

2 July 2026

Legislative Assembly Committee on Community Services

By website and e-mail: communityservices@parliament.nsw.gov.au

Submission on the Human Rights Bill 2025

Who are we?

1. This submission is on behalf of and signed by:
 - Australian Christian Churches
 - Anglican Diocese of Sydney
 - Baptist Churches of NSW & ACT
 - Seventh Day Adventist Church, Australia
 - Presbyterian Church of NSW
 - Anglican Diocese of Canberra and Goulburn
 - Anglican Diocese of Armidale
 - Anglican Diocese of the Southern Cross
 - Fellowship of Independent Evangelical Churches
 - Foursquare Australia
 - Full Gospel Australia
 - International Network of Churches
2. The submission was coordinated by Freedom for Faith, a Christian legal think tank that exists to see religious freedom for all faiths protected and promoted in Australia and beyond. Freedom for Faith is led by people drawn from a range of denominational churches including the Anglican Church Diocese of Sydney, The Catholic Church, the Australian Christian Churches, Australian Baptist Churches, the Presbyterian Church of Australia, and the Seventh-day Adventist Church in Australia. It has strong links with, and works co-operatively with, a range of other faith groups in Australia.
3. We welcome the opportunity to make this submission and we give consent for this submission to be published. Our contact details are as follows.
4. Note that, in addition to their endorsement of this joint submission, some organisations will also make submissions in their own name.

Freedom for Faith

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Section 1: General Principles

5. Comments have been invited on a Private Member's Bill introduced into the NSW Legislative Assembly by Ms Jenny Leong, MP, the Human Rights Bill 2025. An inquiry into the Bill by the Legislative Assembly Committee on Community Services has asked for submissions, which are due on 3 July 2026.
6. This submission will not take a position on whether a human rights act, in principle, is appropriate for the NSW legislative framework. We note that, rather than enacting a Bill of Rights, in 2003 NSW established a Legislation Review Committee which reviews State Bills and provides advice on their conformity with international law. Before any consideration might be given to the potential introduction of a human rights act in NSW the efficacy of the operations of that Committee would require careful review. We also note that there are strong objections to human rights act in principle, as exemplified by Nicholas Aroney and Richard Ekin:

a statutory charter of rights is unnecessary, pointless and dangerous. It is unnecessary because human rights can and should be protected by the Parliament. It is pointless because charters of rights do not produce dialogue. It is dangerous because charters of rights encourage undisciplined law-making by the courts and distort the proper functioning of legislatures.¹

7. Human rights charters are often presented as neutral instruments, but they are not neutral in their operation. The selection and definition of rights, and the way those rights are balanced against social obligations, necessarily reflect particular moral, political, and ideological assumptions. Where those contested concepts are enacted in broad terms, their practical meaning is then left to the judiciary to determine. This transfers significant questions of moral and political judgment from elected representatives to the courts, requiring judges to resolve matters on which the community may reasonably hold deeply contested views.
8. Whether or not a Human Rights Act is appropriate for New South Wales in principle, the proposed Bill is wholly unacceptable in its present form. It rewrites foundational rights recognised in international law, introduces novel rights not contained in any treaty ratified by Australia, and alters the relationship between established rights so that some are elevated while others are diminished, contrary to the text and structure of international human rights law. The Bill also creates a heavy-handed regulatory and enforcement regime that risks having a particularly severe and damaging effect on faith-based organisations.
9. In addition, the timing of this Bill is inappropriate while significant gaps remain in New South Wales anti-discrimination law. Most notably, religion or religious belief is still not

¹ Nicholas Aroney and Richard Ekin *Submission to Queensland Parliament Legal Affairs and Community Safety Committee Human Rights Inquiry* (18 April 2016) paragraph 38, available at <https://documents.parliament.qld.gov.au/com/LACSC-4B8C/HRI-CC35/submissions/00000474.pdf>

generally protected as an attribute under the Anti-Discrimination Act 1977. This means that individuals may remain without an effective remedy where they are treated unfavourably in employment, education, accommodation, or the provision of goods and services because of their faith.

10. Introducing a Human Rights Act at this stage would not correct that deficiency, in fact it would exacerbate it.
11. The Bill would create new and expanded rights, impose substantial obligations on public authorities—including faith-based organisations—and provide new avenues for complaints, investigation and litigation, while people of faith remain without basic protection against religious discrimination. It would therefore increase the regulatory burden on religious individuals and institutions without first addressing the longstanding absence of protection for them. Parliament should remedy that imbalance through comprehensive religious discrimination legislation before considering a broader Human Rights Act.
12. Any legislative reform should begin with specific protection for religious freedom. It would be inappropriate to proceed first with a general Human Rights Bill, particularly one that largely restates rights already protected in existing law, while leaving unresolved the absence of proper legislative protection for religious freedom.
13. We note that the NSW Law Reform Commission has begun its review into the entire Antidiscrimination Act 1977, which we expect to recommend corrections for these deficiencies.
14. The more appropriate course, if the Legislative Review Committee approach is determined to be deficient after review, is not to pursue a general Human Rights Act, but to identify those human rights to which Australia is a signatory that remain inadequately protected in Australian law and address those gaps directly. Where Australian law falls short, the remedy should be targeted legislation that gives proper effect to the relevant ICCPR obligations.
15. The immediate priority should therefore be a Religious Discrimination Bill with broad and practical operation. Such legislation should provide real and positive protection for people of faith, including individuals in New South Wales who presently lack adequate protection against discrimination on the ground of religion.

Section 2: Analysis of the Bill

16. The proposed Bill is deficient in both its conception and operation. It departs from Australia's ratified treaty obligations by creating novel and expanded rights, omitting important protections such as parental rights, applying a general limitations clause in place of the distinct limitation tests contained in the treaties, and failing to provide adequate protection for freedom of thought, conscience and religion.
17. The Bill also fails to recognise that religious freedom is exercised not only by individuals, but through religious communities and institutions. At the same time, it places substantial regulatory burdens on faith-based organisations by treating many of them as public authorities. Those burdens are compounded by the extensive powers given to the proposed NSW Human Rights Commission, including powers to investigate, compel the production of documents, direct participation in conciliation, and publish material capable of causing serious reputational harm.
18. Finally, the Bill establishes a complaints process that is uncertain in operation and may operate unevenly against respondents. It imposes disproportionate penalties and costs consequences, allows the Attorney-General to intervene in questions of statutory interpretation, and shifts the resolution of deeply contested moral and political issues away from Parliament and into the hands of unelected commissions and the courts.

