
Chapter 1

Introduction

Background

Overview of legislative history

1.1 On 22 November 2017, the Australian Government appointed an Expert Panel on Religious Freedom to examine whether Australian law adequately protects the human right to freedom of religion.¹ The Expert Panel received more than 15,500 submissions and conducted 90 consultation meetings with various stakeholders in each state and territory. The Expert Panel's final report was provided on 18 May 2018 and published on 13 December 2018.² The panel concluded that 'Australians enjoy a high degree of religious freedom, and that basic protections are in place in Australian law'. But the panel also acknowledged that 'the protection of difference with respect to belief or faith in a democratic, pluralist country such as Australia requires constant vigilance', and provided specific recommendations on how Commonwealth, state and territory governments could further protect religious freedom.³

1.2 In response to a number of the report's recommendations, the Australian Government developed exposure drafts of the Religious Discrimination Bill 2019, the Religious Discrimination (Consequential Amendments) Bill 2019, and the Human Rights Legislation Amendment (Freedom of Religion) Bill 2019.⁴

1.3 On 29 August 2019, the Attorney-General released the first exposure drafts of the religious discrimination legislation package. A public consultation process was held, which included public submissions and in-person discussions. Almost 6,000 submissions were received between 29 August 2019 and 2 October 2019 and discussions were held with 90 interested stakeholders.⁵

1.4 On 10 December 2019, the Attorney-General released the second exposure drafts of the bills, which addressed feedback received from the first consultation.

1 The Expert Panel was chaired by the Hon Phillip Ruddock and comprised Emeritus Professor Rosalind Croucher AM, the Hon Dr Annabelle Bennett AC SC, Father Frank Brennan SJ AO and Professor Nicholas Aroney.

2 See: <https://www.pmc.gov.au/domestic-policy/taskforces-past-domestic-policy-initiatives/religious-freedom-review>

3 Hon Philip Ruddock, *Religious Freedom Review Report of the Expert Panel*, May 2018, p 104.

4 See <https://www.ag.gov.au/rights-and-protections/consultations/religious-discrimination-bills-first-exposure-drafts>

5 Over 270 of these submissions were published, which represented the majority of submissions received, including all submission from organisations and campaign-style based submissions. See: <https://www.ag.gov.au/rights-and-protections/publications/submissions-received-religious-discrimination-bills-first-exposure-drafts-consultation>

Changes made included: broadening the definition of religious charities;⁶ allowing religious bodies to expressly preference employing persons of the same faith;⁷ protecting associates/spouses from religious discrimination;⁸ and defining the term, 'vilify'.⁹ A second public consultation process was held inviting submissions. Approximately 7,000 submissions were received between 10 December 2019 and 31 January 2020.¹⁰

Introduction of bills

1.5 On 25 November 2021, the Prime Minister introduced the following three bills in the House of Representatives:

- Religious Discrimination Bill 2021;
- Religious Discrimination (Consequential Amendments) Bill 2021; and
- Human Rights Legislation Amendment Bill 2021.

1.6 Together, these bills comprise the religious discrimination legislative package.

1.7 In introducing the bills the Prime Minister noted that the bills are based on four years of work.¹¹

Initiation of inquiry

1.8 On 26 November 2021, pursuant to section 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General wrote to the Parliamentary Joint Committee on Human Rights (the committee) to inquire into, and report on, the religious discrimination legislation package.

1.9 The Attorney-General requested the committee report to both Houses of Parliament by 4 February 2022.

Conduct of the inquiry

1.10 Following referral to the committee, the Chair of the committee, Dr Anne Webster MP, issued a media release on 30 November 2021 to call for submissions and announce the committee's intention to hold a number of public hearings.

6 Religious Discrimination Bill 2021, subclause 9(2).

7 Religious Discrimination Bill 2021, clause 7.

8 Religious Discrimination Bill 2021, clause 16.

9 Religious Discrimination Bill 2021, subclause 5(1)

10 Over 270 of these submissions were published, which represented the majority of submissions received, including all submission from organisations and campaign-style based submissions. See: <https://www.ag.gov.au/rights-and-protections/publications/submissions-received-religious-discrimination-bills-second-exposure-drafts-consultation>

11 The Hon Scott Morrison MP, Prime Minister of Australia, *Committee Hansard*, 25 November 2021, 10812

1.11 The committee wrote to 146 relevant stakeholders inviting them to make a submission to the inquiry by 21 December 2021, and advertised the inquiry on its website. In their submissions, a number of submitters raised concerns regarding the short timeframe for the inquiry.¹²

1.12 The committee received 205 public submissions, and these were published on the committee's website, and one confidential submission. These submissions are listed in Appendix 1. The committee also resolved to publish one example of each form or campaign letter or submission or petition (together with the number received). These are listed in Appendix 3 and the example letters are available on the committee's website.¹³

1.13 In order to assist members of the public to express their views, and to do so as efficiently and effectively as possible, the committee considered it appropriate to conduct a survey. The survey included ten questions. Survey participants could select 'Yes' or 'No' and provide further information to support their view. The survey closed at 5pm AEDT on 21 December 2021 and the committee received 48,107 responses. 39,808 participants chose to respond to the question of whether they supported the current version of the bill, of which 7,239 respondents (18.18 per cent) indicated that they did not support the bill and 32,569 (81.82 per cent) indicated support for the bill. The survey questions and a sample of responses are listed in Appendix 4. It is noted that some submitters questioned the accuracy of the survey. The most common criticism was that the wording of the questions in the survey swayed participants towards one answer over another.¹⁴ Further, some groups conducted their own survey or focus groups on the bill.¹⁵ For example, Equality Australia organised 'The People's

