

The Domestic Experience of Freedom of Religion or Belief

- 3.1 The Sub-Committee heard from a wide range of religious and community groups throughout Australia. This included representatives of major religions, major and minority denominations within major religions, minority religions, and some non-religious belief systems such as humanism. The Sub-Committee also heard from a range of community groups, including Vietnamese and Tibetan groups, the Federation of Ethnic Communities' Councils of Australia and its Victorian chapter, and some government bodies.
- 3.2 Despite receiving over 400 individual submissions, over 200 submissions by way of a range of form letters, and casting a broad net in public hearings, there remain a number of religions, denominations, or belief systems from which the Sub-Committee has not received evidence, such as Eastern Orthodox churches, Jehovah's Witnesses, Sikhism, or Scientology.
- 3.3 Additionally, evidence heard from organisations and individuals who did submit or appear at hearings cannot be taken to represent a whole religious community or denomination. For the vast majority of religions and faith based groups, there is no single position on issues relating to religious freedom adopted by all adherents of that particular faith. It would be remiss of this report to ignore this.
- 3.4 What the sub-committee has noted, are some broad common themes that have come to the fore throughout submissions and hearings. As a result, although this Chapter is not exhaustive, it provides a substantial picture of the status of freedom of religion or belief as experienced in Australia.
- 3.5 This chapter will discuss the experiences of different groups of Australia one by one.

Aboriginal religious practices

- 3.6 Aboriginal and Torres Strait Islanders are diverse in their religious adherence. In the 2016 census, about 650,000 people, or just under three per cent of the population, identified as Aboriginal, Torres Strait Islander, or both. About 8,000 people identified as adhering to “Australian Aboriginal Traditional Religions”¹
- 3.7 The inquiry received a submission from Mr Ernst Willheim, a Visiting Fellow in the ANU College of Law. His submission addresses the freedom of religion or belief in relation to indigenous people, and argues that “Australian law and practice does not adequately protect the human right of Australia’s indigenous people to practice their religion”² Mr Willheim’s submission was the only submission received which examined Aboriginal beliefs and their protections.
- 3.8 Mr Willheim argues there is a “collision between core values of Aboriginal religious belief and core values of the Australian legal system”.³ While Australian law values openness and transparency and gives a “special weight” to protection of private property interests, Aboriginal religious values conflict with this, particularly in relation to the “secret nature of much Aboriginal religious belief”. As a result, he argues:
- laws enacted for the purpose of protecting Aboriginal religious beliefs and practices have failed to achieve their purpose.⁴
- 3.9 Mr Willheim cites the Broome Crocodile Farm case⁵ and the Hindmarsh Island Bridge case⁶ as examples of this problem. In the latter case, a group of women faced the dilemma of having to disclose “gender restricted beliefs” to male decision makers in order to pursue their protection application. They withdrew this evidence and it was decided that there was insufficient knowledge to support the application.
- 3.10 Mr Willheim also refers to *Wurridjal v The Commonwealth*,⁷ in which Aboriginal plaintiffs argued that a Commonwealth lease amounted to unlawful acquisition of a range of traditional rights, including the right to participate in religious ceremony on identified sacred sites. The Commonwealth argued that these rights did not constitute property. Mr

1 Australian Bureau of Statistics (ABS), *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

2 Mr Ernst Willheim, *Submission 400*, p 1.

3 Mr Ernst Willheim, *Submission 400*, p 2.

4 Mr Ernst Willheim, *Submission 400*, p 2.

5 *Western Australia v Minister for Aboriginal and Torres Strait Islander Affairs* (1994) 54 FCR 144.

6 *Tickner v Chapman* (1995) 57 FCR 451.

7 *Wurridjal v Commonwealth* (2009) 237 CLR 309, 389–90.

Willheim refers to Article 27 of the ICCPR as well as Articles of the UDHR and the Declaration on the Rights of Indigenous Peoples, saying:

indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands. Numerous international instruments recognise the special cultural and religious rights of indigenous peoples and the connection between the exercise of those rights and indigenous land.⁸

- 3.11 Mr Willheim argues that this shows the lack of protection for those who practice indigenous religions, and while not making specific recommendations asks the Committee to consider whether Australia does “recognise, value and protect the freedom of Aboriginal people to practice their religion to the same extent as it protects the practice of mainstream religions?”⁹

Baha’i

- 3.12 The Baha’i faith has existed in Australia since 1920 and has an estimated 14,000 followers, according to the 2016 census.¹⁰ The Australian Baha’i Community (ABC) made a submission to the inquiry and was represented by Dr Natalie Mobini-Kesheh at the public hearing in Canberra.
- 3.13 The ABC notes that the Baha’i Community was a pioneer of the inter-faith movement in Australia, and states that Australia should “continue to embrace a plurality of religious identities and beliefs, gathered together under the canopy of just laws and operating within a human rights framework”.¹¹ The ABC believes that freedom of religion should be “fully protected under Australian law”, citing Article 18 of the UDHR as the “appropriate standard of protection”.¹²
- 3.14 The Australian Baha’i Community recommends a Religious Freedom Act as an appropriate form of protection, noting that the then Human Rights and Equal Opportunity Commission recommended this approach in its 1998 Report. Such an act should explicitly recognise the right to freedom of religion or belief as set out in the UDHR, and should contain prohibitions of both discrimination on the grounds of religion or belief and incitement

8 Mr Ernst Willheim, *Submission 400*, p 4.

9 Mr Ernst Willheim, *Submission 400*, p 4.

10 SBS, ‘Census Explorer’, <http://www.sbs.com.au/news/census-explorer> accessed 2 February 2019.

11 Australian Baha’i Community (ABC), *Submission 332*, p 6.

12 ABC, *Submission 332*, p 6.

to religious hatred or violence.¹³ The ABC also urged that “non-partisan pathways be explored” as partisanship would “greatly weaken” the protections.¹⁴

- 3.15 The ABC commented on the importance that educational programmes, inter-faith initiatives, and religious leaders have in building a harmonious Australian society.¹⁵
- 3.16 Regarding the religious persecution of Baha’is, the ABC is primarily concerned about Baha’is in Iran and Yemen, where Baha’is face severe persecution by the state.¹⁶

Buddhism

- 3.17 Buddhism is practised by over 560,000 Australians, or 2.4 per cent of the population, according to the 2016 census.¹⁷ This inquiry received evidence from Venerable Tenpa Bejanke Duim of the Australian Sangha Association at the public hearing in Canberra.¹⁸
- 3.18 Ven. Duim spoke of facing discrimination while trying to find employment, with many jobs advertising for a Christian or someone with Christian values. She believes the discrimination is because of her appearance as a Buddhist monastic.¹⁹ She also gave evidence of a Queensland woman facing harassment due to her Buddhist appearance wearing religious robes.²⁰ Ven. Duim also observed a general lack of understanding about Buddhists in Australian society, with their reputation as pacifists giving an incomplete view of Buddhists as humans.
- 3.19 This inquiry has received no other evidence directly addressing the experience of Buddhists living in Australia, but many Australian Buddhists have come from parts of the world in which Buddhists face religious persecution. Evidence from the Australian Tibet Council and the Tibet Information Office primarily addresses the persecution of Tibetan Buddhists in Tibet, alleging that the Chinese government has been steadily increasing its control over the affairs of Tibet, and commenting in

13 ABC, *Submission 332*, p 6.

14 ABC, *Submission 332*, p 7.

15 ABC, *Submission 332*, p 7-9.

16 ABC, *Submission 332*, p 2-4.

17 ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

18 Venerable Tenpa Bejanke Duim, Committee Member, Australian Sangha Association, *Committee Hansard*, Canberra, 22 June 2018, pp. 43-46.

19 Ven. Duim, *Committee Hansard*, Canberra, 22 June 2018, p 44.

20 Ven. Duim, *Committee Hansard*, Canberra, 22 June 2018, p 44.

particular the demolition of large parts of Larung Gar, a large Buddhist institute.²¹ According to Mrs Kyinzom Dhongdue of the Australian Tibet Council, this persecution is part of a “political strategy”, but it is targeted at Buddhists “because Buddhism has such a dominant influence on our thinking and on our way of life” and, as a result, “threatens the CPC’s authority”.²² Other religious groups face similar persecution for the same reason, including Uighur Muslims and Christians.²³

- 3.20 The Tibetan organisations are focused on the plight of Buddhists in Tibet, and are not aware of Tibet supporters in Australia facing any discrimination.²⁴
- 3.21 The Vietnamese Community in Australia (VCA) also made a submission and appeared at the public hearing in Melbourne. They are concerned about several human rights issues, including the plight of religious minorities.²⁵
- 3.22 These groups made suggestions on how Australia can use its diplomatic influence with China and Vietnam to improve these human rights situations, particularly through human rights dialogues with these countries. Such considerations are beyond the scope of this Interim Report, and will be examined further in subsequent reports.

