



VICTORIAN
WOMEN'S TRUST

The Religious Discrimination Bill: Fraught for Australian Women

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1. Introduction	2
2. What Does the Law Say?	3
2.1 Protective Status of Religion	3
2.1.1 Constitutional Law	3
2.1.2 Common Law	3
2.1.3 Statutory Law	4
2.1.4 The Australian Human Rights Commission	5
2.1.5 International Human Rights Law	5
2.1.6 Cultural and Social Protections	6
2.2 Relevant Legislation for Feminist Concerns	6
2.2.1 Sex Discrimination Act 1984	6
2.2.2 Tasmanian Anti-Discrimination Act 1998	7
2.2.3 NSW Abortion Law Reform Bill 2019	7
2.2.4 Children Legislation Amendment Bill 2019	8
3. Religious Freedom and Gender: A Case Study Analysis	9
3.1 Marriage Equality	9
3.2 Abortion Access	10
3.3 Royal Commission into Child Sexual Abuse	10
3.4 Safe Schools and Building Respectful Relationships	11
3.5 The Israel Folau Case	12
4. Is There a Need for Protection?	14
4.1 The Ruddock Review	14
4.2 The Religious Minority	14
4.3 The Religious Consensus	15
5. The Agenda for Religious Freedom	16
5.1 The Draft Religious Discrimination Bill	16
5.1.1 Statements of Beliefs (Clause 42)	16
5.1.2 Employer Codes of Conduct (Clause 8)	16
5.1.3 Allowing Discrimination (Clause 11)	17
5.1.4 Religious Organisations (Clause 11)	17
5.2 Amendments to the Draft Religious Discrimination Bill 2019	18
5.2.1 Religious Bodies	18
5.2.2 Healthcare Codes of Conduct	19
5.2.3 Religious Hospitals, Aged Care and Accommodation Providers	19
5.3 ALRC Review into Religious Anti-Discrimination Exemptions	19
5.4 AHRC National Discussion Paper	20
6. The Impact on Women, Children and Vulnerable Communities	21
6.1 Education	21
6.2 Healthcare Services	23
6.3 Mandatory Reporting	24
6.4 Offensive Speech	25
7. Concluding Comments	25

1. Introduction

As the national conversation on religious freedom in Australia culminates in the Commonwealth Government's *Religious Discrimination Bill 2019*, concerns over the balance of religious freedom and the rights of others demands attention.¹ Provisions for religious freedom and how they relate to the condition and equality of women are particularly troubling. To actively contribute to debate as advocates for the rights of women, an understanding of religion and religious discrimination in Australia becomes essential to integrating a gendered lens into policy decisions on religious discrimination. Consequently, this report is tendered to provide an understanding of the contemporary national debate on religious discrimination as it has progressed in relation to developments in;

- *Freedom of religious expression*
- *Abortion access*
- *Education reform*
- *Mandatory reporting*
- *the Draft Religious Discrimination Bill 2019*
- *the Australian Law Reform Commission's Review into Religious Anti-Discrimination Exemptions 2019*

and

- *the Australian Human Rights Commission: National Conversation on Human Rights 2020.*

In contextualising the Australian climate around religious freedoms and recent public affairs, this report will also tender an analysis of the effects of proposed reforms for on-going policies towards gender equality and the condition of women. It will be this report's ultimate contention that religious freedom is already subject to adequate protections in Australia, and that any further explicit right to religion is a response to the recent progression of events controversial to religious beliefs, such as marriage equality and gender reform.

The far-reaching scope of the draft *Religious Discrimination Bill 2019* and its dramatic departure from conventional discrimination law frameworks holds heightened risk for abortion and health service access, health and sexual education, responses to institutional child sexual abuse and offensive speech.² It is this report's conclusion that religious freedom protections will create a superseding right to religious dignity over the basic human dignity of vulnerable communities, particularly women.

Throughout this paper, referral to the *Religious Discrimination Bill 2019*, has been revised to reference the second exposure draft of the Bill released on the 10th of December 2019. The key differences between the two drafts are outlined in s 5.2.

2. What Does the Law Say?

The legal framework for human rights in Australia operates through a variety of instruments across federal and state jurisdictions. To navigate the range of legal protections and frameworks available to religious freedom, this paper will address the core legislative instruments involved. In section 2.1 the protective status of religion will be considered from legal standpoints ranging from international to statutory law. Other pieces of legislation relevant to gender equality and the rights of women and children, at risk from proposals for religious discrimination law will be addressed in section 2.2.

2.1 Protective Status of Religion

To actively engage in the religious freedom debate, an understanding of its current protective status in Australia is necessary. There are several existing protections established for religious freedom in Australia ranging from constitutionally implied freedoms to statutory law that establish a piecemeal framework of protections.³ With this understanding, advocates for women are better positioned to critically engage with the proposed reforms and identify the intersections at which they conflict with, and undermine the rights of women and strategies for gender equality.

2.1.1 Constitutional Law

Religious freedom enjoys limited protection under the *Australian Constitution*. It is only referenced in S.116, acting to restrict the Commonwealth Parliament's legislative ability to prohibit the free exercise or establishment of religion.⁴ The section, applicable only to Commonwealth legislation, cannot be extended to executive parliamentary action or that of the states.

Traditionally, the High Court has interpreted the section narrowly, taking the view that S.116 only prohibits laws that ban or prevent religious practice. The section does not prohibit regulations that enforce actions contrary to one's religious convictions.⁵

Additionally, the implied rights to freedom of political communication and freedom of association, have been extended to cases of religious expression and the manifestation of belief.⁶ The High Court has made rulings in the latter judgements of section 2.1.2, recognising the right of religious expression in the commentary of public affairs as pursuant to democratic interests, establishing a further relative constitutional protection.

2.1.2 Common Law

In *Adelaide Co of Jehovah Witness Inc. v the Commonwealth 1943*, the High Court held that although unsuccessful in claiming S.116 to overturn legislative action banning the Jehovah Witness entity, the Jehovah Witness Inc. was protected by S.51.⁷ The case evidences the existence and operation of effective checks and

balances on the Commonwealth reinforcing the intentions of S.116 and religious freedom.

Furthermore, the common-law principle applied in the interpretation of statutory Acts, better known as the legality principle, operates on the assumption that the Commonwealth does not intend to interfere with human rights unless explicitly stated.⁸ Therefore, any Act of the Commonwealth that contravenes the enjoyment of rights is invalid in nature if it is not expressly stated to do so. Historically the legality principle has been endorsed by the High Court in cases such as *Coco v The Queen 1994*, establishing its relevance to all fundamental common law rights, inclusive of freedom of religion.⁹

State established common law evidences state-based protections for religious freedom. One such case in NSW is *OV & OW v Members of the Board of the Wesley Mission Council*.¹⁰ The case is unique in its nature as it rules on a religious commercial service claiming exemptions from discrimination law pursuant to protections established for religious exemptions to the *Anti-Discrimination Act 1977 (NSW)*¹¹. The tribunal held that as heterosexuality was central to the organisations doctrinal beliefs, the commercial organisation had standing to claim exemptions from discrimination law to refuse service to a same-sex couple.¹²

Other relevant cases and common law foundations can be found in:

- *The Church of the New Faith v Commissioner for Pay-roll Tax (Vic) 1983*¹³
- *Evans v New South Wales 2008*¹⁴
- *Krygger v Williams 1912*¹⁵
- *Kruger v Commonwealth 1997*¹⁶
- *Australian Capital Television Pty Ltd. v Commonwealth 1992*¹⁷

