

9 October 2015

Mr Tim Wilson
Human Rights Commissioner
GPO Box 5218
SYDNEY NSW 2001
by email rights@humanrights.gov.au



Dear Commissioner

Religious Freedom Roundtable

The Law Council of Australia is grateful for the opportunity to make a submission to the Australian Human Rights Commission's (AHRC) Religious Freedoms Roundtable. The Law Council restricts its brief comments to the following term of reference:

- Government laws and regulations that limit the right to religious freedom

In preparing comments the Law Council has drawn upon its work for the Australian Law Reform Commission's (ALRC) current inquiry into 'Traditional Rights and Freedoms – Encroachments by Commonwealth Laws'. The Law Council encourages the AHRC to consider the Law Council's submissions in response to the ALRC Issues Paper¹ and Interim Report² as it relates to the AHRC's terms of reference.³ The Law Council understands that the ALRC is due to hand down its final report in December 2015.

The Law Council considers that freedom of religion is a fundamental right, subject to strong protections in domestic and international law.

At the Commonwealth level, protections for freedom of religion are provided under section 116 of the *Commonwealth of Australian Constitution Act*, as well as various provisions of the *Fair Work Act 2009* (Cth),⁴ *Migration Act 1958* (Cth),⁵ *Age Discrimination 2004* (Cth),⁶ *Sex Discrimination Act 1984* (Cth)⁷ and the *Evidence Act 1995* (Cth).⁸

Meanwhile at the State and Territory level there are equal opportunity and anti-discrimination laws which protect freedom of religion through various exemptions. This is in addition to protections provided under section 14 of the *Human Rights Act 2004* (ACT) and section 14 of *Charter of Human Rights and Responsibilities Act 2006* (Vic). Under some state and territory anti-discrimination laws, if there is a 'conflict' between religious freedoms and equality before the law, the right to discriminate on religious grounds may be justified, but only when and if necessary. The approach taken in *Christian Youth*

¹ Australian Law Reform Commission, Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (IP 46), December 2014.

² Australian Law Reform Commission, Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Interim Report 127), July 2015.

³ Law Council of Australia, Submission to the Australian Law Reform Commission: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws, March 2015 and Law Council of Australia, Submission to the Australian Law Reform Commission: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws, October 2015.

⁴ Subsections 351(1), 351(2)(c) and 772(1)(f) and 772(2)(b).

⁵ Section 36(2)(a).

⁶ Section 35.

⁷ Subsections 37 and 38.

⁸ Section 127.

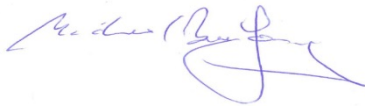
Camps Limited & Ors v Cobaw Community Health Services Limited & Ors [2014] VSCA 75 shows how a 'balance' can be struck.

Under international law, Australia is a party to a number of instruments requiring protection of religious freedom. This includes the *Convention relating to the Status of Refugees 1951*,⁹ *International Labour Organization Convention 111: Discrimination (Employment and Occupation) Convention 1958*,¹⁰ the *International Covenant on Civil and Political Rights 1966*¹¹ and the *International Labour Organization Convention 158: Termination of Employment Convention 1982*.¹²

The Law Council has not identified any laws imposing direct restrictions on the freedom of religion. The Law Council is of the view that the protections arising from domestic and international law, as listed above, provide strong safeguards for religious freedom. Any specific encroachments could potentially result from balancing religious freedom with other protected rights or freedoms.

Please contact Mr Simon Henderson, Senior Policy Lawyer, Human Rights, on 02 6246 3757 or simon.henderson@lawcouncil.asn.au, in the first instance, should you require further information.

Yours sincerely,



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⁹ Article 1.

¹⁰ Article 1(a).

¹¹ Articles 18, 26 and 27.

¹² Article 5(d).

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents its constituent bodies consisting of 16 Australian State and Territory law societies and bar associations and the Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2015 Executive as at 1 July 2015 are:

- Mr Duncan McConnel, President
- Mr Stuart Clark, President-Elect
- Ms Fiona McLeod SC, Treasurer
- Mr Morry Bailes, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.