Christianity

- 3.23 Historically, Australia has been a majority Christian society since European settlement. This has been declining as Australia becomes populated by people from a more diverse range of countries throughout the world and indeed, more people choose to hold no faith at all.²⁶ About 52 per cent of the population declared affiliation with some form of

21 Australian Tibet Council (ATC), *Submission 295*; Tibet Information Office, *Submission 352*; see also comments by Mr Lhakpa Tshoko of the Tibet Information Office and Mrs Kyinzom Dhongdue, Australian Tibet Council, *Committee Hansard*, Canberra, 22 June 2018, pp 28-30, 47-48.

22 Mrs Dhongdue, *Committee Hansard*, Canberra, 22 June 2018, p 48.

23 ATC, *Submission 295*, p 2.

24 Mr Tshoko, *Committee Hansard*, Canberra, 22 June 2018, p 29.

25 Vietnamese Community in Australia, *Submission 337*; Vietnamese Community in Australia, *Committee Hansard*, Melbourne, 30 April 2018, pp 23-29.

26 ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14 For further details about the increase of those without a religion or faith, see page 33 of this chapter.

Christianity on the 2016 census, down from 61 per cent in 2011, and from 73 per cent three decades ago.²⁷

- 3.24 There is a long history of religious tension in Australia between different Christian denominations, in particular between Protestants and Catholics as described in the Committee's 2000 report, *Conviction with Compassion*. Sectarianism continued from early settlement for nearly two hundred years; as Protestants, predominantly from England, clashed with predominantly Irish Catholics. The conflict between Protestant and Catholic is long standing, multifaceted and was driven not only by religion but by class and colonialism. This divide flowed into Australian politics, with the split of the Australian Labor Party in 1955 being perhaps the most well-known example. Well into the second half of the 20th century this sectarianism continued, with overt cases of discrimination, particularly against Catholics, a regular occurrence and with mixed marriages often resulting in social ostracism.²⁸
- 3.25 Nevertheless, in more recent decades the sectarianism within Christianity has subsided as Australia has become more religiously diverse. With a growing number of adherents of other faiths, and with a rapid growth in non-religious Australians, these tensions appear to be much less of a concern than previously.
- 3.26 In terms of this inquiry, there has been very little discussion of the Catholic-Protestant sectarianism. While some have alluded to this history, there has been no evidence suggesting this is a primary concern for either Catholics or Protestants in contemporary Australia. Rather, in the context of religious freedom in Australia, Catholics and Protestants are united by some common concerns.
- 3.27 It should also be noted that there is no single Christian position on issues relating to religious freedom, nor is there a single view representing Catholics, Anglicans, Presbyterians, or any other single denomination. That being the case, this section will represent the concerns as presented in submissions and at public hearings without purporting to convey a whole denominational or Christian position.

General concerns

- 3.28 A large number of submissions expressed concern at an apparent erosion of religious liberty in Australia for Christians. This concern is well
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27 ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14, ABS, *2011 Census of Population and Housing: General Community Profile*, Worksheet B14, ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet B13.

28 Joint Standing Committee in Foreign Affairs, Defence and Trade (JSCFADT), *Conviction With Compassion: A Report into Freedom of Religion and Belief*, 2000, pp.53-54

articulated by Bishop Michael Stead of the Anglican Diocese of South Sydney. Bishop Stead stated that although Australia's "historical embrace of religious diversity" has been based on a social compact based on the country's Christian heritage:

that is rapidly changing. The societal compact – that shared understanding – is in danger of collapse.

...there are now very different views on what the appropriate limitations are on the right to manifest a religious belief. I think everybody is agreed that you can have whatever belief you like. You are free to believe whatever you like behind the doors of the church, the mosque, the synagogue or the temple, but when it comes to manifesting that in the public sphere... there are now some very different opinions about where those boundaries ought to be drawn.²⁹

3.29 The Lutheran Church of Australia stated that basic religious freedoms are under challenge:

Some are attempting to de-legitimise the voice of faith when discussing important changes in society... To delegitimise the religious voice on social, moral, and ethical questions is to devalue the human person and puts the ongoing stability of society at risk.³⁰

3.30 It has been suggested that some Christians now fear the consequences of manifesting their faith publicly. For example, Mrs Madge Fahy from the Catholic Women's League of Victoria and Wagga Wagga stated:

I know of people who ticked the box for no religion because they didn't want to be picked on. This is the mentality of a lot of people – young people and older people. The older generation have said, 'We've lived happily until now, but we're frightened'. You can go out and you will meet plenty of people who are frightened to comment on anything about religion.³¹

3.31 The Australian Catholic Bishops Conference confirmed this feeling:

Regarding expressing points of view – yes, some are fearful. We're finding individuals, ordinary folk feel too intimidated to be able to give expression to their faith and beliefs in the public arena.³²

29 Right Reverend Dr Michael Stead, Bishop of South Sydney, Anglican Church Sydney Diocese, *Committee Hansard*, Sydney, 2 May 2018, p 54.

30 Lutheran Church of Australia, *Submission 229*, p 6.

31 Mrs Madge Fahy, *Committee Hansard*, Melbourne, 30 April 2018 pp 5-6.

32 Bishop Peter Comensoli, Bishops' Delegate, Australian Catholic Bishops Conference, *Committee Hansard*, Sydney, 2 May 2018, p. 5.

3.32 Mr Francis Moore added:

I do think that there is a reluctance of people of faith to speak out in the way they once did... contributions in the public sphere are much more subject to criticism and mockery now than used to be the case. It does take a resilient spokesperson and character for a religious body to speak out on issues that don't have the general support of the community... because of the way in which their opinions can be criticised or not.³³

3.33 The Uniting Church of Australia was concerned about groups that "would want to stifle the public expression of freedom of religion", saying that religious people "should be allowed to vote and allow their religious beliefs to affect how they vote and, therefore, to affect the laws and the way society is governed".³⁴

3.34 Prominent controversial cases in the media have contributed to a sense among some that religious people, including Christians, are less able to put forth their views. Mrs Fahy referred to Israel Folau, saying that his case "perfectly illustrates the risks to people of faith at this time".³⁵ Margaret Court has faced criticism after expressing her views on same-sex marriage.³⁶ Toowoomba GP Dr David van Gend was required to answer to the Queensland Anti-Discrimination Commission following a column he wrote opposing same-sex marriage.³⁷

3.35 Other examples that have been presented as demonstrative of a general decrease in acceptance of protest on religious grounds by members of Christian faiths include cases of abortion protestors who are prevented from protesting within certain distances of abortion clinics, referred to as 'exclusion zones';³⁸ restrictions on conscientious objectors to abortion within the medical field.³⁹ These examples are given in the context of

33 Mr Francis Moore, Executive Director Administration, Catholic Archdiocese of Melbourne *Committee Hansard*, Sydney, 2 May 2018, p. 5.

34 Dr Mark Zirnsak, Uniting Church in Australia, *Committee Hansard*, Melbourne, 30 April 2018, p 35.

35 Mrs Fahy, *Committee Hansard*, Melbourne, 30 April 2018, pp 1-2. See also comments by Robert Wicks and Peter Kurti, *Committee Hansard*, Sydney, 2 May 2018 pp 50-51.

36 Dr Margaret Colwell, *Submission 368*, p 2; Catholic Women's League of Victoria and Wagga Wagga, *Supplementary to Submission 50*, p 2;

37 Australian Christians, *Submission 46*, p 2; Dr James Greenbury, *Submission 323*, p 2; Form letters No 5.

38 Neil Foster, *Submission 7*, p 49; Jane Munro, *Submission 168*, p 1; Family Life International, *Submission 175*, pp 3-5; Form Letters No 7.

39 Australian Christians, *Submission 46*, pp 3-4; Leopold Hamulczyk, *Submission 354*, p 3; Dr Margaret Colwell, *Submission 368*, p 3; Form Letters No 7.

Victorian laws,⁴⁰ with exclusion zones in Tasmania⁴¹ and the ACT⁴² also cited.

- 3.36 These conflicts were discussed at some length in the first part of this inquiry in 2017, and was the focus of Chapter 7 of the First Report. This Second Interim Report will not go over the same ground at length, but will examine specific evidence from witnesses and submissions that suggest this conflict is not merely a theoretical legal issue but is the experience of a number of Christians in Australia today.

