

Chair's Foreword

It is evident that the right to freedom of thought, conscience and religion is a fundamental human right and is the essence of a free society. It was recognised in the Universal Declaration of Human Rights in 1948 and is now enshrined in article 18 of the International Covenant on Civil and Political Rights. It includes the freedom to have or to adopt a religion or belief, and the freedom, either individually or in community with others to manifest one's religion or belief in worship, observance, practice and teaching.

While we have a federal *Sex Discrimination Act 1984*, a *Race Discrimination Act 1975*, a *Disability Discrimination Act 1992* and an *Age Discrimination Act 2004*, there is no dedicated federal law to protect against discrimination on the ground of religious belief or activity, despite our international obligation to do so.

This is the basis on which the Religious Freedom Review recommended that the Commonwealth develop a Religious Discrimination Act to render it unlawful to discriminate on the basis of a person's religious belief or activity.

This is what this bill seeks to do – to remedy this gap in our discrimination laws and to protect people of faith against discrimination.

Australians have the right to enjoy religious freedoms, but as the Religious Freedom Review noted, the protection of difference with respect to belief or faith in a democratic, pluralist country such as Australia requires constant vigilance. This is particularly relevant for minority religious groups who are currently more likely to suffer from direct discrimination, but also for Christians whose genuinely held religious views are increasingly being silenced.

In this inquiry almost all submitters and witnesses recognised the importance of protecting the right to be free from discrimination on the grounds of religious belief and activity, as did 95 per cent of respondents to the committee's survey on this question.

However, significant differences arose in how these protections can best be achieved. The committee acknowledges this legislative package has been contentious and considers there has been substantial confusion and misinformation about parts of the legislation, particularly around statements of belief and the applicability of the legislation to schools and in workplace contexts. However, it is noteworthy that 82 per cent of the over 48,000 respondents to the committee's survey supported the religious discrimination legislative package currently before the Parliament.

In relation to religious schools, it is important to recognise that the ability for religious bodies to act in accordance with their faith is an essential element of the right to

freedom of religion. International human rights law recognises the importance of ensuring the autonomy of religious institutions. The ability of religious bodies, including schools, to uphold their ethos through employment and enrolment policies is a manifestation of the right to freedom of religion.

It is often said that religious values are 'more caught than taught'. Therefore, the ability for religious schools to recruit those who can model the religious values and beliefs of a school in their interactions with students and their families is essential to preserving the general ethos and values of religious schools. Human rights law also recognises the importance of respecting the liberty of parents in ensuring the religious and moral education of their children. The committee recognises the concerns raised around this issue, however, much of the concerns regarding teachers and students being adversely treated because of relationships or sexuality are not issues of direct relevance to this proposed legislation. It is important to note that these bills would prevent discrimination on the grounds of religion – differential treatment on other grounds, such as sexuality, may still constitute discrimination under other anti-discrimination laws. The *Sex Discrimination Act 1984* currently includes exemptions that mean it is not discrimination for religious bodies to discriminate on the grounds of sex or sexual orientation. This religious discrimination legislative package does not affect the operation of these current exemptions and, as such, questions regarding these exemptions are best dealt with as part of the proposed review by the Australian Law Reform Commission.

In relation to statements of belief (clause 12), the committee heard a variety of different perspectives from submitters and witnesses as to the likely impact of this provision. It is important to note upfront that freedom of expression is necessary for the meaningful enjoyment of the right to freedom of thought, conscience, and religion or belief. A person's religious belief, or indeed lack of belief, is often of significance to their identity and manner in which they live their life. As such, it is important that people be able to explain, discuss, share and express their moderate genuine faith-based beliefs without the fear of complaints being brought to silence them.

Of course, the right to freedom of religion must be balanced against other fundamental human rights. A human rights-based framework stresses the principles of universality, equality and freedom and where rights conflict it is important to ensure that all human rights are protected as far as possible.

This committee, which has a decade of experience in applying a human rights lens to proposed legislation, is well-placed to consider this important balancing act. The inquiry drew submissions and testimony from all sectors of Australian society to assist it in this task.

After having carefully considered this evidence, the committee has concluded that the religious discrimination legislative package is, on the whole, a sensible and balanced approach to protect the right to freedom of religion. It reflects a tolerant and inclusive

society that understands the importance of faith to a pluralist democracy, but does not seek to impose those beliefs on, or injure, others. The bills operate as a shield to protect those who genuinely, and in good faith, live their lives according to their religion, from being discriminated against on this basis. The committee considers the bills provide adequate and appropriate safeguards to ensure that any limitation on rights are reasonable, necessary and proportionate.

However, the committee appreciates there are a wide range of views on this important and difficult topic, and considers it important to continue the conversation with the Australian people as to how to balance these rights. In particular, clauses 11 and 12 have been raised as of significant concern to many with questions raised as to how the law will apply in practice. Noting these provisions are somewhat unique in the legislative landscape and given its relationship to the protection of fundamental human rights, the committee would urge future governments to monitor the impact of this legislation on society and individuals and continually review this significant piece of legislation.

Subject to the recommendations made by the committee, we are of the view that the passage of the religious discrimination legislative package remains essential to protect and uphold the fundamental right to freedom of religion and belief.

