

SUBMISSION:

Report of the Special Rapporteur on freedom of religion or belief to the Human Rights Council in March 2024

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policymakers in Federal, State and Territory Parliaments.

acl.org.au

Special Rapporteur on freedom of religion
or belief
Office of the High Commissioner for
Human Rights,
Palais des Nations
CH-1211 Geneva 10, Switzerland



30 October 2023

BY E-MAIL: hrc-sr-freedomofreligion@un.org,
Input for HRC report – SRFORB

Dear Secretariat,

Input for HRC report – SRFORB

On behalf of the Australian Christian Lobby (**ACL**), I welcome the opportunity to provide this submission in support of the Report of the Special Rapporteur on freedom of religion or belief to the Human Rights Council for March 2024.

Yours faithfully,

Michelle Pearce
Chief Executive Officer

Introduction

There are certain developments in Australian law which are deeply concerning.

There is a powerful anti-religious agenda (aimed mainly at Christians), which misuses particular aspects of religious belief to claim that its followers are discriminatory or phobic towards particular sexual minorities (when they are not), thereby generating hostility towards them. One of the clearest outcomes of this is oppressive “conversion therapy” legislation with far-reaching prohibitions on religious practices, framed in a way which provokes hostility towards religious groups for an “ideology” which is misattributed to them. Another is a negative attitude towards Christians for upholding a Christian ethos in Christian schools.

These developments impact Australian society, and since the trends seem to be deepening over time, it is appropriate to draw them to the Special Rapporteur’s attention. We appeal to the Special Rapporteur to contribute support for freedom of religion in this context, especially since the emphasis given by the UN *Independent Expert on sexual orientation and gender identity* (SOGI Expert) recently is not, nor does it purport to be, comprehensive.

ACL responds particularly to the following issues on which contributions are invited:

2. To what extent are forms of hatred based on religion or belief perpetuated by broader prejudicial attitudes in society?
4. What are some of the instances and effects of the advocacy of hatred based on religion or belief
8. Is there a role for religious and belief actors in countering advocacy to hatred based on religion or belief?

Promotion of legislation and policies that disadvantage Christians and other religious groups

In Australia, an attitude of hatred, intolerance, phobia and bigotry is increasingly attributed to Christians in the process of promoting changes in law and policy which restrict the rights of Christians and others. At times this involves an appeal to international human rights law, claiming that Christians engage in unjustified discrimination and in conduct contrary to the prohibition against being subjected to degrading treatment. Examples include the following.

- Excessively broad prohibitions in Victorian legislation on “conversion therapy” practices, the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic). These include practices actively sought by individuals who are same-sex attracted, with benefits that are clearly evidenced but ignored. The prohibitions even apply to opposite-sex attracted individuals who want help to keep their sexual behaviour within certain boundaries.¹ (ACL stands in support of those whose rights are sacrificed

¹ The Act prohibits any ‘change or suppression practice’ (any ‘practice or conduct’), ‘directed towards a person,’ ‘on the basis of’ their ‘sexual orientation or gender identity,’ ‘for the purpose of,’ ‘changing or suppressing’ their ‘sexual orientation’ or ‘gender identity’. ‘Sexual orientation’ extends to gender-based sexual *behaviours*, rather than ‘orientation’ as such. ‘Gender identity’ now includes ‘the personal sense of the body... and other *expressions* of gender, including dress, speech, mannerisms, names and personal references.’ The term ‘gender’ is not defined.

by this legislation, including those who self-identify as non-binary, who seek support that would enable them to live according to their religious beliefs as a matter of free religious choice and their own self-autonomy.)

- A policy (backed by “conversion therapy” legislation) encouraging social and medical transitioning of those with gender dysphoria, including young children, by allowing only affirmation of gender transition, and prohibiting “wait-and-see” approaches, and all support which is non-transition affirming. This is in spite of the emerging tragic evidence of regret, and irreversible harm.
- The attempted removal (still the subject of government inquiry) of all practical ability of Christian schools to maintain their distinctive ethos by recruiting staff who are supportive of the institutional ethos, because of the alleged discriminatory ethos of such schools. Among some of the false claims are that Christian schools expel students for being gay.

The basis for attributing strongly negative attitudes to Christians, is the assertion that certain interpretations of biblical texts are degrading and cause harm and injury to sexual minorities. It is true that some propositions inherent in a certain ideology of sexuality which treats sexual orientation and gender identity as the most important attributes of the individual are not reconcilable with the biblical belief that identifies human dignity with being made in the image of God, and elevates other aspects of the human person above sexual orientation and gender identity.