2.1.3 Statutory Law

Federal statutory protections for religious freedom is drawn across special religious exemptions from existing discrimination Acts and the *Fair Work Act 2009*, the only statute explicitly protecting freedom of religion. The *Fair Work Act 2009* prohibits employment discrimination on the basis of religion, encompassing any 'adverse action' against both existing and prospective employees.¹⁸

At a federal level, religious freedoms are further safeguarded in exemptions and exceptions for religious bodies and individuals from anti-discrimination Acts like the *Sex Discrimination Act 1984* and the *Age Discrimination Act 2004*.¹⁹ These exemptions, particularly those found in the *Sex Discrimination Act* allow for religious beliefs to legitimate discrimination, for example, on the basis of sex, gender or sexuality in educational institutions (s 38).²⁰ Additionally, religious institutions may be exempt from anti-discrimination law regarding gender and sex in the appointment of priests, ministers or members of any religious order (s 37).²¹

State legislatures add to these protections by the concurrent and complimentary operation of Acts like the *Tasmanian Constitution Act 1934*, the *Human Rights Act 2004 (ACT)* and the *Charter of Human Rights and Responsibilities Act (Vic) 2006*.²² The *Tasmanian Constitution Act 1934*, enshrines religious protections in its state constitution to

*'guarantee freedom of conscience and the free profession and practice of religion.'*²³

In comparison, the two rights instruments enacted in Victoria and the ACT protect the demonstration, worship and practice of religion. Furthermore, both instruments require that proposed legislation is subject to a test of compatibility, similar to the parliamentary scrutiny required for Commonwealth legislation.²⁴ These tests ensure consistent human rights safeguards throughout state laws for all human rights, including freedom of religion.²⁵ According to the Australian Human Rights Commission religious discrimination protections exist in all states bar SA and NSW, the latter of which applies its protective provisions to ethno-religious groups.²⁶

Religious vilification laws in the ACT, QLD, VIC and TAS. also prohibit speech that attacks an individual due to their religion.²⁷ NSW employs a similar provision extended to ethno-religious groups, a classification also used in the UK that allows racial discrimination protections to encompass religious minorities. The ethno-religious provision was first established in response to rising anti-Semitism.²⁸

2.1.4 The Australian Human Rights Commission

Federally, individuals are entitled to application to the Australian Human Rights Commission (AHRC) and, for cases of employment discrimination resulting from religious prejudice, the Fair Work Commission. The AHRC may use its authority to inquire into complaints about the practices done by or on behalf of the Commonwealth, in addition to those enabled by Commonwealth law, that act against religious freedom. It is also within the jurisdiction of the AHRC to investigate complaints against the Commonwealth for violating articles 18 and 26 respectively, of the *International Covenant on Civil and Political Rights* and the *Declaration on the Elimination of All forms of Intolerance and of Discrimination based on Religion or Belief 1981*.²⁹

2.1.5 International Human Rights Law

Australia is a signatory to a number of international rights doctrines establishing an international obligation for domestic human rights compliance. UN documents such as the *International Convention on Civil and Political Rights (ICCPR)* and the *Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief* are binding international declarations of Australia's commitment to the protection of rights and freedoms, inclusive of religious freedom.³⁰

Article 18 of the *ICPPR* addresses the right to freedom of thought, conscience and religion. Whilst the article reaffirms article 18 of the *Universal Declaration of Human Rights 1948* in the establishment of religious freedom, it further stipulates a limitation clause permitting the regulation of such freedom by law as is necessary for public safety, order, health, morals and the rights of others.³¹ Article 26 of the *ICCPR* further establishes the right to non-discrimination, including on the basis of religion. It is of the AHRC's opinion that the ratification of such instruments creates for the absolute right to religious freedom, situated equally to other rights according to human rights principle.³²

2.1.6 Cultural and Social Protections

It is necessary to further note that aiding the domestic, federal and international framework of laws creating for the protection of religious freedom in Australia, are the cultural and social attitudes towards religion embedded in Australian society. In the 2016 Census data indicated that 61% of Australians were affiliated with a religion, Christianity comprising 86% of those identifying as religious. 30% of Australians identified as non-religious or in association of a secular belief such as Atheism.³³

Since the census in 2011, the denomination of secular belief members has increased by almost 50%.³⁴ Culturally and socially, religion still constitutes a large portion of life for everyday Australians through services in education, healthcare, community events and charity. According to the Ruddock Review's findings, which will be addressed in section 3.1

*'the Panel did not accept the argument, put by some, that religious freedom is in immediate peril.'*³⁵

2.2 Relevant Legislation for Feminist Concerns

It's the primary concern of feminist and human rights advocates that new religious freedom protections risk overriding current human rights protections for vulnerable people, particularly women.³⁶ The following pieces of legislation are essential in establishing the right of women to be free from discrimination and fostering gender equality. Section 5 will highlight how proposals for religious freedom conflict with these federal and state protections for women and children whilst the following section outlines the existing operation of discrimination law.

2.2.1 Sex Discrimination Act 1984

Sex discrimination is prejudiced behaviour that either directly or indirectly, targets an individual due to their 'sex, marital status, pregnancy or the potential to become pregnant'. The *Sex Discrimination Act 1984* makes it a legal offence to treat someone less favourably on this basis. The Act takes effect in areas of public life such as employment, education, goods & services, housing and Commonwealth law.

The majority of complaints made to the authority under this Act arise from the workplace.³⁷

In recognising the Act's history, it is important to note that the *Sex Discrimination Act* was revolutionary for its time, responding to an incredibly gender-segregated labour market. The Act made sexual harassment illegal for the first time in Australia, whilst helping the promotion of women to more senior and visible roles in the workforce. These developments paved the way to paid parental leave.³⁸

However, the Act is limited in its complaint-based process, requiring the victim to pursue reconciliation from the *AHRC*, which itself has limited power to enforce resolutions. To achieve a binding order, the case must be escalated to the Federal Court.³⁹ Since its inception the Act was updated again in 2013 to extend its protections to sexual orientation, gender identity and intersex status.⁴⁰ Special exemptions already exist within the *Sex Discrimination Act* to enable discrimination if legitimised by religious belief.

2.2.2 Tasmanian Anti-Discrimination Act 1998

The *Tasmanian Anti-Discrimination Act 1998*, a state based anti-discrimination Act, is explicitly highlighted and unconventionally overruled by the proposed federal draft *Religious Discrimination Bill 2019*. The Bill targets Tasmania's strong anti-vilification laws as the first example of national legislation that directly and intentionally overrides state discrimination law.⁴¹ Federally there are no protections against vilification and harassment on the basis of sexual orientation or sex and/or gender identity. Safeguards are only available from state Acts.

Tasmania's anti-vilification laws making it an offence to offend, humiliate, intimidate, insult or ridicule a person on the basis of attributes such as age, race, sexual orientation, gender, disability, marital status, pregnancy and breastfeeding, are singularly identified by the draft *Religious Discrimination Bill 2019* in s 42.1(b), overruling subsection 17(1) of the Tasmanian Act.⁴² The draft *Religious Discrimination Bill 2019* provides an exclusive right to religious speech over pre-existing state protections against discrimination.