I. Definition of rights

19. Any domestic human rights legislation should be a direct and faithful implementation of Australia's international human rights obligations. Clause 4(g) of the Bill recognises this by stating that one of the Bill's objectives is "to give effect to Australia's obligations under international human rights law". As a matter of coherence in Australian law, any State law should reflect those international obligations.
20. A Human Rights Bill should not become a vehicle for creating new or expanded rights beyond those already accepted by Australia through the treaty process. If such legislation is introduced, its scope should be confined to rights found in international instruments that Australia has signed and ratified.
21. Where those treaty rights are incorporated into domestic legislation, they should be adopted in their original form. The wording of the relevant covenant should be carried across faithfully, rather than being paraphrased, expanded, narrowed, or otherwise altered. As drafted, the Human Rights Bill is inconsistent in important respects with international human rights law.
22. The present drafting does not adopt a neutral treaty-based approach. Instead, it includes novel rights, including rights drawn from instruments that Australia has not ratified, while omitting other recognised treaty rights altogether, such as the rights of parents under Article 18(4) of the ICCPR. The result is not a neutral and faithful incorporation of Australia's international obligations, but a selective and ideological reshaping of them.

A) New Rights

23. The Bill does not simply give effect to Australia's existing obligations under ratified international human rights treaties. It also incorporates, or foreshadows the incorporation of, a broader range of rights and principles, including rights drawn from declarations and other international instruments that do not have the same status as binding treaty obligations.
24. This is apparent from Schedule 1, which includes not only the major treaties ratified by Australia, but also the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Principles for Older Persons, and the United Nations General Assembly resolution recognising a human right to a clean, healthy and sustainable environment. These instruments may have political or interpretive significance, but they are not equivalent to treaty obligations ratified by Australia.
25. The Bill also creates or elevates a number of novel rights which are not expressed in that form in any ratified covenants. These include a free-standing right of victims of crime, a broad right to dignified treatment, and a right to a healthy environment.
26. The Bill therefore goes beyond the stated objective of giving effect to Australia's obligations under international human rights law. It creates a domestic human rights framework that includes novel or developing rights, including economic, social, cultural and environmental rights, and then makes those rights relevant to statutory interpretation, public authority decision-making, complaints and litigation.

B) Protection of religious freedom

27. Clause 22 purports to provide protection for religious freedom (along with freedom of thought and conscience), which are indeed protected under Article 18 of the ICCPR. But the clause is fundamentally flawed and undermines, rather than protects, religious freedom.
28. The first difficulty is that clause 22 refers to "every individual" rather than "everyone". That may appear minor, but it should be read alongside clause 10 of the Bill, which provides that only individuals have human rights and that bodies corporate and bodies politic do not have human rights. The effect is to narrow the communal and institutional dimension of Article 18. Article 18(1) expressly protects the manifestation of religion "in community with others". Religious freedom is therefore not confined to private belief or individual conduct. It includes the collective exercise of religion through congregations, schools, charities, denominations, religious associations, and other faith-based institutions.
29. Secondly, while clause 22 includes the phrase "in community with others", it does not make clear that religious bodies themselves must be protected in order for that communal freedom to be meaningful. A church, religious school, or religious charity is not merely a collection of private individuals. It is often the very means by which believers teach, worship, practise, serve, and hand on their faith. If the Bill denies human rights protection

to corporate bodies, while only protecting individual persons, it risks protecting the form of Article 18(1) while undermining its substance.

30. Thirdly, clause 22 uses the language of “religion” but does not give adequate attention to “belief” as it appears in Article 18(1). Article 18(1) protects the freedom to have or adopt “a religion or belief” and to manifest “religion or belief”. The protection is therefore not limited to formal religious affiliation, but extends to conscience and belief more broadly. Any domestic drafting should preserve that full expression, rather than treating belief as merely incidental to religion.
31. Fourthly, as discussed below under “Limitations of Rights”, the note on clause 22 re-writes the limitations clause of ICCPR Article 18(3) to apply not only to the *manifestation* of religion, but the right to *have or adopt* a religious belief. This is a dramatic re-wording of the limitations that would allow a Government to ban belief itself – in direct contradiction to UNHRC General Comment 22 which clarifies that only the *manifestation* of religion can ever be restricted, and belief itself can never be.
32. Clause 37 is a separate provision which includes rights for those from a particular “religious background” to “declare” and practise their religion, a rewording of Article 27 ICCPR which entitles people to “*profess*” and practise their religion. This is a subtle difference as “profess” includes the dimension of witness to others, such as evangelism. The wording in the Bill is subtly weaker than that of the ICCPR and there is no valid reason for the alternative choice in wording.

C) Rights of parents

33. Article 18(4) of the ICCPR provides that States Parties must respect the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
34. That protection is not reproduced in clause 22. Clause 22 protects an individual’s freedom to have or adopt a religion or belief, and to manifest that religion or belief in worship, observance, practice and teaching. However, it omits the specific parental liberty recognised in Article 18(4).
35. This omission is significant. Religious freedom is not limited to individual belief or worship. It includes the transmission of religious and moral convictions within families, and the ability of parents to raise and educate their children consistently with those convictions. The absence of an equivalent to Article 18(4) creates uncertainty about whether the Bill adequately protects parents and guardians in relation to religious and moral education, particularly where those convictions interact with public education, curriculum content, school policies or the actions of public authorities.

