



**Australian
Human Rights
Commission**

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

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE JOINT
STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into the status of the human right to freedom of religion or belief.
2. The Commission is established by the *Australian Human Rights Commission Act 1986* (Cth). The Commission is an ‘A status’ national human rights institution established and operating in full compliance with the Paris Principles.¹
3. This submission focuses on the right to freedom of religion or belief in the Australian context and the law as it stands at the time of writing.² Taking into account the Commission’s experience and expertise, this submission will discuss:
 - the international human rights principles relevant to the right to freedom of religion or belief
 - current protections for the right to freedom of religion under Australian law
 - experiences of discrimination and vilification on the basis of religion in Australia, and
 - the balance between the right to freedom of religion or belief and the right to equality and non-discrimination.

2 Summary

4. Although Australia is a diverse and largely tolerant society, discrimination and vilification on the basis of religion or belief is an experience faced by some in our community.
5. International human rights law provides comprehensive protection for the right to freedom of religion or belief. However, this right has only limited protection in Australia’s domestic law.
6. Section 116 of the *Australian Constitution* provides some protection by restraining the legislative power of the Commonwealth. There is also some protection against discrimination or vilification on the basis of religion in federal and state anti-discrimination laws. These protections, however, are inconsistent across jurisdictions and are quite narrow at the federal level.
7. Federal anti-discrimination legislation also provides some exemptions for religious bodies and educational institutions established for religious purposes that attempt to balance the right to freedom of religion with the right to non-discrimination. Whether these exemptions provide an appropriate balance is a source of ongoing concern, with some believing that they do not provide sufficient scope for religious freedom and others considering they provide too much scope for discrimination, particularly against lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

8. Since the Joint Standing Committee's last report on this issue, the Commission has continued to produce work that promotes the right to freedom of religion or belief, including recommendations that seek to ensure this right is adequately protected.

3 International human rights framework

9. The right to freedom of thought, conscience and religion is protected primarily in article 18 of the *International Covenant on Civil and Political Rights* (ICCPR).³
10. Article 18 provides:
 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
11. The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (the Religion Declaration) elaborates on the guarantees provided under article 18.⁴
12. Article 14 of the *Convention on the Rights of the Child* provides for the right of the child to freedom of thought, conscience and religion.⁵ It also recognises the rights and duties of parents and legal guardians to 'provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child'.⁶

3.1 The scope of article 18 of the ICCPR

13. The right to freedom of thought, conscience and religion under article 18 is simultaneously an individual and collective right. It is enjoyed both by each person individually as well as groups of people with shared beliefs.
14. Freedom of thought, conscience and religion is a non-derogable right, meaning that State Parties are not permitted to suspend this right in a time of public emergency.⁷
15. The UN Human Rights Committee has stated that article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right *not* to profess any religion or belief.⁸

16. Article 18 distinguishes between the freedom to *hold* a particular religion or belief, and freedom to *manifest* that religion or belief in conduct.
17. The freedom to adopt or *hold* a religion or belief is **absolute** and cannot be limited for any reason or under any circumstances.⁹ This includes the freedom to choose or change one's religion or belief.¹⁰
18. However, the freedom to *manifest* a religion or belief in worship, observance, practice or teaching **may** be subject to legitimate limitations.
19. Article 18 explicitly includes the freedom to manifest beliefs 'in community with others'.¹¹ The UN Human Rights Committee has confirmed that the freedom to manifest religion or belief in practice or teaching 'includes acts integral to the conduct by religious groups of their basic affairs', such as the freedom to choose their religious leaders and to establish seminaries or religious schools.¹²
20. Article 6 of the Religion Declaration lists some of the elements of the freedom to manifest a religion or belief, including the freedom to assemble for worship, freedom to use the articles and materials related to the rites or customs, freedom to write and disseminate publications and freedom to teach the religion.
21. Legitimate limitations on the freedom to manifest a religion or belief in worship, observance or practice must be prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.¹³
22. The UN Human Rights Committee has stated:

Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical, and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.¹⁴
23. The UN Human Rights Committee has also observed that the scope of legitimate limitations should be interpreted according to the need to protect other rights under the ICCPR.¹⁵

3.2 *The right to freedom from religious hatred and religious discrimination*

24. Article 20 of the ICCPR requires State Parties to prohibit by law any 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.
25. Upon ratifying the ICCPR Australia made a reservation, or statement of interpretation and intention, in relation to article 20 that states:

Australia interprets the rights provided for by articles 19 [freedom of expression], 21 [freedom of assembly] and 22 [freedom of association] as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matters.¹⁶

26. The UN Human Rights Committee considers the prohibition in article 20 to be 'fully compatible' with the right to freedom of expression under article 19 of the ICCPR.¹⁷ However, the Committee has also stated that prohibitions of 'displays of lack of respect for a religion or other belief system, including blasphemy laws' are incompatible with the right to freedom of expression, except in the specific circumstances contemplated in article 20.¹⁸
27. The right to equality and non-discrimination also offers protection from discrimination on the basis of religion. In some circumstances, however, the right to freedom of thought, conscience and religion will conflict with the right to equality and non-discrimination and the two will need to be balanced.
28. Article 26 of the ICCPR provides that all people 'are equal before the law and are entitled without any discrimination to the equal protection of the law'. It requires State Parties to prohibit and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.
29. The phrase 'other status' has been interpreted by human rights treaty bodies to include attributes such as age,¹⁹ disability,²⁰ and sexual orientation.²¹
30. The right to non-discrimination is not absolute. The UN Human Rights Committee has stated that 'not every differentiation of treatment will constitute discrimination which violates article 26'.²² Distinctions will not constitute discrimination under article 26 if they are 'justified on reasonable and objective grounds, in pursuit of an aim that is legitimate under the Covenant'.²³
31. In other words, for a limitation of the right to non-discrimination to be permissible, it must be a proportionate response to achieve a legitimate aim.
32. The Religion Declaration further provides that States shall take 'effective measures to prevent and eliminate discrimination on the grounds of religion or belief,' including the enactment or repeal of legislation, and take 'all appropriate measures' to prevent intolerance on the basis of religion or belief.²⁴

3.3 Other relevant human rights

33. Article 27 of the ICCPR provides particular protection for ethnic, religious, or linguistic minorities to 'enjoy their own culture, to profess and practise their own religion or to use their own language'.
34. Religious groups and individuals also enjoy the protection of the right to freedom of expression and the right to freedom of association (articles 19 and 22 of the ICCPR).

35. However, like the right to manifest a belief, freedom of expression and freedom of association may be subject to legitimate limitations. Such limitations must be prescribed by law and necessary for the protection of:
- national security or public order (ordre public) (or public safety in the case of freedom of association), or
 - public health or morals, or
 - the rights and freedoms of others.²⁵

4 Current legal protections for freedom of religion or belief

36. Although Australia has an international legal obligation to protect the right to freedom of thought, conscience and religion, there is only limited protection of that right in our domestic law.
37. Section 116 of the *Australian Constitution* provides some protection by restraining the legislative power of the Commonwealth. There is also some protection against discrimination or vilification on the basis of religion in federal and state anti-discrimination laws. These protections, however, are inconsistent across jurisdictions and are quite narrow at the federal level.
38. Exemptions from federal anti-discrimination legislation for religious bodies and educational institutions established for religious purposes, also seek to protect freedom of religion by balancing that right with the right to non-discrimination.