2.2.3 NSW Abortion Law Reform Bill 2019

The *Abortion Law Reform Bill 2019* is a recent reform decriminalising abortion in NSW. The Bill decriminalises abortion for regulation as a healthcare issue.⁴³ Since its introduction into the NSW parliament the Bill stirred considerable public debate resulting in the legislation's delay. Reproductive rights and abortion access are fundamental issues of concern for the lived experiences of women in Australia and their bodily autonomy. The decriminalisation of abortion provides greater agency for a woman on her health, sexuality and family planning, factors further indicative of her economic security, career development and education.⁴⁴

However, despite being decriminalised in most states, abortion access in Australia remains highly regulated and inaccessible to a large population of vulnerable women, demonstrated most considerably in Tasmania, as will be addressed in Section 3.2. The debate surrounding the *Abortion Law Reform Bill 2019* arguably exemplifies the broader national conversation in Australia on abortion and the historical and cultural influence of the Church on state based laws regulating a woman's reproductive rights. The development and resolution of the reform holds significant relevance to the implementation and operationalisation of the draft *Religious Discrimination Bill 2019*, particularly as it further barriers access to abortion and other healthcare services for women.

The NSW reform outlines the procedure for the conscientious objection of healthcare practitioners. Conditional to this exemption is that the practitioner must take every reasonable step to refer their patient to an accessible service.⁴⁵ Similar conditions exist in all territories and states. Opposition to the reform in NSW echoes proposals made in the draft *Religious Discrimination Bill 2019* to remove these conditional premises, enabling practitioners to wholly abandon their patients seeking services against a practitioner's religious beliefs.⁴⁶ In the debate over the *NSW Abortion Law Reform Bill* pro-life advocates and those in support of religious protection claim that a practitioner's obligation of referral violates their freedom of religion.⁴⁷

2.2.4 Children Legislation Amendment Bill 2019

In response to the recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse 2017, the Victorian government has implemented a legislative amendment enacting mandatory reporter status for members of religious orders.⁴⁸ Criminal penalties exist in ACT, SA, WA and Tas. requiring religious ministers to act on suspicion and reports of abuse. The scope of their status as a mandatory reporter extends to confessions of abuse made in confessional, an unprecedented intervention in religious practice.⁴⁹

Religious leaders like Melbourne's Archbishop Peter Comensoli have publicly rejected the measures, principally on the inviolable nature of the confessional seal. When asked how he'd handle the new legislation, Comensoli reaffirmed his stance,

*'Personally, I'll keep the [confessional] seal.'*⁵⁰

The practical enforcement of these laws remains in question, with both canon law scholars and religious officials attesting to their refusal to comply with mandatory reporting.⁵¹ To take practical effect the legislation requires cultural and institutional change within the church, federal legal interference plausibly risks stagnating such change. Although a human rights precedent exists to authorise the prioritisation of public health and safety over ones right to religion, the certainty of its authority in Australian law cannot be guaranteed.⁵²

3. Religious Freedom and Gender: A Case Study Analysis

To understand the broad-sweeping effects of the proposed religious freedom protections, it is essential to pay attention to key case studies exemplifying the relationship between gender and religion in Australian society. Case studies such as marriage equality, abortion access, the Royal Commission into Child Sex Abuse, education reform and Israel Folau's unfair dismissal case demonstrate some of the most significant examples of how religious belief and its legal precedence may conflict with the rights of women and minorities.

3.1. Marriage Equality

The national conversation on religion and its role in Australia has occupied a strong presence in political debate since the Commonwealth's first engagement with marriage equality in 2013 by the Rudd campaign.⁵³ In 2016 the plebiscite on marriage equality legitimised the public discussion and scrutiny of LGBTQI+ relationships, families and their role in Australian society, drawing a national 'No vote' campaign from conservative groups and religious institutions like the Australian Christian's Lobby.⁵⁴ The 'No vote' platform featured heavy criticism on the effects of marriage equality on the role of gender and the wellbeing of children. Particular focus was taken to the vilification of LGBTQI+ resources on bullying and healthy relationships in schools, like Safe Schools (Vic) and the separate gender-violence program Building Respectful Relationships (Vic), as radical gender theory programs.⁵⁵ Having legislated marriage equality in 2017 the subsequent debate shifted to the balancing of religious protections against anti-discrimination law, citing the US case of *Masterpiece Cake-shop v Colorado Civil Rights Commission* as a cause for worry in Australia.⁵⁶

The US case centred on the rights of the owners of the *Masterpiece Cake-shop* to refuse service to a same-sex wedding on the basis of their religious belief. The case serves as a turning point in discrimination law as it relates to commercial services, and is arguably the basis for calls to extend the same precedent to Australian commercial services in the draft *Religious Discrimination Bill 2019*.⁵⁷

Following the enactment of the *Marriage Amendment Act 2017* and concerns over the rights of religious groups to discriminate, the Turnbull government convened an expert panel to investigate the adequacy of protections for religious orders continuing to uphold the traditional view of marriage.⁵⁸

As a historically gendered institution, the de-gendering of marriage by its expansion to the LGBTQI+ community reveals significant progress in the social understanding of gender in broader society. By destabilising restrictive, heteronormative gender roles in marriage, marriage equality marks another move towards a major departure of secular society from gender as a vessel of social authority.⁵⁹ Religious opposition

to marriage equality by contrast reflects its dependence on gender within its power structures and a resistance to its break down.

3.2 Abortion Access

Concurrent to the marriage equality debate abortion laws and services across Australia have regained prominent traction in both federal and state debates. With its recent decriminalisation in NSW, the regulations for abortion remain considerably varied across Australian jurisdictions and healthcare policy. Looking at the NSW reform provides a well-timed and appropriate case study to aid in understanding the position of abortion reform on the public agenda. Debate on the reform has arguably continued as proxy for the national discussion on religious freedom. A central focus of the legislative debate has been the rights of health practitioners with moral and religious convictions against abortion. Following a similar framework for abortion policies found across Australian jurisdictions, the reform enforces the practitioner to refer their patients to accessible services.⁶⁰

Despite the decriminalisation of abortion across Australian jurisdictions, access to abortion and reproductive healthcare services can still be a difficult and controversial path for many women. Rural and regional women are often most disadvantaged by a combination of restrictive termination periods and remote access to services.⁶¹

Additionally, despite the regulation of abortion as a healthcare procedure and its full legality in Tasmania, women are often forced to travel interstate for services following the closure of the state's only low-cost service provider. As elective abortion procedures aren't made available through Tasmania's public healthcare system, women from lower socio-economic backgrounds are required to travel to Victoria to access the service.⁶² Although predominantly legal, Australian women still face a number of barriers in accessing abortion and adequate reproductive healthcare services.

The social and political attitudes towards abortion, and its subsequent provision, have been exacerbated in the NSW debate. Misconceptions of late-term abortions and their frequency are often a crux in the rhetoric aiming to diminish the legal termination period, whilst contemporary claims are now being made against the increased access to services as a means of enabling sex selection. An upper house inquiry consulting both women's and medical groups found no evidence of sex selection or gendercide as an issue in NSW.⁶³ Religious communities have further voiced their antagonism towards the government's lack of religious consultation on the reform. With disregard to the medical gravity of abortion, religious attitudes appear to reinstate religious authority over an issue of female bodily autonomy, health and human rights.⁶⁴

3.3 Royal Commission into Child Sexual Abuse

The Royal Commission into Institutional Responses to Child Sexual Abuse in 2017 received thousands of testimonies, both of institutionalised abuse and its systematic cover-up by state and private organisations. Throughout the interviews conducted by the Royal Commission, over 58% of survivors testified to experiencing child sexual abuse in over 1691 religious institutions, 61.8% of those, Catholic.⁶⁵ Although the severity of abuse and the leniency of responses against perpetrators are not unique to religious institutions, they can be considered especially troubling in the context of the significant roles such institutions play in Australian society. Identified as key providers in education, health and social services for children; priests, ministers, elders and teachers have had trusted and unquestionable access to young Australians for over a century.⁶⁶

Having recognised these institutions as an epicentre of child sexual abuse, several states have legislated recommendations made by the Royal Commission to safeguard the welfare of children. One such recommendation that has recently taken effect in Victoria and caused controversy amongst religious groups in all Australian jurisdictions is the imposition of mandatory reporting status on religious members like those previously mentioned.⁶⁷ The legislation includes religious members within the legal responsibility to report abuse.