Specific concerns

Anti-discrimination laws

- 3.37 The most apparent area of concern for Christians is in the area of conflicting human rights, specifically the right to non-discrimination and the right to practice religion. Rev Peter Kurti argued that the “expansion in scope and precedence” of such laws are resulting in calls to restrict religious freedom “on charges of bigotry and discrimination”, describing this as a “weaponising of antidiscrimination law”.⁴³ Family Voice Australia described parts of anti-discrimination laws as representing “a direct assault on religious freedom”.⁴⁴
- 3.38 The case of Catholic Archbishop of Tasmania Julian Porteous has been cited throughout submissions and hearings. Archbishop Porteous was a witness at the hearing in Hobart.
- 3.39 The Archbishop was subject to a complaint under the Tasmanian *Anti-Discrimination Act 1998* after producing a booklet outlining the Catholic Church’s teaching on marriage, which was intended for distribution within Catholic schools. The complaint was eventually withdrawn, but the case has been cited as an example of the potential conflict between religious freedom and the right to non-discrimination.⁴⁵ Although the complaint was withdrawn, Archbishop Porteous emphasised the “sense of uncertainty” that has resulted from his case:

40 Respectively, the *Public Health and Wellbeing Act 2008*, the *Abortion Law Reform Act 2008*, and the *Health Complaints Act 2016*.

41 *Reproductive Health (Access to Terminations) Act 2013*

42 *Health Act 1993*. See also John Popplewell, *Submission 4*. Mr Popplewell has faced charges for protesting abortion under the ACT Act.

43 Rev Peter Kurti, *Sydney Committee Hansard*, 2 May 2018, p 49. See also The Centre for Independent Studies, *Submission 48*, p 4.

44 Family Voice Australia, *Submission 83*, p 3.

45 This case was raised in several dozen submissions. See, in addition to the discussion at para 7.17 of the First Interim Report, Catholic Women’s League Tasmania, *Submission 45*; Australian Christians, *Submission 46*, p 3; and Anglican Church Diocese of Sydney, *Submission 178*, p 10; Rev Kurti, *Committee Hansard*, Sydney, 2 May 2018 p 49.

People just don't know. Can I only say things within the church? Can I say things publicly? Even within the church, if somebody were to come in and sit in the church and then report back that I said this in my church, would I then be subject to the law? There are a lot of uncertainties still around in Tasmania.⁴⁶

3.40 Archbishop Porteous stated that the uncertainty is particularly due to the wording of the Tasmanian Act, which prohibits conduct which “offends”, “insults”⁴⁷, or “ridicules”. This phrasing is regarded as “setting the bar too low”⁴⁸ and was of particular concern to Archbishop Porteous and other witnesses.⁴⁹ The Anglican Church Diocese of Sydney stated that there is “no fundamental human right not to be offended”, citing the Tasmanian Act as an example of “legislative overreach, however well-intentioned”.⁵⁰ Mrs Patricia Gartland expressed concern about the subjective nature of offence, stating:

anytime you discuss anything that is contentious, there are going to be people who are offended. We have this extraordinary loophole where a person can say they were offended by something and, consequently, the antidiscrimination legislation comes in.⁵¹

3.41 This feeling of uncertainty persists despite the exceptions in section 55 of the Tasmanian *Anti-Discrimination Act 1998*, which include “a public act done in good faith for – (i) academic, artistic, scientific or research purposes; or (ii) any purpose in the public interest.”⁵² Archbishop Porteous suggested adding “religious purposes” to this section.⁵³

3.42 In response to this case, Ms Robin Banks, who was the Anti-Discrimination Commissioner whose office dealt with the case at the time, clarified what she called “misrepresentations of what happened”. She also argued that there has been no “chilling effect on speech”, and that the case allowed:

46 Archbishop Julian Porteous, Archbishop of Hobart, Archdiocese of Hobart, *Committee Hansard*, Hobart, 6 June 2018, p 27.

47 *Anti-Discrimination Act 1998* (Tas), Section 17.

48 See comments by Mr Zimmerman, *Committee Hansard*, Hobart, 6 June 2018, p 25. Archbishop Julian Porteous, Archbishop of Hobart, Archdiocese of Hobart, *Committee Hansard*, Hobart, 6 June 2018, p 26.

49 Archbishop Julian Porteous, *Committee Hansard*, Hobart, 6 June 2018, p 26; Mr Campbell Markham, *Committee Hansard*, Hobart, 6 June 2018, p 20; see also Wilberforce Foundation, *Submission 115*, p 8.

50 Anglican Church Diocese of Sydney, *Submission 178*, p 11.

51 Mrs Patricia Gartland, *Committee Hansard*, Hobart, 6 June 2018, p 2.

52 Section 55(c), *Anti-Discrimination Act 1998* (Tas). See exchange between Dr Aly and Archbishop Porteous, *Committee Hansard*, Hobart, 6 June 2018, pp 27-28.

53 Archbishop Porteous, *Committee Hansard*, Hobart, 6 June 2018, p 26.

All of the parties [to have] their say and [have] an opportunity to think about how to resolve it. I think they had an opportunity to think about the impact of that book on some people.⁵⁴

- 3.43 A similar case from Tasmania involved Mr Campbell Markham, a Presbyterian minister in Hobart, who was subject in 2017 to complaints concerning blog articles he had written in 2011.⁵⁵ Mr Markham stated at the Hobart hearing that the process was “extremely time-consuming” and has “possibly heavy financial burdens with legal counsel”, adding:

the complaint brought against us goes to the heart not just of religious freedom but of the freedom of all Australians to be able to speak freely. We don't think there should be a special freedom for religious people; we think there should be freedom for all Australians to speak their minds and articulate what they think is right and true and good, without fear of prosecution.⁵⁶

- 3.44 Mr. Markham's colleague Dr David Gee was also subject to complaints at the same time concerning his work as a street preacher. He commented that the threat of anti-discrimination laws when used this way

goes well beyond the scope of religious conviction. It actually goes to the very heart... of free speech in Australia, where, if someone views your religious, political – whatever category you want to put it in – conviction as offensive, it is up for grabs for being gotten rid of, using primarily legal [means].⁵⁷

- 3.45 Concerns about anti-discrimination laws are shared by witnesses outside Tasmania as well. Mr Francis Moore of the Catholic Archdiocese of Melbourne stated that in his experience in Victoria “the priority has been given to antidiscrimination over religious freedom under the charter”. Mr Moore supports religious freedom legislation as a guard against “efforts made to chip away” at religious exemptions.⁵⁸

54 Ms Robin Banks, Private Capacity, *Committee Hansard*, Hobart, 5 June 2018, p. 13.

55 Mr Markham details his case in *Submission 405*, pp 1-2, and at the Hobart public hearing, *Committee Hansard*, Hobart, 6 June 2018, p 19. See also the Australian article or John Sandeman, *Eternity News*, 'Anti-discrimination case against preachers dropped' (7 March 2018), <https://www.eternitynews.com.au/australia/anti-discrimination-case-against-preacher-dropped>, accessed 2 February 2019

56 Mr Campbell Markham, Minister, Cornerstone Presbyterian Church, Hobart, *Committee Hansard*, Hobart, 6 June 2018, p 19.

57 Dr David Gee, Evangelist, Cornerstone Presbyterian Church, Hobart, *Committee Hansard*, Hobart, 6 June 2018, p 20

58 Mr. Moore, *Committee Hansard*, Sydney, 2 May 2018, p. 2-3.

Exemptions to anti-discrimination laws

- 3.46 While anti-discrimination laws do provide exemptions and exceptions for religious organisations and people in certain circumstances, many witnesses are concerned about the framing of these exemptions. These concerns echo many of the comments made during the first part of this inquiry and discussed in the First Interim Report.⁵⁹
- 3.47 The Centre for Independent Studies stated that the problem with expressing religious liberties largely as “mere exemptions and exceptions” is that:
- the language of exemptions presupposes that there is an accepted norm from which some are permitted to diverge and engage in what would otherwise be unlawful behaviour. Inconsistent interpretations of these exemptions by the states lead to the possibility of serious threats to religious liberty.⁶⁰
- 3.48 Freedom for Faith argued for a “positive framework” rather than “fragile exemptions in antidiscrimination legislation”.⁶¹
- 3.49 Similarly, Archbishop Julian Porteous said he would “prefer there were no exemptions”, but a positive recognition of religious freedom enshrined in law.⁶²
- 3.50 Christian Schools Australia and Adventist Schools Australia called exemptions “inherently problematic”, inviting “erroneous perceptions” that the religious practices of Christian schools are not a fundamental right but “are merely tolerated as a form of aberration”.⁶³ Similarly, the Australian Catholic Bishops Conference said that the approach presents religious freedom “more as a right to get out of something rather than the right to pursue our religious mission”⁶⁴
- 3.51 The Anglican Schools Corporation made similar comments:
- the present legislative structure, whereby the right to religious freedom is itself found in mere *exemptions* in legislation, is both at odds with the language of the ICCPR, and is problematic when

59 JSCFADT, *Interim Report: Legal Foundations of Religious Freedom in Australia*, 2017, pp. 82-83.

60 Rev Kurti, *Committee Hansard*, Sydney, 2 May 2018, p. 47. See also *Submission 48*, p 4-5.

61 Mr Robert Wicks, Chairman, Freedom for Faith, *Committee Hansard*, Sydney, 2 May 2018, p 49. See also *Submission 317*, pp 7-8.

