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Dear Panel Members,

Submission to the Religious Freedom Review

Kingsford Legal Centre (KLC), Community Legal Centres NSW (CLCNS) Mand the National Association of Community Legal Centres (NACL) welcome the opportunity to make this submission to the Religious Freedom Review.

Summary of recommendations

## KLC, CLONSW and NACLC recommend that:

- 1. Religion be a protected attribute under federal anti-discrimination law. Religion should be defined broadly to include both having a religion or belief and not having a religion or belief.
- 2. Protections against religious vilification be introduced at the federal level.
- 3. All religious exemptions (with the exception of sections 37(1)(a)-(c) of the Sex Discrimination Act 198(Qth)) be removed from federal anti-discrimination law.



## Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since

1981. KLC provides general advice on a wide range of legal issues, including discrimination and other human rights issues.

While freedom of religion or belief is a non-derogable right (a right that cannot be suspended, even in a state of emergency), the freedom to manifest one's religion may be subject to limits under Article 18(3) of the ICCPR:

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Article 20 of the ICCPR provides "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". However, Australia has a reservation to Article 20 to not introduce further laws on this issue.

## Freedom of Religion under Australian Law

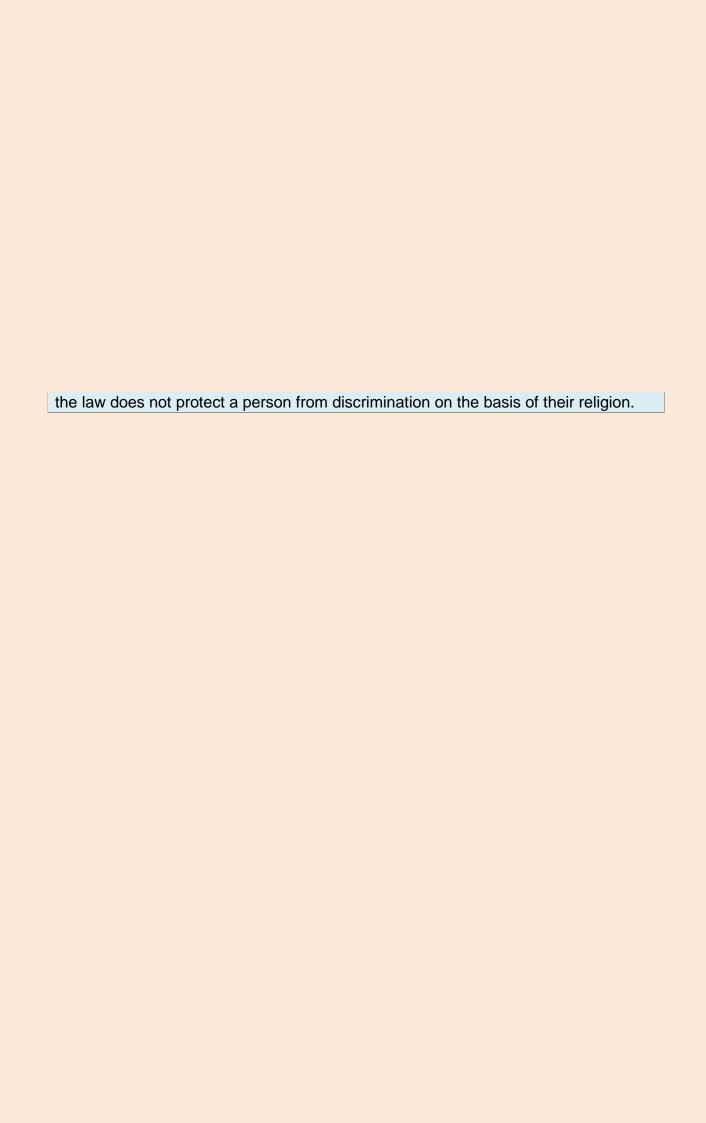
## Protections under the Constitution

Freedom of religion has limited protection under the Australian Constitution. Section 116 of the Constitution provides:

The Commonwealth shall not make any law for ablishing 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 an office or publi  $\check{s}$  CE  $\mu$  •  $\check{s}$   $\mu$  v CE  $\check{s}$  Z u u v  $\acute{A}$  o  $\check{s}$  Z X \_

Section 116 essentially limits the Commonwealth Parliament from enacting laws that establish a 'state religion' or prohibit the free exercise of religion. However, this protection is limited as it only applies to the Commonwealth, not states and territories, and does not apply to all government action, but only to legislation or actions taken under legislation.

Protections under anti-discrimination law



discriminate against individuals where it is necessary to avoid injury to the sensitivities or susceptibilities of the adherents of a religion.<sup>7</sup>

The Sex Discrimination Act 1984th) ('SDA) permits religious bodies to discriminate against people on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in:

ers of any

religious order;

as priests,

ministers or of religion; and

x the training or education of people to participate in religious observance or practice.8

Section 37(1)(d) of the SDA permits bodies established for religious purposes to discriminate against people on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in relation to acts or practices that conform to the doctrines, tenets or beliefs of that religion; or are necessary to avoid injury to the religious susceptibilities of adherents of that religion.

Section 38 of the SDA permits educational institutions established for religious purposes to discriminate against employees and contract workers on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy, where:

\$145.3 billion in funding for non-government schools.<sup>11</sup> Religious educational institutions are also a significant employer in Australia. For example, the Catholic Education Office employs more than 10,000 people in the Sydney Archdiocese, <sup>12</sup> while the Sydney Anglican School Corporation employs 1, 350 staff.<sup>13</sup>

Religious organisations which receive public funding or perform a service on behalf of government should not be exempt from anti-discrimination laws. These exemptions send a message that discrimination is acceptable in our community, which contributes to the entrenchment of systemic discrimination against vulnerable groups of people. It allows the right to freedom of religion to prevail over other rights protected by international human rights law, including the right to live free from discrimination.

KLC, CLONSW and NACLC accept the religious exemptions in sections 37(1)(a)-(c) of the SDA. However, our view is that the religious exemptions in section 37(1)(d) and section 38 of the SDA should be removed. These blanket exemptions are broad, and require no analysis of reasonableness, necessity, proportionality or legitimacy of aims. One fundamental right (freedom of religion) should not be automatically privileged above other fundamental rights (right to non-discrimination and equality) by the granting of a permanent blanket except 0 0 1 332.95 547.9