3.4 Safe Schools and Building Respectful Relationships

Fuelled by the development of marriage equality in 2013, education resources catered towards incorporating gender and sexuality within the school health curriculum became the target of consistent vilification and scrutiny. The Safe Schools program served as the catalyst for the campaign against gender and sexuality education in schools. Constructed as ‘radical gender theory’ programs, Safe Schools – an LGBTQI+ anti-bullying resource, was used to misidentify and destabilise a range of resources such as the Building Respectful Relationships Program Victoria.⁶⁸

Whilst the Safe Schools program was implemented to combat the dramatic levels of suicidality in LGBTQI+ youth and youth bullying culture, Building Respectful Relationships was designed from recommendations made in the Royal Commission into Family Violence (Victoria) 2016. Building Respectful Relationships, a preventative strategy for gender-based violence, recognises the role of relationship building and modelling in schools as a significant medium in addressing the educational inadequacies on topics of gender, respect, violence and power.⁶⁹ The program aims to promote gender equality by challenging restrictive gender roles and attitudes towards women. Taking a whole-school approach, the program asks students to question assumptions about gender that disadvantages men and women, whilst facilitating a culture of respect amongst both staff and student bodies.⁷⁰

Those opposed to gender education often exaggerate and overly sexualise the resources, deliberately misconstruing the programs as radical and sexually inappropriate for children. Despite research indicating their potential to reduce gender-based violence and improve LGBTQI+ inclusivity, an educational approach to gender constitutes the radical indoctrination of children according to conservative leaders such as Prime Minister Scott Morrison.⁷¹ When asked about the Building Respectful Relationships Program premised on preventing family violence, Mr Morrison agreed that it made his

*'Skin curl.'*⁷²

This reservation to preventative strategies against gender violence and their integral role in schools is troubling with recognition of current provisions enabling the right of religious schools and parents to exercise agency over the administration of 'moral' programs. On the basis of religious conviction or morality, students can be opted out of the said resource, and others like it under, its classification as a health education program.⁷³

3.5 The Israel Folau Case

Central to the momentum of religious freedoms on the national agenda is the unfair dismissal case of Israel Folau and the precedent it establishes for freedom of religious expression as it conflicts with anti-discrimination. Folau's social media postings which expressed that homosexuals among others would go to hell became the instigator for the termination of his contract with Rugby Australia, under the argument that Folau's Actions breached his contractual code of conduct.⁷⁴



In litigation since, Folau has sought remedies for unfair dismissal arguing the case that the said code breaches his right to religious expression, subsequently determining the code void at law.⁷⁵

Folau's case has garnered national attention serving as the test case for freedom of religious expression and its adjudication, if mediation was to fail, the case would have established common law for religious expression and its relationship to employment law. The development of Folau's case occurred concurrently to the introduction of the draft *Religious Discrimination Bill 2019*, complementing the federal statutory agenda on religious protections.

Having reached a settlement with Rugby Australia, the case has lost its capacity to establish legal precedent but remains a landmark instance in current socio-political affairs, epitomising the existing tension between religious freedom and freedom from discrimination in Australia.⁷⁶

4. Is There a Need for Protection?

Looking at the need for religious freedom protections involves more than just an understanding of existing protections, but also a critical viewpoint of the social and political attitudes towards religious groups. The narrative for religious freedom so far has been centred on issues key to the concerns of dominant faiths like Catholicism. However, in questioning the need for religious protections, the experiences of minority faiths must be a valued and included voice. Despite this report concluding broad satisfaction with the status of religious freedom, measures may be needed to reform existing frameworks to better include and protect the most vulnerable faiths.

4.1 The Ruddock Review

As a concession to opponents of marriage equality, the Turnbull government Commissioned a review into the nature and security of religious freedom in Australia. The *Religious Freedom Review*, otherwise known as the *Ruddock Review*, investigated the status and shortfalls of religious protections in Australia to provide 20 recommendations of action.⁷⁷ The Morrison government accepted and implemented 15 of the 20 recommendations. The remaining 5 are subject to review by the Australian Law Reform Commission in their report on religious exemptions in anti-discrimination law.⁷⁸ The review primarily reported on religious rights as they relate to the capacity to discriminate, a great focus of the review on religious educational institutions. The review acknowledged that religious freedom is in no immediate danger and further stipulated the panel's hopes that Commonwealth legislation would not be necessary to better existing protections.⁷⁹

4.2 The Religious Minority

Of particular concern to the need for religious safeguards, is perhaps the limited protections offered to religious minority groups in Australia. In the 2016 Census, 14% of religious people identified outside of Christianity. The most prominent of those religions are respectively, Islam, Buddhism, Hinduism and Sikhism.⁸⁰ Under the current legal framework religious protections are centred on issues of practice, manifestation and the right to religion, neglecting to incorporate safeguards against everyday instances of casual discrimination. This discrimination occurring against religious minorities often occurs through the racialisation of religion, assuming forms of islamophobic and xenophobic behaviour. Consistent and cross-jurisdictional victim testimony evidences the growing intolerance and discrimination experienced by religious minorities and particularly by Muslims in Australia.⁸¹

Due to the nature of this discrimination, religious minorities are left vulnerable to harassment and violence, falling through the shortcomings of religious discrimination law and the Racial Discrimination Act. In NSW, provisions in the state's *Anti-Discrimination Act 1977* were amended to reference 'ethno-religious' groups, similar to protections made in the UK, in an attempt to extended discrimination safeguards across race and religion.⁸² Whilst religious groups retain access to anti-vilification

legislation and state religious discrimination Acts, religious minorities have increasingly become the victim of casual hateful and violent acts on the basis of ethnicity or appearance. More work appears necessary to adequately protect people of minority faiths from prejudice and intolerance, but those measures must be specific and appropriate in substitute of the broad-sweeping reforms proposed in the draft *Religious Discrimination Bill 2019*.

4.3 The Religious Consensus

The position of the Australian religious community is varied on the topic of the draft *Religious Discrimination Bill 2019*. The Uniting Church has warned against the over-reaching protections of the Bill, particularly its clauses pertinent to the expression of religious statements of belief. In its submission, the church claims that the standard test for harm is made too high before deeming statements unlawful. Citing the Uniting Church's National Council, it was put forward that the Bill

*'leans too heavily in favour of religious freedom over other rights.'*⁸³

Alternatively, the Sydney Anglican Church Diocese and the Australian Federation of Islamic Councils have been strong advocates for increased powers within the Bill. The Sydney Anglican Church Diocese has criticised the undefined term 'malicious' as the threshold for harm, claiming it makes religious statements vulnerable to litigation. Additionally, the Anglican Church has voiced concerns over the exclusion of solely commercial religious organisations from the protections afforded to the Bill's definition of religious bodies.⁸⁴ The Federation of Islamic Councils have further called for the establishment of a positive right to religious freedom to ensure its equal priority to other rights.⁸⁵

5. The Agenda for Religious Freedom

The status of human rights and the adequacy of discrimination law is currently under national assessment by peak bodies like the Australian Human Rights Commission (AHRC) and the Australian Law Reform Commission (ALRC). The ongoing reviews and reports into human rights reform and religious freedom, substantiate the major platforms available for law reform advocacy. Amidst reviews such as the AHRC's National Discussion Paper on Federal Discrimination and the ALRC's Review into Religious Discrimination Exemptions and its Report on the Future of Law Reform, the Morrison government has released the draft *Religious Discrimination Bill 2019*. Together, these reviews and reports alongside the draft discrimination Bill constitute the key mediums for the progress and reform of religious freedom, as it intersects with other human rights and its operationalisation.

