The Parliament of the Commonwealth of Australia

Second Interim Report: freedom of religion and belief, the Australian experience

Inquiry into the status of the human right to freedom of religion or belief

House of Representatives
Joint Standing Committee on Foreign Affairs, Defence and Trade

April 2019
Canberra

ISBN 978-1-74366-953-2 (Printed version)

ISBN 978-1-74366-954-9 (HTML version)

Contents

LIST OF TABLES

Foreword

Freedom of religion or belief is one of the cornerstones of human rights and as such, the significance of freedom of religion or belief in our community cannot be overestimated. It goes to the core of human individuality and identity. Around the world it is clearly evident that when this right is denied it affects social cohesion, democratic practice, and stability of societies; and can lead to division and conflict.

The right of individuals to believe in, and a society's tolerance towards, differing religions or beliefs is a fundamental component of any healthy democracy, along with the respect for all other human rights upon which democratic societies are based.

Striking the balance between these human rights and giving everyone the opportunity to pursue their faith whilst respecting the human rights of others in society is not an easy task for societies to accommodate, or for governments to achieve, but the importance of doing so is evident; both from the overseas experience and from the evidence from everyday Australians put before this inquiry.

The Second Interim Report of the Human Rights Sub-Committee's Inquiry into the Status of the Human Right to Freedom of Religion or Belief provides a snapshot of the current domestic experience of Australians in the practise and exercise of freedom of religion or belief.

While there is much community debate surrounding the manifestation of beliefs, and religion's role within society, the Sub-Committee has found that the right to believe in whatever faith you choose is something that Australian people take seriously and hold dearly. Our successful multicultural society is based on mutual understanding and respect, which cannot exist and grow without this fundamental right.

This interim report examines some of the perceived problems associated with the reconciling of the exercise of freedom of religion with other human rights, especially principles of freedom of speech and expression and the principles of non-discrimination and fair treatment.

The report examines some of the proposed solutions that have been advanced in the context of vigorous community and political debate. In this the Sub-Committee was cognizant of the findings and recommendations of the Australian Government's Religious Freedom Review and the Government's response to this review, which are summarised in this interim report.

The Sub-Committee recommends that, as a first step in legislative reform, the Australian Government, in consultation with the states and territories, develop and introduce or amend as necessary, legislation to give full effect to Australia's obligations under Article 18 of the Universal Declaration on Human Rights and Article 18 of the International Covenant on Political and Civil Rights.

The Sub-Committee would like to extend its warm thanks to all those individuals and organisations who have taken the time to make submissions or appear before the committee at public hearings. These contributions have been invaluable to this inquiry.

The Sub-Committee's work in this important field is not yet complete. Accordingly this Second Interim Report further recommends that its inquiry be continued in the 46th Parliament so that the international situation concerning freedom of religion and belief can be further examined, including Australia's efforts to protect and promote respect for this vital human right around the world.

Addendum

This report was completed prior to the Christchurch terrorist attack that took place on 15 March 2019. The message of tolerance and acceptance of all peoples' right to practice their religion or belief is even more apparent in light of these events. The Sub-Committee wish to acknowledge this abhorrent attack, and send their condolences to all those affected by this tragedy.

The Hon Kevin Andrews
Chair

Members

Joint Standing Committee on Foreign Affairs, Defence and Trade

Chair

Senator the Hon Ian Macdonald *(Chair from 11.9.18 to 6.10.18)* *(Chair from 25.10.18)*	LNP, QLD

Deputy Chair

Mr Nick Champion MP	Wakefield, SA

Members

Senator the Hon Eric Abetz *(from 10.9.18)*	LP, TAS
Dr Anne Aly MP	Cowan, WA
The Hon Kevin Andrews MP	Menzies, VIC
Ms Sharon Claydon MP	Newcastle, NSW
Mr Chris Crewther MP	Dunkley, VIC
Mr Michael Danby MP *(from 12.2.18)*	Melbourne Ports, VIC
The Hon Damian Drum MP *(from 13.8.18)*	Murray, VIC

Senator Mehreen Faruqi *(from 14.9.18)*	AG, NSW
Senator the Hon Fierravanti-Wells *(from 10.9.18)*	LP, NSW
Senator Alex Gallacher	ALP, SA
Mr Craig Kelly MP	Hughes, NSW
Senator Kimberley Kitching *(from 15.2.18)*	ALP, VIC
Mr Andrew Laming MP *(from 6.2.18)*	Bowman, QLD
Senator Malarndirri McCarthy *(from 10.8.17)*	ALP, NT
Senator Jim Molan AO DSC *(from 5.2.18)*	LP, NSW
Senator Claire Moore	ALP, QLD
Mr Ted O'Brien MP *(from 15.8.17)*	Fairfax, QLD
Mr Graham Perrett MP	Moreton, QLD
Mr Rowan Ramsey MP	Grey, SA
Senator the Hon Lisa Singh	ALP, TAS
Senator Dean Smith *(from 22.6.17)* *(Chair from 16.10.18 to 24.10.18)*	LP, WA
The Hon Warren Snowdon MP	Lingiari, NT
Mrs Ann Sudmalis MP	Gilmore, NSW
Ms Meryl Swanson MP *(from 20.8.18)*	Paterson, NSW
Ms Maria Vamvakinou MP	Calwell, VIC
Mr Andrew Wallace MP *(from 4.12.17)*	Fisher, QLD
Mr Trent Zimmerman MP	North Sydney, NSW

Former members

Senator David Fawcett (Chair) *(12.9.16 – 10.9.18)* *(Chair to 6.9.18)*	LP, SA
Senator Chris Back *(12.9.16 – 22.6.17)*	LP, WA

The Hon Darren Chester *(6.2.18 – 2.3.18)*	Gippsland, VIC
Senator Anthony Chisholm *(14.9.16 –10.8.17)*	ALP, QLD
The Hon Damian Drum MP *(14.9.16 – 20.12.17)*	Murray, VIC
The Hon David Feeney MP *(15.9.16 – 1.2.18)*	Batman, VIC
Mr Andrew Hastie MP *(14.9.16 – 4.12.17)*	Canning, WA
Senator Jane Hume *(6.10.18 to 21.10.18)*	LP, VIC
Senator Chris Ketter *(8.11.16 – 9.2.17)*	ALP, QLD
Ms Madeleine King MP *(17.10.16 – 20.8.18)*	Brand, WA
The Hon Sussan Ley MP *(6.2.18 – 28.8.18)*	Farrer, NSW
Mr David Littleproud MP *(14.9.16 – 20.12.17)*	Maranoa, QLD
Senator Scott Ludlam *(12.9.16 – 14.7.17)*	AG, WA
Senator Bridget McKenzie *(12.9.16 – 5.2.18)*	Nats, VIC
The Hon Dr John McVeigh MP *(14.9.16 – 20.12.17)*	Groom, QLD
Senator Deborah O'Neill *(12.9.16 – 15.2.18)*	ALP, NSW
Ms Melissa Price MP *(14.9.16 – 20.12.17)*	Durack, WA
Senator Linda Reynolds CSC *(12.9.16 – 10.9.18)*	LP, WA
Senator Lee Rhiannon *(26.7.18 – 10.9.18)*	AG, NSW
Mr Bert van Manen *(6.2.18 – 13.8.18)*	Forde, QLD
Senator Peter Whish-Wilson *(9.8.17 – 26.6.18)*	AG, TAS
Mr Jason Wood MP *(14.9.16 – 15.8.17)*	LaTrobe, VIC
Senator Nick Xenophon *(12.9.16 – 1.12.16)*	NXT, SA

Human Rights Sub-Committee

Chair

The Hon Kevin Andrews MP	Menzies, VIC

Deputy Chair

Dr Anne Aly MP	Cowan, WA

Members

Mr Nick Champion MP *(ex officio)*	Wakefield, SA
Ms Sharon Claydon MP	Newcastle, NSW
Mr Michael Danby MP *(from 12.2.18)*	Melbourne Ports, VIC
Mr Craig Kelly MP	Hughes, NSW
Senator Kimberley Kitching *(from 15.2.18)*	ALP, VIC
Senator the Hon Ian Macdonald *(ex officio)*	LNP, QLD
Senator Claire Moore	ALP, QLD
Senator the Hon Lisa Singh	ALP, TAS
Senator Dean Smith *(from 22.6.17)*	LP, WA
The Hon Warren Snowdon MP	Lingiari, NT
Ms Maria Vamvakinou MP	Calwell, VIC
Mr Trent Zimmerman MP	North Sydney, NSW