36. The UNHRC has made clear that the right of parents to ensure this cannot be limited by the State, yet this right is omitted in this Bill.² The UNHRC confirms this status in its General Comment on Article 18:

The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted.³

37. We also note that Article 14 of the Convention on the Rights of the Child recognises the right of children to freedom of thought, conscience and religion. Importantly, Article 14 also requires States Parties to respect the rights and duties of parents and legal guardians to provide direction to the child in the exercise of that right, in a manner consistent with the child's evolving capacities.
38. Clause 18, read together with subclause 32(1), adopts a "mature minor" approach that gives increased weight to a child's autonomy and decision-making capacity. In doing so, the Bill goes beyond the terms of the Convention on the Rights of the Child and does not adequately preserve the corresponding rights, responsibilities and duties of parents and legal guardians. International human rights law recognises that children's developing autonomy must be understood alongside the role of parents in providing appropriate direction and guidance, having regard to the child's evolving capacities. The Bill does not maintain that balance. Instead, it risks treating parental authority as secondary or potentially adverse to the child's rights, rather than recognising parents as ordinarily responsible for the child's care, formation and wellbeing.

D) Elevation of "Discrimination" Rights

39. Clause 14 of the Bill reads as follows:

14 Right to recognition and equality before law and freedom from discrimination

- (1) Every individual has the right to recognition as an individual before the law.
- (2) This right must not be subject to limitation.
- (3) Every individual has the right to enjoy human rights without discrimination.
- (4) Every individual is equal before the law and is entitled to the equal protection of the law without discrimination.
- (5) Every individual has the right to equal and effective protection against discrimination...

² UN Human Rights Committee, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, [3]. Available at: <https://www.refworld.org/docid/453883fb22.html>

³ UN Human Rights Committee, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, [3]. Available at: <https://www.refworld.org/docid/453883fb22.html>

(8) In this section— **discrimination** means discrimination against an individual on a ground set out in the *Anti-Discrimination Act 1977*, Parts 2–4G.

40. This clause has significant issues.
41. Firstly, this formulation effectively places the Anti-Discrimination Act and its definition of discrimination above any Human Rights Act because it puts the legislative definition of discrimination beyond review. This is because the proposed bill uses a **dialogue model**. Central to this model is the opportunity to assess the human rights compatibility of legislation against an external standard. However, if “discrimination” in the external standard (the proposed Bill) is defined to mean whatever it means in State discrimination laws, there is never scope for a statement of incompatibility on any possible changes to those Anti-Discrimination laws, regardless of whether the legislative definitions are inconsistent with the ICCPR and ICESCR definitions of discrimination.
42. In addition, the Bill repeats the phrase “without discrimination” in relation to several specific rights, including participation in public affairs, criminal process guarantees, education, health services, and aspects of an adequate standard of living.
43. This appears to elevate non-discrimination above all other rights so that all other rights must be measured against it.

E) Torture and “degrading treatment”

44. Clause 16 does not distinguish clearly between torture and the broader category of cruel, inhuman or degrading treatment or punishment. Under Article 1 of the Convention against Torture, torture involves the intentional infliction of severe physical or mental pain or suffering for specified purposes, together with the involvement, consent or acquiescence of a public official. The expression “cruel, inhuman or degrading treatment”, while also protected against under international law, is broader and is not itself a definition of torture.
45. By combining these distinct concepts within a single broadly framed right, the Bill risks extending the provision far beyond conduct ordinarily understood as torture. In particular, “degrading treatment” is left undefined and may invite subjective claims based on feelings of offence, humiliation or diminished dignity. Without a clear threshold, there is a risk that expressions of religious doctrine, pastoral guidance or religious practices could be characterised as degrading treatment merely because another person regards the belief expressed as demeaning or harmful. The Bill should preserve the distinctions and thresholds found in the relevant treaties rather than collapsing different categories of prohibited conduct into an uncertain and potentially expansive provision.

II. Expression of rights as corporate rights

46. Key human rights, including religious freedom, are expressed and protected corporately as well as individually. However, contrary to international human rights law, the proposed Bill explicitly excludes these corporate rights.

A) Religious Freedom as a Corporate Right

47. Religious freedom is not merely an individual right. International human rights law expressly recognises that religion is exercised both individually and “in community with others”. That language is critical. It reflects the obvious reality that religion is not only held privately in the mind or expressed occasionally by isolated individuals. It is lived, taught, practised, handed on, and organised through families, congregations, schools, charities, denominations, and other religious bodies.

48. UNHRC General Comment 22 elaborates on the scope of Article 18 and recognises that freedom of thought and belief is *manifested individually and in community with others*:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.⁴

49. Article 6 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* recognizes that the manifestation of religion or belief is not confined to private individual belief or worship. It includes activities that are necessarily communal and institutional in character, including the establishment and maintenance of charitable or humanitarian institutions, the maintenance of places of worship, the observance of ceremonies and holidays, the appointment of religious leaders, the teaching and dissemination of religious materials, and the solicitation of voluntary contributions.

50. In the Sister Immaculate Joseph case, the UNHRC concluded:

As to the claim under article 18, the Committee observes that, for numerous religions, including according to the authors, their own, it is a central tenet to spread knowledge, to propagate their beliefs to others and to provide assistance to others. These aspects are part of an individual’s manifestation of religion and free expression, and are thus protected by article 18, paragraph 1, to the extent not appropriately restricted by measures consistent with paragraph 3...”⁵

⁴ Human Rights Committee, General Comment No. 22 (48) (art. 18), 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993), [1] ('Human Rights Committee, General comment No. 22 (48) (art. 18)'). Available at: <https://www.refworld.org/legal/general/hrc/1993/13375>

⁵ *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzinger v Sri Lanka v Sri Lanka*, Communication No 1249/2004, UN Doc CCPR/C/85/D/1249/2004 (2005), [7.2].

51. This is also recognised in Australian legal precedent. The High Court has consistently held that s116 of the Constitution extends to protecting both religious groups and religious individuals.⁶
52. A proper protection of religious freedom must therefore protect the corporate and communal life of religious communities. Churches and other faith-based institutions must be free to gather for worship, teach their beliefs, appoint leaders, form communities of membership, maintain religious standards, operate ministries, employ staff who support their religious mission, and organise their internal affairs consistently with their faith. Without those protections, the right to religious freedom is reduced to a private liberty of individual belief, rather than a freedom to manifest religion in the public, communal, and institutional forms contemplated by the ICCPR.
53. This is particularly important because many religious obligations cannot be meaningfully fulfilled alone. The freedom to teach children, conduct worship, proclaim doctrine, provide religious education, care for the vulnerable, and operate ministries of mercy necessarily requires institutions. A church, religious school, charity, or faith-based organisation is not merely a secular body with religious individuals inside it. In many cases, the institution itself exists for a religious purpose and is one of the principal means by which believers exercise their religion in community with others.

