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 "we have general anti-vilification provisions in the Criminal Code, which provide substantial criminal penalties for these types of crimes, including against people on the basis of their religion".
Please provide the Committee with a list of all such provisions.
1. In respect of each anti-vilification provision in the Criminal Code:
a. how many times has a person been charged;
b. how many times has a person been prosecuted; and
c. how many times has a person been convicted successfully
2. In respect of each example provided in response to questions 2(a)–(c), please provide a short summary of the offence (including details of the conduct constituting, or allegedly constituting, the offence).

The response to the question is as follows:

List of general anti-vilification provisions in the Criminal Code

The key provisions in the schedule to the *Criminal Code Act 1995* (Cth) (Criminal Code) regarding anti-vilification are:

- section 80.2A – Urging violence against groups
- section 80.2B – Urging violence against members of groups
- section 471.12 – Using postal or similar service to menace, harass or cause offence
- section 474.17 – Using carriage service to menace, harass, or cause offence

Question 1

The Australian Federal Police advises that the following charges were laid between 1 January 2020 and 31 December 2021 :

- Section 80.2A – Urging violence against groups. – **1 offender has been charged**
- Section 80.2B – Urging violence against members of groups. – **0 offenders have been charged**
- Section 471.12 – Using postal or similar service to menace, harass or cause offence. – **2 offenders have been charged**

- Section 474.17 – Using carriage service to menace, harass, or cause offence. – **20 offenders have been charged**

With regard to sections 471.12 and 474.17, the AFP notes that the offenders were charged with multiple counts.

The Commonwealth Director of Public Prosecutions advises that the information set out in the table below reflects a search of all records held by the CDPP (which predates the commencement of each of these offences).

Relevant Offence Criminal Code	Number of Prosecutions commenced	Number of convictions recorded
Section 80.2A – Urging violence against groups	2	0
Section 80.2B – Urging violence against members of groups	0	0
Section 471.12 – Using postal or similar service to menace, harass or cause offence	63	45
Section 474.17 – Using carriage service to menace, harass, or cause offence (includes 474.17(1) and 474.17A(1))	1190	1076

Please note that the information provided is qualified by the following:

1. "Prosecutions commenced" - this is defined to include the following records where the relevant provisions, namely sections 80.2A, 80.2B, 471.12 and 474.17 of the Criminal Code, are recorded as having commenced in the following phases: summary, committal, trial, defence appeal or prosecution appeal.
2. "Conviction" – this is defined to include where the relevant offences have been "Proven", and includes a finding of guilt where a conviction may not be recorded when sentenced.
3. The information relating to section 474.17 includes results for sections 474.17(1) and 474.17A(1).
4. The information is limited to matters that are prosecuted by the CDPP. Some of the relevant offences can be prosecuted by State/Territory police and/or prosecution agencies and the CDPP does not record those prosecutions.

Question 2 – Short summary of each offence [sic: at 2(a)-(c)]

Urging violence against groups and members of groups – sections 80.2A and 80.2B

Under section 80.2A, a person commits an offence if the person intentionally urges another person or a group to use force or violence against the targeted group, intends that force or violence will occur and is reckless as to whether the targeted group is distinguished by race, religion, nationality, national origin, ethnic origin or political opinion.

In addition, under subsection 80.2A(1), the use of force or violence must threaten the peace, order and good government of the Commonwealth. Subsection 80.2A(2) does not require that the force or violence would threaten the peace, order and good government of the Commonwealth. Accordingly, it carries a lower penalty of 5 years' imprisonment, compared to the penalty of 7 years for subsection 80.2A(1).

Section 80.2B contains the offence of urging violence against individual members of groups as opposed to groups as a whole. This offence complements the offence of urging violence against groups contained in proposed section 80.2A. Under section 80.2B, a person commits an offence if they intentionally urge another person or group to use force or violence against a person, they intend that the force or violence occur and they urge such force or violence by reason of their belief that the person is a member of a group distinguished by race, religion, nationality, national origin, ethnic origin or political opinion.

Similarly to section 80.2A, subsection 80.2B(1) requires that the force of violence threaten the peace, order and good government of the Commonwealth, while subsection 80.2B(2) replicates the offence in subsection 80.2B(1) but does not include this requirement. Accordingly, subsection 80.2B(2) has a lower maximum penalty of 5 years compared to the maximum penalty under subsection 80.2B(1) of 7 years imprisonment.

