



The Executive Director
Australian Law Reform Commission
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Dear Sirs,

Re: ALRC Interim Report 127, 'Traditional Rights and Freedoms – Encroachments by Commonwealth Laws'

We write as adherents of The Way of The Livingness.

The Way of The Livingness is a so-called 'new religious movement' which is inspired by the teachings and living way of Serge Benhayon and in fact is an old religion that finds its origins in the teachings of Imhotep, Pythagoras, Buddha, Jesus and other religious leaders less known by history, but all of whom were known foremost for the quality of their lived way long before their teachings were reduced to the doctrines of received religion.

We thank you for the opportunity to present this submission in response to the Commission's Interim Report for the Inquiry, 'Traditional Rights and Freedoms – Encroachments by Commonwealth Laws' and wish to make the following observations with reference to the matter of the affect on religious freedoms of the solemnisation provision of s 113(5) the *Marriage Act 1961* (Cth) which is raised at paragraph 4.76- 4.83 of the ALRC's interim report.

We generally support the proposal by Parkinson and Karam as set out at par 4.82 of your interim report, in particular that the solemnisation provisions in the *Marriage Act* should not preclude a person (who is not authorised under the *Marriage Act* to solemnise marriages) from conducting a religious wedding ceremony provided that the parties to the marriage are 18 years of age and fully cognisant that the person is not authorised to conduct a lawful marriage under the *Marriage Act* and that such a ceremony has no lawful effect.

This submission raises matters which point inexorably to the importance that sub-s 113(5) of the *Marriage Act* should be repealed.

The solemnisation of marriage is directed at and identifies the point of entry into the legal status of marriage. A wedding ceremony on the other hand is an expression of love and commitment between two people. The purpose that is served by the two are clearly related but ultimately quite distinct.

In a secular society a wedding ceremony can take varying forms. Invariably it will reflect the particular beliefs and cultural assumptions of the couple involved. Frequently in Australia today, a wedding ceremony will not occur in a church or take the adopted form of a recognised denomination. That said, expressions of religious conviction of a highly personal and non-denominational kind are frequently reflected in wedding ceremonies.

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Subsection 113(5) makes it unlawful for anyone to conduct a religious wedding ceremony unless the religious wedding ceremony occurs after a legal (and presumably legally effective and valid) civil marriage (unless the solemnization of marriage is conducted by a religious minister of a recognized denomination). The implications of the proscription under the subsection are dire.

The subsection proscribes conducting a religious wedding ceremony unless the wedding ceremony occurs after the performance of a legal civil marriage. Secondly, the subsection makes it unlawful to conduct a religious wedding ceremony at all without also performing a legal civil marriage. The effect of the subsection is that it will be unlawful to conduct a religious wedding ceremony in certain circumstances, whereas it would not be unlawful to conduct a non-religious wedding ceremony in what would otherwise be the same set of circumstances. A clearer example of legislatively enshrined discrimination on grounds of religious expression cannot be imagined. Moreover, the distinction between a religious and a non-religious wedding ceremony is not helpful or a model of clarity because the two will frequently blur into each other.

The gains in calling attention to and changing attitudes about different forms of discrimination have proceeded in an uneven manner and clearly do not extend to discrimination on grounds of religious conviction. Indeed, it is in the area of religious conviction that discrimination in most subtle forms is still alive and allowed to flourish in Australian society today. This is especially the case in relation to minority and so-called new or alternative religions. An example of what we are referring to is the unrestrained (and unconstrained) freedom of the Australian press to pejoratively label a new religious movement a 'cult'.

The matters proscribed by sub-s 113(5) are an anachronistic and indefensible intrusion by government on freedom of religious expression in Australia which, irrespective of the historical circumstances that originally gave rise to the provision, no longer has any place in contemporary society.

As far as we are aware, the sub-section has not been considered by the courts. The objects of the sub-section nevertheless are reasonably readily discernible. The sub-section finds its origins in s 8 of the *Lord Hardwicke's Marriage Act 1753* (26 Geo II, c 33) (accessible in unauthorised form at < <http://freepages.genealogy.rootsweb.ancestry.com/~framland/acts/1753.htm>). As with its legislative progenitor, and central to our purpose in writing, sub-s 113(5) is an assertion of state ownership over the meaning of weddings and more generally religious expression outside of recognised denominations (originally the Church of England). As a concomitant of this, the subsection is an assertion of state limits on the freedom of religious expression and love between committed couples who choose to participate in a wedding ceremony with a religious tone of their own choosing.

We are witnessing a period of transition in which the meaning of freedom of expression and the meaning of marriage are disputed terms. We do not weigh into this debate. We do not need to do so.

The experience that precipitated the enactment of *Lord Hardwicke's Act*, as regards the position of the Church of England and dissenters, is not at play in contemporary Australia. It is also at odds with contemporary social reality. The idea that the control imposed by sub-s 113(5) can be justified on the ground that it promotes certainty in legal relations within society is simply hollow. Unmarried cohabitation is accorded a legal recognition in Australia in a way that already blurs the legal civil demarcation between marriage and non-marriage. In this regard, the sub-section is out of step with contemporary social realities. As such, the quest for certainty in legal relations is not assisted by a sub-section which proscribes a religious wedding unless preceded by a civil legal marriage: see Stephen Parker, *The Marriage Act 1753: A case study in family-law*

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making, OUP (1987), pp133 ff, accessible at <http://lawfam.oxfordjournals.org/content/1/1/133.full.pdf>. The current law is an unacceptable limitation of the state into the area of religion when the state is not otherwise ostensibly interested in religion, or should not be.

Dispensing with the illogical distinction presented by s 113 also accords with Australia's international obligations. Australia is a signatory to and has ratified the ICCPR. Article 18 of the ICCPR recognises the right to freedom of thought, conscience and religion, protecting both 'traditional' beliefs of the major religions but also any other belief of choice. In other words the ICCPR provides a broad protection to all those who hold religious beliefs and more importantly, wish to observe those beliefs. In addition the right to hold or adopt religious beliefs, the Article recognises the freedom to manifest religious belief in worship, observance, practice and teaching. In this context the freedom to manifest religion or belief in practice includes ritual or ceremonial acts which must by definition include marriage ceremonies that are an integral part of religious observance.

We understand that the ICCPR, and in particular Article 18, has not been enacted in domestic law, and as such cannot be invoked to restrict the exercise of Commonwealth power in this regard (see *Tajjour v New South Wales* (2014) 313 ALR 221; *Hawthorne v New South Wales*; *Forster v New South Wales* [2014] HCA 35), however, it makes no sense to maintain a law that in essence goes against these international obligations.


Although the right to manifest religious beliefs is subject to specific limitations, by virtue of Article 18(3), it is unlikely that the current legal requirement to undergo a civil ceremony before a religious one could be considered to be on that is 'necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.'

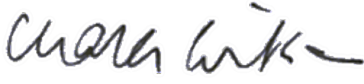
The Australian Human Rights Committee considers that Article 18 does not only afford protection to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions', but should be considered to offer protection against 'any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community' (see General Comment No. 22: The right to freedom of thought, conscience and religion).

Article 26 guarantees equal protection before the law and thus particular measures that might be seen to discriminate against newly established or minority religions in favour of a predominant religion also fall foul of the ICCPR. In this sense, to allow 'recognised' religions to conduct marriage ceremonies without the requirement of a preceding civil ceremony is in essence a failure to treat all religious practice equally before the law.

As you can see there are cogent reasons for the repeal of sub-s 113(5) of the *Marriage Act*, and adoption of a provision to the effect proposed by Parkinson and Karam at 4.82 of your interim report

Yours truly,


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