B) Exclusion of Corporate Rights in the Bill

54. In contrast, Clause 10 of the proposed bill defines who is entitled to the rights established by the Bill:

10 Who has human rights

Only individuals have human rights.

Note -Bodies corporate and bodies politic do not have human rights

55. The definition of individuals is not entirely clear (noting that clause 5 in Part I refers to “all individuals, including the State” appearing to include the State as an ‘individual’). However, the note specifies that “bodies corporate” and “bodies politic” are not included and do not have rights.
56. The effect of this is that corporate human rights – including corporate religious freedom – are negated if they are expressed through a body politic or body corporate. In effect, categories of human rights clearly defined in international instruments are cancelled.
57. This exclusion compounds the existing lack of protection against religious discrimination under the Anti-Discrimination Act 1977 (NSW). Religious bodies would not only remain without the positive protection needed to preserve their religious identity and

⁶ Nicholas Aroney, ‘Freedom of Religion as an Associational Right’ (2014) 33 University of Queensland Law Journal 153; Alex Deagon, *A Principled Framework for the Autonomy of Religious Communities: Reconciling Freedom and Discrimination* (Hart Publishing, Oxford, 2023) 44-46.

institutional freedom, but would also be expressly denied the ability to rely upon the rights created by the Bill.

58. Religious freedom is not the only corporate right affected in this way. Other rights recognized in the ICCPR are also individual rights that necessarily require collective expression if they are to be meaningful. Article 22, for example, protects the right to freedom of association. That right cannot be reduced to a private entitlement held by isolated individuals; it protects the ability of persons to form, maintain, join, and act through associations. This foundational right is functionally negated by the explicit exclusion in the proposed bill.
59. A Human Rights Bill that protects only individual conscience, while failing to protect the autonomy and integrity of religious bodies, would fall short of Australia's international obligations. It leaves religious freedom exposed precisely where it is most often exercised: in the shared life, teaching, governance, employment, and public witness of religious communities. Any legislative protection should make clear that freedom of thought, conscience and religion includes the freedom of religious bodies to exist, organise, teach, serve, and act consistently with their religious beliefs.
60. Any Human Rights Act must recognise the mechanisms by which individual humans exercise their rights in groups, and not explicitly exclude these rights, as the proposed bill does.

III. Limitations of rights

61. A key flaw in the proposed Bill is the general limitations clause (clause 12). Any provision dealing with the limitation of rights should be tied closely to the particular right being limited. The test for limitation should be drawn from the relevant covenant itself, preserving both its language and its structure, rather than replacing it with a generalised or freestanding limitation clause.
62. A Human Rights Bill should only include limitation clauses where the relevant international instrument itself permits that right to be limited, and only on the terms set out in that instrument. This distinction is important because the treaties do not apply a single limitation formula to all rights. Some rights are absolute, while others may be restricted only for specified purposes and in defined circumstances.
63. For example, Article 18(3) of the ICCPR permits limitations on the freedom **to manifest religion or belief** only where those limitations are **necessary** to protect public safety, order, health, morals, or the fundamental rights and freedoms of others. That is a more exacting standard than the general test of whether a limit is "reasonable and demonstrably justified" under clause 12 of the proposed Bill.
64. The same principle should govern any attempt to balance competing rights. Rights should be interpreted and applied consistently with the ratified treaties, rather than through a domestic balancing exercise that elevates one category of rights over another.

65. For that reason, a broad general limitations provision should not be part of a Human Rights Act. Such an approach would depart from the way Australia’s treaty obligations are expressed and would risk applying limits to rights in a manner not contemplated by the treaties themselves.

A) Complexity and Specificity of Limiting Clauses in Human Rights Law

66. Human rights treaties do not subject every right to a single balancing formula. Some rights are absolute, while others contain their own specific limitation clauses, expressed in terms appropriate to the nature and importance of that particular right.
67. General Comment 31 demands that “any restrictions on any of those rights must be permissible under the relevant provisions (i.e., the text of each right considered individually) of the Covenant”.
68. Importantly, the right to freedom of thought, conscience, and religion in Article 18 is one of the few rights that are *non-derogable* under the ICCPR (Article 4.2). This means that it cannot be suspended or restricted even in times of public emergency that threaten the life of the nation—a status shared with only a handful of rights such as the right to life, freedom from torture, and recognition as a person before the law.
69. The non-derogability of Article 18 reflects the United Nations Human Rights Committee’s view that religious freedom is so fundamental to human dignity that it must never be compromised.⁷
70. Any regulation of religious practices must satisfy the test under Article 18(3), namely that limitations are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others and that they are legislated.
71. *The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (1984)* explain that limitations on rights need to be necessary, proportionate to the aim, and the least intrusive means available (ss10-11, 23-31). These criteria require more than fear that religious activity *might* cause harm. They require clear evidence that the specific religious activity poses a specific, concrete risk to public health, safety, or the rights of others. They also require that any limitations on religious freedom are the least intrusive possible to address the specific, concrete risk.
72. In balancing competing rights, the *Siracusa Principles* give priority to the most fundamental rights – including religious freedom – stating:

When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant. (s37)

⁷ General Comment No. 22

73. International jurisprudence has also consistently affirmed the primacy of the right to freedom of religion or belief, even if the beliefs are controversial or unpopular within the community.
74. The European Court of Human Rights (ECtHR) in *Kokkinakis v. Greece* (1993) held that proselytism, even if persistent, is protected under Article 9 of the European Convention on Human Rights (ECHR), unless it involves improper pressure or coercion. The Court warned against criminalising religious outreach merely because it is persuasive or doctrinally exclusive.
75. In *Church of Scientology Moscow v. Russia* (2007), the ECtHR criticised the Russian government's attempts to de-register a religious group based on controversial public perceptions, reiterating that freedom of association (Article 11) and religion (Article 9) cannot be denied due to societal disapproval or unfamiliarity with a group's beliefs or structure.
76. Article 18 of the ICCPR does not permit limitation of the freedom to have or adopt a religion or belief at all. It permits limitation only on the *manifestation* of religion or belief, and only where the limitation is *necessary* to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