Former members

Senator David Fawcett *(to 10.9.18)*	LP, SA
Senator Linda Reynolds CSC *(to 10.9.18)*	LP, WA

Committee Secretariat

Mr James Rees, Committee Secretary

Ms Sonya Fladun, Inquiry Secretary

Ms Stephanie Woodbridge, Research Officer *(from 20.8.18)*

Mr Daniel Simon, Research Officer *(to 24.8.18)*

Mr Alexander Rae, Research Officer *(to 20.7.18)*

Mrs Dorota Cooley, Office Manager *(from 3.7.17)*

Mr Danny Miletic, Officer Manager *(to 30.6.17)*

Ms Natasha Kaleb, Administrative Officer

PO Box 6021
Parliament House
Canberra, ACT 2600
Telephone: 02 6277 2313
Facsimile: 02 6277 2221
Email: jscfadt@aph.gov.au
Internet: www.aph.gov.au/jfadt

Terms of reference

The Committee shall examine the status of the freedom of religion or belief (as recognised in Article 18 of the International Covenant on Civil and Political Rights) around the world, including in Australia. The Committee shall have particular regard to:

1. The enjoyment of freedom of religion or belief globally, the nature and extent of violations and abuses of this right and the causes of those violations or abuses;
2. Action taken by governments, international organisations, national human rights institutions, and non-government organisations to protect the freedom of religion or belief, promote religious tolerance, and prevent violations or abuses of this right;
3. The relationship between the freedom of religion or belief and other human rights, and the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights;
4. Australian efforts, including those of Federal, State and Territory governments and non-government organisations, to protect and promote the freedom of religion or belief in Australia and around the world, including in the Indo-Pacific region.

The inquiry should have regard to developments since the Committee last reported on Australia's efforts to promote and protect freedom of religion or belief in November 2000.

1

Introduction

Background to the inquiry

1.1 On 29 November 2016 the Minister for Foreign Affairs and Trade, the Hon Ms Julie Bishop MP, wrote to the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) to refer an inquiry into the "status of the freedom of religion or belief (as recognised in Article 18 of the International Covenant on Civil and Political Rights) around the world, including in Australia". The Committee was requested to have particular regard to:

- The enjoyment of freedom of religion or belief globally, the nature and extent of violations and abuses of this right and the causes of those violations or abuses;
- Action taken by governments, international organisations, national human rights institutions, and non-government organisations to protect the freedom of religion or belief, promote religious tolerance, and prevent violations or abuses of this right;
- The relationship between the freedom of religion or belief and other human rights, and the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights;
- Australian efforts, including those of Federal, State and Territory governments and non-government organisations, to protect and promote the freedom of religion or belief in Australia and around the world, including in the Indo-Pacific region.

1.2 The inquiry was also to have regard to developments since the Committee last reported on Australia's efforts to promote and protect freedom of religion or belief in November 2000.

1.3 In 1999-2000 the JSCFADT conducted an inquiry into Australia's efforts to promote and protect freedom of religion or belief. The JSCFADT's report, entitled *Conviction with Compassion: A Report into Freedom of Religion and Belief*, was tabled in November 2000. The report made nine recommendations. A subsequent Government Response, tabled in November 2002, accepted or accepted in principle four of those recommendations. The *Conviction with Compassion* report noted the frequency with which the issue of freedom of religion or belief was addressed indirectly in previous reports on human rights, including, for example, in the report entitled, *Improving But…: Australia's Dialogue on Human Rights*, tabled in June 1998.

1.4 The Inquiry was referred by the JSCFADT to the Human Rights Sub-Committee (the Sub-Committee) on 30 November 2016.

1.5 By 2 November 2017, the Inquiry received over 600 submissions and contributing documents from a broad range of stakeholders. The Sub-Committee held 7 public hearings. The initial public hearings which contributed to the first interim report focused on the legal foundation of religious freedom protections in Australia, with leading legal and constitutional academics, human rights groups, and government agencies appearing. The subsequent hearings examined the current experiences of religious and non-religious organisations, groups and individuals within Australia regarding their religious freedom as well as some evidence regarding the overseas experience of religious freedom. Most of these witnesses also contributed submissions.

1.6 The Sub-Committee wishes to thank all those who took the time to make a submission to this inquiry, those who appeared as witnesses and those who have participated in the ongoing discussion around the human right to freedom of religion or belief.

A Second Interim Report

1.7 This is the Second Interim Report of the Human Right Sub-Committee of the Joint Standing Committee for Foreign Affairs Defence and Trade for the Inquiry into the status of the human right to freedom of religion or belief.

1.8 At the start of the inquiry the Human Rights Sub-Committee determined that the most effective way to examine and address very broad terms of reference regarding the protections of religious freedoms in Australia and overseas, would be to first examine and establish what legal protection currently existing in Australia that safeguard the practise of religion and

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

1.9 The Sub-Committee then determined to examine threats to freedom of religion and belief and from that basis, consider any remedies that may be required to bolster protection for religious freedom. After examining Australian protections for religious freedoms the Sub-Committee planned to turn its attention to religious freedom overseas.

1.10 The Sub-Committee found that the freedom of religion or belief receives little formal protection in Australia. Most significantly, there is no explicit protection for religious freedom at the Commonwealth level. Although the Constitution does go some way to preventing the Commonwealth Government from restricting religious practice, it does not prevent states and territories from restricting religion or belief.

1.11 Despite this lack of legal protection it is clear, particularly from the evidence of those who have been subject to religious persecution by other countries, that Australia enjoys significant religious freedoms.

1.12 There is, however, an apparent increasing level of concern amongst Australians regarding their religious freedoms as demonstrated both by the public response to this inquiry and to that of the Australian Government's *Religious Freedom Review* (discussed in Chapter 5), that also sought public submissions a year later.

1.13 As pointed out in the Sub-Committee's First Initial Report these concerns overwhelmingly come from what can perhaps be best described as 'conflicting rights' where one human right may challenge or come into conflict with another human right, for example, when religious groups through the practice of their faith may wish to discriminate on grounds of employment in religious schools or the provision of services. This practice may then come into conflict with, for example, antidiscrimination legislation.

1.14 Evidence provided to the Sub-Committee reflected sharply divided opinion. On one side, it was argued that religious exemptions give unfair weight to religious freedom before the law; on the other side of the debate the majority of submissions reflected a belief that religious freedom is unjustly subordinated to other human rights instruments, such as anti-discrimination legislation. Different concerns regarding these competing human rights were raised and a number of solutions as to how these conflicts might be addressed were suggested.

1.15 As the First Interim Report stated, striking a balance between these rights is indeed a challenging and delicate task.

1.16 The Sub-Committee was mindful of the potential significance of the establishment of the Government's review into religious freedom which commenced on 22 November 2017, with the directive to examine whether Australian law adequately protects the human right to the freedom of religion. As the original reporting date for the Government's review was 31 March 2018 the Sub-Committee determined to wait and examine the Review's findings before making recommendations. This deadline was then extended to 18 May 2018. The Review's report was publicly released on 13 December 2018 along with the Government's response.

1.17 Notwithstanding the lengthy delay before the release of the Government's review and the consequential delay in the Sub-Committee's inquiry, the Sub-Committee determined to produce a Second Interim Report before the end of the 45th Parliament to give voice to some of the evidence provided on these concerns and to present some of the proposed solutions presented in the course of this inquiry.

Report structure

1.18 As discussed above, the First Interim Report tabled in November 2017 examined the legal foundation of religious freedom in Australia, focusing on a selection of submissions from, and public hearings with, legal academics and experts in human rights law.

1.19 The findings of that report are briefly discussed in an overview in Chapter 2.

1.20 The Sub-Committee has proceeded on the assumptions of that First Report, broadening the scope of the inquiry to hear from a wide range of community and religious groups in Australia. The Sub-Committee has continued to focus on the status of freedom of religion or belief in Australia, although a number of groups representing persecuted religious minorities in other countries did appear at public hearings.

1.21 Chapter 3 will discuss the range of concerns about religious freedom in Australia raised throughout public hearings and submissions. Some general concerns are discussed, and the specific concerns of particular religious or community groups are examined in turn.

1.22 Chapter 4 discusses some of the possible solutions or improvements that could be made in Australia. This includes a broad discussion of the various suggestions made by witnesses and in submissions, as well as referring to the suggestions highlighted in the First Interim Report.

1.23 Chapter 5 discusses the finding of the Australian Government's Religious Freedom Review and the Government's response to the Review's recommendations.