62 Archbishop Porteous, *Committee Hansard*, Hobart, 6 June 2018, p. 29.

63 Christian Schools Australia and Adventist Schools Australia (CSA and ASA), *Submission 30*, p 7.

64 Australian Catholic Bishops Conference, *Submission 10*, p 5. See also Australian Catholic University, *Submission 11*, p 10.

seeking to establish an appropriate 'relationship between the freedom of religion or belief and other human rights'.⁶⁵

3.52 In contrast, the ICCPR recognises a "positive right to freedom of religion", placing it "on the same level as other human rights, rather than as an exemption from another human right".⁶⁶

3.53 The CSA and ASA submission highlights the Queensland *Anti-Discrimination Act 1991* as an example of their concerns. That Act exempts discrimination in the hiring of staff by a religious organisation such a school if there is a "genuine occupational requirement".⁶⁷ Advice from the Anti-Discrimination Commission of Queensland has indicated that "the further removed the job is from any essentially spiritual role, the less likely that it will be a genuine occupational requirement". CSA and ASA argue that this advice, in combination with tests for "disproportionality",⁶⁸ suggests that a "secular Court or Tribunal [is] required to adjudicate in what is essentially a matter for the religious body concerned".⁶⁹

3.54 In the context of exemptions for religious organisations, the Lutheran Church of Australia said:

It is not realistic to insist that faith-based organisations set aside their foundational religious teachings in order to accommodate those who dispute them.⁷⁰

Other views

3.55 Although these concerns are common among many Christian participants in this inquiry, others have emphasised the continued freedom Christians enjoy. Dr Mark Zirnsak of the Uniting Church in Australia said that within the Synod of Victoria and Tasmania "we almost never get any issues emerging where members of the church feel their freedom of religion has been impinged upon here in Australia."⁷¹ Dr Zirnsak did share concerns about:

those groups that seem to want to stifle the ability of religious groups to perhaps exercise the same freedoms that corporations would. Having worked previously in secular employment, my employer would have expected when recruiting me that my ability

65 Anglican Schools Corporation (ASC), *Submission 326*, p 3.

66 ASC, *Submission 326*, p 4.

67 *Anti-Discrimination Act 1991*(QLD), Section 25(5).

68 *Anti-Discrimination Act 1991* (QLD), Section 25(5).

69 CSA and ASA, *Submission 30*, p 9.

70 Lutheran Church of Australia, *Submission 229*, p 8.

71 Dr Mark Zirnsak, Uniting Church in Australia, *Committee Hansard*, Melbourne, 30 April 2018, p 35.

to fit in with the culture of the corporation, my values and how they aligned with that corporation would be something that would be taken into account when being employed. It would seem sensible that religious organisations can employ the same sort of test within the same grounds that a corporation would within the realms of antidiscrimination legislation.⁷²

- 3.56 However, he added that this is suitable when there is an inherent requirement for a role, but “as to who the accountant in the office is or who the gardener or the cleaner are, it’s not clear to us why any exemption should apply.”⁷³

Falun Dafa

- 3.57 Falun Dafa, also known as Falun Gong, is a Chinese spiritual discipline introduced in 1992. The Falun Dafa Association of Australia (FDA) has given evidence of persecution of Falun Dafa practitioners by the Chinese government.⁷⁴ Although primarily concerned with the situation in China, the FDA cited examples of persecution faced by Falun Dafa practitioners in Australia. Dr Lucy Zhao told the Sub-Committee of a letter sent by the Chinese consulate to state and federal parliamentarians “advising them not to join any Falun Gong events”. She also claimed that Falun Dafa followers have “been banned from joining local festivals and... denied access to parks and venues” by local councils.⁷⁵
- 3.58 In Victoria, the Falun Dafa Association of Victoria won a case against the Melbourne City Council in the Victorian Civil and Administrative Tribunal allowing them to join a parade.⁷⁶ They stated the Victorian Charter provided protection of their rights in this case.⁷⁷
- 3.59 The FDA has stated that a federal human rights act “would be important to look at”.⁷⁸

72 Dr Zirnsak, *Committee Hansard*, Melbourne, 30 April 2018, p 35.

73 Dr Zirnsak, *Committee Hansard*, Melbourne, 30 April 2018, p 37.

74 Falun Dafa Association of Australia, *Submission 348*; Falun Dafa representatives, *Committee Hansard*, Sydney, 2 May 2018, pp. 23-28.

75 Dr Lucy Zhao, President, Falun Dafa Association of Australia, *Committee Hansard*, Sydney 2 May 2018, p. 25.

76 *Falun Dafa Association of Victoria Inc v Melbourne CC* [2003] VCAT 1955 (23 December 2003).

77 Mr Deller and Dr Zhao, *Committee Hansard*, Sydney, 2 May 2018, p. 26.

78 Mr Deller, Secretary, Falun Dafa Association of Australia, *Committee Hansard*, Sydney, 2 May 2018, p 26.

Hinduism

- 3.60 Hinduism is practised by over 440,000 Australians, or about 1.9 per cent of the population, according to the 2016 census.⁷⁹ This inquiry did not receive submissions from any Hindu organisations or individuals, but did receive evidence from Associate Professor Hemanshu Pota of the Hindu Council of Australia. Prof Pota commented that he supports “full freedom” of speech to criticise Hinduism, stating that “if you can’t criticise me fully then we can never integrate, because I don’t know what you are thinking”.⁸⁰ He also observed that Hindus can take issue with proselytization, noting that “many Hindus go to church” and enjoy participating in different religions but do not like to be converted into a religion.⁸¹
- 3.61 In contrast to some countries such as Pakistan and Bangladesh, Prof Pota said Hindus have “no issues” in Australia:

In Australia, we have never had issues. I was involved with building a temple in Canberra. Twice they came and smashed all our glasses, and twice we replaced them, but I don’t think that’s a societal problem; that’s just a few people who thought they’d paint a devil on our temple and all that. But I really do not consider that a big issue, because, if somebody came to my country and started doing things I don’t understand, I might be much more hostile than Australian society is to us. Once people understand what we are doing, they have no hostility. So, as Hindus, I think it would be wrong for us to complain.⁸²

Islam

- 3.62 Islam is the world’s second largest religion by number of adherents, with an estimated 1.8 billion followers worldwide. There are over 600,000 Muslims in Australia, according to the 2016 census. This is about 2.8 per cent of the population.⁸³

79 ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

80 Prof Hemanshu Pota, Hindu Council of Australia, *Committee Hansard*, Canberra, 22 June 2018, p 50.

81 Prof Pota, *Committee Hansard*, Canberra, 22 June 2018, pp 49-52.

82 Prof Pota, *Committee Hansard*, Canberra, 22 June 2018, p 50.

83 ABS, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

- 3.63 This inquiry received submission from two Muslim organisations, the Islamic Council of Victoria (ICV) and the Ahmadiyya Muslim Community (AMC), both of which were represented at public hearings.
- 3.64 The ICV submission said that Muslims are “more problematically positioned in public policy and media representation than other ethno-religious communities”.⁸⁴ The ICV submission described a rising Islamophobia which defines a Muslim as “less of a person, and more of an idea”.⁸⁵
- 3.65 The ICV stated that religion can be used “as a surrogate for race or ethnicity”,⁸⁶ and highlighted the high visibility of many Muslims. This visibility can be a result of Islamic dress such as the hijab, but may also include “the description “Middle-Eastern appearance” in news reports and police profiling”, or practices such as “praying, fasting and attendance of religious worship at work”.⁸⁷
- 3.66 This observation was also made in a number of other submissions. For example, the Victorian Multicultural Commission (VMC) reported that Muslim communities “regularly report instances of ‘Islamophobia’ to the VMC, especially involving women and young girls facing abuse in public places and on public transport due to religious visibility”. This visibility “also has negative impacts when endeavouring to gain and maintain employment”.⁸⁸

Racial Discrimination Act

- 3.67 The ICV notes that the federal *Racial Discrimination Act 1975* (RDA) does not protect against ethno-religious discrimination. The ICV believes that the New South Wales *Anti-Discrimination Act* protects Jewish and Sikh communities from ethno-religious discrimination in New South Wales, but Muslims are not similarly protected as an “ethno-religious” group.⁸⁹ The ICV has supported including religious freedom in any amendments to the RDA.⁹⁰
- 3.68 The ICV also specifically recommends maintaining section 18C in its current form.⁹¹ This recommendation was discussed in greater detail at the Melbourne public hearing, with Mr Salman clarifying that religious