5.1. The Draft Religious Discrimination Bill 2019

Resisting calls to provide positive protections to religious freedom, the Morrison government recently released its draft *Religious Discrimination Bill 2019* intending to protect individuals in their possession and expression of religious beliefs. After receiving backlash from the religious community, a second draft of the Bill aiming to further appease religious concerns, was released on the 10th of December. Submissions on this draft are being considered by the government until the 31st of January 2020. The most pressing issues identified within the Bill, in its operation as a discrimination Act are as follows;

5.1.1. Statement of Beliefs (Clause 42)

The Attorney-General has insisted that the Bill will follow a similar architecture to the other concurrent discrimination Acts.⁸⁶ Despite these claims, the Bill marks a drastic departure from the legal convention of Australia's discrimination and human rights framework. In an unprecedented manner, the Bill explicitly overrides other federal and state discrimination Acts. Clause 42 of the Bill entitles that any statement of religious beliefs does not constitute discrimination by the standards of any discrimination law. This section in addition to broadly overruling federal and state human rights instruments, explicitly targets and undermines the anti-vilification laws of Tasmania's *Anti-Discrimination Act 1998* in subsection 42.1(b).⁸⁷ The Bill subsequently infringes state sovereignty whilst superseding and overruling other discrimination protections, departing from the convention of their concurrent and complimentary operation as established in Acts like the *Sex Discrimination Act 1984* and the *Racial Discrimination Act 1975*. Essentially, section 42 provides for the absolute freedom of religious expression and the priority of its protection over the entirety of Australian discrimination law.

5.1.2 Employer Codes of Conduct (Clause 8)

Arguably in response to the Israel Folau case, the Bill establishes in section 8 that employer codes of conduct for major companies of a revenue of \$50 million or more may constitute discrimination if they impend on religious expression.⁸⁸ The section would legally invalidate any workplace code of conduct for major businesses aimed at fostering a safe and inclusive environment by limiting harmful speech.

The arbitrary application of the clause to select companies, arguably provides evidence that the provision is reactionary and political rather than a practical policy for everyday Australians. A claim that is further reinforced upon recognising that the section is only applicable to businesses with a \$50 million revenue stream.

Premising the protection of religious expression on the financial capacities of a workplace fundamentally undermines the integrity of the section and the right it attempts to protect.

Furthermore, an exemption is made to the clause if the expression in question causes undue financial harm. If financial hardship is to be the test for the lawfulness of a person's rights, then the content section 8 aims to protect cannot and should not be considered a human right.

In addition to this provision pertaining to codes of conduct, healthcare service providers have been unconditionally included. As such, the section invalidates regulatory mechanisms that ensure patients have open access to healthcare services, despite a practitioner's individual belief.⁸⁹ Fundamentally the section intends to overrule safety nets that respect and balance a patient's right to healthcare with a practitioner's right to belief, reinstating a priority for religious expression over access to medical services.

5.1.3 Allowing Discrimination (Clause 11)

Clause 11, stipulated on a broad and widely encompassing definition of 'religious body', subsequently lowers the threshold to allow discrimination on the basis of religious belief.⁹⁰ If this new test for exemptions from discrimination law is to be taken as precedent, the threshold for allowing exemptions to discrimination laws like the *Sex Discrimination Act*, further risk being lowered. Not only does this clause exclusively exempt religious bodies from a well-established human rights framework, it broadly disables the law in operant Acts safeguarding vulnerable people, functioning to undermine the integrity and consistency of existing protections. Furthermore, if the ALRC's review recommends the repeal of religious exemptions in the *Sex Discrimination Act*, clause 11 becomes by default the test for discrimination. This clause would enable any religious body to lawfully discriminate on the basis of gender, sex, sexuality or pregnancy, as it pertains to its religious belief.

5.1.4 Religious Organisations (Clause 11)

Contrary to human rights convention, and the clear obligations made in international human rights law, the draft *Religious Discrimination Bill 2019* attempts to confer discrimination protections mandated for people, to the inclusion of businesses in subsection 11(5).⁹¹ The extension of the definition of 'person' to include corporations, unusually entitles corporations to pursue discrimination claims on the basis of their religious beliefs.⁹² The ramifications of this classification must be of consideration as it may present unknown complications for discrimination protections between individuals and corporations whilst undermining the key intentions of human rights law.

5.2 Amendments to the Draft Religious Discrimination Bill 2019

Following widespread community backlash from both opponents and advocates for the Bill, the Morrison government has released a second exposure draft of the *Religious Discrimination Bill 2019* on the 10th of December 2019 with eleven draft amendments.⁹³

The Morrison government has stated that the amendments have been drafted in response to concerns expressed by the community through its public submission period. This is grossly misleading. The revision of the Bill appears as a result of the last-minute intervention of a high-powered alliance of church groups, threatening to withdraw support if the government failed to expand the Bill's powers and protections. The alliance of churches including the Catholic Archdiocese of Sydney, the Anglican Diocese of Sydney, the Executive Council of Australian Jewry, the Australian National Imams Council and the Greek Orthodox Church in Australia, have essentially coerced the government into greater protections for religious organisations and commercial services.⁹⁴ Despite the public process for community consultations closing in October, this alliance of religious organisations has been granted the authority to demand further changes from the Morrison government the week of the Bill's introduction to parliament. This can hardly be equated as a broad community consultation.

Responding to their demands, the amendments appear to exclusively privilege the concerns of religious groups, neglecting recommendations made by organisations like the Australian Human Rights Commission and Equality Australia.⁹⁵ Of the eleven amendments made to the Bill through the second draft, its changes to the definition of religious bodies, the clarification of healthcare practitioner codes of conduct rules and the inclusion of service providers like religious hospitals and aged care, are most significant.

5.2.1 Religious Bodies

The new draft expands the protections afforded to religious bodies to include religious charities as they relate to commercial services. Under the amendment any registered religious charity is considered a religious body and provided the

subsequent discrimination protections, regardless of their commercial activity. Registered religious charities are thus permitted to 'solely or primarily engage in commercial activities' and retain discrimination protections, while unregistered groups may participate in commercial activities to the extent that it doesn't constitute their primary service.⁹⁶

The expansion of this definition may risk broadening the landscape for discrimination by subjecting groups, like women, to discrimination across a range of services. What is undeniable is that the amendment will majorly extend the range of organisations now legally entitled to discriminate, including those providing public and publicly funded services.⁹⁷

5.2.2 Healthcare Codes of Conduct

The revised section attempts to clarify that enabling discriminatory behaviour is not intended by invalidating regulatory conscientious objection policies. The amendment clarifies that it is an objection to a procedure rather than a person. The amendment also narrows the definition of health professions to the following; medicine, midwifery, nursing, pharmacy and psychology.⁹⁸

The list of health professions continues to encompass the dominant and most common mediums for which Australians engage with everyday medical services, failing to mitigate any concerns over the breadth of engagements the section applies to. Furthermore, the amendment continues to enable discriminatory behaviour in discarding the manner in which particular procedures are intrinsically linked to particular groups of people.