1.24 Finally, Chapter 6 provides Sub-Committee comment and makes two Recommendations.

2

The First Interim Report

2.1 The First Interim Report (the Report) was tabled in November 2017 and focused on the legal foundations of freedom of religion and belief in Australia. The Sub-Committee held three public hearings with lawyers, human rights organisations, and legal academics. This Chapter gives a brief overview of the findings of that Report.

2.2 The Report began with a discussion of international human rights law in Chapter 2, and in particular the International Covenant on Civil and Political Rights (ICCPR). Article 18 provides for freedom of religion or belief and has been the touchstone of much of this inquiry so far.

2.3 Along with the Universal Declaration of Human Rights (UDHR), the ICCPR is the most important international human rights instrument. Australia has ratified the ICCPR but not adopted it formally into domestic law, although some ICCPR rights do have legislative protection. The Report noted that Article 26, the right to non-discrimination, does have legislative protection in Australia, and that with limited protection for religious freedom "there is a risk of an imbalanced approach to resolving any conflict between the right to freedom of religion or belief and other rights".[1]

2.4 Other international instruments also have a role in human rights law including religious freedom. The Report gave attention to some of these, including the Siracusa Principles, the UNESCO Principles on Tolerance, and various UN Human Rights Committee General Comments, all of which could provide guidance on how to implement protection for freedom of religion in Australia.

---

1 Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *First Interim Report: Legal Foundations of Religious Freedom in Australia*, November 2017, p. 13.

2.5 Chapter 3 of the Report discussed the definition of freedom of religion, as well as its scope and its limitations. There is broad agreement on several key issues. Importantly, the right to freedom of "religion or belief" includes "thought" and "conscience" and is not limited to theistic belief systems. Non-theistic beliefs and the right not to profess any beliefs at all are also covered by the right to freedom of religion and belief.

2.6 The right to hold a religion or belief is absolute; in distinction, the right to manifest a religion or belief is subject to some limitations. This is also broadly accepted, although exactly what limitations are appropriate is more contentious.

2.7 Article 18 also contains other phrases, the importance of which is accepted but the interpretation of which is more difficult. For example, the right to religious freedom is held both "individually" and "in community with others". The extent to which the right is merely personal and private and the extent to which it is communal and public has been a common point of discussion through the Inquiry.

2.8 The rights of parents and guardians with respect to the religious and moral education of their children are also protected. There is some disagreement on the implications of this in the context of public education and the rights of children.

2.9 Chapter 4 addresses Australia's federal protection of religious freedom, and finds that there is broad agreement that this protection is limited. The Constitution prohibits the Commonwealth from restricting religion, and there are some implied Constitutional rights, including to freedom of religious expression and association. But these protections are not absolute, nor do they prohibit restrictions at state or territory level, and there is no explicit protection of the right.

2.10 The Report noted that Australia's long history of religious tolerance and freedom is in large part due to the effect of the common law, and the "general principle of Australians being free to act as they wish unless a law specifically prohibits them".[2] Some parties are concerned that this general freedom is being slowly eroded, or may be threatened by legislation, including legislation which protects other rights which may be in conflict with religious freedom.

2.11 There are several main suggestions for strengthening legislative protection for religious freedom at federal level, including a bill of rights, a dedicated religious freedom act, a religious discrimination act, or a variation or combination of these. There has also been much discussion about the

2 Human Rights Sub-Committee, *First Interim Report*, November 2017, p. 49.

effectiveness and appropriateness of existing religious exemptions and exceptions within federal non-discrimination law.

2.12 The Report considered the range of arguments for and against these suggestions, without putting forth any recommendations. Since tabling the Report, the Sub-Committee has continued to receive evidence on these matters, with a wide range of opinions being given. Although there appears to be general agreement that the Commonwealth should take measures to strengthen legislative protection for religious freedom, there is no unanimity on how this is best achieved, and there is much debate about how to balance conflicting rights and whether there would be unintended consequences of particular types of legislation.

2.13 The Report gave attention to existing state and territory laws in Chapter 5, noting in particular the Victorian Charter of Rights and Responsibilities and the ACT Human Rights Act, which have both been put forth as examples of effective human rights instruments upon which a federal instrument could be based. Three state governments made written submissions, and the ACT government made a submission and appeared at a public hearing in Canberra in 2017. The Victorian Multicultural Commission and Equal Opportunity Tasmania also made submissions and appeared at public hearings during the second part of the Inquiry.

2.14 One issue noted by the Report is the inconsistency across jurisdictions of legislative protection of human rights. A common argument in favour of federal religious freedom legislation is that it would make protections consistent.

2.15 Chapter 6 canvassed various ideas for how to implement the ICCPR in Australia, stating that there "has been general agreement about the need to formally implement the right to freedom of religion or belief".[3] There is a variety of opinions on whether a bill of rights is either desirable or achievable. There are also different opinions on other possible legislative measures. Despite this, there is general agreement that religious freedom should be protected in Commonwealth law, however this is achieved.

2.16 Perhaps the most contentious issue has been how to balance religious freedom with other human rights. In contemporary society and politics, this conflict is most apparent with regard to the rights to equality and non-discrimination. It can also arise when considering the right to freedom of speech. These issues were discussed at length in Chapter 7. The Report discussed at some length the "many varying arguments" and commented

3 Human Rights Sub-Committee, *First Interim Report*, November 2017, p. 74.

that "striking the right balance between these competing rights is a challenging and delicate task".[4]

2.17 In summary, the First Interim Report made several key findings that have provided the basis for the Sub-Committee in its subsequent work:

- There is general agreement that freedom of religion or belief receives very little formal protection, and almost no legislative protection, at federal level.
- There is broad agreement that the Commonwealth should enact legislation, or amend existing legislation, to provide explicit protection for religious freedom.
- There is no agreement on the best way for the Commonwealth to do this. There are several main options, with arguments for and against each option. Measures supported by some parties are opposed by others.
- Federal non-discrimination legislation provides religious exceptions and exemptions. There are three main opinions on these exceptions and exemptions: firstly, that they are adequate in their current form; secondly that they prioritise religious freedom over the right to non-discrimination inappropriately; and thirdly that they inadequately protect religious freedom.

4 Human Rights Sub-Committee, *First Interim Report*, November 2017, p. 90.

3

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 case [5] and the Hindmarsh Island Bridge case [6] 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 Commuity 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

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 Reverand 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 Tasmania [41] and the ACT [42] 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 compliant 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-intention".[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 collegue 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, C*ommittee 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 S*ubmission 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 "preference 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, 30April 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, 30April 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

4

Possible Solutions

4.1 As discussed in Chapter 2, there are a variety of suggestions for how best to provide explicit protection for religious freedom at a federal level. The main suggestions are:

- A bill or charter of rights or a Human Rights Act
- A Religious Freedom Act
- A Religious Discrimination Act

4.2 There are some suggestions for more minor measures that could provide a starting point before one of the above options is implemented. For example, amending the *Racial Discrimination Act* to prohibit religious discrimination has some support. Many witnesses and submissions have recommended improvements to religious exemptions or exceptions in religious discrimination laws to achieve greater balance between the right to non-discrimination and religious freedom.

4.3 A number of more specific issues have been raised in Chapter 3 by particular groups. These are important but relatively more focused issues, such as control orders in the *Criminal Code Act 1995*,[1] or laws that affect particular Jewish traditions.[2] Where applicable, suggestions from witnesses and submissions in relation to these issues have been noted in that Chapter.

4.4 This Chapter addresses suggestions for a broad national approach to protecting religious freedom in general.

---

1 JSCFADT, *Second Interim Report,* Chapter 3, pp. 25-26.

2 JSCFADT, *Second Interim Report,* Chapter 3, pp. 30-31.

Bill of Rights, Charter of Rights, or Human Rights Act

4.5 The option of implementing a comprehensive human rights instrument at Commonwealth level was discussed in the First Interim Report. A Bill of Rights is the most commonly suggested idea, but similar options include a Charter of Rights or a Human Rights Act. Each of these instruments would enumerate a range of rights, likely encompassing most or all of those in the ICCPR or UDHR, of which religious freedom would be one. During the first part of this inquiry many submissions and witnesses, including Professors George Williams and Carolyn Evans, supported, at least in principle, the idea of a national Bill of Rights or similar instrument. There was some opposition, and there was also discussion around the practical and political difficulty of achieving a Bill of Rights.[3]

4.6 Dr Paul Taylor described the distinction between a Bill and a Charter of rights as:

> a charter simply lists the rights as if they were values and they do not apply them in the legislation as rights that can be invoked in a particular way.[4]

4.7 While a Human Rights Act would be a legislative instrument, a Bill of Rights or Charter of Rights could, at least in theory, be a constitutional instrument. The inherent difficulties associated with amending the constitution were discussed in the First Report and have been repeated in a number of submissions. [5] These instruments could have a legislative function, as in the Victorian *Charter*, and they could be enacted with a view to incorporating them into the Constitution at a later date.[6]

4.8 This chapter will use the term 'Bill of Rights' to mean a comprehensive national human rights instrument, unless further clarification is necessary.

