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Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Submitted online: [www.ahp.gov.au](http://www.ahp.gov.au)

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

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistically diverse backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

We thank the Joint Standing Committee on Foreign Affairs, Defence and Trade for this opportunity to provide input into the Inquiry into the status of the human right to freedom of religion or belief.

### **Key Messages**

As a signatory to the International Covenant on Civil and Political Rights, (ICCPR) Australia made a commitment to the international community to protect the right to freedom of religious practice. This submission proposes to address the operation of that commitment as it relates to Australia's domestic obligations.

Almost 50 years prior to the operation of the ICCPR the framers of the Australian Constitution enshrined the right to freedom of religion in a document where very few other rights were deemed necessary to explicitly protect. 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,...". From its inception as a nation Australia has always understood the fundamental need for the state to protect the rights of individuals and communities to engage in worship free from persecution. The protection of this right cannot be overstated in terms of its importance to social cohesion and the successful experiment that is Australian multiculturalism. Australia affirmed that

understanding in 1972 when it signed the International Covenant on Civil and Political Rights. Particularly relevant to this inquiry are the terms of cl. 3 of Article 18, which state:

*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.*

Since that time Australia and its constituent States have continued to honour and strengthen its commitment to an inclusive and harmonious society through domestic legislative enactments and the ratification of important international instruments.

Increasingly, however, religious freedom is under threat from a small but vocal sector of the Australian populace. These threats include attempts to legislate for the prohibition of wearing of various forms of religious attire, most notably as it relates to women of Islamic faith but also as it relates to headdress worn by Sikh men. Such threats also relate to fears concerning the sale of food that complies with religious custom, most notably as it relates to halal certification. Additionally there have been disputes about the establishment of buildings and other sites that provide for religious observance, most notably as they relate to mosques, Islamic schools and Islamic cemeteries. Also affected have been Australia's Jewish communities who faced a marked increase in online attacks. This activity correlates to a small but vocal international movement opposed to the free expression of religion.

FECCA is concerned that much of this opposition is based upon misinformation and erroneous conclusions drawn about connections between religious observance and terrorist activity. FECCA urges the Commonwealth to assist in the correction of those misunderstandings. FECCA also maintains the position that it cannot be demonstrated that any proposed limitations on religious observance are "*necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*".

### **Summary of recommendations**

- **The Parliament should resist any attempts to curtail freedom of religion by refusing to pass any legislation seeking to prohibit the wearing of faith-based attire.**
- **The Parliament should resist any attempts to prohibit the sale of food that complies with religious custom.**
- **The Parliament should facilitate measures to cohesive and consistent human rights laws, through a federal human rights legislation or state and territory legislation, including laws on protecting freedom of religion or belief.**
- **The Parliament should give consideration to amending the *Racial Discrimination Act* to provide for similar protections against discrimination upon religious grounds. Alternatively the Parliament should consider enacting separate legislation to that effect.**
- **The Australian Government should take a more proactive role in providing accurate information to the public; in building open inter-faith dialogue; and in promoting and facilitating events such as 'mosque open days'.**
- **The Government should consider the adoption of an approach for all Commonwealth departments similar to that taken by the Australian Defence Force in its 'Guide to Religion and Belief'.**
- **The Parliament should ensure that all education and training providers in receipt of Commonwealth funding maintain open, inclusive and non-discriminatory practices and policies.**

## **Action taken to protect the freedom of religion or belief, to promote religious tolerance, and prevent violations or abuses of this right**

Australia is a signatory to a number of significant international instruments that entrench the freedom of religion and religious expression, including the *Universal Declaration of Human Rights of 1948* (UDHR) and *International Covenant on Civil and Political Rights, 1966* (ICCPR). Article 18 of the UDHR read with Article 2 provides key protections for freedom of religion or belief. This encompasses the right to manifest religion or belief in teaching, practice, worship and observance. ICCPR Article 18 contains a more detailed provision on religion or belief compared to the UDHR, and imposes an obligation on the State Parties to refrain from placing any limitations on religious freedom and expression unless such limitations are prescribed by law in order to ensure public safety, order, health ... rights and freedoms of others.

*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981* and United Nations Human Rights Committee General Comment 22, 1993 provide detailed information in relation to religious expression and about the international law obligation to protect freedom of religion or belief. These international instruments provide an ideal platform for future legislation on human rights and freedom of religion or belief.

Section 116 of the Australian Constitution, among other things, precludes the Commonwealth from enacting laws that prohibit free exercise of religion.<sup>1</sup> Although this provision does not provide an absolute guarantee against freedom of religion or belief, through judicial activism over many decades, the courts adopted a more human rights based approach, and have interpreted the section as providing fundamental guarantees, rather than mere imposition of restrictions on legislative power.<sup>2</sup>

Numerous diversity inclusive legislations and policies have been adopted by the Commonwealth and State and Territory Governments to promote religious freedom and prevent discrimination based on religious beliefs such as Racial Discrimination Act 1975 (Cth) and Australian Human Rights Commission Act of 1986 (Cth).

Victoria and the ACT have human rights Acts that include protection of freedom of religion or belief. FECCA recommends adopting measures to create uniformity of human rights laws across Australia. This recommendation is in line with recommendation 3 of the 2000 report produced by the Parliamentary Joint Standing Committee on Foreign Affairs on freedom of religion.<sup>3</sup>

The reported incidents of religious intolerance in Australia have risen over past few years.<sup>4</sup> There have been instances where children were discriminated against due to lack of flexibility in relation to school uniforms,<sup>5</sup> women targeted because of their attire, particularly

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<sup>1</sup> *Commonwealth of Australia Constitution Act, 1900*, S. 116.

