

## The 2017/18 Religious Freedom Review

5.1 In November 2017, following the same-sex marriage postal survey, the Australian Government initiated a review into religious freedoms in Australia. To conduct the review, the then Prime Minister the Hon Malcolm Turnbull appointed an expert panel, headed by former Attorney-General and Minister for Immigration, Multicultural and Indigenous Affairs, the Hon Philip Ruddock. Other members of the panel were Emeritus Professor Rosalind Croucher AM, the Hon Annabelle Bennett AO Sc, Fr Frank Brennan SJ AO, and Professor Nicholas Aroney.

5.2 The terms of reference of the Religious Freedom Review (the review) were as follows:

*Objective*

The Panel shall examine and report on whether Australian law (Commonwealth, State and Territory) adequately protects the human right to freedom religion.

*Scope*

In undertaking this Review, the Panel should:

- consider the intersections between the enjoyment of the freedom of religion and other human rights
- have regard to any previous or ongoing reviews or inquiries that it considers relevant
- consult as widely as it considers necessary<sup>1</sup>

5.3 The Expert Panel's review began in the context of parliamentary debate of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*. Among other things, the *Marriage Amendment Act* amended the definition of marriage in section 5 of the *Marriage Act 1961* to provide that marriage

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1 Department of Prime Minister and Cabinet, *Religious Freedom Review Terms of References*, 2017

means “the union of two people to the exclusion of all others”.<sup>2</sup> Previously marriage had been defined as the “union of a man and a woman”.<sup>3</sup> Ensuring adequate protections for religious bodies that maintain that marriage can only be between a man and a woman became a feature of parliamentary discussion of the legislation.

- 5.4 Whilst broadly dealing with the same topic as the Sub-Committee’s inquiry, the Review focused specifically on the question of “whether Australian law adequately protects the human right to freedom of religion”. This Sub-Committee’s inquiry examines the status of the human right to the freedom of religion or belief more broadly; both locally and abroad; in law but also practically - the ‘on the ground’ experiences of people in Australia.
- 5.5 The original reporting date for the Expert Panel’s review was 31 March 2018. This deadline was subsequently extended to 18 May 2018. Prime Minister Scott Morrison publicly released the Expert Panel’s report and the government’s response to the Panel’s recommendations on 13 December 2018.<sup>4</sup>
- 5.6 The Expert Panel received over 15,000 submissions over two months and conducted 90 consultative meetings with stakeholder groups and individuals. These included religious groups, organisations, businesses, individuals as well as LGBTIQ groups, academics, teachers and secular groups.<sup>5</sup>
- 5.7 The Panel’s Terms of Reference required it to have regard to any previous or ongoing reviews or inquiries that it considered relevant. In its report the Expert Panel noted that it was “particularly cognisant” of Report 129 of the Australian Law Reform Commission (ALRC), *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (2015), and the Human Rights Sub-Committee’s First Interim Report on the legal foundations of religious freedom in Australia.<sup>6</sup> The Chair and other members of the Expert Panel met with the Chair and Deputy Chair of the Human Rights Sub-Committee informally on 26 March 2018.<sup>7</sup>
- 5.8 In its report the Expert Panel noted that it was “not surprising” that freedom of religion should be the subject of such interest in Australia: “As

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2 *Marriage Amendment (Definition and Religious Freedoms) Act 2017*, Commonwealth, Section 5.

3 *Marriage Act 1961 (Marriage Amendment Act 2004)*, Commonwealth, Section 5.

4 Department of Prime Minister and Cabinet, *Religious Freedom Review: Report of the Expert Panel*, 2018, p and Australian Government, *Australian Government response to the Religious Freedom Review*, 2018

5 *Religious Freedom Review*, p. 109.

6 *Religious Freedom Review*, p. 17.