B) Generic “Limitations Clause” Erases Careful Balance

77. Clause 12 adopts a general limitations provision which applies across all human rights in the Bill. This approach is inappropriate because it assumes that all rights may be limited according to a common test of what is “reasonable” and “demonstrably justified” in a free and democratic society. This is not the approach taken in the international treaties.
78. The effect of clause 12 is therefore to replace the carefully-balanced treaty-based structure of rights and limitations with a one-size-fits all test. That test may allow rights to be limited in circumstances where the relevant covenant does not permit limitation, or on grounds broader than those recognised by the treaty.
79. This is particularly concerning because the limitations in clause 12 are a much lower bar than that provided to religious freedom in the ICCPR.
80. Clause 12 states:

12 Limitations on rights

- (1) A human right may be subject under law only to limits that are reasonable and may be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on human rights is reasonable and justified, the following considerations are relevant—
 - (a) the nature of the right,
 - (b) whether the limitation is aimed at achieving a legitimate objective,

- (c) the relationship between the limitation and the limitation’s objective, including whether the limitation will be effective to achieve the objective,
- (d) whether the limitation is proportionate to the objective sought to be achieved, including consideration of the following—
 - (i) the extent of the interference with the human right,
 - (ii) whether there are effective safeguards or controls over the means adopted to achieve the objective,
 - (iii) whether the means adopted are sufficiently circumscribed,
 - (iv) whether there is oversight of the means adopted and access to review,
 - (v) whether there are any less right restrictive and reasonably available means to achieve the objective,
 - (vi) whether the means adopted provide sufficient flexibility to treat different cases differently,
 - (vii) whether any affected groups are particularly at risk.

Note— A legitimate objective is a necessary objective that addresses a public or social concern that is pressing and substantial enough to warrant limiting the right.

81. This language is significantly different from international law. A test based on what is “reasonable” and “demonstrably justified” is a dramatically lower barn than the stricter requirement of *necessity* in ICCPR 18. The Bill does not confine limitations to the specific grounds stated in the Covenant, but adds a far wider set of grounds.
82. The Bill also undermines the strong interpretation of the term “necessary” in international law. The note to clause 12 of the Bill states that “a legitimate objective is a necessary objective that addresses a public or social concern that is pressing and substantial enough to warrant limiting the right.” This use of the word “necessary” is materially different from the necessity test in Article 18 of the ICCPR.
83. Under Article 18, the manifestation of religion or belief may be limited only where the *limitation itself* is necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Clause 12 of the Bill reframes this inquiry. It asks whether the *objective* is “necessary”, rather than whether the restriction on religious freedom is necessary. That is, so long as the *objective* is deemed to be necessary, the *specific limitation* does not need to be.
84. When the note to clause 12 is read together with the note to clause 22, the high threshold of necessity in international law is diluted into a broader “legitimate objective” test. That

test requires only a public or social concern that is “pressing and substantial enough to warrant limiting the right”.

85. This risks lowering the level of protection given to religious freedom (and other rights), by permitting limitations on the basis of a sufficiently important *objective* rather than requiring proof that the *limitation itself* is necessary for one of the specific purposes recognised in Article 18. This invites an “ends justifies the means” approach and excessive restrictions justified by a “necessary” objective.
86. The proposed general limitations clause also erases the important distinction between freedom of thought, conscience and religion and the *manifestation* of religion or belief. Article 18 of the ICCPR does not permit limitation of the freedom to have or adopt a religion or belief at all. It permits limitation only on the *manifestation* of religion or belief, and only where the limitation is *necessary* to protect public safety, order, health, morals, or the fundamental rights and freedoms of others. By removing the nuance of the distinction, the proposed Bill actually allows the restriction of thought, conscience and religion themselves – in blatant violation of international law.
87. A Human Rights Bill should not invite courts or public authorities to determine rights according to a broad and open-ended balancing exercise. If treaty rights are to be incorporated into legislation, the limitations on those rights should be incorporated with equal precision. Limitations should appear only where the relevant treaty right provides for them, and should be expressed in the same terms as the treaty itself.

C) Specific targeting of religious freedom

88. In addition to the watering down of the ICCPR protections for religious freedom in the general limitations clause, the proposed Bill actively targets religious freedom for limitation.
89. A number of the rights defined in Section 2 of the Bill have notes, most pointing out that individuals have additional rights in other clauses. The exception is clause 22, which defines “freedom of religion” in the terms of the Bill. The note to clause 22 reads:

Note – The freedom to have or adopt a religious or other belief or opinion must not be subject to limitation except in achieving a legitimate objective. The following limits are recognised under international human rights law as legitimate-

- (a) limits that are necessary to protect public safety
- (b) limits that are necessary to protect public order
- (c) limits that are necessary to protect public health or morals
- (d) limits that are necessary to protect the fundamental rights and freedoms of others.

90. This is the only right defined in the Bill that has a note clearly defining its limitations on top of the general clause. This is particularly concerning because the note *appears* to comply with the ICCPR by echoing the language of Article 18(3). In reality, however, it significantly changes the wording of the ICCPR and is explicitly defining a much lower bar of protection than international human rights law demands.
91. Firstly, as noted above, the note changes the language of necessary limitation to a legitimate objective – greatly increasing the scope for a government to restrict religion.
92. Secondly, the note suggests that there are grounds for the restriction of “the freedom to have or adopt a religious or other belief or opinion”. That is clearly contradictory to the ICCPR and international precedent.
93. Article 18 draws a clear distinction between the internal freedom to hold, adopt or change a religion or belief and the external freedom to manifest that religion or belief. Article 18(1) protects freedom of thought, conscience and religion, including the freedom to have or adopt a religion or belief of one’s choice. Article 18(3), by contrast, permits limitations only on the manifestation of religion or belief. Its limitation grounds do not extend to the internal freedom to hold or adopt a belief.
94. That distinction is reinforced by Article 4 of the ICCPR. Although certain Covenant rights may be derogated from during a formally declared public emergency, Article 18 is expressly excluded from derogation by Article 4(2). The right to manifest a religion or belief remains subject to the specific limitations contained within Article 18(3), but the underlying freedom to have, adopt, retain or change a religion or belief is not subject to limitation.
95. The note to clause 22 therefore does more than merely dilute the treaty standard. It applies a limitation framework to a part of religious freedom that international law protects unconditionally. In that respect, the note is directly inconsistent with Article 18 of the ICCPR.
96. It is hard to understand why the Bill would add additional statements of limitations on religious freedom – and no other rights – unless it was the express intention to ensure that religion was made subordinate to other human rights.