Conversion therapy legislation in Australia has a peculiarly ideological character. The *Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)* is fiercely protective of a form of ideology that gives paramount importance to sexual orientation and gender identity (and their expression). It frames the religious ideology which it opposes inaccurately, in terms which provoke hostility towards it, and its followers, and publicly declares, with legislative force, its “denunciation”. It mischaracterises particular religious beliefs when it does so.²

ACL is familiar with Christian beliefs across a broad denominational spread. It does not agree with the official description (given e.g. in New South Wales proposals modelled on the Victorian legislation) of “the core beliefs behind conversion practices”. These “beliefs”, it claims, are that: identities which deviate from heterosexual, and cisgender are not desirable, and represent deviancy of the soul or ‘sexual brokenness’, and all people are born with the potential to develop heterosexual attraction and cisgender identity, or otherwise LGBTQ+ identities can be ‘overcome’ so they are not acted upon (e.g., through celibacy or living as a cisgender heterosexual person).

² “In enacting this Act, it is the intention of the Parliament—

(a) to denounce and give statutory recognition to the serious harm caused by change or suppression practices; and

(b) to affirm that a person's sexual orientation or gender identity is not broken and in need of fixing; and

(c) to affirm that no sexual orientation or gender identity constitutes a disorder, disease, illness, deficiency or shortcoming; and

(d) to affirm that change or suppression practices are deceptive and harmful both to the person subject to the change or suppression practices and to the community as a whole.”

The *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), and NSW Consultation Paper, is also premised on the following suppositions, which ACL and many Australian Christians do not agree with:

- that there is a need in contemporary Australia to denounce “the ideology” that animates faith-based teaching and practices (particularly Christian teaching and practices) on sexuality and gender.
- that it is appropriate to give statutory recognition to harm, and thereby deem harm, from the full range of practices to be prohibited (ranging from torture to talk-based pastoral help) in the absence of more convincing evidence of harm.
- that “harmful practices” are occurring, especially as alleged against mainstream Protestant churches (in a study entitled *Preventing Harm Promoting Justice*).
- that harm results from parental, religious, medical, and other practices frequently sought by individuals (and denied them by the prohibitions on “suppression”) in the form of counselling, prayer and other support.

These suppositions, enshrined in legislation, cast Christians in an especially negative light, and provide a platform for divisive anti-Christian sentiment.

The lack of legal and institutional support for freedom of religion in Australia

ACL is not supportive of anti-vilification legislation as the response to growing antipathy against Christians. It instead advocates greater protection for freedom of religion and for the expression of religious beliefs, including in the context of sexuality, as this will help correct false understandings of Christian belief and the Christian message.

There is no proper protection for freedom of religion and freedom of expression in Australia, as understood by the ICCPR. On the contrary, the freedom to express religious belief, or speak on issues concerning religion, is constrained by anti-vilification law which is extensive in Australian states and territories. Anti-vilification law has been especially limiting of speech on subjects connected with sexual orientation and gender identity.

It is extraordinary how remote the connection needs to be to particular beliefs for a person to be denounced. In October 2022 as recorded by [The Australian Financial Review](#), Andrew Thorburn, a former banker, was forced to resign as chief executive of Essendon Football Club by virtue of his affiliation with a conservative Melbourne church because the founding pastor in 2013 preached a sermon on homosexuality. Victorian Premier Daniel Andrews at a press conference following Mr Thorburn’s resignation, declared:

‘Those views are absolutely appalling. I don’t support those views, that kind of intolerance, that kind of hatred, bigotry. It is just wrong....To dress that up as anything other than bigotry is just obviously false.’

They were not even views Mr Thorburn expressed. Such is the sensitivity and hostility towards a position taken in a sermon preached in 2013 that Mr Thorburn’s indirect connection to it in October 2022 was enough to force his resignation and to cause the Victorian Premier to add

his heavy-handed endorsement to the condemnation of Mr Thorburn. In this environment, the protection that exists for freedom of religion is drowned out. Christian teaching on the issue remains hidden and only a distorted mischaracterisation of it is heard by the public.

Inadequate, piecemeal protection for religious followers in Australia, making them a soft target for legislation weaponised against them

The Australian Human Rights Commission (AHRC), Australia's National Human Rights Institution, has done little to promote freedom of religion. Its recently proposed charter would reinforce that deficiency. The AHRC has a track record of failing to give adequate support for the ICCPR and (especially in connection with gender issues) CEDAW.