4.1 The Australian Constitution

39. The *Australian Constitution* prohibits the Commonwealth from enacting legislation that would establish any religion, or which would prohibit the free exercise of religion. Section 116 states:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

40. Section 116 has been framed largely as a restraint on Commonwealth legislative power and prevents one religion being given pre-eminence over other forms of observance. The High Court of Australia has made clear that it does not operate as a freestanding individual right to freedom of religion.²⁶

4.2 Religion as a protected attribute in federal and state legislation

41. There is limited protection of the right to freedom of religion in federal and state legislation.
42. At the federal level, a person who suffers discrimination in employment on the basis of religion can make a complaint to the Commission, pursuant to the

Australian Human Rights Commission Act 1986 (Cth) and the *International Labour Organization Convention (No 111) concerning Discrimination in respect of Employment and Occupation*. The Commission has the function of inquiring into and attempting to reach a settlement of such complaints through conciliation.²⁷ From 1 July 2014 to 30 June 2016, the Commission received 26 complaints on this ground.²⁸

43. The Commission also has the function of inquiring into complaints about acts or practices by or on behalf of the Commonwealth or under a Commonwealth Act which may be inconsistent with articles 18 (freedom of religion) or 26 (right to non-discrimination, including on the basis of religion) of the ICCPR or the Religion Declaration.²⁹ From 1 July 2014 to 30 June 2016, the Commission received two complaints in relation to the Religion Declaration.³⁰
44. If these types of complaints cannot be conciliated, the Commission may inquire into the acts or practices and prepare a report to the Attorney-General if it finds that there has been a breach. This report may contain recommendations to prevent a repetition of the act or practice or to remedy a breach of rights. However, these recommendations are not binding.³¹ These reports are published on the Commission's website.³²
45. The *Racial Discrimination Act 1975 (Cth)* (RDA) does not specifically prohibit discrimination on the ground of religious identity or belief. However, religious groups may be regarded as being covered by the RDA where they can establish a common 'ethnic origin'.
46. In *Macabenta v Minister for Immigration & Multicultural Affairs*,³³ the Full Court of the Federal Court stated that the following questions are relevant when considering 'ethnic origin':

For example, is there a long shared history?, is there either a common geographical origin or descent?, is there a common language?, is there a common literature?, is there a common religion or a depressed minority? One can easily appreciate that the question of ethnic origin is a matter to be resolved by those types of factual assessments.³⁴
47. The term 'ethnic origin' has been interpreted as including Jewish and Sikh people.³⁵ However, there is no jurisprudence concerning whether Muslim people are a group of common 'ethnic origin' for the purposes of the RDA. Currently, complaints made to the Commission about racial discrimination by Muslim people will not be accepted unless there is some racial or ethnic element to the complaint.³⁶
48. Under the *Fair Work Act 2009 (Cth)* employers are prohibited from:
 - taking adverse action against an employee or prospective employee on the basis of a number of specified protected attributes, including religion³⁷
 - including terms in a modern award that discriminate against an employee for a number of reasons, including religion³⁸

- terminating an employee’s employment for reasons including their religion.³⁹
49. The federal Parliament must also prepare statements of compatibility in respect of proposed legislation which set out whether the law is compatible with human rights, including freedom of religion or belief.⁴⁰ Where proposed legislation engages and limits the right to freedom of religion or belief, the statement of compatibility should provide an assessment of the measures against the criteria for legitimate limitations provided in the ICCPR.⁴¹
50. The anti-discrimination laws of each State and Territory, with the exception of New South Wales and South Australia, contain a prohibition against discrimination on the grounds of religious belief.⁴² New South Wales prohibits discrimination on the ground of ethno-religious origin.⁴³ South Australia prohibits discrimination on the ground of religious appearance or dress.⁴⁴ These laws protect individuals against discrimination in certain areas of public life, such as education, employment and the provision of goods and services.
51. Victoria and the Australian Capital Territory have enacted statutory charters of rights which include freedom of religion.⁴⁵ The charters require a statement of compatibility to be prepared in respect of any proposed draft law, which sets out the view of the government (or whoever is proposing the law) on whether the draft law is compatible with human rights. The Victorian and ACT charters each allows the Supreme Court of the relevant jurisdiction to make a declaration that an existing law cannot be interpreted consistently with a human right. In those circumstances, the declaration is provided to the responsible Minister for them to consider whether to amend the draft law.⁴⁶