Support

4.9 In this second part of the inquiry, a Bill of Rights has continued to have much in-principle support from a diverse range of contributors.[7]

---

3 JSCFADT, *First Interim Report,* pp. 31-38

4 Dr Paul Taylor, private capacity, *Committee Hansard*, Sydney, 6 June 2017, p. 18.

5 Ms Robin Banks, Private Capacity, *Committee Hansard,* Hobart, 5 June 2018, p. 10. Human Right's Law Alliance, *Submission 156*, p. 15; Presbyterian Church of Queensland, *Submission 192*, p. 56.

6 CLA and Canadian Charter.

7 Quakers Australia, *Submission 2*, p.2; Ms Louise Olliff, Senior Advisor, Policy and Community Engagement, Refugee Council of Australia, *Committee Hansard* Melbourne, 30 April 2018, p. 16; Mr Charles Wilson, Private Capacity, Canberra, 22 June 2018, p. 13.

4.10 For example, the Islamic Council of Victoria expressed a "strong preference" for a Bill of Rights:

> I think it's a sign of a very healthy, inclusive democracy to have a bill of rights. There are a number of benefits to a bill of rights. It basically means that whenever government legislates there's a check – a bill of rights check – and there are opportunities for the community and society to actually challenge some legislation on the basis that it contravenes the bill of rights[8]

4.11 The Uniting Church of Australia supports incorporating human rights into legislation, while not expressing a strong preference for how this is achieved. UCA President Stuart McMillan stated that:

> to leave things as they are, with exemptions under the discrimination legislation, or simply to have a piece of legislation that only deals with religious freedom would be short-sighted and not expansive enough for what the nation of Australia requires.[9]

4.12 Amnesty International recommends a Human Rights Act as the best way to "ensure rights to freedom of religion and other fundamental rights are protected and appropriately balanced"[10].

4.13 Liberty Victoria supports a charter of rights similar to the Victorian *Charter*, but "more consonant with the international framework". In addition to civil and political rights, "economic, social and cultural rights should be part of the charter of human rights that should be adopted by the Australian parliament."[11]

4.14 In support of the Victorian *Charter*, Liberty stated that although it "was not provided with some of the tools that are necessary for a legal instrument", it has been "very effective in a number of ways" and has "been very important in helping small steps, but definite steps, towards promoting a culture of human rights in Victoria."[12]

4.15 Ms Robin Banks, who appeared in a private capacity at the Hobart hearing and also authored the submission made by Equal Opportunity Tasmania while still in her capacity as Anti-Discrimination Commissioner for Tasmania, supports a "full charter of rights that recognises in Australian

---

8 Mr Adel Salman, Vice-President, Islamic Council of Victoria *Committee Hansard*, Melbourne, 30 April 2018, p. 8.

9 Mr Stuart McMillan, President, Uniting Church in Australia, *Committee Hansard,* Sydney, 2 May 2018, p. 37.

10 Amnesty International, *Submission 378*, p. 5.

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

12 Mr Gardiner, *Committee Hansard*, Melbourne, 30 April 2018, p. 30.

law all of the rights that Australia has ratified under international conventions".[13]

4.16 Civil Liberties Australia favours a "legislative charter of rights", supporting the recommendations of the National Human Rights Consultation Committee chaired by Frank Brennan. [14] This Committee recommended a Human Rights Act along the lines of the Victorian and ACT instruments which would enumerate human rights, require new legislation to be compatible with these rights, and provide for the High Court to declare legislation incompatible and refer it back to Parliament.[15]

4.17 Civil Liberties Australia also commended the process used in Canada, where a statutory bill of rights was introduced with the intention of holding a constitutional referendum after 25 years. The bill of rights was approved by the Canadian population and became enshrined in the Constitution. Bill Rowlings called this "an excellent model for Australia", stating:

> Some people are afraid of a bill of rights. We would say 25 years is not an unreasonable time to have people settle down and see how it works…[16]

4.18 Ms Banks made similar comments, arguing that although Australia may not be ready for constitutional protection

> we need people to become familiar with human rights, and I think the only way that will happen is through enactment.[17]

4.19 Other groups, such as the Quakers, Refugee Council of Australia, the Ethnic Communities Council of Victoria and Victorian Multicultural Commission also stated support for a federal instrument.[18]

4.20 A Bill of Rights was opposed or criticised by a number of submitters.[19]

---

13 Ms Banks, *Committee Hansard,* Hobart, 5 June 2018, p. 10.

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

15 National Human Rights Consultation Committee, *Report on the National Human Rights Consultation,* 2009.

16 Mr William Rowlings, Chief Executive Officer, Civil Liberties Australia, *Committee Hansard*, Canberra, 22 June 2018, p. 22.

17 Ms Banks, *Committee Hansard,* Hobart, 5 June 2018, p. 10.

18 Quakers Australia, *Submission 2*; Mr John Deller, Secretary, Falun Dafa Association of Australia, *Committee Hansard*, Sydney, 2 May 2018, p. 26; Ms Olliff, *Committee Hansard* Melbourne, 30 April 2018, p. 16; Ms Marion Lau, Secretary, Ethnic Communities' Council of Victoria, Melbourne, 30 April 2018, p. 16; Ms Elizabeth Blades-Hamilton, Senior Research and Policy Officer, Multicultural Affairs and Social Cohesion Division, Officer of the Victorian Multicultural Commission (VMC), *Committee Hansard*, Melbourne, 30 April 2018, p. 18; Mr Wilson, *Committee Hansard,* Canberra, 22 June 2018, p. 13.

4.21 Christian Schools Australia and Adventist Schools Australia argued that Australian jurisdictions with these types of instruments "allow restrictions and limitations on religious freedom far beyond that permissible under international law".[20] They argued that the ACT and Victorian Acts both have a "lower threshold for legitimate government action than that found in international law". Furthermore, CSA and ASA note that both Acts only apply to natural persons, as opposed to organisations. This is of concern to religious organisations, in particular religious schools, and their ability to "exercise their rights collectively".[21]

4.22 Dr Michael Casey of the ACU was cautious of incorporating the ICCPR in whole, noting that it "would probably give us something like a human rights act or a bill of rights", which has been "very fraught in our country".[22]

4.23 While not explicitly opposing a Bill of Rights, the ECAJ takes "a fairly conservative approach to that whole area of law reform". Mr Wertheim argued that there is "no compelling reason" to incorporate international conventions into domestic law:

> whilst [religious] exemptions [in anti-discrimination law] still exist, the general position of religious communities in Australia in terms of observing and living out their beliefs is safe…

4.24 He added:

> There's always the concern, also, that by incorporating the provisions of international treaties into domestic law, the words of those treaties are read down as words of limitation instead of interpreted in the way I believe they were intended as words of conferring beneficial rights. That would also need to be guarded against.[23]

4.25 However, ECAJ also acknowledged that "social norms and conventions are changing" in this area. Noting the tendency in some Western countries, including Australia, to push back against religious exemptions in anti-discrimination laws, Mr Wertheim stated that

---

19 Donald Hardgrave, *Submission 99,* p 2; Douglas Sands, *Submission 152*; Catholic Women's League of Tasmania, *Committee Hansard,* Hobart, 5 June 2018, pp. 1-4.

20 Christian Schools Australia and Adventist Schools Australia (CSA and ASA), *Supplementary to Submission 3*0, p. 2.

21 CSA and ASA, *Supplementary to Submission 30*, p. 12.

22 Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, *Committee Hansard,* Sydney, 2 May 2018, p. 2.

23 Mr Peter Wertheim, Co-CEO, Executive Council of Australian Jewry, *Committee Hansard*, Sydney, 2 May 2018, p. 30.

> 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.[24]

Religious Freedom Legislation

4.26 There is some support for enacting legislation which specifically protects freedom of religion or belief without incorporating other ICCPR rights, such as a Religious Freedom Act.

