

## **Senate Legal and Constitutional Affairs Legislation Committee**

### **Religious Discrimination Bill 2021 [Provisions]**

#### **Attorney-General's Department**

**Hearing date:** 21 January 2022

**Question date:** 25 January 2022

#### **Deborah O'Neill asked the following question:**

In relation to clause 12:

1. Since 1 December 2018, has the current or former Attorney-General ever met with the Premier or the Attorney-General of Tasmania in relation to section 17(1) of the Tasmanian Anti-Discrimination Act? If not, why not? If so, on what date(s), who was present at the meeting(s) and what was discussed.

2. Since 1 December 2018, has the current or former Attorney-General ever written to the Premier or the Attorney-General of Tasmania in relation to section 17(1) of the Tasmanian Anti-Discrimination Act? If not, why not? If so, on what date(s) and could a copy of the correspondence please be provided to the Committee.

3. In its formal response to Recommendation 15 of the Religious Freedom Review, the Morrison Government promised:

the Government will consult with the States and Territories on the terms of a potential reference to the ALRC to give further consideration to how best to amend current Commonwealth anti-discrimination legislation to prohibit the commencement of any legal or administrative action, pursuant to State-based anti-discrimination legislation analogous to section 18C of the Racial Discrimination Act, that seeks to claim offence, insult or humiliation because a person or body expresses a view of marriage as it was defined in the Marriage Act before being amended in 2017.

Has the Morrison Government consulted with the States and Territories on the terms of a potential reference to the ALRC to give further consideration to how best to amend current Commonwealth anti-discrimination legislation to prohibit the commencement of any legal or administrative action, pursuant to State-based anti-discrimination legislation analogous to section 18C of the Racial Discrimination Act, that seeks to claim offence, insult or humiliation because a person or body expresses a view of marriage as it was defined in the Marriage Act before being amended in 2017? If not, why not? If so, please provide an exhaustive account – including dates – of the consultation that has taken place.

#### **The response to the question is as follows:**

1. The Government was made aware of the position of the states and territories through correspondence received from jurisdictions and from submissions provided during the two exposure draft consultation processes.
2. See above.
3. On 22 February 2019, the former Attorney-General wrote his state and territory

counterparts seeking views on the draft terms of reference for the Australian Law Reform Commission (ALRC) inquiry into religious exemptions in anti-discrimination law. This included consideration of reforms to remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) prior to 2017<sup>1</sup>, whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

For further detail, please refer to the Department's response to Senator O'Neill's further question of 25 January 2022 relating to consultation on the Terms of Reference for ALRC inquiry (copy at **Attachment A**).

## Senate Legal and Constitutional Affairs Legislation Committee

### Religious Discrimination Bill 2021 [Provisions]

#### Attorney-General's Department

**Hearing date:** 21 January 2022

**Question date:** 25 January 2022

#### Deborah O'Neill asked the following question:

In its formal response to the Religious Freedom Review, the Morrison Government promised that “the Government will consult with the States and Territories on the terms of a potential reference to the ALRC to consider recommendations 1 and 5 to 8 of the Review with a view to settling upon a legislative mechanism that would, on a nationally consistent basis, achieve the twin purposes of limiting or removing altogether (if practicable) legislative exemptions to prohibitions on discrimination based on a person’s identity, while also protecting the right of religious institutions to reasonably conduct themselves in a way consistent with their religious ethos.”. Did this ever happen? If so, provide details of all relevant consultations (including dates) and evidence that those consultations took place. If no such consultations have occurred, why not?

#### The response to the question is as follows:

On 22 February 2019, the former Attorney-General, the Hon Christian Porter MP, wrote to the Attorneys-General and Justice Ministers of each state and territory seeking their agreement to the draft terms of reference for an Australian Law Reform Commission inquiry into religious exemptions in anti-discrimination law. A sample of these letters is included at **Attachment A**. Further, on 12 March 2019, the former Attorney-General wrote to the President of the ALRC, the Hon Justice Sarah Derrington, seeking views on the inquiry’s terms of reference. This letter is included at **Attachment B**.

In both of these letters, the former Attorney-General specifically asked for views on the consideration of reforms in order to:

- limit or remove religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to conduct their affairs in a way consistent with their religious ethos; and
- remove legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

The Government considered all responses received.

