

## SUBMISSION OF HOPE MISSION NETWORK TO THE EXPERT PANEL ON RELIGIOUS FREEDOMS

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### ***Hope Mission Network***

The Hope Mission Network (HopeNet) was established in 2005, being a network of over sixty Christian congregations within the Uniting Church Presbytery of South Australia. Amongst other things, HopeNet provides a framework for member congregations to review current issues and concerns, enabling a collective voice to be presented when required.

### ***The Amended Marriage Act 1961***

On 8 December 2017, the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (The Act) was assented to, allowing for marriage between people of the same sex. This change is contrary to the definition of marriage given by the Sacred Scripture, which is that marriage is an exclusive relationship between a man and a woman. This definition is included in the HopeNet Memorandum of Understanding with the Uniting Church in SA. One consequence of these changes is to bring the position of the Christian Church and the law of the land into direct conflict, resulting in a potential impact on freedom of speech, conscience and religion in Australia.

**The Act will impact the free preaching of Sacred Scripture from our pulpits by both ordained and lay practitioners.** It will impact on school curricula, hiring of staff and conduct of the Christian schools in which numbers of the children of families in our HopeNet churches are enrolled.

**The Act will impact Christian employees and business owners.** This has already been experienced in the UK, Canada, some States of the US and some European countries. We certainly don't want our society tarnished like that.

**Legal challenges to Freedom of Speech have brought costly and distressing effects to countries similar to ours.** In the UK the case of David Barker and Stephen Wan accused of hate speech eventually had all charges dropped against them, and that they in fact were free to explain what the Bible has to say about marriage; including what the Bible has to say about same-sex relationships, being free to quote Romans 1:26-27. Similarly, the president of the USA has found occasion to recently say that "No American – whether a nun, nurse, baker, or business owner – should be forced to choose between the tenets of faith or adherence to the law."

We hope the Panel will make recommendations safeguarding Australia from even entering the trend of these other countries. Robust free speech is no enemy to anyone's rights.

**We reject the argument put up by some during and after the postal survey on marriage that protections on conscience grounds would work against protections from discrimination by others.** This simply shifts protections around groups in society. All can and must have equal protection under law for freedom of speech, religion and expression of conscience. As Macquarie University lecturer Dr. Stehen Chavura put it "I invite LGBTQI rights advocates to name all the countries without a robust tradition of freedom of speech that have strong and effective LGBTQI rights movements."<sup>1</sup>

**Section 47 of The Act allows a minister of religion to refuse to solemnise a marriage for a number of stipulated reasons, but does not limit the grounds on which a minister may refuse to solemnise marriage.** Similar allowances are made in Section 47B for the refusal of the use of facilities and provisions of services by religious bodies. While these sections have merit, they are by themselves inadequate.

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<sup>1</sup> The Australian 27/12/2017

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To stipulate in The Act any grounds for refusal to solemnise marriage on the basis of religious beliefs wrongly implies that Australian Law has to make special provision for the exercise of religious freedom, whereas such freedoms are already defined in Section 116 of *The Constitution*, as well as being a basic human right.

Therefore we respectfully request that both section 47 and 47A commence with a subsection similar to:

*Recognising the fundamental nature of the Freedom of Religion and the limitation of Commonwealth power in section 116 of The Constitution, nothing in this Act imposes an obligation on a minister of religion [ or religious marriage celebrant (47A) ] to solemnise any marriage.*

**We are concerned that the action of pastors and ministers in relation to marriage may result in legal action against them under state law.** This has already been experienced in Tasmania by Archbishop Porteous of the Roman Catholic Church and currently with the Cornerstone Presbyterian Church. We therefore request that The Act be amended to include words to ensure that any action taken by a person, where that action is authorised by The Act, cannot form the basis of a claim under any law of the Commonwealth or any State or Territory against that person.

**We are concerned the law does not provide any protection for citizens who are not ministers of religion nor religious celebrants, but have conscientious commitment, religious or otherwise, in relation to marriage.** Their commitments will compel them to refuse permission for their facilities to be used for, or to provide goods and services for, a same-sex wedding. As anti-discrimination law currently stands, if they so refuse they could face expensive court action. We therefore request that there be a new section in The Act as follows:

*Recognising the fundamental nature of the Freedom of Religion and the limitation of Commonwealth power in section 116 of the Constitution, a person may, despite any law (including this Part), refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation or celebration of a marriage, or for purposes reasonably incidental to the solemnisation or celebration of a marriage, if:*

- a) the refusal is because the marriage is not the union of a man and a woman; and*
- b) the refusal conforms to the doctrines, tenets or beliefs of their religion or*
- c) is genuinely informed by their own conscientious conviction that marriage is only a union of a man and a woman.*

Concurrently the Commonwealth anti-discrimination acts should provide that discrimination is only unlawful and actionable if the service which has been denied on the basis of religious or conscientious freedom could not be reasonably obtained elsewhere by the person who has been denied the service.

Alternatively the Commonwealth could incorporate Article 18 of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> into law. This would ensure state, territory and Commonwealth legislation allowed these freedoms.

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<sup>2</sup> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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### ***The Importance of the Christian Religion***

**It should be evident to the Panel that the Christian Church and Christianity in general has provided and continues to provide enormous positive contribution to Australian society.**

The list is long and includes hospitals, aged care, schools, welfare as well as being instrumental in the establishment of service organisations such as the Flying Doctor, Red Cross, World Vision and more. Even democracy itself, and our ordered, peaceful and free society, registering high on the Global Peace Index with other similarly based countries, is dependent upon principles inherited from our Judeo-Christian background.

This is reinforced in the preamble of *The Constitution*. It is embedded in our nation's highest institutions; Sacred Scripture is the basis of oaths undergirding truth-telling in our Courts, and the Lord's Prayer is recited at the beginning of daily parliamentary sessions. Nearly 40% of our students attend non-government schools, the vast majority of which are Christian based. The root of Judeo-Christianity is not understood by all but the fruit of it is enjoyed by all Australians. Christianity can only protect itself by declaring itself in word and action. It relies on the State under God to accord it free expression in all levels of its practice.

**“There is empirical evidence to suggest that society benefits as a whole from religion.**

Sociological, psychological, biological and particularly economic research suggest that societies with high levels of religious freedom are more prosperous and harmonious than those that do not. Loss of religious freedom has a correspondingly negative impact upon society.”<sup>3</sup>

**It is therefore proper that this freedom be given adequate protection for Christians, and indeed for people of all religions, in Australian law.** All people must be able to continue contributing to Australian society regardless of their faith.

### ***Conclusion***

Christianity is both cooperative and unchangeable. It is cooperative in that it recognises the right of people to choose how they live, and willingly submits to proper governmental authority. It is unchangeable in that it does not yield its fundamental truths to the social mood of the day. In such a context the challenge for the legislature is to enact laws that, while allowing for new rights like same sex marriage, also preserves the rights of those with different views.

To properly safeguard the rights of not just Christians, but all those who cannot support same sex marriage, the safeguards referred to above must be included in The Act. We therefore urge the Panel to heed our views.

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<sup>3</sup> Submission 48 to the Senate Select Committee on the to the Exposure Draft of the *Marriage Amendment (Same-Sex Marriage) Bill 2016* at [14].