4.27 Bishop Michael Stead did not want to see a "fully augmented human rights act", observing that some ICCPR rights might be difficult "politically and pragmatically" to implement. Instead, he supported a "set of rights", particularly those relating to

> the individual's own belief or world view structures and how they might form associations with people with similar views, express those views in public and educate children around those views.[25]

4.28 Freedom for Faith (FFF) stated that until recently "many Christian organisations and denominations … would prefer not to have legislation in this space". However, FFF stated that Australia has now:

> reached a tipping point here… Perhaps somewhat reluctantly, we think that really the only way going forward, given the trends in society, is to actually put a positive framework around this rather than relying upon what I think are fragile exemptions in the anti-discrimination legislation.[26]

4.29 Constitutionally, this could be achieved through the external affairs powers.[27]

4.30 Referring to the Victorian *Charter*, FFF said that human rights instruments have "typically got the limitation provisions wrong", and that further detail would be required to:

> ensure that it is actually useful within the Australian context and doesn't give undue discretion to the judiciary over how the provisions might be interpreted at a higher level. I think that is the

24 Mr Wertheim, *Committee Hansard*, Sydney, 2 May 2018, p. 30.

25 Dr Michael Stead, Right Reverand, Bishop of South Sydney, Anglican Church Sydney Diocese, *Committee Hansard,* Sydney, 2 May 2018, p. 55.

26 Freedom for Faith, *Committee Hansard*, Sydney, 2 May 2018, pp. 49-50.

27 Freedom for Faith, *Submission 317*, p 8. See also Neil Foster, *Submission 7*, p 7.

> weakness of many of the human rights charters we have: they're just too vague and therefore open to be used politically.[28]

4.31 Mr Spencer of the Christian Schools Association stated that legislation enacting religious freedom would be a "good first step". Noting the concerns CSA and ASA have about the role of courts adjudicating in matters concerning religious faith, Mr Spencer suggested that such a law may need to clarify how courts should define and interpret Article 18.[29] Similarly, Robert Wicks said that simply incorporating the wording of Article 18 into federal legislation would not be "granulated quite enough", arguing that there would need to be more:

> detail in the religious freedom act – let's call it that – to help us understand what is necessary, for example, in terms of the limitations around religious freedom[30]

4.32 Rev Peter Kurti of the Centre for Independent Studies stated that while the CIS is "not generally supportive of the expansion of federal powers over the states", protecting religious freedom would "best be considered a national matter warranting central government action". CIS is supportive of FFF's recommendation of specific religious freedom legislation.[31]

4.33 Some form of religious freedom act was also supported by Catholic witnesses. Dr Michael Casey of the ACU stated:

> There's no standalone covenant on religious freedom itself, but perhaps thinking in terms of something like a religious freedom act – I don't suppose you'd call it a religious discrimination act. That may be some sort of instrument which might be worth considering. [32]

4.34 This view is shared by Mr Francis Moore of the Catholic Archdiocese of Melbourne, who is concerned about "efforts made to chip away at the existing exemptions that religious bodies have".[33] He added that such a law would establish "a contemporary statement of the community's position on religious freedom" and allow for future laws to be

---

28 Mr Robert Wicks, Chairman, Freedom for Faith, *Committee Hansard,* Sydney, 2 May 2018, pp. 49-50.

29 Mr Mark Spencer, Executive Officer Policy, Governance and Staff Relations, Christian Schools Australia, *Committee Hansard*, Sydney, 2 May 2018, p. 18.

30 Mr Wicks, *Committee Hansard,* Sydney, 2 May 2018, p. 49.

31 Reverand Peter Kurti, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard,* Sydney, 2 May 2018, pp. 47-48.

32 Dr Casey, *Committee Hansard,* Sydney, 2 May 2018, p. 2.

33 Mr Francis Moore, Executive Director Administration, Catholic Archdiocese of Melbourne, *Committee Hansard,* Sydney, 2 May 2018, pp. 2-3.

"benchmarked against that framework". This could "[set] a standard or a tone for debate that might not be present at this time".[34]

4.35 The Islamic Council of Victoria supports a religious freedom act approach "if we are not so bold as to go down" the path of a Bill of Rights.[35]

4.36 The Australian Baha'i Commuity recommends a Religious Freedom Act which explicitly recognises 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 to religious hatred or violence.[36]

4.37 Some witnesses have expressed concern about legislation that would provide protection for the right to freedom of religion or belief but not other human rights. Professor Carolyn Evans warned against "cherrypicking":

> The danger at the moment is that various religious groups say, 'We need a religious freedom act,' then the media say, 'We need a media protection act,' and you could end up multiplying the problem rather than resolving it.[37]

Anti-discrimination legislation

4.38 While federal law could create a positive right to freedom of religion or belief, the law could also be used to protect against discrimination based on religion or belief. This has been supported by a number of contributors. Ms Robin Banks, a former Tasmanian Anti-Discrimination Commissioner from 2010 to 2017, argued:

> It is critical that we have discrimination protection at all levels of government. At the moment of course we don't have it at the federal level, and I think that causes problems. I suspect if we had had religious discrimination protection under federal law in the past that some of the debates we're having now would be less likely to have arisen.[38]

4.39 This inquiry has heard discussion of three approaches to how religious freedom could be protected in federal anti-discrimination legislation. Firstly, there have been proposals for a religious discrimination act (or for a single, consolidated anti-discrimination act which would encompass

34 Mr Moore, *Committee Hansard,* Sydney, 2 May 2018, pp. 2-3

35 Mr Salman, *Committee Hansard*, Melbourne, 30 April 2018, p. 8.

36 Australian Baha'i Community (ABC), *Submission 332*, p. 6.

37 Professor Carolyn Evans, Private Capacity, *Committee Hansard,* Melbourne, 7 June 2017, p. 9. JSCFADT, *First Interim Report,* p. 73.

38 Ms Banks, *Committee Hansard,* Hobart, 5 June 2018, p. 7.

existing legislation as well as include religious discrimination). Secondly, some have suggested amending the *Racial Discrimination Act* to include protection against religious discrimination, or discrimination based on ethno-religious origins. Finally, the role of religious exemptions within existing anti-discrimination law has been a topic of much discussion, with disagreement on whether these exemptions are adequate.

4.40 The Victorian Multicultural Commission has supported introducing specific religious discrimination legislation, [39] echoing the recommendations of the Australian Human Rights Commission.[40]

4.41 The Australian Baha'i Community has argued:

> Australia should enact federal legislation to make direct and indirect discrimination on the basis of religion and belief unlawful in all areas of public life.[41]

4.42 The Refugee Council of Australia states that protection against religion-based discrimination and vilification is "more necessary than ever" and is desirable whether through additional legislation or the amendment of existing legislation. [42] The Ethnic Communities Council of Victoria also recommends this approach.[43]

4.43 The Islamic Council of Victoria has argued that the *Racial Discrimination Act* could be expanded to include religion. As discussed in Chapter 4, Jewish and Sikh communities are protected in New South Wales from discrimination on the basis of their "ethno-religious" origin, which is included in the definition of "race" in the NSW *Anti-Discrimination Act*. The ICV argues that although section 18C of the RDA is a strong protection for ethnic communities against discrimination, "religious freedom [is] a glaring omission which we want to see included in any future amendments to the RDA".[44]

Amendments to religious exemptions

4.44 Current anti-discrimination law, both at federal and state level, contains certain exemptions for religious organisations.

4.45 These exemptions are supported by some religious organisations. The Executive Council of Australian Jewry commented that "Whilst those

39 Victorian Multicultural Commission, *Submission 329*, pp. 7-8.

40 Australian Human Rights Commission, *Submission 12*, p. 13; JSCFADT, *First Interim Report, p*p. 73-74.

41 ABC, *Submission 332*, p 7

42 Refugee Council of Australia, *Submission 190*, p. 10; Ms Olliff, *Committee Hansard* Melbourne, 30 April 2018, pp. 14-16.