On 9 April 2019, the former Attorney-General wrote to his state and territory counterparts enclosing the final terms of reference. A sample of this letter is included at **Attachment C**.



**The Hon Christian Porter MP**  
Attorney-General

The Hon Mark Speakman SC MP  
Attorney General  
GPO Box 5341  
SYDNEY NSW 2001

22 FEB 2019

Dear Attorney General

I am writing to seek your agreement to the draft terms of reference for an Australian Law Reform Commission (ALRC) inquiry into religious exemptions in anti-discrimination law.

On 11 December 2018, I wrote to you advising of the Australian Government's response to the Report of the Expert Panel into Religious Freedom (Religious Freedom Review). In that response, the Australian Government committed to consult with states and territories on the terms and parameters of a potential reference to the ALRC on the framework of religious exemptions in anti-discrimination law.

As noted in the Religious Freedom Review, religious exemptions from discrimination laws vary widely between jurisdictions. The Government agrees with the Panel's assessment that reforms in this area should be undertaken with a view to greater harmonisation. The ALRC inquiry will consider potential reforms to limit or remove altogether (if practicable) religious exemptions to discrimination, while also protecting the ability of religious institutions to reasonably conduct their affairs in a way that is consistent with their religious ethos.

It will also consider reforms to remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

I have enclosed draft terms of reference for the proposed ALRC referral for your consideration.

The terms of reference require that, in undertaking this reference, the ALRC should have regard to the interaction between Commonwealth, state and territory anti-discrimination laws, and the desirability of national consistency in religious exemptions in those laws, and should consult widely, including with state and territory governments.

Since the reference will consider the anti-discrimination framework of New South Wales, I am seeking your agreement to the draft terms of reference. In order to issue the referral to the ALRC in a timely manner for inquiry and report by December 2019, I would be grateful for your response by 28 February 2019.



I look forward to continuing to work with you on this important reference.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

Encl. Draft Terms of Reference – Australian Law Reform Commission Review of religious exemptions in anti-discrimination law

## Terms of Reference

### Review of religious exemptions in anti-discrimination law

I, the Hon Christian Porter MP, Attorney-General of Australia, having regard to:

- the rights and freedoms recognised in the international agreements to which Australia is a party, in particular:
  - the right to freedom of thought, conscience and religion, including the right to manifest one's religion or belief in worship, observance, practice and teaching and the liberty of parents and guardians (where applicable) to ensure the religious and moral education of their children in conformity with their own convictions; and
  - the rights of equality and non-discrimination
- the importance of protecting the rights of children to be free from discrimination in education
- the importance of allowing religious institutions to conduct themselves in a manner consistent with their religious ethos
- the interaction between Commonwealth, State and Territory anti-discrimination laws and the desirability of national consistency in religious exceptions in those laws

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), a consideration of what reforms to relevant anti-discrimination laws, the *Fair Work Act 2009* (Cth) and any other Australian law should be made in order to:

- limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to reasonably conduct their affairs in a way consistent with their religious ethos; and
- remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

### Scope of the reference

In undertaking this reference, the ALRC should include consideration of Commonwealth, State and Territory anti-discrimination laws and the Fair Work Act. To avoid doubt, religious institutions for the purposes of this reference includes bodies established for religious purposes as well as educational institutions conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

The ALRC should identify and have regard to existing reports and inquiries including:

- the Report of the Expert Panel on Religious Freedom (Religious Freedom Review), particularly recommendations 1, 5, 6, 7 and 8;
- Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Report 129); and
- any other inquiries or reviews, including state and territory inquiries or reviews, that it considers relevant.

**Consultation**

The ALRC should consult widely with State and Territory governments, religious institutions, the education sector, and other civil society representatives.

The ALRC should produce consultation documents to ensure experts, stakeholders and the community have the opportunity to contribute to the review.

**Timeframe for reporting**

The ALRC should provide its report to the Attorney-General by 20 December 2019.