Subsection 80.2B(3) also clarifies that, for the purposes of the offences in subsections 80.2B(1) and 80.2B(2), it is immaterial whether the targeted person is actually a member of the targeted group. The relevant factor is that the person urging the force or violence believes they are.

These offences were designed to extend the urging community violence offence to cover circumstances in which a person urges a group to use force or violence against a group distinguished by national origin or ethnic origin (in addition to existing race, religion, nationality or political opinion).

Use of a carriage service to menace, harass or cause offence – s 474.17

Section 474.17 makes it an offence for a person to use a carriage service in such a way as would be regarded by a reasonable person as being, in all the circumstances, menacing, harassing or offensive.

The offence does not require that the recipient be in fact menaced or harassed. Instead, it provides that reasonable persons must regard the use of the carriage service, given all the circumstances, as menacing, harassing or offensive. This allows community standards and common sense to be imported into a decision on whether the conduct is in fact menacing, harassing or offensive.

Examples of the type of use of a carriage service the offence may cover include use that would make a person apprehensive as to their safety or well-being or the safety of their property, use that encourages or incites violence, and use that vilifies persons on the basis of their race or religion.

Use of a postal or similar service to menace, harass or cause offence – s 471.12

Section 471.12 makes it an offence for a person to use a postal or like service in such a way as would be regarded by a reasonable person as being, in all the circumstances, menacing, harassing or offensive.

This offence does not require that the recipient be in fact menaced or harassed. Instead, it provides that reasonable persons must regard the use of the postal or similar service, given all the circumstances, as menacing, harassing or offensive. This allows community standards and common sense to be imported into a decision on whether the conduct is in fact menacing, harassing or offensive.

In practice, the offence would cover material that would make a person apprehensive as to his or her safety or well-being or the safety of his or her property as well as material containing offensive or abusive language or derogatory religious, racial or sexual connotations.

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 Recommendation 20 of the Religious Freedom Review, and elsewhere in its response to the Religious Freedom Review, the Morrison Government promised that it would "propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review". Has the Government ever made such a formal proposal to State and Territory Governments or Attorneys-General? If so, please provide details and evidence that this proposal was, in fact, made formally. If not, 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 Ministers for Justice of each state and territory enclosing the Terms of Reference for the ALRC Review. This continued the consultation with jurisdictions following the formal distribution of the Government's response to the Religious Freedom Review. A copy of this letter, as sent to the Hon Mark Speakman SC MP, Attorney General of New South Wales, is at **Attachment A**.

The Government's response to the Religious Freedom Review is available on the website of the Department of the Prime Minister and Cabinet: https://www.pmc.gov.au/domestic-policy/taskforces-past-domestic-policy-initiatives/religious-freedom-review.

Additionally, the Government response included:

- a proposal for the creation of the Working Group to consider and implement the recommendations of the Religious Freedom Review;
- in-principle support of the recommendation for the New South Wales and South Australian Attorneys-General to consider amendments to their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity;
- in-principle support of the recommendation for states and territories to consider repealing references to blasphemy and abolish statutory or common law offences of blasphemy in their jurisdictions;
- in-principle support for jurisdictions to consider the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation;
- that jurisdictions 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.

ATTACHMENT A

The Hon Christian Porter MP
Attorney-General

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

2 2 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.

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 Recommendation 16 of the Religious Freedom Review, the Morrison Government promised that "[t]he Attorney-General will correspond with the New South Wales and South Australian Attorneys-General seeking their consideration to 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 line with the Panel's recommendations." Has the current or former Attorney-General ever corresponded with the NSW or SA Attorneys-General seeking their consideration to 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 line with the Panel's recommendations? If not, why not? If so, on what date(s) and could copies of the relevant correspondence please be provided to the Committee.

The response to the question is as follows:

Please refer to the Department's response to Senator O'Neill's related question of 25 January at **Attachment A**.