84 Islamic Council of Victoria (ICV), *Submission 191*, p 1.

85 ICV, *Submission 191*, p 1.

86 ICV, *Submission 191*, p 2.

87 ICV, *Submission 191*, p 3,4.

88 Victorian Multicultural Commission (VMC), *Submission 329*, p 4; 7.

89 Section 4, *Anti-Discrimination Act 1977* defines “race” to include “ethno-religious” origin

90 ICV, *Submission 191*, p 8, 1.

91 ICV, *Submission 191*, Recommendation 5, p 9

people “absolutely should be allowed to state our faith position” even though members of other faith groups might find such positions “highly contentious and problematic”. Mr Salman argued that freedom of speech is adequately protected by the section 18D “carve outs” which allow for “the serious pursuit of knowledge, the serious pursuit of public debate or artistic expression”. Mr Salman called section 18D, which achieves less attention than the more controversial 18C, a “really good clause in the legislation”.⁹²

- 3.69 In combination, the two sections ensure the right balance is found between protecting freedom of speech and providing the “legislative recourse to hold to hold others to account who are vilifying a group, community or religion”.⁹³

Counter-Terrorism Act

- 3.70 The ICV expressed particular concern with the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015, which amended the *Criminal Code Act 1995* to allow control orders to be imposed on children as young as 14. The ICV stated that “Muslim communities will shoulder a heavier burden of proof and endure more intrusion than others”, adding that while the law may affect only a few children, the “damage the legislation will do is enormous to the multicultural and multi-faith communities.”⁹⁴ Mr Salman stated:

We believe that if there were a bill of rights we would be able to challenge some of the laws that have been put in place, because they impinge upon our civil liberties. Australia... has legislated more laws on counterterrorism than, I think, any other Western democracy, which is quite extraordinary. We believe that there are serious concerns with counterterrorism legislation and that a bill of rights would allow us or others to successfully challenge new legislation that impacts or impinges upon civil liberties.⁹⁵

- 3.71 Concerns about these control orders were also raised by the Ethnic Communities’ Council of Victoria.⁹⁶

92 Mr Adel Salman, Vice-President, Islamic Council of Victoria *Committee Hansard*, Melbourne, 30 April 2018, p 11.

93 Mr Salman, *Committee Hansard*, Melbourne, 30 April 2018, p 11.

94 ICV, *Submission 191*, pp 10-11.

95 Mr Salman, *Committee Hansard*, Melbourne, 30 April 2018, p 10.

96 Ethnic Communities’ Council of Victoria, *Submission 19*, p 2.

Freedom of speech and public discourse

3.72 The ICV made some observations on freedom of speech, public discourse, and the role of community leaders such as politicians and journalists. Mr Salman stated that the “rising anti-Muslim sentiment” is largely “driven by public narrative whether it be in the media or by politicians”. He commented:

If there were some legislation or a bill of rights that actually said there’s freedom of religion, which then also had consequences for those who impinge upon that freedom of religion in the name of free speech – it’s about seeking that balance between free speech and freedom of religion. At the moment, it’s purely up to our discretion where that line is. We think that there needs to be something a little bit clearer.⁹⁷

3.73 In determining where the line should be drawn, Mr Salman commented that “it can be as simple as when it’s speech that incites hatred and fear, is unwarranted and misinforms. When it spreads falsehoods, misconceptions and stereotypes about one particular community”.⁹⁸

3.74 The ICV representatives emphasised the importance of respectful public discourse. Mr Mohideen was concerned about some voices “trying to divide the community by making these hateful statements” and perpetuating a

‘them and us’ sort of society. As Muslims, we say we are not ‘them’; we are part of the ‘us’, the whole fabric.⁹⁹

3.75 Mr Salman commented that people should absolutely be able to raise points of difference... as long as it’s done respectfully. It comes back to the way in which it is done.¹⁰⁰

Ahmadi Muslims

3.76 Ahmadi Muslims follow the teaching of Mirza Ghulam Ahmad, who lived in the 19th and early 20th Centuries in the Punjab region of India.¹⁰¹ The

97 Mr Salman, *Committee Hansard*, p 9

98 Mr Salman, *Committee Hansard*, p 9.

99 Mr Mohamed Mohideen, President, Islamic Council of Victoria, *Committee Hansard*, Melbourne, 30 April 2018, p 12.

100 Mr Adel Salman, *Committee Hansard*, Melbourne, 30 April 2018, p 12.

101 BBC News, ‘Who are the Ahmadi?’ http://news.bbc.co.uk/2/hi/south_asia/8711026.stm accessed 2 February 2019.

Ahmadiyya Muslim Community in Australia is estimated at around 5,000.¹⁰²

- 3.77 The Ahmadiyya Muslim Community's submission addressed the persecution of Ahmaddiya Muslims, primarily in Pakistan, but with persecution spreading to Algeria, Indonesia, and Malaysia. The AMC representatives spoke about the strong level of community engagement by Ahmadi Muslims in Australia,¹⁰³ and Mr Ahmed stated:

I was 13 when we migrated to this great nation... I have never in my 20 years – I'm 33 now – from the age of 13 experienced any discrimination as such.¹⁰⁴

- 3.78 Mr Sharif further stated that "Australia is a safe haven for us".¹⁰⁵

Bendigo Mosque

- 3.79 The planning of a mosque in the Victorian city of Bendigo caused controversy, including "anti-mosque and/or anti-Islam and anti-racism" protests between 2014 and 2016.¹⁰⁶ The Victorian Multicultural Commission (VMC) discussed this case in their submission and at the Melbourne public hearing. The VMC commissioned the report *Social Cohesion in Bendigo*, which was produced by La Trobe University.¹⁰⁷ This was described as a "very difficult and tense situation which had the real capacity to blow out of all proportion", although fortunately it "dissipated".¹⁰⁸ Ms Blades-Hamilton of the VMC stated that decision-makers in this case were guided by the Victorian *Charter*.¹⁰⁹

102 Mr Hamed Ahmed, Human Rights Coordinator, Ahmadiyya Muslim Community, *Committee Hansard*, Canberra, 22 June 2018, p 36.

103 Mr Ahmed, *Committee Hansard*, Canberra, 22 June 2018, pp 36-42.

104 Mr Ahmed, *Committee Hansard*, Canberra, 22 June 2018, pp 36-42.

105 Mr Mirja Ramjan, Director of Public Relations, Ahmadiyya Muslim Community, *Committee Hansard*, Canberra, 22 June 2018, p 36.

106 Victorian Multicultural Commission, *Social Cohesion in Bendigo: Understanding Community Attitudes to the Mosque in 2015, 2016*, p. 5

107 Victorian Multicultural Commission, *Social Cohesion in Bendigo: Understanding Community Attitudes to the Mosque in 2015, 2016*

108 Ms Elizabeth Blades-Hamilton, Senior Research and Policy Officer, Multicultural Affairs and Social Cohesion Division, Office of the Victorian Multicultural Commission, *Committee Hansard*, Melbourne, 30 April 2018, p. 19.

109 Ms Blades-Hamilton, *Committee Hansard*, Melbourne, 30 April 2018, P. 20

Judaism

- 3.80 There are over 90,000 adherents of Judaism in Australia, according to the 2016 census.
- 3.81 The Sub-Committee received a submission from the Executive Council of Australian Jewry (ECAJ), the elected national body representing the Australian Jewish Community. The ECAJ Executive Director, Mr Peter Wertheim, gave evidence at a public hearing in Sydney.
- 3.82 Mr Wertheim noted that in practice “Jewish Australians are fortunate to enjoy a high level of freedom of religion and belief”, with “very few impediments” to Jews living openly, expressing their beliefs, moving freely, congregating peaceably, and partaking in religious services, customs, and traditions.¹¹⁰
- 3.83 Nevertheless, Jewish Australians face some unique challenges in Australian society, both culturally and legally.
- 3.84 The ECAJ states that anti-Semitism is a “persistent, albeit limited, problem in Australia”.¹¹¹ Anti-Semitism is a much greater problem in other parts of the world, and the ECAJ submission discusses examples of serious anti-Semitism at some length.¹¹² Highlighted are several examples of terrorist attacks targeting Jews in Europe, including France, Belgium, and Denmark. Jews also face anti-Semitic sentiment at a community level throughout other parts of Europe, and many countries have laws banning the kosher slaughter of animals. Jews face even heavier persecution in other countries, and the ECAJ submission emphasises the plight of Jews in Iran, Egypt, Turkey, and Ukraine as countries of particular danger for Jewish communities.¹¹³
- 3.85 Despite the comparatively “limited” anti-Semitism at community or state level in Australia, the absence of anti-Semitism is “a necessary condition for the exercise of freedom of religion or belief”.¹¹⁴ The ECAJ’s annual reports on anti-Semitism demonstrate that it is an “increasing” problem and sometimes involves threats or acts of violence. Mr Wertheim told the Sub-Committee that the last 18 months have seen “the rise of a small but tightly organised group espousing Nazism as an ideology”.¹¹⁵