**The Hon Christian Porter MP**  
Attorney-General

The Hon Justice Sarah Derrington  
President  
Australian Law Reform Commission  
PO Box 12953  
BRISBANE QLD 4003

12 MAR 2019

Dear Justice Derrington *Sarah*

I am writing to seek your views on the draft terms of reference for an Australian Law Reform Commission (ALRC) inquiry into religious exemptions in anti-discrimination law.

On 13 December 2018, the Prime Minister, the Hon Scott Morrison MP, and I released the Expert Panel's Report into the Religious Freedom Review and the Government's comprehensive response to the Report. In that response, the Australian Government committed to consulting with the states and territories on the terms and parameters of a potential reference to the ALRC on the framework of religious exemptions in anti-discrimination law and the *Fair Work Act 2009* (Cth).

As noted in the Religious Freedom Review, religious exemptions from discrimination laws vary widely between jurisdictions. The Government agrees with the Panel's assessment that reforms in this area should be undertaken with a view to greater harmonisation. The ALRC inquiry will consider potential reforms to limit or remove altogether (if practicable) religious exemptions to discrimination, while also protecting the ability of religious institutions to reasonably conduct their affairs in a way that is consistent with their religious ethos.

It will also consider reforms to remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

The terms of reference require that, in undertaking this reference, the ALRC should have regard to the interaction between Commonwealth, state and territory anti-discrimination laws, and the desirability of national consistency in religious exemptions in those laws, and should consult widely, including with state and territory governments.

I have enclosed draft terms of reference for the proposed ALRC referral for your consideration. In order to issue the referral to the ALRC in a timely manner for inquiry and report by December 2019, I would be grateful for your response by 13 March 2019.

I have written to my counterparts in the states and territories separately, attaching the draft terms of reference for their consideration.

I look forward to continuing to work with you on this important reference.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

Encl. Draft Terms of Reference – Australian Law Reform Commission Review of religious exemptions in anti-discrimination law



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## Terms of Reference

### Review of religious exemptions in anti-discrimination law

I, the Hon Christian Porter MP, Attorney-General of Australia, having regard to:

- the rights and freedoms recognised in the international agreements to which Australia is a party, in particular:
  - the right to freedom of thought, conscience and religion, including the right to manifest one's religion or belief in worship, observance, practice and teaching and the liberty of parents and guardians (where applicable) to ensure the religious and moral education of their children in conformity with their own convictions; and
  - the rights of equality and non-discrimination
- the importance of protecting the rights of children to be free from discrimination in education
- the importance of allowing religious institutions to conduct themselves in a manner consistent with their religious ethos
- the interaction between Commonwealth, State and Territory anti-discrimination laws and the desirability of national consistency in religious exceptions in those laws

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), a consideration of what reforms to relevant anti-discrimination laws, the *Fair Work Act 2009* (Cth) and any other Australian law should be made in order to:

- limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to reasonably conduct their affairs in a way consistent with their religious ethos; and
- remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

### Scope of the reference

In undertaking this reference, the ALRC should include consideration of Commonwealth, State and Territory anti-discrimination laws and the Fair Work Act. To avoid doubt, religious institutions for the purposes of this reference includes bodies established for religious purposes as well as educational institutions conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

The ALRC should identify and have regard to existing reports and inquiries including:

- the Report of the Expert Panel on Religious Freedom (Religious Freedom Review), particularly recommendations 1, 5, 6, 7 and 8;
- Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Report 129); and
- any other inquiries or reviews, including state and territory inquiries or reviews, that it considers relevant.

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**Consultation**

The ALRC should consult widely with State and Territory governments, religious institutions, the education sector, and other civil society representatives.

The ALRC should produce consultation documents to ensure experts, stakeholders and the community have the opportunity to contribute to the review.

**Timeframe for reporting**

The ALRC should provide its report to the Attorney-General by 20 December 2019.

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**The Hon Christian Porter MP**  
Attorney-General

MS19-000388

09 APR 2019

Mr Gordon Ramsay MLA  
Attorney-General  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

Dear Attorney-General

Following my correspondence of 22 February 2019, I am pleased to advise you that on 8 April 2019, I referred to the Australian Law Reform Commission (ALRC) an inquiry into the framework of religious exemptions in anti-discrimination law.