4.3 Religious exemptions in federal anti-discrimination law

52. Federal anti-discrimination laws contain exemptions for religious bodies and educational institutions established for religious purposes.
53. The *Sex Discrimination Act 1984* (Cth) (SDA) makes it unlawful to discriminate against a person on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, breastfeeding and family responsibilities,⁴⁷ in areas of public life including employment, education and the provision of goods, services and facilities.⁴⁸
54. However, it is not unlawful for a religious body to discriminate on one of the grounds set out in the SDA in relation to:
- the ordination or appointment of priests, ministers of religion or members of any religious order
 - the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order
 - the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice,⁴⁹ and

- the provision of accommodation.⁵⁰
55. Under the SDA, discrimination on the ground of attributes protected by the SDA is also permitted in relation to any other act or practice ‘of a body established for religious purposes’ where that act or practice:
- conforms to the ‘doctrines tenets or beliefs’ of that religion, or
 - is necessary to avoid ‘injury to the religious susceptibilities of adherents to that religion’.⁵¹
56. However, exemptions for religious bodies under the SDA do not apply where:
- an act or practice is connected to the provision of Commonwealth-funded aged care or the employment of persons to provide that aged care⁵²
 - accommodation provided by a religious body is connected to the provision of Commonwealth-funded aged care.⁵³
57. Section 38 of the SDA permits educational institutions established for religious purposes to discriminate on the grounds set out in the SDA in connection with the employment of staff or the provision of education or training where:
- it is ‘conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed’, and
 - the educational institution ‘discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed’.⁵⁴
58. Section 35 of the *Age Discrimination Act 2004* (Cth) contains an exemption for unlawful age discrimination in relation to the acts and practices of bodies established for a religious purpose that is identical to section 37(1)(d) of the SDA (see paragraph [55]).
59. Each of the prohibitions of discrimination contained in the *Fair Work Act 2009* (Cth) discussed at paragraph [48] are subject to exemptions where the adverse action, term or termination:
- relates to the staff of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed
 - is in good faith, and
 - is to avoid ‘injury to the religious susceptibilities of adherents of that religion’.⁵⁵

5 Experiences of religious discrimination or vilification

60. Australia is a diverse country, comprised of people of many different faiths and beliefs. Although Australia is a largely tolerant society, discrimination and

vilification on the basis of religion or belief is an experience faced by some in our community.

61. In the 2011 Australian census, the main reported faith responses continued to be the major Christian denominations, Catholic (25%) and Anglican (17%). However, Buddhism (2.5%), Islam (2.2%), Hinduism (1.3%) and Judaism (0.5%) were among other faiths reported at significant levels. Many more reported adherence to other Christian denominations and smaller religions, while 22.3% chose 'No religion'.⁵⁶
62. The Commission observes that people in Australia have generally been able to manifest their religion or belief without significant obstacles or impediments.
63. The Commission's survey as part of the 2014 *Rights & Responsibilities* consultation asked how well respondents thought the right to freedom of religion is protected in Australia:
 - 37% of respondents considered the right to freedom of religion as extremely well or well protected
 - 44% considered religious freedom either moderately or slightly protected
 - 10% considered religious freedom is not at all protected in Australia.⁵⁷
64. The freedom to manifest religion or belief relies upon feelings of safety, generated by a culture of tolerance and acceptance.
65. Discrimination may occur in the form of public harassment, prejudice, violence, and myriad forms of unequal treatment. Fear of discrimination and prejudice may restrict people from practising their religion, disclosing to others that they are religious, or presenting themselves as visibly religious (such as through their clothing). It may also impact other aspects of life.
66. Consultations undertaken by the Commission have found that some Muslim Australians, for instance, have altered their participation in public life and cancelled public events due to fears of being attacked or abused for their religion.⁵⁸
67. Several submissions to the Commission's 2014 *Rights & Responsibilities* consultation highlighted the negative social impacts of public calls to ban the religious dress of Muslim women and controversy around planning applications for mosques.⁵⁹ These impacts include increased safety concerns for Muslim women, and consequential impacts on the right to freedom of religion and freedom of movement.
68. The Scanlon Foundation's 2015 *Australians Today* survey found high rates of reported discrimination by members of faith groups. More than 20% of surveyed Christians, Buddhists, Hindus, Muslims and Jews all reported discrimination on the basis of skin colour, ethnic origin or religion over the past 12 months.⁶⁰ However, instances of discriminatory behaviour done specifically on the basis of religion were not isolated in the data.

