of intolerance and prejudice by religious leaders against individuals on the basis of their sexual orientation, in a broader context of acts of violence, including killings of LGBT persons.
>
> 42. ... the State should repeal anti-blasphemy laws, anti-conversion laws and criminal laws that discriminate against certain people according to their religious affiliations or beliefs or criminalize their "dissident" practices.
>
> 63. The Special Rapporteur has …come across public rejections of violence which remain disappointingly abstract, because they are based on the problematic assumption that violence results from a mere "instrumentalization" of religion and, accordingly, has little, if anything, to do with religious motives. … such rejections based on a trivialization of religious motives will themselves remain trivial. As discussed earlier, the instrumentalization thesis one-sidedly attributes the problem to external, non-religious factors while too quickly discarding the potential relevance also of religious obsessions and theological views.
>
> 64. Religious communities and especially their representatives and intellectual leaders should not succumb to the temptation to reduce the issue of violence in the name of religion to mere "misunderstandings" and external abuses. This would amount to an irresponsible trivialization of the problem… theologians and religious leaders should actually expose themselves to the disturbing fact that perpetrators of violence — or at least some of them — may be convinced to perform an act of service to God when killing fellow humans. Taking seriously these ideas, however bizarre and distorted they may seem, is the precondition for giving sufficiently profound responses. Only by confronting the perverse "attractiveness" of violent religious extremism for some people, including people living in precarious and volatile political circumstances, will it be possible to tackle the various root causes of violence, including polarizing religious interpretations and incitement to religious hatred.

Faith communities in Victoria have been given an illegal carte blanche right to breach human rights, with a succession of Victorian governments misquoting, misusing, and stripping International covenants of their meaning, and giving them a meaning that is in contradiction to their intent. Even though the states have no impediment to making law "with respect to religion", they have no lawful right to make laws in breach of the International Covenants that Australia is signatory to.

Demands by various faith communities seeking to prevent criticism of their faith, or the right to unfettered exercise of their religion by claiming this to be consistent with the **ICCPR** are expressing an

ignorance of the **ICCPR** and its requirements. States such as Victoria are acting illegally by providing faith communities rights that are in contradiction to the **ICCPR**.

PART EIGHT
CONCLUSION

Respect for religion and faith – the right to exercise religion – can not justify breaching the **ICCPR**.

Any objective which includes seeking to impose respect for religion – even if such an objective is called for by the UN in its own declarations – is also in breach of the **ICCPR** according to the UN's own material (**GC 34 of 2011**).

The **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief** calls for tolerance and respect. The tolerance and respect called for is not absolute, but limited to other International instruments and rights:

> "**the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible**"

Though the Declaration might be stated with the best intentions in mind, ie to foster tolerance by faith communities of other faith communities, it has been (mis)interpreted to include within its ambit that which is antithetic to the **ICCPR**. It is laudable that a faith community, ie, the Islamic community respect another faith community, the Christian faith community for instance. However, the Declaration and its intent has been turned into is something altogether different.

The "tolerance" now demanded by faith communities is for them to be tolerated when exercising their religion according to its tenets, even where their tenets demand intolerance,. Restrictions, permissible under Article 18 (3) of the **ICCPR,** are claimed to infringe their rights, and claimed to be evidence of "intolerance" of their faith. Faith communities are misusing international covenants to sophistically claim that no restriction can or should be imposed on them that would prohibit them discriminating against other faith communities, or discriminating against the LGBTQI community, or against atheists.

There is no right to unfettered religious observation. The right to unfettered and unrestricted practice by believers to do acts consistent with their religious tenets, would unleash countless violations of human rights. In Islam the Koran proclaims – and any proclamation in the Koran is Sharia – that

Christianity is the most reprehensible of blasphemies possible [9], advocating a hatred of Christians. Giving Muslims “free exercise” intends to allow advocating hatred and violence against those most despised by “god”.

The Muslim community – ie representatives from the Islamic Council of Victoria, such as Waleed Aly – have consistently declared anti-terror laws to be “anti-Muslim” laws that fetter their observation of Islam [APPENDIX 6].

And the Christian community seeks to exercise its intolerance of homosexuality (as does the Muslim community), in proclaiming discrimination against homosexuals to be a right as it is part of their religion, and that we should tolerate their intolerance.

What the faith communities seek violates the UN’s own charters which the UN declares is inadmissible. The aim of faith communities is not supported by any International covenant, with the exception of religion-based covenants such as the OIC’s “**Cairo Declaration on Human Rights in Islam, Aug. 5, 1990**” to which Australia is NOT a signatory, and which explicitly subverts human rights to religion-based law, contrary to the **ICCPR** (**GC 34 of 2011**).

The OIC’s **Cairo Declaration on Human Rights in Islam, Aug. 5, 1990**:

> ARTICLE 22:
>
> (a) Everyone shall have the right to express his opinion freely in such manner as would ***not be contrary to the principles of the Shari'ah***.
>
> (b) Everyone shall have the right to advocate what is right, and propagate what is good, and ***warn against what is wrong and evil according to the norms of Islamic Shari'ah***.

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[9] “Unbelievers are those that say: 'Allah [God] is the Messiah, the son of Mary.' ... Unbelievers are those that say: 'Allah is one of three.' The Table 5.72-74 Dawood translation

"We have revealed to them [Christians] the truth, but they are liars all. Never has Allah begotten a son, nor is there any other god besides Him." The Believers 23.90 Dawood translation

"Those who say: 'The Lord of Mercy has begotten a son,' preach a monstrous falsehood, at which the very heavens might crack, the earth break asunder, and the mountains crumble to dust." Mary 19.88 Dawood translation

" ...admonish those who say that Allah has begotten a son... a monstrous blasphemy is that which they utter. They preach nothing but falsehoods." The Cave 18.2 -5 Dawood translation

"**They do blaspheme who say: 'God is Christ the son of Mary**.' But said Christ: 'O Children of Israel! Worship Allah, my Lord and your Lord.**' Whoever joins other gods with Allah – Allah will forbid him in the Garden, and the Fire will be his abode. There will for the wrongdoers be no one to help. They do blaspheme who say: Allah is one of three in a Trinity**: for there is no god except One God... **a grievous penalty will befall the blasphemers**..." The Table Spread, 5.72-73, Ali translation

> (c) Information is a vital necessity to society. It ***may not*** be exploited or misused in such a way as may ***violate sanctities and the dignity of Prophets***, undermine moral and ethical Values ***or disintegrate***, corrupt or harm society or weaken its ***faith***.
>
> ARTICLE 24:
>
> ***All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah***.

Without equivocating, what is sought for by various faith communities is the compulsory enforcement of religious observation.

The Federal government cannot enforce religion because of s 116.

The Federal government cannot make laws with respect to religion because of s 116.

Neither however can the States introduce their own laws, despite already having done so, and despite being permitted to do so under domestic law, where the state laws in question violate the International covenants they claim to be derived from.

The "freedom" sought by faith communities is incompatible with human rights; indeed faith communities seek instead to subvert human rights to religion.

The "Constitution" (s 116) has to be amended to permit Article 18 (3) of the **ICCPR**, and the excesses of religion should be properly curtailed. Without a change to the "Constitution" the marriage act, laws against terrorism, laws against genocide, etc, are all likely invalid, and the Federal government will be left with not much power in the "Constitution" to enact many laws at all.

Statutes such as Victoria's religious "tolerance" act should be repealed immediately.

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