110 Mr Peter Wertheim, Co-CEO, Executive Council of Australian Jewry, *Committee Hansard*, Sydney, 2 May 2018, p 29.

111 Executive Council of Australian Jewry (ECAJ), *Submission 116*, p 4.

112 ECAJ, *Submission 116*, p 22-29.

113 ECAJ, *Submission 116*, p 22-29.

114 ECAJ, *Submission 116*, p 3.

115 Mr Wertheim, *Committee Hansard*, Sydney, 2 May 2018, p 29.

3.86 In the context of anti-discrimination law and the possibility of incorporation international law into domestic law, the ECAJ made this comment:

...we do agree with the general proposition that there does seem to be a tendency in Australia and in other Western societies to wind back some of the exemptions for protection of religious freedom that exist in antidiscrimination legislation. Whilst those exemptions still exist, the general position of religious communities in terms of observing and living out their beliefs is safe. There's no compelling reason to start incorporating some of these international conventions into domestic law. But if the trend continues, and if there is a sufficient groundswell of opinion in some sectors of society for winding back the exemptions in antidiscrimination law to the point where religious communities might be compelled to do things against their conscience, then I think that whole question would need to be looked at much more seriously.¹¹⁶

Specific Concerns

3.87 The ECAJ submission states that "central to Jewish practice" is the general principle of *dina demalchuta dina*, or "the law of the land is the law". This is the principle that the civil law has primacy over religious law, and the exceptions in a free and democratic society like Australia "have limited if any application".¹¹⁷

3.88 Despite this, the submission noted several areas in which the law may have a specific effect on Jews, directly or indirectly, that it does not have on people of other faiths or no faith.

Incitement to violence

3.89 Mr Wertheim raised as "an area of urgent need for reform" the sections of the Criminal Code dealing with incitement of violence on the basis of race and religion. These sections prevent urging violence against groups (Section 80.1A) or members of groups (Section 80.1B) that are "distinguished by race, religion, nationality, national or ethnic origin or political opinion". Mr Wertheim argues that the elements of the offences "impose an impossibly high evidentiary bar", requiring both an intention

116 Mr Wertheim, *Committee Hansard*, Sydney, 2 June 2018, p 30.

117 ECAJ, *Submission 116*, p 6.

to incite as well as an intention that violence will occur. This is made more difficult by the “good faith” defence in Section 80.3.¹¹⁸

3.90 Referring to groups in Australia which have advocated the “mass killing of Jews and gays among others”, Mr Wertheim argued that:

given that you’ve got groups that do get away with inciting violence on the basis of race or religion... this is an area in urgent need of reform, and it does actually go to religious freedom because it is one of the few laws that does provide specific protections to people on the basis of religion.¹¹⁹

Divorce and remarriage

3.91 One issue for Jewish Australians raised by ECAJ is the freedom of Jewish divorcees to remarry. Under Jewish law, a marriage can only be dissolved upon the presentation of a “Gett”, a Jewish divorce document which is presented, voluntarily, by the husband and accepted by the wife. Without a Gett, religious divorce is not granted and religious remarriage is not possible. Gett refusal or Gett recalcitrance puts one party, usually the woman, in a vulnerable position with regards to property settlement and contact with children. The result can be social and religious stigma, including for children of subsequent civil marriages.

3.92 The ECAJ submission acknowledges that Gett recalcitrance is a problem of Jewish religious law, not Australian law, but draws attention to remedies that are provided in the civil law in jurisdictions such as Canada, South Africa, the UK, and New York State. Such provisions protect parties against the use of Gett recalcitrance as a means of financial blackmail and protect future children of subsequent marriages.¹²⁰

3.93 The ECAJ drew attention to a 2004 article by Amanda Williamson which addresses the problem from a family law and constitutional perspective,¹²¹ and also, in particular, to the Family Law Council’s 2001 report *Cultural-community Divorce and the Family Law Act 1975: A proposal to clarify the law*,¹²² which put forth proposals for law reform that would help address the problem of Gett recalcitrance but which have not been adopted.

118 Mr Wertheim, *Committee Hansard*, Sydney, 2 June 2018, pp 32-33.

119 Mr Wertheim, *Committee Hansard*, Sydney, 2 June 2018, pp 32-33.

120 ECAJ, *Submission 116*, p 9.

121 A Williamson, ‘An Examination of Jewish Divorce Under the Family Law Act 1975 (Cth)’, 11 *James Cook University Law Review* 132.

122 Report to the Attorney-General by the Family Law Council, August 2001

The Jewish Sabbath

- 3.94 The observance of Saturday as the Sabbath in the Jewish faith raises some difficulties in a society which, does not observe Saturday as a holy day, and indeed, is often considered a work day. Examples of where this can create problems are in employment, where friction can arise due to the absence of employees on Saturdays;¹²³ in education, where Jewish students can have difficulties if exams, classes, or extra-curricular activities such as sports are scheduled for Saturdays or other Jewish holy days;¹²⁴ and in the electoral process, where Jewish voters must use pre- or postal voting and cannot participate in election-day activities, as elections are always held on Saturdays.¹²⁵

Strata title legislation

- 3.95 Strata title legislation and their by-laws typically prohibit damage to common property, while designating the front door and doorpost around it as common property. This can conflict with the “ancient and very widespread practice among Jews of all levels of religious observance” of affixing a mezuzah, a small piece of parchment containing Hebrew Scriptures, to the inside of a doorpost. Some Jews have been asked by Owners Corporations to remove the mezuzah due to the alleged damage to the common property.¹²⁶
- 3.96 The ECAJ recommends amendments to by-laws allowing this practice.

Other issues

- 3.97 Kosher slaughter of animals is practiced in Australia, but has received some “misinformed public criticism”.¹²⁷
- 3.98 There has been no move by the government to outlaw infant male circumcision, despite “occasional populist calls to that effect”.¹²⁸
- 3.99 Jewish religious laws have certain requirements for burial practices and autopsies.¹²⁹ The ECAJ notes that Western and South Australian state laws

123 ECAJ, *Submission 116*, pp 7-8.

124 ECAJ, *Submission 116*, pp 11-12.

125 ECAJ, *Submission 116*, pp 8-9.

126 ECAJ, *Submission 116*, p 14.

127 ECAJ, *Submission 116*, p 12. The Sub-Committee notes that there has been a great deal of controversy surround the Islamic Halal slaughter of animals, which is undertaken for similar reasons as Kosher slaughter. Although no submissions were received about this, nor was the topic brought up during public hearings. A summary about halal foods can be found here J Wong and J Millie “Explainer: what is halal, and how does certification work?” The Conversation, 12 February 2015 <https://theconversation.com/explainer-what-is-halal-and-how-does-certification-work-36300>

128 ECAJ, *Submission 116*, p 13.

mandate renewable tenure for burial plots, with no exception for permanent tenure, which is required by Judaism. The ECAJ states that these laws should be amended to bring them into line with other state laws, which do allow permanent tenure for religious reasons.¹³⁰

Non-religious beliefs

- 3.100 The 2016 census recorded a record number of Australians stating they had “No Religion” or “Secular Beliefs”, with around 7 million people marking one of these options. This was up from around 4.8 million in 2011, and accounts for about 30 per cent of the population. In addition, a record 2.3 million or ten per cent did not state or inadequately stated an answer, meaning around 40 per cent of the population chose not to positively identify with any religion.¹³¹
- 3.101 This inquiry has received evidence from individuals and organisations representing non-religious views. For the purposes of this section, this is to be understood to mean a belief system or worldview, for example humanism, atheism, or secularism. This is in contrast to organisations which are religiously or ideologically neutral or do not represent a particular religious belief, for example government departments and some types of charity or human rights organisation. It is also in contrast to individuals or legal scholars, for example, who may or may not personally adhere to a religion or belief system but who are speaking only to legal matters and not representing any particular religion or religious view.
- 3.102 Many non-religious submitters have argued for the importance of the right to ‘freedom from religion’. The Humanist Society of Queensland (HSQ) stated that the “right to freedom *from* the influence of religion or belief is just as strong as the right to freedom *of* religion or belief”.¹³² HSQ President Dr Meg Wallace has argued that the right to freedom from “the dictates of the beliefs of others” is “inherent in the meaning of Article 18”, saying:

Its intention is not to *privilege* the liberty to act according to one’s beliefs, but to ensure that governments restrict their policies and

129 ECAJ, *Submission 116*, pp 13-14.

130 ECAJ *Submission 116*, p 14.

131 Australian Bureau of Statistics, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

132 Humanist Society of Queensland, *Submission 5*, pp 2-3. See also David Price, *Submission 1*, p 1; Secular Party of Australia, *Submission 157*; Catherine Walsh, *Submission 181*; Alastair Lawrie, *Submission 183*;

legislation subject to their adopted *political* worldview. They should separate their decision-making from the dictates of belief.¹³³

3.103 Some submitters dispute this concept. Professor Iain Benson argues that the phrase “has been used to suggest that there can be no exposure to public manifestations from religion and this is not accurate”.¹³⁴ Article 18(2) of the ICCPR provides protection from “coercion”, and it is freedom from religious coercion that is at issue, not freedom from religion itself, according to Professor Benson.