69. This survey found significantly more negative attitudes toward Muslims than Christians and Buddhists.⁶¹ It also found strong negative attitudes towards immigrants from Middle Eastern countries compared to immigrants from other parts of the world.⁶²
70. A study commissioned by the Challenging Racism Project of Western Sydney University and the Islamic Sciences and Research Academy found 'high experiences' of racism by members of the Muslim community. A majority (57%) of respondents had experienced racism at least sometimes in at least one of the situations noted in the study (for example, in the workplace, at school, etc).⁶³ Surveyed Muslims who stated they considered religion to be 'very important' in daily life agreed that there is racial prejudice in Australia, at slightly higher rates than the total surveyed Muslim population. Those who agreed that Islam is consistent with Australian norms and society also agreed that there is racial prejudice at slightly higher rates than the total sample.⁶⁴
71. A number of groups representing members of particular religious communities record instances of discrimination, abuse and prejudice on the basis of religion.
72. The Executive Council of Australian Jewry releases an annual report on anti-Semitism in Australia, including data and extensive information about anti-Semitic incidents and discourse.⁶⁵ In the most recent reporting period, covering 1 October 2015 – 30 September 2016, 210 anti-Semitic incidents were logged, including 12 physical attacks, 22 instances of property damage and vandalism, and dozens of instances of abuse, harassment, intimidation, and threats.⁶⁶ Anti-Semitic incidents occur regularly 'around synagogues on the Jewish Sabbath'.⁶⁷ The report notes that many instances go unreported and are therefore not reflected in the data.⁶⁸
73. There are also several recently established groups dedicated to reporting anti-Muslim or anti-Islam behaviour and sentiments. Islamophobia Register Australia and Islamophobia Watch Australia have begun to aggregate data and information, and allow those who witness Islamophobia to report it.⁶⁹
74. Attacks on places of worship and on people who are visibly religious (for example, through their clothing, where they go to school, or other characteristics) are regularly reported in the news media. Attacks on and threats towards mosques and Islamic prayer rooms,⁷⁰ synagogues,⁷¹ and churches⁷² occur frequently, as do instances of public abuse and physical attack on people perceived to belong to a particular religion, such as Muslims,⁷³ Jews,⁷⁴ and Sikhs.⁷⁵

6 Freedom of religion in Australia

6.1 *Does Australia need increased protection for freedom of religion?*

75. For many years, the Commission has advocated for freedom of religion or belief to be a protected attribute under federal anti-discrimination law. The

Commission has suggested a number of approaches that could be taken to such a reform.