7 *Religious Freedom Review*, p. 111.

it went about its work, the Panel heard repeatedly that religious adherence in Australia is at a critical juncture. Changing patterns of religious adherence, a loss of trust in mainstream institutions, and changing social mores are challenging the traditional role that religion has played in Australian society.”<sup>8</sup> While the Panel did not accept the argument put by some submissions and representations that religious freedom is in “imminent peril”, it did accept that “the protection of difference with respect to belief or faith in a democratic, pluralist country such as Australia requires constant vigilance”.<sup>9</sup>

- 5.9 The Expert Panel recorded its impression that, as a whole, Australians generally enjoy religious freedom: “Most stakeholders of faith acknowledged that, by and large, they have been free to observe their religious beliefs. Those from faiths that face persecution overseas were particularly vocal in acknowledging the relative safety that Australia affords people of different faiths. These perspectives highlighted that religious freedom is precious and that it needs to be actively preserved.”<sup>10</sup>
- 5.10 Like the Sub-Committee’s inquiry, the Expert Panel’s consultations made it clear that there were widely divergent views on how religious freedom should be protected. The Panel observed: “Most groups acknowledged the difficult conversations that need to occur when rights intersect and highlighted the need to adopt a position of minimal harm. However, there were divergent views expressed on how the balance should be struck between competing rights. For example, although some groups felt that the current exceptions for religion in anti-discrimination law strike an appropriate balance, others argued for increased protections, such as through a Religious Freedom Act, while others argued that existing protections should be limited. Others argued that a Human Rights Act or mechanisms such as a general limitations clause would provide a more sophisticated and appropriate protection for everyone’s rights.”<sup>11</sup>
- 5.11 The Expert Panel noted that a common characteristic of many representations was apprehension, even fear, about threats to religious freedom: “People of faith were apprehensive that religious freedom may come under threat in Australia. The Panel heard many examples of changes to legislation or judicial decisions from overseas that underpinned this apprehension. While the Panel considered these matters carefully, it was cautious in drawing conclusions from the experience in jurisdictions with quite different legal arrangements from Australia. The

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8 *Religious Freedom Review*, p. 8.

9 *Religious Freedom Review*, p. 8.

10 *Religious Freedom Review*, p. 10.

11 *Religious Freedom Review*, p. 10.

Panel also heard representations from those who feared that protections for religion would be expanded at their expense, for example through a strengthening of exceptions to anti-discrimination laws.”<sup>12</sup>

- 5.12 Like the Sub-Committee, the Expert Panel found inconsistent approaches to religious freedom and levels of protection as between the Commonwealth and the States and Territories and as between the various States and Territories. This did not lead the Panel to conclude, however, that the legal protection of religious freedom in Australia is seriously inadequate. The Panel observed: “While consistency may be its own virtue, inconsistency is not necessarily problematic – unless it creates difficulties for people in real-world situations. Indeed, in some circumstances there may be considerable benefits in jurisdictions applying different approaches.”<sup>13</sup>
- 5.13 In relation to the overall legal framework, the Expert Panel considered a range of alternative paths to improve protection of religious freedom through legal reforms, such as legislating a Commonwealth Human Rights Act; developing a Religious Freedom Act; and replacing the current framework of exceptions to anti-discrimination law with a general limitations clause.<sup>14</sup> To the extent that these reforms raised complex issues, and in the absence of clear information that the current framework has caused substantial real problems, the Panel made no recommendation in this area other than to suggest that the issue should be looked at again in the future.<sup>15</sup>
- 5.14 The Panel noted the importance of ensuring that the right to religious freedom is given appropriate weight in situations where it is in tension with other public policy considerations, including other human rights. Although not binding at international law, the Panel concluded that the Siracusa Principles form a sound basis for considering any law that limits the operation of freedom of religion.<sup>16</sup> The Panel recommended that any proposals for reform have regard to the Siracusa Principles in developing and drafting laws that would impact on the right to freedom of religion and other rights.<sup>17</sup> In addition, the Panel recommended that governments consider the use of interpretive clauses in anti-discrimination legislation to

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12 *Religious Freedom Review*, p. 11.

13 *Religious Freedom Review*, p. 15.

14 *Religious Freedom Review*, pp. 39-46.

15 *Religious Freedom Review*, pp. 40-41.

16 *Religious Freedom Review*, p. 29.

17 *Religious Freedom Review*, Recommendation 2, p. 46.

reflect the equal status in international law of all human rights, including freedom of religion.<sup>18</sup>