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 Recommendation 20 of the Religious Freedom Review, and elsewhere in its response to the Religious Freedom Review, the Morrison Government promised that it would "propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review". Has the Government ever made such a formal proposal to State and Territory Governments or Attorneys-General? If so, please provide details and evidence that this proposal was, in fact, made formally. If not, 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 Ministers for Justice of each state and territory enclosing the Terms of Reference for the ALRC Review. This continued the consultation with jurisdictions following the formal distribution of the Government's response to the Religious Freedom Review. A copy of this letter, as sent to the Hon Mark Speakman SC MP, Attorney General of New South Wales, is at **Attachment A**.

The Government's response to the Religious Freedom Review is available on the website of the Department of the Prime Minister and Cabinet: https://www.pmc.gov.au/domestic-policy/taskforces-past-domestic-policy-initiatives/religious-freedom-review.

Additionally, the Government response included:

- a proposal for the creation of the Working Group to consider and implement the recommendations of the Religious Freedom Review;
- in-principle support of the recommendation for the New South Wales and South Australian Attorneys-General to consider amendments to their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity;
- in-principle support of the recommendation for states and territories to consider repealing references to blasphemy and abolish statutory or common law offences of blasphemy in their jurisdictions;
- in-principle support for jurisdictions to consider the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation;
- that jurisdictions 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.

ATTACHMENT A

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Dear Attorney General

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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:

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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.

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 Recommendation 14 of the Religious Freedom Review, the Morrison Government promised that "[t]he Attorney-General will correspond with State and Territory Attorneys-General seeking their consideration to repeal references to blasphemy in line with the Panel's recommendation". Has the current or former Attorney-General ever corresponded with State and Territory Attorneys-General seeking their consideration to repeal references to blasphemy in line with the Panel's recommendation? If not, why not? If so, on what date(s) and could copies of the relevant correspondence please be provided to the Committee.

The response to the question is as follows:

Please refer to the Department's response to Senator O'Neill's related question of 25 January at **Attachment A**.

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 Recommendation 20 of the Religious Freedom Review, and elsewhere in its response to the Religious Freedom Review, the Morrison Government promised that it would "propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review". Has the Government ever made such a formal proposal to State and Territory Governments or Attorneys-General? If so, please provide details and evidence that this proposal was, in fact, made formally. If not, why not?

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- that jurisdictions should have regard to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights when drafting laws that would limit the right to freedom of religion.

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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.

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Yours sincerely

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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

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- the importance of protecting the rights of children to be free from discrimination in education
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Timeframe for reporting

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

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 Recommendation 13 of the Religious Freedom Review, the Morrison Government promised that "[t]he Attorney-General will correspond with State and Territory Attorneys-General seeking their agreement to abolish statutory or common law offences of blasphemy". Has the current or former Attorney-General corresponded with State and Territory Attorneys-General seeking their agreement to abolish statutory or common law offences of blasphemy? If not, why not? If so, on what date(s) and could copies of the relevant correspondence please be provided to the Committee.

The response to the question is as follows:

Please refer to the Department's response to Senator O'Neill's related question of 25 January at **Attachment A**.

ATTACHMENT A

Senate Legal and Constitutional Affairs Legislation Committee

Religious Discrimination Bill 2021 [Provisions]

Attorney-General's Department

Hearing date: 21 January 2022

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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 Ministers for Justice of each state and territory enclosing the Terms of Reference for the ALRC Review. This continued the consultation with jurisdictions following the formal distribution of the Government's response to the Religious Freedom Review. A copy of this letter, as sent to the Hon Mark Speakman SC MP, Attorney General of New South Wales, is at **Attachment A**.

The Government's response to the Religious Freedom Review is available on the website of the Department of the Prime Minister and Cabinet: https://www.pmc.gov.au/domestic-policy/taskforces-past-domestic-policy-initiatives/religious-freedom-review.

Additionally, the Government response included:

- a proposal for the creation of the Working Group to consider and implement the recommendations of the Religious Freedom Review;
- in-principle support of the recommendation for the New South Wales and South Australian Attorneys-General to consider amendments to their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity;
- in-principle support of the recommendation for states and territories to consider repealing references to blasphemy and abolish statutory or common law offences of blasphemy in their jurisdictions;
- in-principle support for jurisdictions to consider the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation;
- that jurisdictions 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.

ATTACHMENT A

The Hon Christian Porter MP
Attorney-General

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

2 2 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.