76. For example, in 2011, the Commission recommended that the attributes of freedom of religion covered by the Commission's existing ILO jurisdiction under the *Australian Human Rights Commission Act 1986* (Cth) and by the *Fair Work Act 2009* (Cth) should be the basis of this new legal protection.⁷⁶
77. In 1998, the Commission proposed wider-reaching reform in relation to freedom of religion, via the proposed enactment of a Religious Freedom Act, which would recognise and give effect to the freedom of religion or belief in Australian law.⁷⁷ The Commission also recommended that this Act should proscribe the advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence as required by article 20 of the ICCPR and that Australia should withdraw its statement of interpretation in relation to article 20.⁷⁸
78. The Commission's 1998 report was considered in 2000 by the Joint Standing Committee on Foreign Affairs, Defence and Trade and the then Australian Government. At that time, their view was that a Religious Freedom Act was not necessary to better protect freedom of religion in Australia.⁷⁹
79. The Commission remains of the view that the Australian Government should consider expanding the circumstances in which anti-discrimination law protects against discrimination and vilification on the basis of religion.
80. Currently, at a federal level, the circumstances in which religion is a protected attribute is limited to some ethno-religious groups under the RDA, the *Fair Work Act 2009* (Cth) and the Commission's complaint's jurisdiction, described at paragraphs [42]-[44]. Some protection is offered by state and territory legislation, however this is inconsistent across jurisdictions.
81. Ensuring that religion generally is protected would further incorporate the right to non-discrimination into Australian law. It would also provide enforceable remedies for people who experience discrimination or vilification on the basis of religion in an area of public life, for example a person whose rental application is refused because the home owner doesn't want people of a particular religion living in the property.

6.2 *Balancing freedom of religion and the right to non-discrimination*

82. As described in section 3.1, under article 18 of the ICCPR, although the freedom to adopt or hold a religious belief is absolute,⁸⁰ the freedom to manifest that belief in worship, observance, practice or teaching may be subject to legitimate limitations.⁸¹
83. Consequently, the right to manifest freedom of religion or belief must necessarily be balanced with other competing human rights. In Australia, balancing the right to freedom of religion or belief with the right to equality and

non-discrimination, particularly in relation to LGBTI people, has been a source of concern.

84. As noted above, Australian anti-discrimination law seeks to balance the exercise of freedom of religion with protection from discrimination through the use of religious exemptions. However, there is disagreement within the Australian community about the extent to which religious organisations should be subject to anti-discrimination laws and the scope of religious practices that should be exempt from these laws.
85. In consultations with the Commission, some stakeholders have raised concerns that current federal and state anti-discrimination laws do not appropriately balance the prohibition against discrimination, particularly discrimination against LGBTI people, and the protection of the right to freedom of religion or belief.
86. On one hand, some argue that anti-discrimination laws do not adequately protect LGBTI people from discrimination, in part due to the exemptions provided to religious bodies.⁸² Others consider that these exemptions are too narrow and do not provide sufficient scope for religious organisations to manifest their beliefs and act in a way that is consistent with their purpose, unjustifiably limiting freedom of religion.⁸³
87. Particular questions raised by current exemptions for religious bodies include:
 - whether exemptions to anti-discrimination laws are, in principle, an appropriate means for protecting religious freedom
 - the appropriateness of religious bodies receiving government funding for the provision of services being allowed to discriminate in relation to their clients and staff
 - whether the removal of religious bodies providing Commonwealth-funded aged-care services from the scope of the exemptions for religious bodies in the SDA is a proportionate limitation on freedom of religion
 - the appropriateness of the ‘doctrines, tenets or beliefs’ test, particularly in relation to courts and tribunals attempting to identify the ‘doctrines, tenets or beliefs’ of a religion
 - whether exemptions should allow for consideration of the impact of discrimination on the person discriminated against.
88. This submission does not attempt to resolve the above tensions. Rather, the Commission seeks to highlight the complexity of balancing competing rights and report the concerns stakeholders have raised through the Commission’s work in this area.
89. The Commission’s submission to the Senate Legal and Constitutional Affairs Committee’s inquiry into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012 dealt with some of these issues. Ultimately, the then

government did not proceed with that Bill. However, it is worth noting that the Commission recommended that the Australian Government consider including in that Bill provision for ensuring an appropriate balance between freedom of religion or belief and other human rights, including particular issues regarding services and facilities funded by the Commonwealth.⁸⁴

90. The Commission remains supportive of further consideration of a mechanism for ensuring an appropriate balance is maintained between the right to freedom of religion or belief and other human rights.