43 Ethnic Communities' Council of Victoria, *Submission 19*, p. 2.

44 Islamic Council of Victoria, *Submission 191*, p. 8 and Recommendation 5, p. 9.

exemptions still exist, the general position of religious communities in terms of observing and living out their beliefs is safe."[45]

4.46 Many religious organisations believe religious exemptions are inadequate should be replaced by positive protection of religious freedom. Archbishop Porteous said:

> I would prefer there were no exemptions. I would prefer that there was enshrined in law a recognition of the right of religious freedom, so somebody could hold a consciously held religious belief and the law would actually support that belief.[46]

4.47 The Australian Catholic Bishops Conference stated that exemptions present religious freedom as "a right to get out of something rather than the right to pursue our religious mission", adding:

> The language of exemptions is misleading and fails to recognise that religious freedom is not a special permission to discriminate granted by the government in contradiction to the general law, but a fundamental human right that government is obliged to protect.[47]

4.48 The ACBC argued that exemptions or exceptions should be "replaced in legislation with language that recognises and accommodates the overlapping rights and freedoms that co-exist in a pluralist society such as Australia."[48] The same argument was made by the Australian Catholic University.[49]

4.49 Christian Schools Australia and Adventist Schools Australia called exemptions "inherently problematic". Rather than exemptions, religious freedom "could be tackled as a definitional issue", with discrimination defined to clarify that:

> activities done in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, undertaken in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed, would not constitute discrimination.[50]

45 Mr Wertheim, *Committee Hansard*, Sydney, 2 May 2018, p 30.

46 Archbishop Julian Porteous, Archibishop of Hobart, Archdiocese of Hobart, *Committee Hansard,* Hobart, 5 June 2018, p. 29.

47 Australian Catholic Bishops Conference (ACBC), *Submission 10*, p. 5.

48 ACBC, *Submission 10*, p. 5.

49 Australian Catholic University (ACU), *Submission 11*, p. 10.

50 CSA and ASA, *Submission 30*, pp 10-11.

4.50 Other contributors share this belief that exemptions are inadequate safeguards of religious freedoms.[51]

4.51 On the other side of this issue, a number of contributors believe that religious exemptions can be inappropriate because they preference religious freedom over other rights. They should be limited in their scope, or amended or removed.

4.52 Rodney Croome highlighted the Tasmanian Anti-Discrimination Act, noting that while it permits discrimination by religious organisations on the grounds of religion, it "does not extend to discrimination on the grounds of sexual orientation or gender identity or intersex status". Mr Croome argues that the Tasmanian Act should:

> act as a model nationally when it comes to removing those existing exemptions which do explicitly allow discrimination by religious organisations against vulnerable minorities.[52]

4.53 In a similar context, Ms Banks questioned how exemptions should work in a society governed by the rule of law and where we are all expected to obey and be bound by the same laws".

4.54 She added:

> I think we need to be very careful about going any further than discrimination law protections. I think it raises the spectre of privileging some groups over others, whether it's one religious group over other religious groups or one group in society, people of faith, over people who are not of faith. [53]

4.55 Ms Hilkemeijer argued in the context of exemptions:

> a law that allows businesses refuse to provide goods and services because of a conflict with core beliefs is not supported by article 18 of the ICCPR… to allow such discrimination would be a radical departure from the law and practice in other Western liberal democracies. [54]

Other measures

Multicultural legislation

4.56 The Victorian Multicultural Commission recommended consideration of

---

51 Anglican Schools, *Submission 326*

52 Mr Rodney Croome, Just Equal, and, Tasmanian Gay and Lesbian Rights Group, *Committee Hansard,* Hobart, 5 June 2018, p. 8.

53 Ms Banks, *Committee Hansard,* Hobart, 5 June 2018, p. 8.

54 Ms Anja Hilkemeijer, Private Capacity, *Committee Hansard,* Hobart, 5 June 2018, p. 9.

> a multicultural act at the federal level that enshrines multiculturalism in the Australian context.[55]

4.57 The VMC supports this measure at a federal level because it provides consistency across the states and territories and "embeds multiculturalism".[56]

4.58 Ms Blades-Hamilton said that a Multicultural Act could "very well sit within a bill of rights or other human rights legislation to bolster it". [57] She points to the *Canadian Multiculturalism Act 1988*, which enshrines religious and other freedoms in its preamble, as well as establishing multiculturalism as official Canadian policy.[58]

4.59 Amnesty International also urged political leaders to "demonstrate genuine support for multiculturalism", although did not specifically recommend legislation.[59]

Religious freedom ambassador and/or commissioner

4.60 The possibility of instituting a religious freedom ambassador was discussed during a number of public hearings and via submissions, potentially to sit within the Department of Foreign Affairs and Trade.[60]

4.61 As a result of the Religious Freedom Review conducted by an Expert Panel led by The Hon Phillip Ruddock (see chapter 5 for further discussion), Australian Government responded by proposing (amongst other things) to create a Religious Freedom Commissioner role, to sit within the Australian Human Rights Commission.

4.62 A Religious Freedom Ambassador role would seek to promote religious freedoms outside of Australia, in a similar manner to the United States' Ambassador at-large for International Religious Freedom. The Sub-Committee was interested in learning more about how such a position could work in Australia, and would be open to further dialogue on this topic. The US Ambassador at-large for International Religious Freedom seeks to:

---

55 Victorian Multicultural Commission, *Submission 329*, p 6.

56 Mr Antony O'Hea, Research and Policy Manager, Mutlicultural Affairs and Social Cohesion Division, Office of the Victorian Multicultural Commission *Committee Hansard,* Melbourne, 30 April 2018, p. 20; Ms Blades-Hamilton, *Committee Hansard*, Melbourne, 30 April 2018, p. 20.

57 Ms Blades-Hamilton, *Committee Hansard*, Melbourne, 30 April 2018, p. 18.

58 VMC, *Submission 329*, p 5; preamble and section 3 of *Multiculturalism Act 1988*.

59 Amnesty International, *Submission 378*, p. 5.

60 Senator Fawcett and Dr Zirsak, *Committee Hansard*, Melbourne, 30 April 2018, p. 37; Senator Moore and Mr Gore, *Committee Hansard,* Sydney, 2 May 2018, pp. 13-14; Human Rights Law Alliance, *Submission 156*, pp.68-70; Seventh Day Adventist Church in Australia, *Submission 327*, pp. 17-18

- Promote freedom of religion and conscience throughout the world as a fundamental human right and as a source of stability for all countries;
- Assist emerging democracies in implementing freedom of religion and conscience;
- Assist religious and human rights NGOs in promoting religious freedom;
- Identify and denounce regimes that are severe persecutors on the basis of religious belief.[61]

4.63 A Religious Discrimination Commissioner would function in a similar manner to the other human rights commissioners, such as the Disability Discrimination Commissioner or Sex Discrimination Commissioner, investigating complaints of religious discrimination within Australia and promoting religious freedom throughout the community.

Sub-Committee Comment

4.64 Most contributors to this inquiry agree that freedom of religion or belief needs to be given greater legal protection at a federal level. The Sub-Committee recognises the various ways this could be achieved and the arguments for and against each of these methods.

4.65 The Sub-Committee refers to the First Interim Report, and particularly Chapters 6 and 7, which discusses the issues raised in this chapter

61 US Department of State, *Office of International Religious Freedom* https://www.state.gov/j/drl/irf/ accessed 2 February 2019.

5

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[1]

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

---

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".[2] Previously marriage had been defined as the "union of a man and a woman".[3] 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.[4]

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.[5]

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.[6] 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.[7]

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

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 Minster 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."[8] 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".[9]

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."[10]

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."[11]

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

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."[12]

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."[13]

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.[14] 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.[15]

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.[16] 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.[17] In addition, the Panel recommended that governments consider the use of interpretive clauses in anti-discrimination legislation to

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.[18]

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.[19] 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.[20] 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.[21]

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.[22] 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.[23] There was also an absence evidence that funding to faith-based charities would come under threat.[24]

---

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

19 R*eligious 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.[25]

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.[26]

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.[27]

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.

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.[28]

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'.[29]

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.[30] 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.[31] The Panel also took the view that New South Wales and South Australia should consider legislative reform to include religion as a protected attribute.[32]

5.23 The full list of recommendations of the Expert Panel are outlined below:

Table 5.1 Recommendations of the Religious Freedom Review[33]

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.
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.
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.
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

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'.

Recommendation 5

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.

Recommendation 6

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.

Recommendation 7

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.

Recommendation 8

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.

Recommendation 9

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.

Recommendation 10

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.

Recommendation 11

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.

Recommendation 12

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.

Recommendation 13

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

Recommendation 14

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.

Recommendation 15

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.

Recommendation 16

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.

Recommendation 17

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.

Recommendation 18

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.

Recommendation 19

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.

Recommendation 20

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,

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

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.[34]

5.25 In making its response the government welcomed the opportunity "to enhance the statutory protection of freedom of thought, conscience and religion".[35] 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.

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.[36]

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.[37]

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.[38]

5.28 Overall the Government accepted either directly or in principle 15 of the Expert Panel's 20 recommendations.[39] While agreeing with the principles underpinning the remaining five recommendations (recommendation 1 and recommendations 5 to 8), the Government has taken the view that

---

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.[40]

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;[41]
- establishing a standalone position of Freedom of Religion Commissioner at the Australian Human Rights Commission;[42]
- supporting the Australian Human Rights Commission to increase awareness of the importance of freedom of religion;[43]
- 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;[44] 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.[45]

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.[46] The Government also noted that any potential changes to the Fair Work Act require a formal process of

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.[47]

47 *Government response*, p. 6.