- 5.15 The Expert Panel noted that many submissions focused their attention on specific instances of where the right to manifest religious belief was perceived to be under threat. These included the ability of goods and services providers to decline services for reasons of conscience; the ability of religious schools to select staff and students that conform to their religious ethos; the right of parents to ensure that their children are educated in accordance with their religious and moral values; the provision of public funding to charities and faith based organisations; the extent to which religious ministers can choose not to solemnise marriages that go against their religious beliefs; and the ability of religious bodies to prevent their facilities from being used for the solemnisation of such marriages.<sup>19</sup> The Expert Panel concluded that there was limited information to suggest that the right to freedom of religion is currently being infringed in any of these areas.<sup>20</sup> The Panel noted that the Marriage Amendment Act included a number of measures to protect religious freedom, and that these and other protections appeared to be operating effectively.<sup>21</sup>
- 5.16 The Expert Panel further noted that the human right to freedom of religion, as articulated in the ICCPR and other international instruments, provides a broad freedom to people to manifest their faith either individually or collectively. However, this aspect of the right may be limited in the interests of giving effect to the fundamental rights and freedoms of others. The Panel took the view that a right to discriminate in the provision of goods and services is not required to ensure the free and full enjoyment of Australians' right to freedom of religion under international law.<sup>22</sup> Similarly, the Panel did not consider it appropriate that civil celebrants who are not ministers of religion should be entitled to decline to solemnise same sex marriages if they became celebrants after same-sex marriage was legalised or chose not to avail themselves of the transitional provision in the Marriage Amendment Act.<sup>23</sup> There was also an absence evidence that funding to faith-based charities would come under threat.<sup>24</sup>

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18 *Religious Freedom Review*, Recommendation 3, p. 47.

19 *Religious Freedom Review*, Chapter 4 and 5, pp. 48-90

20 *Religious Freedom Review*, p. 104.

21 *Religious Freedom Review*, p. 105.

22 *Religious Freedom Review*, p. 49.

23 *Religious Freedom Review*, p. 81.

24 *Religious Freedom Review*, p. 105.

- 5.17 However the Expert Panel did consider that there are a number of opportunities to clarify the law in order to avoid issues arising in the future. Recommendations in this area include:
- that the Commonwealth Government amend section 11 of the *Charities Act* to clarify that advocacy of a ‘traditional’ view of marriage would not, of itself, amount to a disqualifying purpose
  - that the Commonwealth Government amend *the Sex Discrimination Act* to ensure that religious schools can continue to select staff and students who conform to their religious ethos, provided that it is on the basis of a published policy
  - that the Commonwealth progress legislative amendments to make it clear that religious educational institutions are not required to make facilities available or provide goods and services for a marriage on religious grounds, and
  - that the Attorney-General consider the advice on the Attorney-General’s Department website relating to marriage celebrants to better explain the religious protections available to different classes of authorised celebrants, including ministers of religion.<sup>25</sup>
- 5.18 The Expert Panel noted that many submissions focussed on the relationship between religious freedom and other rights and freedoms, including freedom of speech and freedom of association. Concerns raised in this broad area included significant variance of anti-vilification and hate speech laws across jurisdictions, including in relation to which types of speech are prohibited and in relation to which protected attributes; uncertainty about whether and how religious beliefs about marriage and sexuality can be legitimately voiced; the ongoing presence of blasphemy laws in some jurisdictions; and instances of social hostility against members of some religions.<sup>26</sup>
- 5.19 With respect to vilification laws, the Expert Panel encouraged the Commonwealth, State and Territory Attorneys-General to cooperate to ensure greater consistency and national coverage with respect to anti-vilification provisions in accordance with Australia’s international obligations.<sup>27</sup>
- 5.20 With respect to blasphemy, the Expert Panel concluded that the prohibition of certain speech on the grounds of religious belief is very difficult to reconcile with competing rights in a free society where beliefs and ideas of any kind should be able to be freely debated and criticised.
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25 *Religious Freedom Review*, p. 106.

26 *Religious Freedom Review*, p. 106.

27 *Religious Freedom Review*, p. 106.

The Panel concluded that blasphemy laws are out of step with a modern, tolerant, multicultural society and should be abolished.<sup>28</sup>

- 5.21 The Expert Panel noted that discrimination on the basis of religion and religious belief is prohibited in most Australian jurisdictions in one way or another. However, legislative protection from discrimination on the grounds of religion is limited at the Commonwealth level to the area of employment; in New South Wales to ‘ethno-religious origin’ and in South Australia to ‘religious appearance or dress’.<sup>29</sup>
- 5.22 The Panel accordingly recommended that the *Racial Discrimination Act* be amended to include religion as a protected attribute, or, preferably, to develop a Commonwealth Religious Discrimination Act directed at the provision of comprehensive protection against discrimination based on religious belief or activity, including the absence of religious belief.<sup>30</sup> In this the Panel urged that careful consideration be given to appropriate exceptions and practical considerations, including the need to review and adjust responsibilities for the Australian Human Rights Commission, to the extent that new Commonwealth legislation would create additional responsibilities for it.<sup>31</sup> The Panel also took the view that New South Wales and South Australia should consider legislative reform to include religion as a protected attribute.<sup>32</sup>
- 5.23 The full list of recommendations of the Expert Panel are outlined below:

Table 5.1 Recommendations of the Religious Freedom Review<sup>33</sup>

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**Recommendation 1**

Those jurisdictions that retain exceptions or exemptions in their anti-discrimination laws for religious bodies with respect to race, disability, pregnancy or intersex status should review them, having regard to community expectations.