IV. Religious institutions as “Public authorities”

97. The Bill applies to the acts and decisions of a “public authority”. However, that expression is defined broadly in clause 9 to possibly include many private organisations, including faith-based bodies, where they are engaged in the provision of services such as early childhood education, other education, public health services, disability services, housing, aged care, or any other service to the community for which they receive public funding.
98. This is a significant expansion of the practical reach of the Bill. The result is that institutions established for religious purposes may be subjected to obligations designed for government decision-makers, despite their distinct religious character and mission.

99. At the same time, the Bill does not apply generally to acts or decisions of a private nature. This substantially limits the operation of many of the rights that the Bill purports to protect. For example, rights relating to work, housing, strike action, and the environment would not necessarily apply to private individuals or private bodies acting in a private capacity. The Bill therefore creates an uneven scheme: it places substantial obligations on many faith-based organisations, while other ordinary private decisions remain outside its scope.
100. Clause 49 makes it unlawful for a public authority to act, or make a decision, in a way that is incompatible with human rights, or to fail to give proper consideration to a relevant human right. The requirement to give “proper consideration” is defined expansively. It requires a decision-maker to identify affected rights, assess compatibility with those rights, ensure the participation of specified groups where they are disproportionately affected, and realise “access to justice principles”.
101. These obligations would be highly burdensome for private organisations providing public services. In practical terms, they could require schools, aged care facilities, disability providers, and other bodies to consult widely before making ordinary operational decisions.
102. The obligation to ensure participation by specified groups is also problematic in principle. It elevates the procedural position of some affected persons over others and imposes a rigid participation requirement on decision-makers. In a faith-based context, this may interfere with the ability of religious organisations to make decisions consistently with their doctrines, tenets, beliefs, governance structures, and religious purposes.
103. The difficulty is compounded by the role given to the proposed NSW Human Rights Commission (see below). The Bill would enable complaints to be made against public authorities and would allow the Commission to investigate and review the policies and procedures of institutions captured by the Bill. It would also permit public reporting in a way that may expose religious and other bodies to reputational sanction. This creates a substantial risk that the complaints process itself becomes a form of pressure on faith-based institutions to alter their policies, practices, or religious character.
104. The enforcement provisions intensify these concerns. Where a public authority is alleged to have failed to give proper consideration to human rights, an individual may lodge a complaint with the proposed NSW Human Rights Commission, commence proceedings in the Tribunal, commence proceedings in a court, or rely on the rights under the Act in other proceedings where they have standing.
105. Clause 51 then creates an asymmetrical costs regime. A successful applicant may obtain costs against a respondent, including where the applicant succeeds on only one ground. By contrast, the Bill prevents an applicant from being ordered to pay costs in any case. This appears to apply even where a claim is vexatious, misconceived, or without merit. Similar costs provisions in the Anti-Discrimination Act 1977 (NSW) have contributed to

respondents being drawn into costly and damaging complaints processes, where the process itself can become the punishment.

106. The combined effect of these provisions is an unwarranted intrusion into the governance, policies, and ordinary operations of religious bodies and other private organisations delivering public services. The Bill would expose them to broad procedural duties, complaints, investigations, litigation, and reputational pressure, while undermining their capacity to operate in accordance with their religious doctrines, tenets, and beliefs.

V. Power of the Attorney General

107. The Bill gives the Attorney-General a broad right to intervene in court proceedings and to be joined as a party where a question of law arises concerning the application of the Act, or the interpretation of another statutory provision in light of the Act.
108. That power is inappropriate in this context. Questions about the meaning and application of legislation are matters for the courts, applying ordinary principles of statutory interpretation. The Attorney-General is not a neutral participant in that process. The office has a hybrid character, combining legal responsibilities with political and executive functions. For that reason, routine intervention by the Attorney-General in proceedings concerning the interpretation of the Act risks introducing political considerations into matters that should be determined judicially.
109. The concern is not merely procedural. A broad intervention power blurs the distinction between Parliament, the Executive, and the judiciary; Parliament enacts legislation, the Executive administers it, and the courts interpret and apply it. If the Attorney-General is able to enter proceedings to advance a position about how the Act should be interpreted, particularly in disputes that may otherwise be between private parties, the independence of judicial interpretation is placed under unnecessary pressure.
110. The Bill risks transforming the Attorney-General from a limited intervener in exceptional public interest matters into an active participant in the development of human rights jurisprudence. That is not an appropriate role for a political office-holder. The interpretation of rights, limitations, and statutory obligations should remain the responsibility of an independent judiciary, applying orthodox legal principles without executive or political intervention.

VI. Human Rights Commission granted excessive powers

111. The proposed NSW Human Rights Commission would be given extensive oversight, investigatory and review powers over religious bodies that are captured by the Bill. This might include faith-based early childhood centres, schools, aged-care facilities, hospitals, disability services and other charitable institutions. Such powers would represent an unjustified intrusion into the internal policies, governance and operations of religious organisations.

