The Hon. Christian Porter MP
Attorney-General,
Commonwealth Government of Australia,
Canberra,
ACT 2600.

October 2, 2019.

Dear Mr Porter,

Submission on the Australian government’s draft Religious Freedom Bill

We welcome the opportunity you have given us to comment on your government’s draft Religious Freedom Bill.

However, we do not relish having to plead, as we feel obliged to do on this occasion, to be allowed to retain freedoms that generations of Australians have been able to take for granted. For the past twenty years these freedoms – of conscience, religious belief and speech – have been under relentless assault.

The whole current debate on religious freedoms should never even have been necessary, had it not been for the Coalition’s poor handling of the 2017 same-sex marriage plebiscite. The whole issue was surrounded by dishonesty from the start.

A solemn promise broken

Your predecessor as Attorney-General, the then Senator the Hon. George Brandis, and many other Liberal supporters of same-sex marriage solemnly promised that re-defining marriage would leave our existing freedoms intact.

A more accurate assessment of the consequences of re-defining marriage, however, was given by another Liberal supporter of same-sex marriage, the Hon. Tim Wilson MP, a former Australian Human Rights Commissioner.

In his Acton Lecture on Religion and Freedom, delivered at the Centre for Independent Studies on November 14, 2016, he warned that religious communities in Australia should bow to the inevitable – that is, accept the legalisation of same-sex marriage – in return for being allowed to keep some, but by no means all, of the religious freedoms they had hitherto enjoyed.

He admonished religious communities that the outcome of re-defining marriage could take one of two forms: a “soft landing” or a “hard landing”. A “soft landing”, he said, would be one in which religious communities accepted with good grace the legalisation of same-sex marriage, and tried not to hold out for too many religious exemptions. A “hard landing”, however, would result from “the pursuit of allowing the law to change and exempting bakers and florists from supplying goods and services to same-sex marriages”. This, he said, wouldn’t be accepted by parliament, and the Greens and Labor would likely impose a settlement with even fewer, if any, exemptions.

Who would be chiefly responsible for such an adverse outcome? Mr Wilson expressed his personal view as follows: “The burden of its passage comes down to the way religious leaders and communities engage. If it is with humility, then religious freedom can win. Without it, a
hard landing will likely be imposed in the not-too-distant future.” In other words, he was saying that religious communities would have nobody but themselves to blame if Australia ended up with same-sex marriage and zero religious exemptions.

We, the members of Endeavour Forum, are appalled by the views of both George Brandis and Tim Wilson – the first one seeking to allay our concerns by promising that re-defining marriage would not affect our freedoms; the second one seeking to hold religious communities chiefly responsible for their loss of all their freedoms in the event that they did not co-operate nicely with giving up some of their freedoms.

The Coalition’s mishandling of the marriage plebiscite result

If the Coalition wanted to ensure that re-defining marriage would not endanger religious freedoms, then they should at least have put into place suitable safeguards and guarantees for these freedoms before Parliament voted in late 2017 to ratify the marriage plebiscite result. Instead, the Coalition deferred consideration of this all-important question until after parliament had enacted the same-sex marriage provisions.

Before the plebiscite was held, George Brandis had solemnly promised voters that freedom of religion and speech would be untouched by the redefinition of marriage. Therefore the Coalition was under no obligation to enact the marriage plebiscite results until after religious people were satisfied that their freedoms would be protected.

The Coalition failed to do this, and proceeded to re-define marriage without legal protections for religious communities.

What needs to be done?

1) **Repeal section 18C of the Racial Discrimination Act**

   Australia’s criminal laws, at both the national and state levels, are more than sufficient to tackle physical threats to people’s well-being. We do not need the sort of additional anti-discrimination laws, particularly those under the controversial section 18C of the Racial Discrimination Act, to police people’s speech and personal opinions. “Taking offense” at someone’s views has been used unscrupulously by certain aggrieved minorities to launch lawsuits and to persecute Christian believers.

2) **Australia’s obligations to the UN International Covenant on Civil and Political Rights**

   Article 18 of the UN International Covenant on Civil and Political Rights, which Australia signed in 1972, defines important protections for “freedom of thought, conscience and religion”. The Australian government, having endorsed this covenant, is legally and morally obliged to use its legislative powers to support these freedoms.

   Western Australian law professor, Dr Augusto Zimmermann, says: “It should protect not only religious freedom but freedom of speech, freedom of conscience, freedom of association and the right to peaceful assembly. This can be done because the High Court has generally adopted an expansive approach to the external affairs power found in the Australian Constitution.”

   But he adds: “Unfortunately, the proposed religious discrimination act appears to be a missed opportunity” *(The Australian*, July 12, 2019).

We hope that your office will give urgent consideration to our concerns about the shortcomings of the government’s draft Religious Freedom Bill.

Yours sincerely,

(Mrs) Babette Francis,
National and Overseas Coordinator,
Endeavour Forum, Inc.