

The First Interim Report

- 2.1 The First Interim Report (the Report) was tabled in November 2017 and focused on the legal foundations of freedom of religion and belief in Australia. The Sub-Committee held three public hearings with lawyers, human rights organisations, and legal academics. This Chapter gives a brief overview of the findings of that Report.
- 2.2 The Report began with a discussion of international human rights law in Chapter 2, and in particular the International Covenant on Civil and Political Rights (ICCPR). Article 18 provides for freedom of religion or belief and has been the touchstone of much of this inquiry so far.
- 2.3 Along with the Universal Declaration of Human Rights (UDHR), the ICCPR is the most important international human rights instrument. Australia has ratified the ICCPR but not adopted it formally into domestic law, although some ICCPR rights do have legislative protection. The Report noted that Article 26, the right to non-discrimination, does have legislative protection in Australia, and that with limited protection for religious freedom “there is a risk of an imbalanced approach to resolving any conflict between the right to freedom of religion or belief and other rights”.¹
- 2.4 Other international instruments also have a role in human rights law including religious freedom. The Report gave attention to some of these, including the Siracusa Principles, the UNESCO Principles on Tolerance, and various UN Human Rights Committee General Comments, all of which could provide guidance on how to implement protection for freedom of religion in Australia.

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

- 2.5 Chapter 3 of the Report discussed the definition of freedom of religion, as well as its scope and its limitations. There is broad agreement on several key issues. Importantly, the right to freedom of “religion or belief” includes “thought” and “conscience” and is not limited to theistic belief systems. Non-theistic beliefs and the right not to profess any beliefs at all are also covered by the right to freedom of religion and belief.
- 2.6 The right to hold a religion or belief is absolute; in distinction, the right to manifest a religion or belief is subject to some limitations. This is also broadly accepted, although exactly what limitations are appropriate is more contentious.
- 2.7 Article 18 also contains other phrases, the importance of which is accepted but the interpretation of which is more difficult. For example, the right to religious freedom is held both “individually” and “in community with others”. The extent to which the right is merely personal and private and the extent to which it is communal and public has been a common point of discussion through the Inquiry.
- 2.8 The rights of parents and guardians with respect to the religious and moral education of their children are also protected. There is some disagreement on the implications of this in the context of public education and the rights of children.
- 2.9 Chapter 4 addresses Australia’s federal protection of religious freedom, and finds that there is broad agreement that this protection is limited. The Constitution prohibits the Commonwealth from restricting religion, and there are some implied Constitutional rights, including to freedom of religious expression and association. But these protections are not absolute, nor do they prohibit restrictions at state or territory level, and there is no explicit protection of the right.
- 2.10 The Report noted that Australia’s long history of religious tolerance and freedom is in large part due to the effect of the common law, and the “general principle of Australians being free to act as they wish unless a law specifically prohibits them”.² Some parties are concerned that this general freedom is being slowly eroded, or may be threatened by legislation, including legislation which protects other rights which may be in conflict with religious freedom.
- 2.11 There are several main suggestions for strengthening legislative protection for religious freedom at federal level, including a bill of rights, a dedicated religious freedom act, a religious discrimination act, or a variation or combination of these. There has also been much discussion about the

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

- effectiveness and appropriateness of existing religious exemptions and exceptions within federal non-discrimination law.
- 2.12 The Report considered the range of arguments for and against these suggestions, without putting forth any recommendations. Since tabling the Report, the Sub-Committee has continued to receive evidence on these matters, with a wide range of opinions being given. Although there appears to be general agreement that the Commonwealth should take measures to strengthen legislative protection for religious freedom, there is no unanimity on how this is best achieved, and there is much debate about how to balance conflicting rights and whether there would be unintended consequences of particular types of legislation.
- 2.13 The Report gave attention to existing state and territory laws in Chapter 5, noting in particular the Victorian Charter of Rights and Responsibilities and the ACT Human Rights Act, which have both been put forth as examples of effective human rights instruments upon which a federal instrument could be based. Three state governments made written submissions, and the ACT government made a submission and appeared at a public hearing in Canberra in 2017. The Victorian Multicultural Commission and Equal Opportunity Tasmania also made submissions and appeared at public hearings during the second part of the Inquiry.
- 2.14 One issue noted by the Report is the inconsistency across jurisdictions of legislative protection of human rights. A common argument in favour of federal religious freedom legislation is that it would make protections consistent.
- 2.15 Chapter 6 canvassed various ideas for how to implement the ICCPR in Australia, stating that there “has been general agreement about the need to formally implement the right to freedom of religion or belief”.³ There is a variety of opinions on whether a bill of rights is either desirable or achievable. There are also different opinions on other possible legislative measures. Despite this, there is general agreement that religious freedom should be protected in Commonwealth law, however this is achieved.
- 2.16 Perhaps the most contentious issue has been how to balance religious freedom with other human rights. In contemporary society and politics, this conflict is most apparent with regard to the rights to equality and non-discrimination. It can also arise when considering the right to freedom of speech. These issues were discussed at length in Chapter 7. The Report discussed at some length the “many varying arguments” and commented

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

that “striking the right balance between these competing rights is a challenging and delicate task”.⁴

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

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

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