<sup>2</sup> *Church of the New Faith v Commissioner for Payroll Tax (Vic)* (1983) 154 CLR 120, pp. 131-132. See further: Joint Standing Committee on Foreign Affairs, Defence and Trade, *Conviction with Compassion: A report on Freedom of Religion*, November 2000.

<sup>3</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *Conviction with Compassion: A report on Freedom of Religion*, November 2000.

<sup>4</sup> See further: The Express Tribune, *Alarming emergence of religious Intolerance in Australia*, 5 November 2015 and Martha Nussbaum, *The burqa and the new religious intolerance*, ABC, 23 Aug 2012.

<sup>5</sup> SBS, Sikh Student refused school enrolment for wearing Turban, 19 January 2017, accessible at: <http://www.sbs.com.au/news/article/2017/01/19/sikh-student-refused-school-enrolment-wearing-turban>

those wearing head covers such as hijabs or niqab<sup>6</sup> and a rise in online attacks against the Australian Jewish community.<sup>7</sup>

In some religions and cultures, attire, special diets, methods and times of worship are key components of the manifestation of the religion or belief. Lack of flexibility in relation to the aforementioned methods of religious expression can limit an individual's capacity to meaningfully engage in Australian society and economy. For instance, United Nations Human Rights Committee General Comment 22 elaborating on religious 'practice' states that it includes the wearing of distinctive clothing or head covering.<sup>8</sup> Dress restrictions through legislation or policies such as banning of hijab or niqab should amount to an infringement of rights under Australian law.

Under the current policies of the Australian defence forces, commanders and supervisors may grant permission to individuals who request to wear items of dress for religious and cultural reasons, provided certain safety ... conditions are satisfied.<sup>9</sup> 'Guide to Religion and Belief in the Australian Defence Force'<sup>10</sup> endeavours to create a culturally and religiously inclusive environment for defence force employees and public by providing information in relation to the current anti-discrimination legislation, accommodating dietary requirements, flexibility in relation to fasting and worship and death in service. It also provides an overview of a number of major religions in Australia and highlights some key practices in each of those religions. It is recommended that a similar approach is adopted by other Commonwealth departments and affiliated bodies to educate and encourage them to deliver culturally and religiously appropriate services.

FECCA was informed that, in some States and Territories the highest expenditure of certain religious institutions relate to security for places/buildings that are of religious importance i.e. the synagogues, religious burial grounds and mosques or other public buildings associated with a particular religion such as schools. Islamophobia has recently been fuelled by the global humanitarian crisis and attacks by extremist terror groups in western countries. Due to lack of education and opportunities to engage in a meaningful dialogue with other communities, people often link the extremist terror groups to Muslim communities in Australia, which further marginalise this community. Thus, Governments should adopt a more proactive role in educating public, building interfaith dialogues and facilitating and promoting events such as 'mosque open-days' to engage the general public in these broader discussions.

Commonwealth Attorney General's Department initiated productive and pragmatic discourses such as 'Australian Partnership of Ethnic and Religious Organisations' (APER0) provided an avenue to make a positive contribution to Australia's interfaith dialogue. Continuation of programmes such as these with sufficient resources will benefit the broader Australian community.

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<sup>6</sup> Steve Lillebuen, Chloe Booker, Liam Mannix, The Age, Muslim woman 'viciously attacked' on Swanston Street in Melbourne, 30 September 2015 accessible at: <http://www.theage.com.au/victoria/muslim-woman-viciously-attacked-outside-state-library-of-victoria-in-melbourne-20151029-gkmeu4.html> and Brendon Foster, WA Today, Muslim woman allegedly attacked with beer bottle in Perth's south, 19 November 2016, accessible at: <http://www.watoday.com.au/wa-news/muslim-woman-allegedly-attacked-with-beer-bottle-in-perths-south-20161219-gtdx47.html>

<sup>7</sup> Online Hate Prevention Institute, *After the Charlie Hebdo Attack: The line between Freedom of Expression and Hate Speech*, accessible at: <https://ohpi.org.au/line-between-freedom-of-expression-and-hate-speech/>

<sup>8</sup> United Nations Human Rights Committee, 'General Comment 22: The Right to Freedom of Thought, Conscience and Religion (Art 18)', 1993.

<sup>9</sup> Australian Defence Force, Guide to Religion and Belief in the Australian Defence Force, accessible at: [http://content.defencejobs.gov.au/pdf/triservice/Guide\\_to\\_Religion\\_and\\_Belief\\_in\\_the\\_ADF.pdf](http://content.defencejobs.gov.au/pdf/triservice/Guide_to_Religion_and_Belief_in_the_ADF.pdf)

<sup>10</sup> Ibid

## **Australian efforts to protect and promote the freedom of religion or belief in Australia**

Australia is one of the most multicultural nations in the world and has many policies to accommodate and assist people from diverse cultural, linguistic and religious backgrounds. FECCA supports the Government policies to increase the humanitarian intake as a response to the current global humanitarian crises. These persecuted minorities belong to numerous cultural and religious groups. Thus, we urge the Government to adopt measures to ensure that priority is given to refugees, based on need alone, irrespective of their religious, cultural or linguistic background.

Considering the negative rhetoric, in relation to need to certain religions, religious practices, and marginalisation of communities across the world, it is essential that the Australian Government implement the previous recommendations of this Committee, especially in relation to continuing and extending the programs that assist international non-governmental organisations to protect freedom of religion or belief.<sup>11</sup>

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<sup>11</sup> See, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Conviction with Compassion: A report on Freedom of Religion*, November 2000.