6

Sub-Committee Comment and Recommendations

6.1 At the start of its inquiry, the Human Rights Sub-Committee determined that the most effective way to examine and address the issues raised by its very broad terms of reference wold be to first establish what protections currently exist for freedom of religion and belief in Australia. The Sub-Committee then determined to examine the types of threats and challenges that might impact on religious freedoms. and from that basis determine recommendations for a course of action. The Sub-Committee then determined to turn its attention to the situation for religious freedom overseas.

6.2 The Sub-Committee initially found that while Australians generally enjoy freedom of religion and relief, this human right receives little formal protection. Most significantly there is no explicit protection for religious freedom at the Commonwealth level. Although the Constitution does go some way to preventing the Australian Government from restricting religious practice, it does not prevent states and territories from restricting religion or belief.

6.3 As both the Sub-Committee's inquiry and the Expert Panel's review have shown, there is a significant level of concern amongst Australian people of faith regarding religious freedom. However this concern is disputed and there is a lack of consensus about what response, if any, is warranted. In large measure these divergent opinions reflect the perception of "conflicting rights", between the right to freedom of religion and belief and the rights to freedom of speech and to non-discriminatory treatment. As the First Interim Report pointed out, striking a balance between these rights is a challenging and delicate task, especially where discussion and debate can be politically charged and is as likely to divide people as it is likely to bring them together.

6.4 Notwithstanding a lack of community consensus, the Sub-Committee is of the view that these are debates that must be taken forward in a constructive way with the objective of ensuring that all Australians enjoy protection for the full range of human rights. It is apparent from the Sub-Committee's inquiry and the Expert Panel's review that further community discussion, consultation and engagement is required to build as broad agreement as may be possible, including bipartisan and cross-party support, for further reforms to strengthen protections for religious freedom and belief. The Government's stated commitment to pursuing bipartisan support for a Religious Discrimination Bill is welcome, but should be extended to a process in which the Parliament itself takes the lead in community discussion and engagement.

6.5 As discussed in Chapter 4 of this Second Interim Report, there are a number of potential solutions to the issues identified as possible impediments to the full enjoyment to the human right of freedom of religion or belief. The Sub-Committee notes that the adoption of a Bill of Rights or other constitutional mechanisms would be a complex, difficult endeavour, in part owing to the wide range of views, and indeed lack of consensus, about the merits and/or scope of such a measure. This is something to examine and discuss in the longer term. What could be achieved in a shorter time frame, and with a greater chance of securing wide spread support, is the harmonisation of legislation throughout the country, so that all states and territories of the Commonwealth uphold the same framework of human rights in respect of freedom of relation and belief. In this regard it should be emphasised that Australia has long been a signatory to the Universal Covenant on Civil and Political Rights. Article 18 of the ICCPR constitute an internationally agreed standard to which Australia has subscribed. The Sub-Committee believes that this standard should be reflected in the laws of the Commonwealth and the States and Territories.

6.6 The Sub-Committee is cognisant of the fact that they were unable, in this parliamentary term, to further examine the international situation of the status of the human right to freedom of religion or belief, which was to form the basis of the latter stages of the inquiry. The Sub-Committee has received evidence that suggests that internationally, the human right to freedom of religion is under threat and as such, this area requires comprehensive investigation.

Recommendation 1

The Sub-Committee recommends that the Australian Government, in consultation with the states and territories, develop and introduce or amend as necessary, legislation to give full effect to Australia's obligations under Article 18 of the Universal Declaration on Human Rights and Article 18 of the International Covenant on Political and Civil Rights.

Recommendation 2

The Sub-Committee recommends that this inquiry be continued in the 46th parliament, so as to enable a proper and thorough consideration of the international situation for the status of the human right to freedom of religion or belief before a final report can be tabled.

Senator the Hon Ian McDonald

Chair

Join Standing Committee on Foreign Affairs and Trade

The Hon Kevin Andrews MP

Chair

Human Rights Sub-Committee

2 April 2019

A

Appendix A — Bibliography

Reports and Government Publications

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

Australian Bureau of Statistics (ABS), *2011 Census of Population and Housing: General Community Profile.*

Australian Bureau of Statistics (ABS), *2006 Census of Population and Housing: General Community Profile.*

Australian Government, *Australian Government response to the Religious Freedom Review*, 2018.

Department of Prime Minster and Cabinet, *Religious Freedom Review: Report of the Expert Panel,* 2018.

Family Law Council*, Cultural-community Divorce and the Family Law Act 1975: A proposal to clarify the law, a Report to the Attorney-General by the Family Law Council,* 2001.

Joint Standing Committee in Foreign Affairs, Defence and Trade, *Conviction With Compassion: A Report into Freedom of Religion and Belief*, 2000.

Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *First Interim Report: Legal Foundations of Religious Freedom in Australia*, November 2017.

National Human Rights Consultation Committee, *Report on the National Human Rights Consultation,* 2009.

Cases

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

Tickner v Chapman (1995) 57 FCR 451.

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

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

Legislation

Abortion Law Reform Act 2008, Victoria

Anti-Discrimination Act 1977, Commonwealth of Australia

Anti-Discrimination Act 1991, Queensland

Anti-Discrimination Act 1998, Tasmania

Health Act 1999, Australian Capital Territory

Health Complaints Act 2016, Victoria

Marriage Act 1961 (Marriage Amendment Act 2004), Commonwealth

Marriage Amendment (Definition and Religious Freedoms) Act 2017, Commonwealth

Public Health and Wellbeing Act 2008, Victoria

Reproductive Health (Access to Terminations) Act 2013, Tasmania

Other

The Age, 'Victoria clears witches for take-off', 21 July 2005, https://www.theage.com.au/news/National/Victoria-clears-witches-for-takeoff/2005/07/21/1121539075041.html. accessed 2 February 2019.

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

J Sandeman, *Eternity News*, 'Anti-discrimination case against preachers dropped' 7 March 2018, https://www.eternitynews.com.au/australia/anti-discrimination-case-against-preacherdropped accessed 2 February 2019.

SBS, 'Census Explorer', http://www.sbs.com.au/news/census-explorer accessed 02 February 2019.

US Department of State, Office of International Religious Freedom https://www.state.gov/j/drl/irf/ accessed 2 February 2019.

M Wallace, *Freedom From Religion: Rethinking Article 18*, Sydney, Cilento Publishing, 2015.

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

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 accessed 2 February 2019.