The final terms of reference for this inquiry are attached. The terms of reference require the ALRC to consider what reforms to Commonwealth, state and territory anti-discrimination laws, the *Fair Work Act 2009* and any other Australian laws should be made in order to:

- limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to conduct their affairs in a way consistent with their religious ethos; and
- remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*, whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

The terms of reference require the ALRC to consult widely, including with State and Territory Governments, and ask the ALRC to provide its final report by 10 April 2020.

Thank you for your engagement so far on this important reference, and I look forward to working with you in considering the recommendations of this inquiry.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

Encl. Final terms of reference

## Terms of Reference

### Review of religious exemptions in anti-discrimination law

I, the Hon Christian Porter MP, Attorney-General of Australia, having regard to:

- the rights and freedoms recognised in the international agreements to which Australia is a party, in particular:
  - the rights to freedom of speech, association and thought, conscience and religion, including the right to manifest one's religion or belief in worship, observance, practice and teaching (including in community with others) and the liberty of parents and guardians (where applicable) to ensure the religious and moral education of their children in conformity with their own convictions; and
  - the rights of equality and non-discrimination
- the importance of protecting the rights of all people, and children in particular, to be free from discrimination in education
- the importance of allowing religious institutions both to teach and otherwise conduct themselves in a manner consistent with their religious ethos
- the interaction between Commonwealth, State and Territory anti-discrimination laws and the desirability of national consistency in religious exceptions in those laws

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), a consideration of what reforms to relevant anti-discrimination laws, the *Fair Work Act 2009* (Cth) and any other Australian law should be made in order to:

- limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to conduct their affairs in a way consistent with their religious ethos; and
- remove any legal impediments to the expression of a view of marriage as it was defined in the *Marriage Act 1961* (Cth) before it was amended by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), whether such impediments are imposed by a provision analogous to section 18C of the *Racial Discrimination Act 1975* (Cth) or otherwise.

### Scope of the reference

In undertaking this reference, the ALRC should include consideration of Commonwealth, State and Territory anti-discrimination and vilification laws and the *Fair Work Act*.

To avoid doubt, religious institutions for the purposes of this reference includes bodies established for religious purposes (including faith-based institutions) and educational institutions conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

The ALRC should identify and have regard to existing reports and inquiries including:

- the Report of the Expert Panel on Religious Freedom (Religious Freedom Review), particularly recommendations 1, 5, 6, 7 and 8;
- Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Report 129); and
- any other inquiries or reviews, including state and territory inquiries or reviews, that it considers relevant.

The ALRC should also have regard to religious exemptions in anti-discrimination laws and their interaction with 'religious belief or activity', including the expression of religious and moral views, insofar as they are a ground of discrimination (as proposed by the Religious Freedom Review, particularly in recommendations 15 and 16, and in accordance with Recommendation 2).

### **Consultation**

The ALRC should consult widely with State and Territory governments, religious institutions, the education sector, and other civil society representatives.

The ALRC should produce consultation documents to ensure experts, stakeholders and the community have the opportunity to contribute to the review.

### **Timeframe for reporting**

The ALRC should provide its report to the Attorney-General by 10 April 2020.

## **Senate Legal and Constitutional Affairs Legislation Committee**

### **Religious Discrimination Bill 2021 [Provisions]**

#### **Attorney-General's Department**

**Hearing date:** 21 January 2022

**Question date:** 25 January 2022

#### **Deborah O'Neill asked the following question:**

On 21 January 2022, the Attorney-General gave evidence that:

There is an omission in the bill in relation to the burden of proof in relation to that provision, and we're working with the Attorney to rectify that. That was literally our fault in the drafting. It was in—you'll see it in the exposure draft—and it disappeared as we were going through iterations of the draft. So we are working to correct that burden of proof element.

Why didn't the Attorney-General's Department inform the Committee in its written submission that there is an omission in the bill?