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**Recommendation 2**

Commonwealth, State and Territory governments should have regard to the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* when drafting laws that would limit the right to freedom of religion.

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**Recommendation 3**

Commonwealth, State and Territory governments should consider the use of objects, purposes or other interpretive clauses in anti-discrimination legislation to reflect the equal status in international law of all human rights, including freedom of religion.

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**Recommendation 4**

The Commonwealth should amend section 11 of the *Charities Act 2013* to clarify that advocacy of a ‘traditional’ view of marriage would not, of itself, amount to a ‘disqualifying

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28 *Religious Freedom Review*, p. 106.

29 *Religious Freedom Review*, p. 107.

30 *Religious Freedom Review*, Recommendation 15, p. 95.

31 *Religious Freedom Review*, p. 95.

32 *Religious Freedom Review*, p. 95.

33 *Religious Freedom Review*, Recommendations, pp. 1-7.

purpose’.

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#### **Recommendation 5**

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The Commonwealth should amend the *Sex Discrimination Act 1984* to provide that religious schools can discriminate in relation to the employment of staff, and the engagement of contractors, on the basis of sexual orientation, gender identity or relationship status provided that:

- (a) the discrimination is founded in the precepts of the religion
  - (b) the school has a publicly available policy outlining its position in relation to the matter and explaining how the policy will be enforced, and
  - (c) the school provides a copy of the policy in writing to employees and contractors and prospective employees and contractors.
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#### **Recommendation 6**

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Jurisdictions should abolish any exceptions to anti-discrimination laws that provide for discrimination by religious schools in employment on the basis of race, disability, pregnancy or intersex status. Further, jurisdictions should ensure that any exceptions for religious schools do not permit discrimination against an existing employee solely on the basis that the employee has entered into a marriage.

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#### **Recommendation 7**

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The Commonwealth should amend the *Sex Discrimination Act* to provide that religious schools may discriminate in relation to students on the basis of sexual orientation, gender identity or relationship status provided that:

- (a) the discrimination is founded in the precepts of the religion
  - (b) the school has a publicly available policy outlining its position in relation to the matter
  - (c) the school provides a copy of the policy in writing to prospective students and their parents at the time of enrolment and to existing students and their parents at any time the policy is updated, and
  - (d) the school has regard to the best interests of the child as the primary consideration in its conduct.
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#### **Recommendation 8**

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Jurisdictions should abolish any exceptions to anti-discrimination laws that provide for discrimination by religious schools with respect to students on the basis of race, disability, pregnancy or intersex status.

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#### **Recommendation 9**

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State and Territory education departments should maintain clear policies as to when and how a parent or guardian may request that a child be removed from a class that contains instruction on religious or moral matters and ensure that these policies are applied consistently. These policies should:

- (a) include a requirement to provide sufficient, relevant information about such classes to enable parents or guardians to consider whether their content may be inconsistent with the parents’ or guardians’ religious beliefs, and
  - (b) give due consideration to the rights of the child, including to receive information about sexual health, and their progressive capacity to make decisions for themselves.
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#### **Recommendation 10**

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The Commonwealth Attorney-General should consider the guidance material on the Attorney-General’s Department’s website relating to authorised celebrants to ensure that it uses plain English to explain clearly and precisely the operation of the *Marriage Act 1961*. The updated guidance should include:

- (a) a clear description of the religious protections available to different classes of authorised celebrants, and
  - (b) advice that the term ‘minister of religion’ is used to cover authorised celebrants from religious bodies which would not ordinarily use the term ‘minister’, including non-Christian religions.
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#### **Recommendation 11**

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The Commonwealth Attorney-General should consider whether the Code of Practice set out in Schedule 2 of the *Marriage Regulations 2017* is appropriately adapted to the needs of smaller and emerging religious bodies.