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 Recommendation 3 of the Religious Freedom Review, the Morrison Government promised that "[t]he Attorney-General will correspond with State and Territory Attorneys-General seeking their consideration of the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation and will propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review." Has the current or former Attorney-General corresponded with State and Territory Attorneys-General seeking their consideration of the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation and will propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review?

- If not, why not?
- If so, on what date(s) and could copies of the relevant correspondence please be provided to the Committee.

The response to the question is as follows:

Please refer to the Department's response to Senator O'Neill's related question of 25 January at **Attachment A**.

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 Recommendation 20 of the Religious Freedom Review, and elsewhere in its response to the Religious Freedom Review, the Morrison Government promised that it would "propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review". Has the Government ever made such a formal proposal to State and Territory Governments or Attorneys-General? If so, please provide details and evidence that this proposal was, in fact, made formally. If not, 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 Ministers for Justice of each state and territory enclosing the Terms of Reference for the ALRC Review. This continued the consultation with jurisdictions following the formal distribution of the Government's response to the Religious Freedom Review. A copy of this letter, as sent to the Hon Mark Speakman SC MP, Attorney General of New South Wales, is at **Attachment A**.

The Government's response to the Religious Freedom Review is available on the website of the Department of the Prime Minister and Cabinet: https://www.pmc.gov.au/domestic-policy/taskforces-past-domestic-policy-initiatives/religious-freedom-review.

Additionally, the Government response included:

- a proposal for the creation of the Working Group to consider and implement the recommendations of the Religious Freedom Review;
- in-principle support of the recommendation for the New South Wales and South Australian Attorneys-General to consider amendments to their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity;
- in-principle support of the recommendation for states and territories to consider repealing references to blasphemy and abolish statutory or common law offences of blasphemy in their jurisdictions;
- in-principle support for jurisdictions to consider the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation;
- that jurisdictions 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.

ATTACHMENT A

The Hon Christian Porter MP
Attorney-General

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

2 2 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.

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 Recommendation 2 of the Religious Freedom Review, the Morrison Government promised that the "Attorney-General will correspond with State and Territory Attorneys-General seeking their agreement to future consideration of the International Covenant on Civil and Political Rights in their respective legislative processes, including any relevant jurisprudence and the Siracusa Principles". Has the current or former Attorney-General corresponded with State and Territory Attorneys-General seeking their agreement to future consideration of the International Covenant on Civil and Political Rights in their respective legislative processes, including any relevant jurisprudence and the Siracusa Principles?

- If not, why not?
- If so, on what date(s) and could copies of the relevant correspondence please be provided to the Committee.

The response to the question is as follows:

Please refer to the Department's response to Senator O'Neill's related question of 25 January at **Attachment A**.

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 Recommendation 20 of the Religious Freedom Review, and elsewhere in its response to the Religious Freedom Review, the Morrison Government promised that it would "propose the establishment of a Council of Attorneys-General Working Group to consider all relevant recommendations of the Review". Has the Government ever made such a formal proposal to State and Territory Governments or Attorneys-General? If so, please provide details and evidence that this proposal was, in fact, made formally. If not, 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 Ministers for Justice of each state and territory enclosing the Terms of Reference for the ALRC Review. This continued the consultation with jurisdictions following the formal distribution of the Government's response to the Religious Freedom Review. A copy of this letter, as sent to the Hon Mark Speakman SC MP, Attorney General of New South Wales, is at **Attachment A**.

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- in-principle support of the recommendation for the New South Wales and South Australian Attorneys-General to consider amendments to their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity;
- in-principle support of the recommendation for states and territories to consider repealing references to blasphemy and abolish statutory or common law offences of blasphemy in their jurisdictions;
- in-principle support for jurisdictions to consider the use of objects, purposes or other interpretive clauses in their anti-discrimination legislation;
- that jurisdictions 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.

ATTACHMENT A

The Hon Christian Porter MP
Attorney-General

The Hon Mark Speakman SC MP
Attorney General
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SYDNEY NSW 2001

2 2 FEB 2019

Dear Attorney General

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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.

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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:

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- the importance of protecting the rights of children to be free from discrimination in education
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Scope of the reference

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Consultation

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Timeframe for reporting

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