Abortion, contraceptive and reproductive services remain clear targets of the amendment whilst it is yet unknown how procedures like those for the trans community (hormone therapy and gender reassignment for example) will be recognised under religious belief. In practice, this revised condition is difficult to enforce and regulate, having no practicable effect in limiting discrimination.

5.2.3 Religious Hospitals, Aged Care and Accommodation Providers

The third key amendment to the Bill pertains to the staffing abilities of religious hospitals, aged care and accommodation providers. The Bill now establishes that to preserve a religious ethos, those organisations may preference same faith employees in hiring.⁹⁹ This provision becomes of concern for hospitals when taken into consideration with the provisions enabling conscientious objections without referral.

It can be identified that by coupling discriminatory hiring processes for faith based hospitals and aged care, with a disregard for referral policies following conscientious objections, a range of healthcare providers will essentially opt-out of the provision of services like abortion. Subsequently, access to fundamental healthcare services will

be further restricted to both women and other vulnerable groups on the basis of their geography, and the chance that they might live near a faith-based institution.

Accommodation providers are additionally permitted to discriminate against its customers on the basis of their faith, if that religious belief is a clearly publicised organisational policy. As such, camps and conference centres may reject customers from the use of their services if they are able to claim religious belief.¹⁰⁰

5.3 The Australian Law Reform Commission's Review into Religious Anti-Discrimination Exemptions

After releasing the draft *Religious Discrimination Bill 2019* the Attorney-General has resubmitted an amended terms of reference to the Australian Law Reform Commission (ALRC). The new terms of reference narrow the scope of the ALRC's inquiry to the exclusion of the draft *Religious Discrimination Bill 2019* to focus on pre-existing legislative amendments. The inquiry is to report on the issues unresolved by the Bill, its findings due in December 2020.¹⁰¹ The ALRC's review is predominantly concerned with religious anti-discrimination exemptions pertaining to educational institutions and the 5 recommendations made by the Ruddock Review that have yet to be implemented.

Of those recommendations, major concerns can be seen in the consideration of moral objections to educational resources as they relate to religious beliefs, particularly as it would pertain to sexuality education models such as the Building Respectful Relationships (Vic) program.

5.5 The Australian Human Rights Commission's National Discussion Paper: Priorities for Federal Discrimination Law Reform 2020

The Australian Human Rights Commission (AHRC) is simultaneously working towards a report on the recommendation of law reform priorities for 2020. The paper, in consideration of the submissions made to the AHRC, will suggest an agenda for federal law reform for human rights and goals for the improvement of discrimination law.¹⁰²

The Commission has released a preliminary paper that outlines its views on the priorities for federal reform, and directs community questions. Particular concern is made towards the remedial nature of existing protections, a push towards a proactive approach, inconsistencies across jurisdictions and the review of all discrimination law exemptions.¹⁰³ There is considerable overlap between the concerns of the AHRC and the issues raised in the development of new religious discrimination proposals. Upon its release, the report may serve as a significant platform for feminist advocacy against the prioritisation of religious discrimination protections and the manner in which they undermine the rights of women and children.

6. The Impact on Women, Children and Vulnerable Communities

Women are made particularly vulnerable by current proposals for religious freedom. Having outlined the agenda for religious freedom in Australia, it becomes obvious that religious discrimination laws and exemptions contradict human rights principles by privileging the right to religion over the rights of others. The draft *Religious Discrimination Bill 2019* is particularly problematic, limiting access to education and healthcare services, legitimising offensive speech and problematising responses to institutional child sex abuse. This section will look at these practical effects and what they mean for the future of gender equality and women in Australia.

6.1 Education

Education is a fundamental right of children, recognised both in Australia and internationally. Religious institutions play a significant role as educational service providers for a large proportion of young Australians. According to the Australian Bureau of Statistics, of all students 65.7% are enrolled in government schools whilst

'19.7% (are enrolled) in Catholic schools.'

A further 14.6% are enrolled in independent schools, many of which are also religiously affiliated.¹⁰⁴ Recognising the responsibility religious institutions have in educating young people, there are a number of concerns for education policy where religious freedom protections may conflict with educational programs and the subsequent welfare of children.

As education policy is state dependent, its implementation may vary from the national curriculum in each jurisdiction. For example, each state is individually responsible for their implementation of curriculum components such as sexuality education.¹⁰⁵ Across all jurisdictions however is the consistent and longstanding right of parents to consent to, or withdraw from programs centred on issues of 'morality'. This parental right is often used to opt out of value programs like sexuality education, contributing to its further varied and inconsistent implementation across Australian schools.¹⁰⁶

In addition to these parental exemptions from 'moral' topics, there exists little to no oversight in sexuality education, leaving students across the country vulnerable to miseducation on topics of sexual health, consent, contraception and respectful relationships. Recent studies have further observed that when sexuality education is offered, there are often a range of inadequacies in the resources, structure and implementation of its content. A study by La Trobe University found that 80% of sexuality education is taught in the Personal Development, Health and Physical Education curriculum whilst in some religious schools it becomes a component of students' religious studies.¹⁰⁷ Despite an already varied and inconsistent policy on sexuality education, further notes made by the *Ruddock Review* currently under

inquiry by the ALRC, and clauses of the draft *Religious Discrimination Bill 2019* risk isolating students further.

Recommendation 9 of the *Ruddock Review* and the subsequent terms of reference set for the ALRC's report on religious exemptions in anti-discrimination legislation, address the right of parents to withdraw children from education programs contrary to their beliefs. What is different about these approaches to education policy compared to the status-quo, is the potential for the Commonwealth to enshrine these provisions in a federal discrimination Act such as the draft *Religious Discrimination Bill 2019*. This would provide a uniform policy across states enabling both religious schools and parents with the legal right to withdraw from sexuality education on the basis of religious belief.

With student's already experiencing an inadequacy in resources on contraception, gender, gendered violence, sexuality and relationships, the Morrison government's agenda places a greater weight on the right of schools to religious freedom than the right of children to a basic education on sexual health.¹⁰⁸ These inadequacies in schools help to foster a toxic culture of misinformation and sexualisation by positioning young Australians to independently use other resources in place of a school curriculum for sexual education. Subsequently pop-culture, pornography, the media and peer & familial discussions become the basis for a young person's understanding of sex, gender and respect.¹⁰⁹ This style of 'independent education' often creates an environment wherein women become the disproportionate victims of sexual violence, partner abuse, and misogyny.¹¹⁰

Recommendations made by the *Royal Commission into Family Violence (Victoria)* identified schools as a key institution in preventing the epidemic of violence facing Australian women today.¹¹¹ A major concern for education as it intersects with religious freedoms are the further barriers religious discrimination rights may put between students and their access to programs like the gender-violence preventative strategy *Building Respectful Relationships (Vic)*. Already subject to scrutiny and backlash from religious and conservative groups, programs addressing gender related health, violence and gender expression are likely made vulnerable to religious priorities and subsequently barred from students under the proposed draft *Religious Discrimination Bill 2019*.¹¹²

Of particular concern in the draft *Religious Discrimination Bill 2019* is clause 10, entitling religious organisations and corporations to discrimination protections. The subsequent effect of this clause legally cements the right of religious schools to pursue educational courses aligned to the teachings of their faith. This clause in addition to recommendations made in the *Ruddock Review* reaffirming a parent's right to withdraw, puts hundreds of thousands of young Australians at risk of isolation from an appropriate education on sexuality.¹¹³

In their submission on the draft *Religious Discrimination Bill 2019*, the *Victorian Equal Opportunity and Human Rights Commission* (VEOHRC) outlined the potential for private organisations tendering education programs to pursue discrimination protections.¹¹⁴ This would enable religious organisations the right to provide teaching programs pursuant to religious beliefs such as homosexuality as an illness and contraception as a sin.

