

# Review into the Framework of Religious Exemptions in Anti discrimination Legislation

## Terms of Reference 10 April 2019

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

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

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

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

## Scope of the reference

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

To avoid doubt, religious institutions for the purposes of this reference includes bodies established for religious purposes (including faith-based institutions) and educational

institutions conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

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

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

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

## **Consultation**

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

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

## **Timeframe for reporting**

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