1. Did the Attorney-General or her office advise or instruct the Department not to make the Committee aware of that omission?
2. On exactly what date did the Attorney-General's Department become aware of the omission in the bill?
3. On exactly what date did the Attorney-General's Department notify the Attorney-General of the omission in the bill?
4. How did the omission in the bill occur?
5. On what date and at what time was the Attorney-General's Department informed that the Government intended to introduce the Religious Discrimination Bill into the Parliament during the final sitting fortnight of 2021?
6. On what date and at what time was the Attorney-General's Department informed that the Government intended to introduce the Religious Discrimination Bill into the Parliament on 25 November 2021?
7. Why does the Explanatory Memorandum to the Human Rights Legislation Amendment Bill 2021 contain track changes (see, eg, paragraph 1, 17 and paragraphs 2 and 4 of the Statement of Compatibility with Human Rights)?
8. Who was responsible for finalising the draft Explanatory Memorandum to the Human Rights Legislation Amendment Bill 2021?
9. Other than the omission in the bill identified by the Department on 21 January 2022, how many other omissions or errors has the Department identified in the Religious Discrimination Bill, the Religious Discrimination (Consequential Amendments) Bill 2021 or the Human Rights Legislation Amendment Bill 2021? In respect of each error or omission, please:
  - a. provide a reference to the relevant clause(s);
  - b. an explanation of the omission or error;
  - c. an explanation of how the omission or error occurred; and
  - d. an explanation of exactly when the Attorney-General's Department became aware of the omission or error.
10. How many omissions or errors has the Department identified in the Explanatory Memorandum of the Religious Discrimination Bill, the Religious Discrimination



(Consequential Amendments) Bill 2021 or the Human Rights Legislation Amendment Bill 2021? In respect of each error or admission, please:

- a. provide a reference to the relevant paragraph number(s);
- b. an explanation of the omission or error;
- c. an explanation of how the omission or error occurred; and
- d. an explanation of exactly when the Attorney-General's Department became aware of the omission or error.

The response to the question is as follows:

- 1. Did the Attorney-General or her office advise or instruct the Department not to make the Committee aware of that omission?**

No.

- 2. On exactly what date did the Attorney-General's Department become aware of the omission in the bill?**

The drafting error in clause 14 of the Religious Discrimination Bill 2021 was identified on Friday, 26 November 2021 – the day after the Bill's introduction.

- 3. On exactly what date did the Attorney-General's Department notify the Attorney-General of the omission in the bill?**

Friday, 26 November 2021.

- 4. How did the omission in the bill occur?**

The error occurred due to a editing oversight in re-drafting of the Religious Discrimination Bill 2021 after the second exposure draft.

- 5. On what date and at what time was the Attorney-General's Department informed that the Government intended to introduce the Religious Discrimination Bill into the Parliament during the final sitting fortnight of 2021?**

In June 2021, the Attorney-General announced that the Religious Discrimination Bill 2021 would be introduced into the Parliament before the end of 2021.

- 6. On what date and at what time was the Attorney-General's Department informed that the Government intended to introduce the Religious Discrimination Bill into the Parliament on 25 November 2021?**

Final approval of the legislative package occurred at approximately 5:00pm on 24 November 2021. The daily program for the House of Representatives for 25 November 2022 was provided to the Department on 24 November 2022, at 9:48pm.

- 7. Why does the Explanatory Memorandum to the Human Rights Legislation Amendment Bill 2021 contain track changes (see, eg, paragraph 1, 17 and paragraphs 2 and 4 of the Statement of Compatibility with Human Rights)?**

This is a minor drafting error – the track changes simply indicate a change to the spacing of the relevant sentences to ensure the titles of legislation did not break across two lines.

**8. Who was responsible for finalising the draft Explanatory Memorandum to the Human Rights Legislation Amendment Bill 2021?**

Preparation and printing of the explanatory memorandum was the responsibility of the Attorney-General's Department. The explanatory memorandum was cleared by a Senior Executive Service officer in the Department and submitted to the Attorney-General's Office for approval prior to introduction into the Parliament.

**9. Other than the omission in the bill identified by the Department on 21 January 2022, how many other omissions or errors has the Department identified in the Religious Discrimination Bill, the Religious Discrimination (Consequential Amendments) Bill 2021 or the Human Rights Legislation Amendment Bill 2021? In respect of each error or omission, please:**

**a. provide a reference to the relevant clause(s);**

Religious Discrimination (Consequential Amendments) Bill 2021, clause 2(1).