Sexuality education in schools is already failing too many young Australians, yet developments for the progress of religious freedom risk making vulnerable structural flaws, national policy. These proposals for religious freedom fundamentally act against the welfare of children, making young people vulnerable to misinformation. In direct contradiction to the findings of the *Royal Commission into Family Violence (Victoria)*, these policies have the potential to disregard preventative gender-violence strategies, continuing the culture of violence threatening women across the country.

6.2 Healthcare Services

Women's advocacy groups and health organisations such as the Australian Medical Association have made a number of submissions on the draft *Religious Discrimination Bill 2019* voicing concerns over its impact on healthcare services for women.¹¹⁵ The Bill invalidates regulatory guidelines ensuring all patients are given access to appropriate healthcare services if a practitioner is to conscientiously object.

These codes of conduct and professional guidelines become nullified by clause 8, enabling practitioners to wholly object and abandon patients on the basis of religious belief without providing a referral to an appropriate service provider. This threatens to bar women from access to contraception, sexual health and reproductive health services, whilst also hindering access to services for LGBTQI+ people, particularly for trans people.

Reproductive services for trans women, single women, same-sex partners and unmarried couples may be arbitrarily rejected whilst practitioners may abandon patients seeking sexual health screenings, aids medication and contraception prescriptions.¹¹⁶ Without guaranteeing a referral, vulnerable people are left judged and isolated on fundamental issues of healthcare.

What is perhaps most at risk is a women's open access to abortion services. As an already contentious and highly regulated procedure made inaccessible for a number of women dependent on their socio-economic status and location, clause 8 further jeopardises a women's health for the sake of religious belief.

Julie Keys of Women's Health Victoria attests to concerns over further limiting abortion services for women,

*'Women also experience significant psychological distress and stigma when they find their trusted health care providers will not enable them to access a service they are legally entitled to, whilst placing moral judgement on their reproductive choices.'*¹¹⁷

An additional concern to clause 8 in relation to healthcare services is the protection of statements of belief established in clause 41. The clause would authorise and protect practitioners in expressing condemnation and judgement over a patient's sexual activity, sexuality, relationship or pregnancy status. This becomes particularly troubling when a sought and legally entitled medical service becomes effectively substituted for a discriminatory statement.

Pre-existing guidelines in all states enable healthcare practitioners to conscientiously object from services that contradict their beliefs whilst still ensuring a patient's right to services and information.¹¹⁸ Reforms to regulatory codes of conduct do little to reaffirm religious freedom, instead disempowering vulnerable minority groups by restricting their access to legally entitled healthcare. These protections for religious freedom unnecessarily become detrimental to the health and welfare of others.

6.3 Mandatory Reporting

Religious bodies have publicly rejected legislative amendments imposing mandatory reporter status on members of religious orders, primarily protesting the inviolable sanctity of confession.

The mandatory reporting laws as recommended by the Royal Commission may conflict with federal protections established in the draft *Religious Discrimination Bill 2019*, applying priority of religious practice over the findings of the Royal Commission. The Victorian Andrews government has voiced similar concerns over its proposed legislation to ban gay conversion therapy.¹¹⁹ Although mandatory reporting status would interact differently with the Bill, as it is situated within criminal code whilst proposals for conversion therapy are premised in civil law, it exemplifies the potential for the Bill to supersede state provisions.

The creation of precedent in section 8.1 for religious organisations to find any condition, requirement or practice that impedes religious belief, discriminatory is an additionally problematic clause. This section, inapplicable to state criminal law, still retains importance as a legal landmark for religious freedom that may serve to catalyse further direct protections for religious institutions against state regulations similar to mandatory reporting.

The intentions established in the Bill and the framework of protections it seeks for religious organisations make it reasonable to question where the Bill's over-reach into state law might end. With religious public figures and leaders already objecting to mandatory reporter legislation, it is worrisome that additional state laws may be

identified and overruled by the Bill, potentially making religious mandatory reporting vulnerable to Commonwealth invalidation.¹²⁰

The legal complexities of the Bill and its relation to state law will most likely be brought to the judiciary, granting religious organisations the platform to test legislation like mandatory reporting laws and the gay conversion therapy ban. The greater threat to their effective implementation however can be found in the cultural and political symbolism of the Bill and its consequences for institutional and structural change in the church.

Dependent on cooperation within religious orders, mandatory reporting laws already risk stagnation and a loss of practical effect within the church. The draft *Religious Discrimination Bill 2019* problematically provides legitimisation for religious members to wilfully and wholly neglect their legal obligations to report child abuse. The protection of religious practices like confessional, will come at the cost of the welfare of children.

6.4 Offensive speech

What is perhaps the most marked departure from precedent in human rights legal principle is the provision made in the draft *Religious Discrimination Bill 2019* giving its section 41 sole authority over all other discrimination Acts, both at state and federal levels.¹²¹ Section 41 pertains to statements of belief, creating for the absolute protection of all statements made in accordance to genuine religious belief, until those statements reach the higher legal threshold of harassment, vilification or incitement of hatred.¹²²

In practical terms this entitles legal protection to individuals denigrating women for their relationship or marital status, for their reproductive choices and for their sexual agency. *VEOHRC* has expressed very legitimate concerns that the provision would enable religious healthcare practitioners, in addition to refusing services, to shame and condemn women for requesting contraception or abortion services.¹²³ The breadth of this protected speech is further clarified with the additional concerns of disability advocates that statements claiming disability as a punishment for sin can also constitute protected statements of belief.¹²⁴

In lowering offensive speech protections across the country, section 41 expresses the Commonwealth's intention to disregard the experiences of vulnerable populations such as women, the LGBTQI+ community and people with disabilities. The existing threshold of offending, humiliating, intimidating, insulting or ridiculing, permits free religious expression whilst recognising the dignity of all people.

Explicitly targeting Tasmania's anti-vilification laws, some of the country's most extensive and comprehensive protections for offensive speech on gender, intersex

status, relationship status, breastfeeding, pregnancy and family responsibilities, section 41 clearly makes women more vulnerable in a time of rising harassment.¹²⁵ In response to the rise in harassment, particularly through online mediums, against cis and trans women, Victoria recently introduced the *Patten Bill*. The Bill is an amendment to the *Racial and Religious Tolerance Act* to extend vilification protections to gender, sexual orientation, gender identity, sex characteristics and disability.¹²⁶ The Bill provides basic safeguards, already available to religious groups, to victims of increasingly brazen cases of online harassment.

The draft *Religious Discrimination Bill 2019* will however nullify these protections, and any other provision relating to offensive speech if that speech is made in accordance to religious belief. Ultimately in privileging

'The right to be a bigot'

as the then Attorney-General George Brandis said in 2014 in relation to the 18C Racial Discrimination Act debate, the Commonwealth is once again side-lining human rights.¹²⁷

Speech matters, and the culture that speech fosters creates real action, some of which can be of direct danger to women. As advocates for women, the washing down of these protections must be of high concern and attention and the precedent it sets over other discrimination Acts, wholly condemned.