112. The concern arises from the breadth of the definition of “public authority” and “public nature” in clause 9. The Bill does not confine public functions to activities carried out by government. Clause 9(2) expressly provides that the matters listed in clause 9(1) do not limit what may be considered in deciding whether a function is of a public nature. This creates uncertainty about how far the definition may extend. At its broadest, it could be argued that religious activities open to the public, such as church services, weddings or funerals, have a public character. In any event, clause 9(3)(b) clearly captures private bodies that receive public funding to provide services to the community, including faith-based organisations delivering education, health, aged care and other public-facing charitable services.
113. The powers proposed for the NSW Human Rights Commission are correspondingly broad. Clause 63 gives the Commission all powers necessary to exercise its functions, while clause 62 empowers it to review and investigate policies, programs, procedures, practices and services where suspected breaches of clause 49 arise. In the case of religious bodies, this would allow a government-created body to examine the internal policies and practices by which those organisations seek to maintain their religious character and carry out their mission.
114. That intrusion is especially concerning because clause 49 requires captured bodies to make decisions in a way that is compatible with the “human rights” defined by the Bill. As addressed above, those rights are not confined to ratified treaty rights. They include novel and expanded rights, omit important treaty rights such as parental rights, deny rights to bodies corporate even where international law recognises the communal and institutional dimensions of religious freedom, and apply a balancing framework that gives insufficient protection to freedom of conscience, belief and religion.
115. The practical effect is that religious bodies may be subjected to investigation and review against a contested and ideologically weighted set of rights. By defining public authority status by reference to public funding, the Bill appears to expose faith-based organisations to government scrutiny precisely when they are carrying out their public charitable work. That would place religious schools, hospitals, aged-care providers and other ministries at risk of external investigation into whether their policies and procedures comply with disputed human rights standards, rather than allowing them to operate consistently with their doctrines, tenets and beliefs.
116. The Bill also gives the proposed NSW Human Rights Commission excessive powers in relation to complaints against public authorities. If an alleged contravention of clause 49 occurs, an individual may make a human rights complaint to the Commission. Once a complaint is made, clause 77 permits the Commissioner to take steps to resolve the matter, including by making inquiries, requesting information, and arranging conciliation.
117. More concerning, clause 78 gives the Commissioner a broad power to compel the production of documents. That power is not confined to the complainant or the respondent. It extends to any “relevant entity”, which includes any other entity the

Commissioner considers has information relevant to the complaint in its possession or control. This is an extraordinarily broad power.

118. In practice, a complaint against one faith-based institution could become the basis for requiring documents from a much wider class of bodies. For example, a complaint against one Anglican school could arguably lead to requests for policies, procedures, enrolment materials or governance documents from other Anglican schools or related entities across New South Wales.
119. That is a substantial and unjustified expansion of investigative power. It is particularly concerning where the bodies affected may be religious organisations whose internal policies, employment practices, enrolment decisions, pastoral procedures and governance arrangements are closely connected to their doctrines, tenets and beliefs. A complaint about a single decision should not become a mechanism for broad-ranging scrutiny of the policies and practices of other religious bodies.
120. The obligation to comply is also framed too narrowly. Clause 78 requires a relevant entity to comply with a document request unless it has a “reasonable excuse”. However, the only specific example provided by the Bill of such an excuse is reference to legal professional privilege (in cl 78(4)). That seems significantly narrower than comparable provisions in the Anti-Discrimination Act 1977 (NSW), which permit a complainant or respondent to provide a reasonable excuse for non-compliance without confining that excuse to legal professional privilege. There may be many legitimate reasons why documents should not be produced, including confidentiality, privacy, religious governance concerns, pastoral sensitivity, or the burden and scope of the request.
121. The penalties for non-compliance are also excessive. Failure to comply with a request to produce documents is an offence carrying a maximum penalty of 113 penalty units. This is more than double the penalty that may apply to a body corporate under the comparable provision in the Anti-Discrimination Act, and more than ten times the penalty that may apply to an individual under that Act. Such a penalty is disproportionate for a failure to produce documents in an administrative complaints process.
122. These provisions would give the Commission coercive powers that are too broad, insufficiently constrained, and backed by excessive penalties. They would expose religious and other non-government bodies to wide-ranging document demands, including in relation to matters beyond the immediate complaint. This would intensify the Bill’s intrusion into the internal affairs of faith-based organisations and create a serious risk that the complaints process itself becomes a punitive and coercive mechanism.

VII. Conciliation Process

123. The Bill describes conciliation as a process intended to promote the resolution of complaints in a way that is “informal, quick and efficient”. However, the provisions governing conciliation are inconsistent with that purpose. They create a process that is

coercive, procedurally uneven, and likely to become adversarial at an early stage, even before any contravention of human rights has been established.

124. Under clause 79, if the Commissioner accepts a human rights complaint, the Commissioner may conduct a conciliation conference. Clause 81 then empowers the Commissioner to direct an individual to take part in that conference. More significantly, that direction may be filed as a court order and enforced accordingly. This goes beyond the comparable provisions of the Anti-Discrimination Act 1977 (NSW), under which the President of Anti-Discrimination NSW may direct a complainant or respondent to attend, with non-compliance attracting a statutory penalty.
125. By allowing a direction to attend conciliation to be filed as a court order, the Bill converts what should be an informal dispute resolution process into a binding legal command. Court enforcement may bring with it procedural consequences such as timetable management, evidentiary requirements, costs consequences, and other sanctions for non-compliance. That is a heavy-handed approach at the conciliation stage, particularly where there has been no finding that the respondent has breached the Act. It is difficult to reconcile such coercive machinery with a process said to be informal, quick and efficient.
126. Clauses 82 to 84 also create an imbalance in the way conciliation may be conducted. The complainant may attend personally, or may be represented by another person with the Commissioner's consent. The complainant may also be accompanied by a support person, and where the complainant has a disability the Commissioner must allow a support person if the complainant wishes. In addition, clause 84 allows the complainant to be assisted by an interpreter and by another individual considered necessary or desirable to make the conciliation accessible and inclusive, including someone with "appropriate cultural or social knowledge and experience".
127. These provisions may be well-intentioned, but they risk changing the character of conciliation. A process designed to be a private and practical discussion between the parties may instead become a gathering involving representatives, support persons, helpers, interpreters, cultural or social advisers, and potentially lawyers or activists. This is especially problematic where equivalent entitlements are not clearly conferred on the respondent. The result may be a process that is no longer a facilitated negotiation between the parties, but an adversarial proceeding in substance.
128. Finally, clause 87 provides that conciliation does not affect any other right or remedy in relation to an alleged contravention of clause 49. This makes it less likely that conciliation will bring finality. Unlike the Anti-Discrimination Act, which provides mechanisms for conciliation agreements to be registered and enforced, and for legally binding deeds of release, the Bill appears to allow conciliation to become merely the first step in an ongoing dispute. That is inconsistent with the stated purpose of achieving an informal, quick and efficient resolution.

