

## Introduction

### Background to the inquiry

- 1.1 On 29 November 2016 the Minister for Foreign Affairs and Trade, the Hon Ms Julie Bishop MP, wrote to the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) to refer an inquiry into the “status of the freedom of religion or belief (as recognised in Article 18 of the International Covenant on Civil and Political Rights) around the world, including in Australia”. The Committee was requested to have particular regard to:
- The enjoyment of freedom of religion or belief globally, the nature and extent of violations and abuses of this right and the causes of those violations or abuses;
  - Action taken by governments, international organisations, national human rights institutions, and non-government organisations to protect the freedom of religion or belief, promote religious tolerance, and prevent violations or abuses of this right;
  - The relationship between the freedom of religion or belief and other human rights, and the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights;
  - Australian efforts, including those of Federal, State and Territory governments and non-government organisations, to protect and promote the freedom of religion or belief in Australia and around the world, including in the Indo-Pacific region.
- 1.2 The inquiry was also to have regard to developments since the Committee last reported on Australia’s efforts to promote and protect freedom of religion or belief in November 2000.

- 1.3 In 1999-2000 the JSCFADT conducted an inquiry into Australia's efforts to promote and protect freedom of religion or belief. The JSCFADT's report, entitled *Conviction with Compassion: A Report into Freedom of Religion and Belief*, was tabled in November 2000. The report made nine recommendations. A subsequent Government Response, tabled in November 2002, accepted or accepted in principle four of those recommendations. The *Conviction with Compassion* report noted the frequency with which the issue of freedom of religion or belief was addressed indirectly in previous reports on human rights, including, for example, in the report entitled, *Improving But...: Australia's Dialogue on Human Rights*, tabled in June 1998.
- 1.4 The Inquiry was referred by the JSCFADT to the Human Rights Sub-Committee (the Sub-Committee) on 30 November 2016.
- 1.5 By 2 November 2017, the Inquiry received over 600 submissions and contributing documents from a broad range of stakeholders. The Sub-Committee held 7 public hearings. The initial public hearings which contributed to the first interim report focused on the legal foundation of religious freedom protections in Australia, with leading legal and constitutional academics, human rights groups, and government agencies appearing. The subsequent hearings examined the current experiences of religious and non-religious organisations, groups and individuals within Australia regarding their religious freedom as well as some evidence regarding the overseas experience of religious freedom. Most of these witnesses also contributed submissions.
- 1.6 The Sub-Committee wishes to thank all those who took the time to make a submission to this inquiry, those who appeared as witnesses and those who have participated in the ongoing discussion around the human right to freedom of religion or belief.

## **A Second Interim Report**

- 1.7 This is the Second Interim Report of the Human Right Sub-Committee of the Joint Standing Committee for Foreign Affairs Defence and Trade for the Inquiry into the status of the human right to freedom of religion or belief.
- 1.8 At the start of the inquiry the Human Rights Sub-Committee determined that the most effective way to examine and address very broad terms of reference regarding the protections of religious freedoms in Australia and overseas, would be to first examine and establish what legal protection currently existing in Australia that safeguard the practise of religion and

belief. This examination resulted in the presentation of the First Interim Report entitled *Legal Foundations of Religious Freedom in Australia* which was tabled in November 2017.

- 1.9 The Sub-Committee then determined to examine threats to freedom of religion and belief and from that basis, consider any remedies that may be required to bolster protection for religious freedom. After examining Australian protections for religious freedoms the Sub-Committee planned to turn its attention to religious freedom overseas.
- 1.10 The Sub-Committee found that the freedom of religion or belief receives little formal protection in Australia. Most significantly, there is no explicit protection for religious freedom at the Commonwealth level. Although the Constitution does go some way to preventing the Commonwealth Government from restricting religious practice, it does not prevent states and territories from restricting religion or belief.
- 1.11 Despite this lack of legal protection it is clear, particularly from the evidence of those who have been subject to religious persecution by other countries, that Australia enjoys significant religious freedoms.
- 1.12 There is, however, an apparent increasing level of concern amongst Australians regarding their religious freedoms as demonstrated both by the public response to this inquiry and to that of the Australian Government's *Religious Freedom Review* (discussed in Chapter 5), that also sought public submissions a year later.
- 1.13 As pointed out in the Sub-Committee's First Initial Report these concerns overwhelmingly come from what can perhaps be best described as 'conflicting rights' where one human right may challenge or come into conflict with another human right, for example, when religious groups through the practice of their faith may wish to discriminate on grounds of employment in religious schools or the provision of services. This practice may then come into conflict with, for example, antidiscrimination legislation.
- 1.14 Evidence provided to the Sub-Committee reflected sharply divided opinion. On one side, it was argued that religious exemptions give unfair weight to religious freedom before the law; on the other side of the debate the majority of submissions reflected a belief that religious freedom is unjustly subordinated to other human rights instruments, such as anti-discrimination legislation. Different concerns regarding these competing human rights were raised and a number of solutions as to how these conflicts might be addressed were suggested.
- 1.15 As the First Interim Report stated, striking a balance between these rights is indeed a challenging and delicate task.

- 1.16 The Sub-Committee was mindful of the potential significance of the establishment of the Government's review into religious freedom which commenced on 22 November 2017, with the directive to examine whether Australian law adequately protects the human right to the freedom of religion. As the original reporting date for the Government's review was 31 March 2018 the Sub-Committee determined to wait and examine the Review's findings before making recommendations. This deadline was then extended to 18 May 2018. The Review's report was publicly released on 13 December 2018 along with the Government's response.
- 1.17 Notwithstanding the lengthy delay before the release of the Government's review and the consequential delay in the Sub-Committee's inquiry, the Sub-Committee determined to produce a Second Interim Report before the end of the 45th Parliament to give voice to some of the evidence provided on these concerns and to present some of the proposed solutions presented in the course of this inquiry.

## **Report structure**

- 1.18 As discussed above, the First Interim Report tabled in November 2017 examined the legal foundation of religious freedom in Australia, focusing on a selection of submissions from, and public hearings with, legal academics and experts in human rights law.
- 1.19 The findings of that report are briefly discussed in an overview in Chapter 2.
- 1.20 The Sub-Committee has proceeded on the assumptions of that First Report, broadening the scope of the inquiry to hear from a wide range of community and religious groups in Australia. The Sub-Committee has continued to focus on the status of freedom of religion or belief in Australia, although a number of groups representing persecuted religious minorities in other countries did appear at public hearings.
- 1.21 Chapter 3 will discuss the range of concerns about religious freedom in Australia raised throughout public hearings and submissions. Some general concerns are discussed, and the specific concerns of particular religious or community groups are examined in turn.
- 1.22 Chapter 4 discusses some of the possible solutions or improvements that could be made in Australia. This includes a broad discussion of the various suggestions made by witnesses and in submissions, as well as referring to the suggestions highlighted in the First Interim Report.

- 1.23 Chapter 5 discusses the finding of the Australian Government's Religious Freedom Review and the Government's response to the Review's recommendations.
- 1.24 Finally, Chapter 6 provides Sub-Committee comment and makes two Recommendations.