7 Work of the Commission

91. In the period since the Committee's 2000 report, the Commission has published the following materials on freedom of religion or belief:

- [*Freedom of religion and belief in 21st century Australia*](#): the Commission commissioned the Australian Multicultural Foundation, in association with Monash University and RMIT University, to prepare this report. Published in 2011, the report captures views expressed in consultations and submissions on freedom of religion or belief in Australia.
- [*Submission to the Attorney-General's Department review of Consolidation of Commonwealth Discrimination Law*](#): in 2011, the Commission provided an extensive submission to the Attorney-General's Department on consolidating Commonwealth anti-discrimination law into a single Act, which included recommendations relevant the right to freedom of religion or belief.
- [*Submission to Senate Inquiry into 2012 Human Rights and Anti-Discrimination Bill*](#): the Commission made a submission to the Senate Legal and Constitutional Affairs Committee's inquiry into this Bill, which included consideration of exemptions to anti-discrimination law for religious bodies.
- [*Swamy v Percival \[2013\] AusHRC 66*](#): the Commission published this report on its inquiry into a complaint of discrimination in employment on the basis of religion.
- [*Rights & Responsibilities Consultation Report*](#): this report sets out the process and outcomes of the *Rights & Responsibilities* consultation, undertaken in 2014 by the then Human Rights Commissioner, Mr Tim Wilson.
- [*Religious Freedom Roundtable*](#): in 2015, Mr Wilson established a Religious Freedom Roundtable process, publishing an [*Issues Paper*](#), [*Statement of Purpose and Guiding Principles*](#) and a [*Summary Paper*](#) of discussions of faith and non-faith organisations at the inaugural Roundtable on 5 November 2015.

92. The Commission's advocacy work includes engagement with members of religious communities as it pertains to other aspects of their human rights, for instance racial discrimination or sex discrimination. Discrimination based on religion was consistently raised at the consultations that took place to mark the 40th anniversary of the RDA.⁸⁵
93. Commissioners in recent years have also advocated for aspects of religious freedom, including in respect of the right to wear religious attire in public,⁸⁶ to observe religious practices,⁸⁷ and generally.⁸⁸ Commissioners have also spoken publicly against racially motivated attacks on members of religious communities.⁸⁹
94. The Race Discrimination Commissioner's community engagement with ethnic groups and organisations regularly involves contributions from religious and ethno-religious communities. For instance, in September 2016, the Race Discrimination Commissioner held an inaugural National Forum on Racial Tolerance and Community Harmony, attended by delegates representing racial and ethnic groups from across Australia, and heard from members of these communities.

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- ¹ The Paris Principles were adopted by UN General Assembly resolution 48/134 of 20 December 1993. At <http://www.un.org/documents/ga/res/48/a48r134.htm> (viewed 8 February 2017).
- ² Consequently, this submission does not address freedom of religion or belief in relation to proposals to expand the definition of a civil marriage under the *Marriage Act 1961* (Cth) to include all couples, regardless of sex, sexual orientation, gender, identity or intersex status. More information about the Commission's position on this subject can be found in the Commission's recent submission to the Select Committee inquiry on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill. See Australian Human Rights Commission, Submission No 72 to Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill, *Inquiry into the Commonwealth Government's Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill*, 18 January 2017. At <http://www.aph.gov.au/DocumentStore.ashx?id=d0a12a9a-5c3f-42eb-9519-2372396e2166&subId=462693> (viewed 8 February 2017).
- ³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- ⁴ *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, UN GAOR, 36th sess, UN Doc A/36/684 (1981). At <http://www.un.org/documents/ga/res/36/a36r055.htm> (viewed 8 February 2017).
- ⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- ⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 14(2).
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