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**Recommendation 12**

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The Commonwealth should progress legislative amendments to make it clear that religious schools are not required to make available their facilities, or to provide goods or services, for any marriage, provided that the refusal:

- (a) conforms to the doctrines, tenets or beliefs of the religion of the body, or
  - (b) is necessary to avoid injury to the religious susceptibilities of adherents of that religion.
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**Recommendation 13**

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Those jurisdictions that have not abolished statutory or common law offences of blasphemy should do so.

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**Recommendation 14**

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References to blasphemy in the *Shipping Registration Regulations 1981*, and in State and Territory primary and secondary legislation, should be repealed or replaced with terms applicable not only to religion.

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**Recommendation 15**

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The Commonwealth should amend the *Racial Discrimination Act 1975*, or enact a Religious Discrimination Act, to render it unlawful to discriminate on the basis of a person's 'religious belief or activity', including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.

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**Recommendation 16**

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New South Wales and South Australia should amend their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's 'religious belief or activity' including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for the appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.

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**Recommendation 17**

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The Commonwealth should commission the collection and analysis of quantitative and qualitative information on:

- (a) the experience of freedom of religion in Australia at the community level, including:
    - (i) incidents of physical violence, including threats of violence, linked to a person's faith
    - (ii) harassment, intimidation or verbal abuse directed at those of faith
    - (iii) forms of discrimination based on religion and suffered by those of faith
    - (iv) unreasonable restrictions on the ability of people to express, manifest or change their faith
    - (v) restrictions on the ability of people to educate their children in a manner consistent with their faith
  - (b) the experience of freedom of religion impacting on other human rights, and
  - (c) the extent to which religious diversity (as distinct from cultural diversity) is accepted and promoted in Australian society.
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**Recommendation 18**

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The Commonwealth should support the development of a religious engagement and public education program about human rights and religion in Australia, the importance of the right to freedom of religion and belief, and the current protections for religious freedom in Australian and international law. As a first step, the Panel recommends that the Attorney-General should ask the Parliamentary Joint Committee on Human Rights to inquire into and report on how best to enhance engagement, education and awareness about these issues.

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**Recommendation 19**

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The Australian Human Rights Commission should take a leading role in the protection of freedom of religion, including through enhancing engagement, understanding and dialogue. This should occur within the existing commissioner model and not necessarily through the creation of a new position.

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**Recommendation 20**

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The Prime Minister and the Commonwealth Attorney-General should take leadership of the issues identified in this report with respect to the Commonwealth, and work with the States and Territories to ensure its implementation. While the Panel hopes it would not be necessary,

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consideration should be given to further Commonwealth legislative solutions if required.

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## Government Response to the Religious Freedom Review

5.24 The Prime Minister, the Hon Scott Morrison MP, and the Attorney-General, the Hon Christian Porter MP released the government's response to the Expert Panel's report on 13 December 2018.<sup>34</sup>

5.25 In making its response the government welcomed the opportunity "to enhance the statutory protection of freedom of thought, conscience and religion".<sup>35</sup> In doing so the government highlighted two major features of the statutory architecture of Australia's federal anti-discrimination system as a matter of context and background to the substance of its response.

First, religion is not covered as a protected attribute in the four current federal anti discrimination Acts. It is, however, the subject of several exemptions of the type described above. For example, the *Age Discrimination Act 2004* and the *Sex Discrimination Act* both contain a general religious exemption for any acts or practices of a body established for religious purposes that conform to the doctrines, tenets or beliefs of the relevant religion, or are necessary to avoid injury to the religious susceptibilities of adherents of that religion. In the *Sex Discrimination Act*, this explicitly includes exemptions for inherently religious practices, such as the training and ordination of priests, ministers of religion or members of a religious order and the selection or appointment of persons to perform duties or functions for any religious observance. As stated above, the *Sex Discrimination Act* also includes specific exemptions for educational institutions established for religious purposes in relation to the employment of staff and contractors, and the provision of education and training. Further, although religion is not a protected attribute under federal anti-discrimination law, the *Fair Work Act 2009* provides a number of protections from discrimination on the basis of religion in employment. The *Fair Work Act* prohibits employers from taking adverse action against an employee or prospective employee on the basis of religion, including terms in modern awards or enterprise agreements which discriminate against an employee on the basis of religion, and terminating an employee's employment for reasons including their religion.