B

Appendix B — List of Submissions

List of submissions utilised in this interim report

1 D Price
- 1.1 Supplementary to submission 1

2 Religious Society of Friends (Quakers) in Australia

4 J Popplewell
- Attachment 1
- Attachment 2

5 Humanist Society of Queensland

6 Equal Opportunity Tasmania

7 A/Prof Neil Foster

10 Australian Catholic Bishops Conference

11 Australian Catholic University

12 Australian Human Rights Commission

15 B Clinch

19 Ethnic Communities' Council of Victoria

30 Christian Schools Australia and Adventist Schools Australia
- 30.1 Supplementary to submission 30

45 Catholic Women's League Tasmania Inc
- 45.1 Supplementary to submission 45

46 Australian Christians

47 Civil Liberties Australia

48 The Centre for Independent Studies

50 Catholic Women's League of Victoria and Wagga Wagga

- 50.1 Supplementary to submission 50

83 Family Voice Australia

99 Dr Donald Hardgrave

115 Wilberforce Foundation

116 Executive Council of Australian Jewry

123 P Humphris

139 Dr Luke Beck

152 D Sands

156 Human Rights Law Alliance

157 Secular Party of Australia

- 157.1 Supplementary to submission 157

168 J Munro

175 Family Life International

177 P Browne

178 Anglican Church Diocese of Sydney

180 Fairness in Religion in Schools

181 C Walsh

182 Feminist Legal Clinic

183 A Lawrie

190 Refugee Council of Australia

191 Islamic Council of Victoria

192 Presbyterian Church of Queensland

211 P Bradshaw

227 Liberty Victoria

229 Lutheran Church of Australia

295 Australia Tibet Council

309 G Allshorn

317 Freedom for Faith

323 Dr J Greenbury

326 Anglican Schools Corporation

327 Seventh Day Adventist Church in Australia

329 Victorian Multicultural Commission

331 Centro Espirita Beneficente Uniao do Vegetal

- 331.1 Supplementary to submission 331

332 Australian Baha'i Community

337 Vietnamese Community in Australia (VCA)

348 Falun Dafa Association of Australia Inc

352 Tibet Information Office

354 Name Withheld

368 Dr Margaret Colwell

- 368.1 Supplementary to submission 368

376 Prof Iain Benson

378 Amnesty International Australia

387 M Mallen

390 C Houtman

391 C Ellis

392 S Roberts

400 E Willheim

C

Appendix C — Witnesses who appeared at public hearings

Tuesday 6 June 2017 - Sydney

Private Capacity

- Prof George Williams

Australian Lawyers for Human Rights

- Dr Tamsin Clarke

Private Capacity

- Dr Luke Beck
- Dr Alex Deagon
- Dr Paul Taylor

Australian Catholic University

- Dr Michael Casey, Director, PM Glynn Institute

Wilberforce Foundation

- Mr Christopher Brohier

The University of Notre Dame Australia

- Professor Michael Quinlan
- Professor Iain Benson

Human Rights Law Alliance

- Mr Martyn Iles

Private Capacity

- Associate Professor Neil Foster

Wednesday 7 June 2017 – Melbourne

Human Rights Law Centre

- Ms Anna Brown, Director of Legal Advocacy
- Ms Lee Jia-Yi Carnie, Lawyer

Private Capacity

- Professor Carolyn Evans
- Associate Professor Patrick Quirk

Presbyterian Church of Queensland

- Mr Mark Fowler, Legal Representative

Private Capacity

- Dr Augusto Zimmermann
- Mr Joshua Forrester
- Ms Lorraine Finlay
- Professor Gary Bouma

Religions for Peace Australia

- Professor Desmond Cahill, Chair

Friday 27 October 2017 – Canberra

Australian Human Rights Commission

- Mr Daniel Nellor, Adviser to the Human Rights Commissioner
- Mr Edward Santow, Human Rights Commissioner

The Australian Law Reform Commission

- Mr Robert Cornall AO, Acting President
- Mr Matthew Corrigan, Principal Legal Officer

ACT Justice and Community Safety Directorate

- Mr Sean Costello, Director, Civil Law, Legislation, Policy and Programs
- Ms Julie Field, Executive Director, Legislation, Policy and Programs

Attorney-General's Department

- Ms Autumn O'Keefe, Acting Assistant Secretary, Civil Law Unit, Civil Justice and Corporate Group
- Mr John Reid, Acting Deputy Secretary, Civil Justice and Corporate Group

Monday 30 April 2018 – Melbourne

Catholic Women's League of Victoria and Wagga Wagga

- Ms Francis Beaumont, Member, Social Questions Committee
- Mrs Madge Catherine Fahy, Treasurer, Social Questions Committee
- Miss Ann Robinson, General Secretary, Social Questions Committee

Islamic Council of Victoria

- Mr Mohamed Mohideen, President
- Mr Adel Salman, Vice-President

Refugee Council of Australia

- Ms Louise Olliff, Senior Adviser, Policy and Community Engagement

Ethnic Communities' Council of Victoria

- Ms Marion Lau, Secretary
- Mr Peter Mousaferiadis, President
- Mr Nikolaus Rittinghausen, Policy Officer, Aged Care

DO, Mr Nha Tien, External Affairs Vice President, Hoa Hao Buddhism Congregation Australian/Victorian Chapter

- Mr Du Tran, Secretary

Victorian Multicultural Commission

- Mr Antony O'Hea, Research and Policy Manager, Multicultural Affairs and Social Cohesion Division
- Ms Elizabeth Blades-Hamilton, Senior-Research and Policy Officer, Multicultural
- Affairs and Social Cohesion Division

Vietnamese Community in Australia/ Victorian Chapter

- Ms Vivienne Nguyen, President
- Mr Nha Tien Do, External Affairs Vice President

Private Capacity

- Father Huy Hoang

Liberty Victoria

- Mr Jamie Gardiner, Vice-President

Wednesday 2 May 2018 – Sydney

Australian Catholic Bishops Conference

- Bishop Peter Andrew Comensoli, Bishops' Delegate
- Dr Lee-Anne Perry, Delegate

Catholic Archdiocese of Melbourne

- Mr Francis Moore, Executive Director Administration

Open Doors

- Mr Michael Gore, Chief Executive Officer
- Mr Timothy Reid, Church Engagement Manager

Anglican Aid

- Mr Ronald JL Balderston, Volunteer Schools Liaison
- Mr Edgars Stanly Ozols, Operations Manager

Seventh-day Adventist Church in Australia

- Pastor Michael Andrew Worker, Secretary

Christian Schools Australia and Adventist Schools Australia

- Dr Daniel Pampuch, Chief Executive Officer
- Mr Mark Spencer, Executive Officer Policy, Governance and Staff Relations

Anglican Schools Corporation

- Mr Ross Smith, Chief Executive Officer

Falun Dafa Association of Australia Inc

- Mr John Deller, Secretary
- Dr Lucy Zhao, President

Private Capacity

- Mrs Fengying Zhang

Executive Council of Australian Jewry

- Mr Peter John Wertheim, CO-CEO

Uniting Church in Australia Assembly

- Mr Robert Samuel Floyd, Assembly Associate General Secretary
- Mr Stuart John McMillan, President

Religious Society of Friends (Quakers) in Australia

- Mr David Lyle Purnell, Public Officer

Freedom for Faith

- Reverend Michael Luke Kellahan, Executive Director
- Mr Robert James Wicks, Chairman

The Centre for Independent Studies

- Reverend Peter Walter Kurti, Senior Research Fellow
- Dr Jeremy Peter Sammut, Senior Research Fellow

Anglican Church Diocese of Sydney

- Right Reverend Dr Michael Stead, Bishop of South Sydney

Amnesty International Australia

- Mr Joel Michael Clark, Advocacy and Government Relations Adviser
- Ms Katie Wood, Legal Counsel and Compliance Manager

Pagan Awareness Network

- Mr David John Keith Garland, President/Public Officer

Tuesday 5 June 2018 – Hobart

Catholic Women's League Tasmania

- Mrs Patricia Gartlan, Life Member
- Mrs Anna Matuszek, Social Issues Convenor
- Miss Genevieve Rochecouste
- Miss Jacquelyn Rochecouste

just.equal and Tasmanian Gay and Lesbian Rights Group

- Mr Rodney Croome

Private Capacity

- Ms Robin Banks
- Ms Anja Hilkemeijer

Cornerstone Presbyterian Church and Operation513 Ministries

- Dr David Gee, Evangelist

Cornerstone Presbyterian Church, Hobart

- Mr Campbell Markham, Minister

Archbishop of Hobart, Archdiocese of Hobart

- Archbishop Julian Porteous

Friday 22 June 2018 – Canberra

Human Rights Watch

- Ms Elaine Virginia Pearson, Australia Director

Australian Baha'i Community

- Dr Natalie Mobini-Kesheh, Director, Office of External Affairs
- Ms Shephalie Williams, Representative, Office of External Affairs

Private Capacity

- Dr Amelia Stephens
- Dr Rachel Hall
- Ms Alison Greig
- Mr Charles Wilson

Christian Faith and Freedom

- Ms Elizabeth Kendal, Director of Advocacy

Civil Liberties Australia

- Dr Kristine Klugman, President
- Ms Elly McLean, Member
- Mr William Rowlings, Chief Executive Officer

Tibet Information Office

Mr Lhakpa Tshoko, Office of His Holiness the Dalai Lama
and Central Tibetan Administration

International Coalition to End Transplant Abuse in China

- Mrs Susanne Gaye Hughes, Executive Director and Acting Chair, Australian
- Advocacy and Initiatives Committee
- Professor Wendy Rogers, Chair, International Advisory Committee

Ahmadiyya Muslim Association Australia

- Mr Hamed Ahmed, Human Rights Coordinator
- Mr Mohammad Atae Rabbi Hadi, Minister of Religion
- Mr Mohammad Nasir, National Vice President
- Mr Mirija Ramjan Sharif, Director of Public Relations

Australian Sangha Association

- Venerable Tenpa Bejanke Duim, Committee Member

Australia Tibet Council

- Mrs Kyinzom Dhongdue, Campaigns Manager and Executive Officer

Hindu Council of Australia

- Associate Professor Hemanshu Roy Pota, National Executive Member

Federation of Ethnic Communities' Councils of Australia

- Dr Alia Imtoual, Director of Policy
- Ms Sara Lailey, Policy and Project Officer