12 See Australian Lawyers Alliance, *Submission 2*, p. 5; Diversity Council Australia, *Submission 13*, pp. 6-7; Associate Professor Mark Fowler, *Submission 20*, p. 49; Law Council Australia, *Submission 28*, p. 8; Council of the Ageing, *Submission 29*, p. 2; National Tertiary Education Union, *Submission 35*, p. 2; Child Wise, *Submission 48*, p. 4; Australian Council of Trade Unions, *Submission 64*, p. 4; Disability Voices Tasmania, *Submission 68*, p. 5; Australian Health Promotion Association, *Submission 72*, p. 2; Relationships Australia, *Submission 99*, p.13; Federation of Ethnic Communities' Councils of Australia (FECCA), *Submission 105*, pp. 2-3; Kingsford Legal Centre, *Submissions 110*, p.12; Fair Agenda, *Submission 122*, p. 3; Dr Sean Mulcahy, *Submission 126*, p. 1; Buddhist Library, *Submission 135*, p. 1; Queensland Centre for Intellectual and Developmental Disability, *Submission 164*, p. 2; Centre for Women's Safety and Wellbeing, *Submission 179*, p. 2; NSW Council of Civil Liberties, *Submission 181*, pp. 4 and 18.

13 See the committee's [website](#).

14 Scarlet Alliance, Australian Sex Workers Association, *Submission 128*, p 2; Fair Agenda, *Submission 122*, p 3; Kingsford Legal Centre, *Submission 110*, p 13; Tasmanian Council of Social Services, *Submission 36*, p 10; Associate Professor Fiona Kate Barlow et. al, *Submission 146*; Equality Australia, *Joint Parliamentary Inquiry into Religious Discrimination Bill*, additional information received 21 December 2021, p 1.

15 See Australian Youth Affairs Coalition, *Submission 137*; Children and Young People with Disability Australia, *Submission 139*, p. 3.

Submission', which was signed by 6,108+ individuals and which contained a statement opposing the bill and set out a selection of personal stories and opinions.¹⁶

1.14 The committee held three public hearings in relation to this inquiry in Canberra, on 21 December 2021, 13 January 2022 and 14 January 2022. The committee heard evidence from a range of religious organisations, peak bodies and community groups, academics, legal experts and the Attorney-General's Department. A list of witnesses is included at Appendix 2, and the *Committee Hansard* transcript is available on the committee website.¹⁷

Consideration by other parliamentary committees

1.15 On 2 December 2021, the Senate referred the Religious Discrimination Bill 2021, the Religious Discrimination (Consequential Amendments) Bill 2021 and the Human Rights Legislation Amendment Bill 2021 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 4 February 2022.¹⁸

1.16 The Legal and Constitutional Affairs Legislation Committee's inquiry is distinct and separate from this committee's inquiry.

1.17 On 21 December 2021, the Senate Standing Committee for the Scrutiny of Bills (scrutiny committee) considered the legislation. The scrutiny committee drew attention to a number of significant issues addressed by the bill which were left to delegated legislation, reiterating its longstanding view that significant matters 'should be included in primary legislation unless a sound justification has been provided for the use of delegated legislation.'¹⁹ The scrutiny committee also emphasised clauses which granted broad administrative powers²⁰ and reversed the evidential burden of proof for defendants.²¹

Structure of the report

1.18 The report contains five Chapters, as follows:

- Chapter 1 sets out the introduction and background to the inquiry;

16 Equality Australia, *Submission 31, Attachment 1*.

17 In this report, references to the *Committee Hansard* are to the proof transcript. Page numbers may vary between proof and official transcripts.

18 Parliament of Australia, '[Religious Discrimination Bill 2021 \[Provisions\]; Religious Discrimination \(Consequential Amendments\) Bill 2021 \[Provisions\] and Human Rights Legislation Amendment Bill 2021 \[Provisions\]](#)'.

19 Senate Standing Committee for the Scrutiny of Bills Committee, *Scrutiny Digest 18 of 2021*, 1 December 2021, p. 25–29

20 Senate Standing Committee for the Scrutiny of Bills Committee, *Scrutiny Digest 18 of 2021*, 1 December 2021, p. 29–30.

21 Senate Standing Committee for the Scrutiny of Bills Committee, *Scrutiny Digest 18 of 2021*, 1 December 2021, p. 32.

- Chapter 2 discusses the legislative framework of the religious discrimination legislation package and the key human rights principles;
- Chapter 3 discusses unlawful discrimination and related issues raised by submitters and witnesses to the inquiry;
- Chapter 4 discusses religious bodies, and the impact of the religious discrimination legislation package on employment, access to services, and related issues raised by submitters and witnesses to the inquiry;
- Chapter 5 discusses religious educational institutions, and the impact of the bill on students and teachers; and
- Chapter 6 discusses statements of belief and related issues raised by submitters and witnesses to the inquiry.

Acknowledgements

1.19 The committee acknowledges and thanks the organisations and individuals who assisted with, and contributed to, the inquiry by making submissions, responding to the survey, giving evidence at the public hearings and providing additional information.

Note on references

1.20 References to the *Committee Hansard* are to the proof Hansard. Page numbers may vary between the proof and official Hansard transcripts.