VIII. Reporting mechanism

129. The Bill creates a series of reporting and publication powers that are likely to operate unfairly against respondents, including religious bodies captured as public authorities. These provisions are particularly concerning because they apply in the context of complaints that may be unresolved, untested, misconceived, vexatious, or without legal merit.
130. Where a complaint is not resolved through conciliation, clause 88 requires the Commissioner to report on the substance of the complaint and the steps taken to resolve it. The report may also include details of actions the Commissioner considers the respondent should take to ensure future compatibility with human rights. This provision appears to assume that the failure to resolve a complaint is attributable to some deficiency in the respondent's conduct. It does not adequately allow for the possibility that the complaint was unfounded, that no human right was breached, or that the complainant acted unreasonably in refusing a fair resolution proposed by the respondent.
131. Clause 89 is also inadequate in relation to resolved complaints. It requires the Commissioner to provide notice to the parties recording the outcome and stating that the Commissioner has finished dealing with the complaint. However, it does not provide for the registration or enforcement of a conciliation agreement in the manner available under the Anti-Discrimination Act 1977 (NSW). Nor does the Bill contain equivalent provisions for termination, withdrawal, abandonment, or referral of complaints following failed conciliation. The result is an uncertain process that may fail to bring either enforceable resolution or finality.
132. The publication powers in clause 90 are especially problematic. The Commissioner may publish information about a human rights complaint after the Commission has finished dealing with it. Although there are limits on the publication of personal information, the Commissioner may publish the substance of the complaint and draw upon material included in annual reports. This is, in substance, a "name and shame" provision. It is unfair to respondents and risks causing reputational damage even where no breach has been established.
133. The protection for personal information is also too weak. Clause 90 allows publication of personal information where that information has previously been published or was provided for the purpose of publication. The phrase "has previously been published" is vague and open-ended. It does not identify who must have published the information, in what form, or in what circumstances. For example, a complainant could go to the media or publish allegations online identifying a respondent. On one view, that prior publication could then permit the Commissioner to publish the respondent's personal details, the substance of the complaint and adverse material, even where the complaint is unresolved or has been resolved without any admission of wrongdoing.
134. This is inconsistent with the private and confidential nature of conciliation. A process said to be informal, quick and efficient should not be followed by public reporting that may

expose the respondent to reputational sanction. The risk of later publication will discourage frank participation in conciliation and may have a chilling effect on the speech, policies and decisions of individuals and institutions, particularly faith-based bodies concerned that ordinary religious decisions may become the subject of public criticism by the Commission.

135. The annual reporting provisions in clause 91 compound the problem. The Commissioner must report on the number and type of complaints, conciliation conferences, outcomes and related statistics. However, the report may also include the number of public entities that failed to comply with conciliation directions, the number of complaints made against particular public entities, the names of public entities, and details of actions taken in relation to unresolved complaints. These provisions go beyond statistical reporting and again create a mechanism for public identification and reputational pressure.
136. The Bill also requires public authorities that prepare annual reports to include details of human rights complaints made against them, including the number and outcome of those complaints. This would apply to private bodies deemed to be public authorities, including schools, hospitals, aged care facilities and other faith-based service providers. This is unnecessary duplication given the Commissioner's own reporting obligations. It is also another form of "name and shame" reporting, requiring organisations to publicly identify themselves as the subject of complaints regardless of whether those complaints were frivolous, vexatious, misconceived or dismissed.
137. This is a real concern for people of faith and faith-based institutions. Experience under anti-discrimination law demonstrates that religious individuals and organisations may be subjected to vexatious or ideologically motivated complaints. A Human Rights Bill drafted in broad and contested terms, and creating novel or conflicting rights, is likely to increase that risk. Public reporting of complaints, without adequate regard to their merit, would make the complaints process itself punitive.
138. Clause 97 also goes too far in protecting persons who provide information to the Commissioner or another entity in relation to a human rights complaint. The clause appears to protect a person from civil, criminal and administrative liability, and from consequences for breaching professional etiquette, ethics or accepted standards of professional conduct. That protection is too broad. It should not excuse breaches of confidentiality, legal professional privilege, professional obligations, court orders, or other legal restraints simply because information was provided in connection with a complaint.
139. Clause 98 is similarly excessive. It empowers the Commissioner to make orders restricting publication in order to protect work security, privacy or any human right of an individual involved in a complaint, with a penalty of 90 penalty units for breach. These powers resemble suppression or non-publication orders, but without the safeguards that apply to courts. The provision does not begin from the principle of open justice, nor does it require the kind of strict grounds ordinarily necessary to justify suppression, such as protection of the administration of justice or personal safety.

140. The Commissioner is not a court and should not be given court-like powers to make suppression orders backed by significant penalties. If conciliation is intended to be private and confidential, that should be achieved through clear confidentiality rules governing the complaint process.

Conclusion

141. Whether or not a Human Rights Act may be appropriate for New South Wales in the longer term, this Bill is both inappropriate in its content and premature in its timing.
142. Before considering any such Bill, Parliament should first address the significant and longstanding absence of protection against religious discrimination in the Anti-Discrimination Act 1977. It should also assess the effectiveness of its own Legislation Review Committee and whether additional legislation is needed to ensure compliance to international human rights instruments.
143. In any event, this particular Bill should not proceed. It departs substantially from the rights and limitations contained in ratified international instruments, creates novel and contested rights, weakens the protection of freedom of thought, conscience and religion, and omits important protections such as parental rights. It also imposes extensive obligations on faith-based organisations while denying religious bodies the capacity to rely on human rights in their own institutional capacity. These substantive defects are compounded by a heavy-handed regulatory and enforcement regime.
144. The Bill should therefore be rejected. Any future consideration of a Human Rights Act should begin with a careful assessment of actual gaps in existing law, preserve the text and structure of Australia's ratified treaty obligations, and provide clear and meaningful protection for freedom of religion, conscience and belief.

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