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34 PMC, Religious Freedom Review website, <https://www.pmc.gov.au/domestic-policy/religious-freedom-review>

35 *Government response*, p. 2.

Second, freedom of religion is one right among many others and so, in practice, this right co exists with a broad suite of other human rights. Importantly though, freedom of religion is not subordinate or secondary to the other rights which it will necessarily be balanced with. Ultimately, in consideration of the best manner in which to frame, balance and protect co existing rights, the Australian Government considers there is a requirement to ensure some enhanced standing protection for Australians' right to freedom of religion, by giving it more weight in our community than it currently receives.<sup>36</sup>

- 5.26 The government's response noted that there is no standalone law that gives comprehensive effect throughout Australia to the human right to freedom of religion. Consequently, as recommended by the Expert Panel, the government announced its intention to introduce a Religious Discrimination Bill into the Parliament. The Government elaborated on the proposed Bill as follows:

This Bill will ensure people's right to freedom of religion is adequately protected in our community by the establishment of legislation that adopts the same framework that exists in other Commonwealth anti-discrimination legislation. The Bill will provide substantive protection against discrimination by rendering it unlawful to discriminate on the basis of a person's religious belief or activity, including on the basis that a person does not hold a religious belief or participate in a religious activity; and will include a framework of appropriate exemptions as exists in other anti-discrimination legislation.<sup>37</sup>

- 5.27 The government further indicated that in developing a Religious Discrimination Bill to provide comprehensive protection against discrimination based on religious belief or activity the Government wishes to work with the Opposition, crossbench and stakeholders in a consultative process to develop bipartisan agreement on a Bill that could be introduced into the Parliament with broad cross-party support.<sup>38</sup>
- 5.28 Overall the Government accepted either directly or in principle 15 of the Expert Panel's 20 recommendations.<sup>39</sup> While agreeing with the principles underpinning the remaining five recommendations (recommendation 1 and recommendations 5 to 8), the Government has taken the view that

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36 *Government response*, pp. 3-4.

37 *Government response*, p. 4.

38 *Government response*, p. 5.

39 *Government response*, p. 5.

further consideration is necessary to address the complexities associated with those recommendations.<sup>40</sup>

- 5.29 Aside from the development of a Religious Discrimination Bill, the Government's stated intentions include the following:
- developing a General Amendment Bill for introduction to Parliament as soon as practicable, containing amendments to existing Commonwealth legislation relating to freedom of religion, including amendments to marriage law, charities law and objects clauses in existing anti-discrimination legislation;<sup>41</sup>
  - establishing a standalone position of Freedom of Religion Commissioner at the Australian Human Rights Commission;<sup>42</sup>
  - supporting the Australian Human Rights Commission to increase awareness of the importance of freedom of religion;<sup>43</sup>
  - commencing a process with all State and Territory Governments seeking their consideration to review and amend their own existing policies and legislation which pertain to freedom of religion to ensure a high degree of consistency across Australia;<sup>44</sup> and
  - referring recommendations that pertain to the States and Territories to a proposed Council of Attorneys-General Working Group and the Council of Australian Governments (COAG) Education Council, as appropriate, to consider all relevant recommendations.<sup>45</sup>
- 5.30 Recognising the complexity of the issues surrounding the framework of exemptions for religious bodies in anti-discrimination law in all Australian jurisdictions, the Government indicated its intention to consult with the States and Territories on the terms of a potential reference to the Australian Law Reform Commission where recommendation 1 and recommendations 5 to 8 can be referred with a view to considering what drafting options may be available that would achieve the twin purposes of limiting or removing altogether (if practicable) legislative exemptions to discrimination based on a person's identity while also protecting the right of religious institutions to reasonably conduct their affairs in a way consistent with their religious ethos.<sup>46</sup> The Government also noted that any potential changes to the Fair Work Act require a formal process of
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40 *Government response*, p. 5.

41 *Government response*, p. 5.

42 *Government response*, p. 5.

43 *Government response*, p. 6.

44 *Government response*, p. 6.

45 *Government response*, p. 6.

46 *Government response*, p. 6.

engagement and consultation with the States and Territories. The Government has observed that as an independent statutory law reform body, the ALRC would be one option considered as a potential forum to conduct community consultation in a methodical manner on specific drafting options designed to balance rights to freedom from discrimination and rights to freedom of religion in this complex area of the law with impartiality and legal expertise.<sup>47</sup>

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47 *Government response*, p. 6.