Australia has extensive antidiscrimination laws in federal, state and territory jurisdictions. The exemptions for schools to maintain their ethos are depleting, as noted, and the grounds on which discrimination is prohibited are constantly widening, particularly in meeting the aspirations of the Yogyakarta Principles. There is one notable omission, and that is the absence of protection against discrimination on grounds of religion in some jurisdictions.³

ACL and others speaking for religious groups have been advocating proper protection for freedom of religion, and against religious discrimination. After a major review of such issues in 2017, two "Exposure Drafts" were released of a Religious Discrimination Bill, and in 2021 then Prime Minister Scott Morrison introduced a legislative package which lapsed. There is not a single proposal among these which would simultaneously protect freedom of religion in Australia to an adequate standard, and protect against discrimination on grounds of religion. The very fact that this has been so controversial, and there is no viable proposal to meet ICCPR standards, is symptomatic of Australia's lack of commitment to international human rights law norms on religious matters.

Meanwhile, there is powerful advocacy against such protection (including that already mentioned), which invokes concepts of harm and injury in an exaggerated and selective sense, to associate them with different aspects of Christian beliefs.

More is needed in promotion of religious freedom from UN sources

The 2018, 2020 and 2023 reports of the SOGI Expert have caused some controversy, by providing detailed justifications for prohibiting "conversion therapy" practices, without any clear explanation of the characteristics of the practices which would justify prohibition and even criminal sanctions. These are empowering anti-Christian activists in Australia to urge "conversion therapy" legislation, which is not only excessive in its coverage, but lacks the essential human rights justifications needed for so radically removing religious freedom and self-autonomy (including in matters of sexuality orientation and gender identity). The "harm"

³ There is:

- a. no protection at all against discrimination on grounds of religion in New South Wales;
- b. none at federal level, beyond meaninglessly narrow protection with no legal redress under the Commonwealth *Fair Work Act* 2009 and
- c. inadequate protection, applying only to "religious dress" in South Australia.

is legislated rather than proven. It is claimed to subsist in the religious “ideology” itself. The prohibited “practices” under the *Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)* are not confined only to coercive or involuntary practices. They include practices which individuals want, for religious, mental health or other reasons. The prohibitions capture without distinction: torture and supportive counselling; treatment that is coerced, and which is voluntarily sought by individuals for their own reasons. They cover mundane advice or even discussion with an individual, to encourage and support them in their own lifestyle choices. The initiative could come entirely from the individual concerned, who might, for example, be trying to resolve a sense of conflict between their own religious and sexual identities.

The reason this is a hate speech issue is that a false anti-faith narrative accompanies such legislation when proposed and when enforced in Australia, which creates hostility and marginalisation of those of faith, particularly the Christian faith.

In order to provide counterbalance and completion to the work of the SOGI Expert, we ask that the Special Rapporteur clarify the justifications for conversion therapy legislation in reference to the specific, demonstrable, harmful characteristics of “conversion therapy” practices, sufficient to engage the rights claimed, such as freedom from torture, while maintaining suitable emphasis on the need to uphold self-autonomy and choice, and freedom of religion, among other rights overridden by civil and criminal prohibitions.

Although it may be necessary at times to emphasise that “the right to freedom of religion or belief must not be used as an excuse for violence or discriminatory denial of the human rights of LGBT persons” as the SOGI Expert has done, and to discuss certain incompatibility between freedom of religion and the equal enjoyment of human rights by LGBT persons, the position of freedom of religion in that context has not been sufficiently and positively asserted in recent years.

Conclusion

ACL would therefore appeal to the Special Rapporteur in the 2024 report to lend support for freedom of religion, and for individuals who follow religions which include texts which are opposed by the radical element of some sections of society, by expressing firm support for international law standards which support freedom of religion, including for religious institutions, and freedom from discrimination on grounds of religion. There has been strong and misplaced messaging in recent years about the alleged harms of religious beliefs, including in the above legal and policy areas, but very little reminders of the fundamental treaty-based rights which should prevent individuals from being marginalised in this way.

We now see particular religions become a target of hostility merely because of objection to specific, narrow and generally misunderstood teachings, which are pejoratively portrayed by their opponents.

We would urge the Special Rapporteur to clarify that:

- the justifications for prohibiting the manifestation of religion need to be persuasive, disciplined and convincing and must meet the strict requirements of Article 18(3) of the ICCPR;
- reliance on the prohibition against torture, inhuman or degrading treatment to limit freedom of religion and an individual's self-autonomy should require the presence of essential characteristics to justify invoking such rights;
- legislation promoted in opposition to religions or their followers should be resisted where they are for unjustified political or ideological or other gain, and/or where they encourage hostility, hatred towards or marginalisation of such religions and/or followers;
- religious followers are free, according to the terms of the ICCPR, to express their beliefs openly, to engage in public discourse concerning their beliefs, including on matters of gender and sexuality, and the practical and legal implications for public policy.