3.104 In contrast, Dr Wallace argues that:

Even in societies where individuals are not prevented from having and practising their beliefs, those beliefs are privileged through government endorsement, funding and policy. Freedom *from* ‘religion or belief’ of others is thus an unfulfilled promise of Article 18 throughout the world.¹³⁵

3.105 Dr Wallace has further argued that

the ‘freedom’ aspect of the belief provisions is generally perceived as a justification for priority treatment of particular religious beliefs and practices by government and society. This has been detrimental to minority religious groups and non-believers alike. This influence can be insidious, as it often is in liberal democracies.¹³⁶

3.106 Variations of this general argument are given by a number of submitters.¹³⁷ Civil Liberties Australia also made similar statements at the Canberra public hearing, who argued that religion is given preferential treatment and has greater political clout:

The atheists or the nonbelievers or the agnostics are not unified in a lobby group the way the various religious groups are. The religious groups do have far more power and far more sway with politicians because of their voting strength and their lobbying ability than do the disparate people who are agnostics or atheists

133 Meg Wallace, *Freedom From Religion: Rethinking Article 18*, Sydney, Cilento Publishing, 2015, p. 28.

134 Professor Iain T Benson, *Submission 376*, p 4.

135 M Wallace, *Freedom From Religion*, p. 29.

136 M Wallace, *Freedom From Religion*, p. 28.

137 Secular Party of Australia, *Submission 157*; Phil Browne, *Submission 177*; Catherine Walsh, *Submission 181*; Alistair Lawrie, *Submission 183*; Merridy Mallen, *Submission 387*; Chris Houtman, *Submission 390*.

or nonbelievers. The weight of the religious sector outweighs its representation in the community, and I think that's a bad thing.¹³⁸

- 3.107 The evidence presented to this inquiry highlights a number of areas in which religion is purportedly privileged, or given inappropriate preference in public policy in contrast to non-religious people.

Exemptions to anti-discrimination laws

- 3.108 The most significant example of alleged privilege or preference given to religion, or to Christianity in particular, is that of religious exemptions in anti-discrimination law. Civil Liberties Australia warns against an “emerging trend to argue that respect for freedom of religion requires special exemptions for religious believers from anti-discrimination and other laws”, citing such exemptions in the amended *Marriage Act* as an example.¹³⁹ The HSQ argues that such exemptions are “too broad” and should be restricted to “conduct directly related to protecting the manifestation of personal belief”.¹⁴⁰ The Secular Party of Australia calls the “tolerance by government of religious exemptions” a “special religious privilege”, arguing it is resulting in “denial of services” and discrimination.¹⁴¹ Mr Alastair Lawrie argues that religious exceptions “inherently lead to human rights abuses against LGBT people” and give religious schools “free reign to mistreat lesbian, gay, bisexual and transgender students”.¹⁴²
- 3.109 Liberty Victoria argues that exemptions “prefer the religious over the non-religious”.¹⁴³ often “impose costs on others”, and that there is “no justification for allowing religious groups to discriminate in the public sphere against others based on just their beliefs”.¹⁴⁴
- 3.110 Dr John Perkins also emphasised this at the Melbourne public hearing:
- If someone claimed special entitlements [with regard to antidiscrimination laws] on the grounds of their sex, ethnicity or race, this would not be allowed. But if people can claim entitlements on the basis of their religion, I suggest that is not

138 Dr Kristine Klugman, President, Civil Liberties Australia, *Committee Hansard*, Canberra, 22 June 2018, p. 23.

139 Civil Liberties Australia, *Submission 47*, p 2.

140 HSQ, *Submission 5*, p. 2.

141 Secular Party of Australia, *Submission 157*, pp 2-3.

142 A Lawrie, *Submission 183*, pp 3-5.

143 Mr Jamie Gardiner, Vice-President, Liberty Victoria, *Committee Hansard*, Melbourne, 30 April 2018, p 34.

144 Liberty Victoria, *Submission 227*, pp 12-14.

treated in the same manner; it is condoned, supported and encouraged.¹⁴⁵

- 3.111 Equal Opportunity Tasmania made similar arguments in the context of proposed changes to the Tasmanian *Anti-Discrimination Act*. Such changes would “allow, specifically for religious purposes, attribute-linked offensive, humiliating, insulting or intimidating public conduct”. This would arguably represent a “fundamental curtailing of the right to equality and the right to freedom from discrimination”.¹⁴⁶ It would also suggest that

the rule of law... is not seen to apply where a religious purpose can be argued. This is most likely to give special status to people of religion and religious organisations.

In effect, the provisions of the draft Bill would privilege religious views in public debate without providing equivalent protections to those who challenge those views... Protection would not be extended to those who held equally strong, but opposing, views to those of religious people.¹⁴⁷

Education

- 3.112 A number of submissions have criticised federal government funding of religious private schools,¹⁴⁸ which the HSQ states “results in a divisive and unequal education system”.¹⁴⁹
- 3.113 Many submissions have raised concerns about the federal government’s funding of religious chaplains in public schools. The school chaplaincy programme, which funds almost entirely Christian chaplains, is described as a “particularly egregious example of religious discrimination” by Civil Liberties Australia,¹⁵⁰ and has received criticism for “promoting mainly Christian values”.¹⁵¹ The Feminist Legal Clinic contends that the “failure to ensure availability of instruction in the full range of religions within the student body effectively preferences the teaching of Christianity and discriminates against other belief systems.”¹⁵²

145 Dr John Perkins, President, Secular Party of Australia, *Committee Hansard*, Melbourne, 30 April 2018, p 40.

146 Equal Opportunity Tasmania, *Submission 6*, pp 15-16.

147 Equal Opportunity Tasmania, *Submission 6*, p 16.

148 Secular Party of Australia, *Submission 157*, p 5.

149 Humanist Society of Queensland, *Submission 5*, p 9.

150 Civil Liberties Australia, *Submission 47*, p 3.

151 Humanist Society of Queensland, *Submission 5*, p 9. See also Secular Party of Australia, *Submission 157*; Geoff Allshorn, *Submission 309*, p 3.

152 Feminist Legal Clinic, *Submission 182*, p. 2.

3.114 Some have also expressed opposition to Special Religious Instruction or Special Religious Education in public schools, calling this “religious indoctrination”.¹⁵³ The Secular Party stated that government should promote “the rights of children to be free of religious indoctrination in all Australian schools”.¹⁵⁴ Although others have argued that religious education is a fundamental right under Article 18(4) of the ICCPR, Mr Perkins stated that the fourth provision in Article 18 doesn’t negate the first three, which:

also have relevance to children, in terms of their ability to think clearly, to make up their own minds about religion and to be educated but not indoctrinated in religion.¹⁵⁵

3.115 Fairness in Religion in Schools (FIRIS) argues that an approach like that taken in Quebec, Canada where children are provided with a philosophical ethics and study of religions class, rather than religious instruction would be more prudent.¹⁵⁶ They go on to note:

If religious instruction is to remain in public schools, education departments ought to ensure that all children from religious and non-religious backgrounds are provided with equal opportunity for instruction in their worldview, or provide education about major worldviews equally to all students; or both.¹⁵⁷

Tax exemptions

3.116 The advancement of religion is considered in law to be a “charitable purpose”, and can result in tax exemptions for religious organisations. The Secular Party of Australia have called this a “compulsory tithing on all Australians”, a “source of great resentment”, and “not conducive to society harmony”.¹⁵⁸

3.117 While recognising the appropriateness of a religious organisation receiving tax exemptions for its charitable purposes, many submissions have argued that these exemptions should not extend to non-charitable activities.¹⁵⁹