**b. an explanation of the omission or error;**

The Schedule 2 amendments alter Section 11 of the Religious Discrimination Act, contingent on the commencement of the *Equal Opportunity (Religious Exceptions) Amendment Act 2021* (Vic.). The identified error is that the timing is tied to 'the commencement of Division 2 of Part 2' of the Victorian Act, where it should be 'the commencement of Division 1 of Part 2', on the basis that Division 1 relates to Religious Educational Institutions, whereas Division 2 relates to other religious bodies (not schools) providing 'government funded goods and services'.

**c. an explanation of how the omission or error occurred; and**

The error occurred due to an editing error.

**d. an explanation of exactly when the Attorney-General's Department became aware of the omission or error.**

The drafting error in clause 2(1) of the Religious Discrimination (Consequential Amendments) Bill 2021 was identified on Wednesday, 12 January 2021, while reviewing submissions made to the Parliamentary Joint Committee on Human Rights.

**10. How many omissions or errors has the Department identified in the Explanatory Memorandum of the Religious Discrimination Bill, the Religious Discrimination (Consequential Amendments) Bill 2021 or the Human Rights Legislation Amendment Bill 2021? In respect of each error or admission, please:**

**a. provide a reference to the relevant paragraph number(s);**

**b. an explanation of the omission or error;**

**c. an explanation of how the omission or error occurred; and**

**d. an explanation of exactly when the Attorney-General's Department became aware of the omission or error.**

None other than the error noted by the committee above at question 7.

The Attorney-General's Department further notes the Question on Notice from Senator Rice from the Parliamentary Joint Committee on Human Rights hearing of 14 January 2022 and the department's response to that question (copy at **Attachment A**).

**Parliamentary Joint Committee on Human Rights**  
**RELIGIOUS DISCRIMINATION BILL AND OTHER RELATED BILLS**  
**Attorney-General's Department**

**Hearing date:** 14 January 2022

**Hansard page:** 70

**Question type:** Spoken

**Question number:** 22008

**Senator Janet Rice asked the following question:**

**Senator RICE:** We're out of time, Mr Walter, so I don't need to know what the intent of clause 12 is. Basically, are you saying that the Human Rights Commission's legal analysis is wrong or are you saying that, in fact, that statement in the explanatory memorandum, where you said, 'the bill does not affect the operation of other Commonwealth anti-discrimination legislation', is accurate?

**Mr Walter:** If you'd like me to I can take this on notice. I think it is important to note that the intent of this provision is to provide clarification and certainty as to the application of discrimination laws. We don't think it has a substantive effect on—

**Senator RICE:** But there's a difference between not having a substantive effect and having an effect. The legal opinion of the Human Rights Commission and the legal opinion of the Law Council, where they said that it basically has a big impact on state and territory legislation, is that it has an impact, which means that that statement in the EM is quite incorrect.

**Mr Walter:** How about I respond to you in writing on that?

**Senator RICE:** Okay.

**The response to the Senator's question is as follows:**

Clause 12 of the Bill, which relates to the making of statements of belief (as defined in clause 5), provides that statements of belief, as defined, will not, in and of themselves, be discrimination for the purposes of listed anti-discrimination laws and subsection 17(1) of the *Anti-Discrimination Act 1998* (Tas). In general terms, the department considers that clause 12 clarifies the existing operation of anti-discrimination laws.

Subclause 12(1) provides that a statement of belief in and of itself does not contravene certain provisions of Commonwealth, state and territory anti-discrimination law. This means that the clause will not operate to exempt discriminatory conduct merely because it has been accompanied by a statement of belief. In addition, it is not intended that this clause would affect the ability of a complainant to bring statements of belief forward as evidence in support of a discrimination complaint concerning separate conduct.

As noted in the department's response to Written Question on Notice 1 provided to the Committee on 11 January 2021, clause 12 has been specifically developed to balance the rights of freedom of religion and freedom of expression with other rights, and is subject to the limitations set out in the Bill. Further background on the application of clause 12 can be found in the department's responses to Written Questions on Notice 8, 9, 10, 11 and 13 dated



11 January 2021.

Paragraph 6 of the Explanatory Memorandum of the Bill is part of the General Outline. Under the sub-heading 'Outline of the Bill' the operation of clause 12 is set out at paragraph 34.