153 Alistair Lawrie, *Submission 183*, p 5; Miriam English, *Submission 383*, p 1;

154 Secular Party of Australia, *Submission 157*, p 5.

155 Dr Perkins, Committee Hansard, Melbourne, 30 April 2018, p. 39.

156 Fairness in Religion in Schools (FIRIS), *Submission 180*,

157 FIRIS, *Submission 180*, p. 10

158 Secular Party of Australia, *Submission 157*, p 4.

159 Many submissions suggested this, some include: Humanist Society of Queensland, *Submission 5*, p. 7; Ms B Clinch, *Submission 15*, p. 1; Rev P. Humphris *Submission 123*, p. 3; Secular Party of Australia, *Submission 157*, p 4; P Bradshaw, *Submission 211*, p.1; Mr G Allshorn, *Submission 309*,

Opening of Parliament

- 3.118 Dr Luke Beck, who appeared before the Sub-Committee in Sydney on 6 June 2017, has commented on the opening of Parliament with prayers. He argues that not only does this grant “official imprimatur” to Christianity, but it is “distinctly Protestant” and, specifically, Anglican.¹⁶⁰
- 3.119 Civil Liberties Australia says that ending this practice would “confirm the separation of religion and state in this country”.¹⁶¹ The Secular Party of Australia made similar comments.¹⁶²

Other

- 3.120 Other examples given of special religious privilege include favourable fees to clergy for marriage ceremonies compared to civil celebrants; outsourcing government-funded health services to religious organisations; the inclusion of “advancing religion” as a “charitable purpose”; and the “sanctity of the confessional” in the Catholic Church.¹⁶³
- 3.121 The Secular Party of Australia also argued that the prohibition of vilification on the basis of religion in the ACT “introduces a blasphemy law”.¹⁶⁴
- 3.122 Civil Liberties Australia (CLA) argued that the “rights of atheists must not be ignored”, observing that atheists are actively discriminated against and sometimes killed in parts of the world such as Bangladesh.¹⁶⁵
- 3.123 The Humanist Society of Queensland also notes that while there are laws at state level which prohibit discrimination on the ground of religion, there is no “explicit prohibition of discrimination on the ground of absence of a particular personal belief”. While this is implied, it should be explicit, according to the HSQ.¹⁶⁶

p. 3; Ms M Mallen, *Submission 387*; Mr C Houtman, *Submission 390*; C Ellis, *Submission 391*, p. 3; S Roberts and T Fieldhouse *Submission 392*, p. 2.

160 Dr Luke Beck, *Submission 139*, pp 2-4; Dr Beck, *Private Capacity, Committee Hansard*, Sydney, 6 June 2017, p 13.

161 Civil Liberties Australia, *Submission 47*, p 3.

162 Secular Party of Australia, *Submission 157*, p 4.

163 Secular Party of Australia, *Submission 157*, p 3; Feminist Legal Clinic, *Submission 182*, pp. 2-3.

164 Secular Party of Australia, *Submission 157*, p 3.

165 Civil Liberties Australia, *Submission 47*, p 2.

166 Humanist Society of Queensland, *Submission 5*, p 4.

Paganism

- 3.124 Over 15,000 Australians identified with Paganism on the 2016 census, and over 6,600 with Wiccan (Witchcraft), a drop since 2011.¹⁶⁷ The Sub-Committee received evidence from Mr David Garland of the Pagan Awareness Network. Mr Garland commented on the broad lack of acceptance of witchcraft and paganism in Australia, noting that witchcraft was illegal in Queensland until 2001, and that “any form of enchantment, conjuration, summoning or prophecy” was unlawful in Victoria under the *Vagrancy Act* until 2005.¹⁶⁸
- 3.125 According to Mr Garland, Paganism faces several challenges in Australia. Some issues arise due to the solitary nature of the religion, which has “no church and... no overarching group”.¹⁶⁹ Historically, pagans have faced societal pressure:
- We had the ‘satanic panic’ in the 80s, where we were very heavily persecuted and accused of being Satanists. People were bashed and all types of stuff happened... I was sacked in 1998 for my religion. There were no religious protections at work then. I’ve had numerous death threats, to the point where my phone was tapped by the police and calls were being traced so that they could find out where they were coming from, all because I’m pagan.
- In the eighties we were accused of eating babies and sacrificing virgins and all that type of stuff... It’s hard, because in some of the texts – Exodus 18, 19 and 21, I think – ‘thou shalt not suffer a witch to live’ in the King James version.¹⁷⁰
- 3.126 Mr Garland noted that Pagans have found recourse after being subjected to “vilification of our religion in the press” in the Victorian *Racial and Religious Tolerance Act*. With no similar act in NSW, such recourse is not available in that state for religious vilification.¹⁷¹
- 3.127 Aside from a history of general non-acceptance, two specific legal issues stand out for pagans, according to Mr Garland.

167 Australian Bureau of Statistics, *2016 Census of Population and Housing: General Community Profile*, Worksheet G14.

168 Mr David Garland, Pagan Awareness Network, *Committee Hansard*, Sydney, 2 June 2018, p 41. See also ‘Victoria clears witches for take-off’, *The Age*, 21 July 2005, <https://www.theage.com.au/news/National/Victoria-clears-witches-for-takeoff/2005/07/21/1121539075041.html>.

169 Mr Garland, *Committee Hansard*, Sydney, 2 June 2018, p 41.

170 Mr Garland, *Committee Hansard*, Sydney, 2 June 2018, p 41.

171 Mr Garland, *Committee Hansard*, Sydney, 2 June 2018, p 42.

Knife laws

- 3.128 Pagan religious practice includes the use of a doubled-edged blade called an athame, which is prohibited by federal law but subject to different state laws:

In New South Wales, I can have one, as long as I've told the police.
In Victoria, you can have one, but you have to lock it up in a gun safe, it must be registered and you must leave yourself open for inspection by police at any time. They're completely illegal in Western Australia and completely illegal in the Northern Territory.¹⁷²

Marriage laws

- 3.129 As indicated above, paganism is not structured in the way most larger religions are. Following changes to the *Marriage Act* earlier this year, pagan civil celebrants were deregistered as religious celebrants. Although they can still perform civil ceremonies, they cannot perform religious ceremonies, and pagans can “no longer have ‘pagan handfasting’, which is what our weddings are, written on a certificate”.¹⁷³

Quakers

- 3.130 About 1,700 Australians identified with the Religious Society of Friends, also known as Quakers, on the 2016 census. The Quakers identified the lack of explicit protection for religious freedom in Commonwealth law, and supported a Charter of Rights that would specify rights to be protected in Australia.¹⁷⁴
- 3.131 The Quakers submission highlighted the role of the Australian Partnership of Religious Organisations and Religions for Peace Australia, praising the interfaith dialogue facilitated by these groups and saying they both offer “important avenues for people from the different religious groups to be supported”.¹⁷⁵
- 3.132 The Quakers emphasised their concern to preserve the right of conscientious objection to military service, including for religious reasons. They noted the *Defence Legislation Amendment Act 1992*, which made

172 Mr Garland, *Committee Hansard*, Sydney, 2 June 2018, p 42.

173 Mr Garland, *Committee Hansard*, Sydney, 2 June 2018, p 42.

174 Quakers Australia, *Submission 2*, p 2

175 Quakers Australia, *Submission 2*, p 2

conscientious objection to a particular war an acceptable ground for exemption to military service, as opposed to objection to war in general.¹⁷⁶

Centro Espirita Beneficente Uniao do Vegetal (the UDV)

- 3.133 The Sub-Committee received a short submission from the Centro Espirita Beneficente Uniao do Vegetal (the UDV) Australia. UDV is a Christian Spiritist Religion which began in Brazil.¹⁷⁷
- 3.134 The UDV noted the limited interpretation of section 116, citing *Kruger v Commonwealth*, in which the High Court said that a law must have the explicit purpose of interfering with the free exercise of a religion in order to be invalid. Laws which do not have this purpose are not invalid even if they do have that effect. UDV recommends a law similar to the United States' *Religious Freedom Restoration Act*, which requires any law which interferes with religious practice to have both a "compelling governmental interest" but also to be the "least restrictive means". UDV argues this puts the "burden of proof" on the government, and argues that a similar legislative measure is required in Australia today.¹⁷⁸
- 3.135 The Sub-Committee notes that this resembles comments made by Dr Alex Deagon, who based his argument on Gaudron J's dissent in *Kruger*.¹⁷⁹

176 Quakers Australia, *Submission 2*, p 4.

177 Centro Espirita Beneficente Uniao do Vegetal (the UDV), *Submission 331*, p. 1

178 UDV, *Supplementary Submission 331*, p. 2.

179 JSCFADT, *Interim Report: Legal Foundations*, pp. 36-38