7. Concluding Comments

Effective human rights operate on the inviolable principle that all human rights are to be assured and protected in equal respect to one another, and that the dignity and quality of life for all people is to be safeguarded and proactively pursued. Departing from this principle, the *Religious Discrimination Bill 2019* presents one's right to freedom of religion as a mandate to legitimise the denigration, humiliation and discrimination of other people.

The Bill clearly marks the Commonwealth's visible priority in privileging the rights of religious faiths and their capacity to discriminate against groups, such as women. Despite initial government reports and reviews finding no immediate need for further religious protections in Australia, the Morrison government appears to amplify the voices of those calling for the pervasive safeguards that will enable religious individuals and bodies a superseding right to discrimination.

The proposed protections not only violate the conventions and architecture of human rights and discrimination law by championing the select rights of some over the basic rights of others, but further vests lawful authority in harmful actions against vulnerable communities. Contradicting the entirety of our existing anti-discrimination framework, the Bill attempts to substitute an existing system wherein co-existing concurrent rights operate effectively, for a hierarchy that displaces access to healthcare, education and dignity with another's right to belief.

It is inarguable that women will be dramatically affected by the implementation of the proposed religious freedom protections. To empower those of religious faith, the Bill sacrifices a woman's expectation to be free from hateful, humiliating speech, to access legally entitled and essential healthcare services, to work freely in safe and supportive environments and to live in a community that teaches its children to respect every young girl and woman.

The Bill places these expectations below a healthcare practitioner's right to condemn their patients and refuse them service, below a school's right to refuse to teach adequate sexual health and below one's right to live with respect.

Religious freedom is a human right that deserves protection and its equal standing within the Australian legal framework, however, it is not a right that can come at the cost and harm of others. Religious protections can be implemented without enabling lawful discrimination. Every Australian, including children, women, the LGBTQI+ community, the disabled community and those of faith, are entitled to live free from discrimination.

Opportunities must be seized to actively represent the voice of women and to integrate a gendered lens into the ongoing debate. With the second exposure draft of

the *Religious Discrimination Bill 2019* released on the 10th of December 2019, the Commonwealth is now open to community submissions until the 31st of January 2020. This platform demands its use as a medium to highlight and publicly scrutinise the dangers to women and other vulnerable communities embedded within the Bill.

Australia sits at the precipice of monumental human rights law reform. As feminists and advocates for human rights, it is essential that the rights of women are not excluded from the development of that narrative. Consequently, as the Australian Human Rights Commission releases its paper on the agenda for national law reform, the available policy and human rights instruments must be considered and supported in affirming a proactive and balanced rights framework for women.

Additionally, the Australian Law Reform Commission's Review into Religious Anti-Discrimination Exemptions 2019 offers a further chance to safeguard the consistency and practical application of discrimination protections against ever-increasing exemptions. This review must be addressed as the opportunity it is to defend the integrity of our discrimination law framework, and to recognise the value, we as Australian's place in the right to be free from discrimination.

Across these platforms, Australian human rights and discrimination law is changing. It is at this crucial point in time that those with the abilities, resources and voice bring women's rights to the forefront of that discussion. Human rights are not dispensable, nor are they flexible. They are universal and undeniable; and they apply to women.

Endnotes:

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- ¹ The Exposure Draft Religious Discrimination Bill 2019 (Cth)
- ² Elphick, L., Hilkemeijer, A. & Maguire, A 2019, 'The Government Has Released its Draft Religious Discrimination Bill – How Will It Work', *The Conversation*, viewed 3 September 2019, https://theconversation.com/the-government-has-released-its-draft-religious-discrimination-bill-how-will-it-work-122618?utm_source=facebook&utm_medium=facebookbutton&fbclid=IwAR0LJ0NCSMbEghBHTyv6HykEsyoSZArkOgU58Go94fIOEFQzvKhhf0ZeyNg.
- ³ Joint Standing Committee on Foreign Affairs, Defence and Trade 2019, 'Interim report: federal protection of freedom of religion or belief', *Inquiry into the Status of the Human Right to Freedom of Religion or Belief*, s 41.
- ⁴ *Commonwealth of Australia Constitution Act* 1900, s 116.
- ⁵ *Krygger v Williams* (1912) 15 CLR 366.
- ⁶ Gaudron, J in *Australian Capital Television Pty Ltd v Commonwealth* (1992) HCA 45, 177 CLR 106, [212].
- ⁷ *Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth* (1943) 67 CLR 116, 124 (Jehovah's Witness case).
- ⁸ Attorney-General's Department 2017, 'Inquiry into the status of the human right to freedom of religion or belief', *Submission to the Joint Standing Committee*, 2.
- ⁹ *Coco v the Queen* HCA 15, (1994) 179 CLR 427.
- ¹⁰ *OV & OW v Members of the Board of the Wesley Mission Council (NSW)* (2010) NSWADT 293.
- ¹¹ *Anti-Discrimination Act* 1977 (NSW)
- ¹² *OV & OW v Members of the Board of the Wesley Mission Council (NSW)* (2010) NSWADT 293.
- ¹³ *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (1953) 154 CLR 120.
- ¹⁴ *Evans v State of New South Wales* (NSW) (2008) 168 FCR 576 [2].
- ¹⁵ *Krygger v Williams* HCA 65, (1912) 15 CLR 366.
- ¹⁶ *Kruger v the Commonwealth* HCA 27, (1997) 190 CLR 1.
- ¹⁷ *Australian Capital Television Pty Ltd v Commonwealth* HCA 45, (1992) 177 CLR 106.
- ¹⁸ *Fair Work Act (No. 28)* 2009 (Cth) s 351.
- ¹⁹ *Sex Discrimination Act (No. 4)* 1984 (Cth), ('SDA'), s 37 & 38; *Age Discrimination Act (No. 68)* 2004 (Cth) s 35.
- ²⁰ *SDA (No. 4)* 1984 (Cth) s 38.
- ²¹ *Ibid* s 37.

²² *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2004* (ACT); *Tasmanian Constitution Act 1934* (Tas).

²³ *Tasmanian Constitution Act 1934* (Tas) s 46.

²⁴ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth)

²⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28 & s 29; *Human Rights Act 2004* (ACT) s 37.

²⁶ Australian Human Rights Commission 2019, 'Religious Freedom Bills', *Submission to the Attorney-General's Department*, s 24.

²⁷ *Ibid* s 42.

²⁸ *Ibid* s 41.

²⁹ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1996, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR'); *Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief 1981*, opened for signature 21 December 1965, 1249 UNTS 13, (entered into force 4 January 1969).

³⁰ *Ibid*.

³¹ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) ('UDHR'), Art. 18 s 3.

³² Australian Human Rights Commission 2019, 'Religious Freedom Bills', *Submission to the Attorney-General's Department*, s 33.

³³ Australian Bureau of Statistics 2018, *The Census of Population and Housing (Census)*, Media Release, viewed 4 September 2019,

<https://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/8497F7A8E7DB5BEFCA25821800203DA4?OpenDocument>.

³⁴ *Ibid*.

³⁵ Ruddock, P 2018, 'Religious freedom review: report of the expert panel', (The Ruddock Review), *Department of Prime Minister and Cabinet*, viewed 3 September, 8.

³⁶ Sayed, D 2019, 'Here's why women should be worried about new religious discrimination laws', *the Women's Agenda*, viewed 4 September 2019,

<https://womensagenda.com.au/latest/heres-why-women-should-be-worried-about-new-religious-discrimination-laws/>.

³⁷ Van Der Winden, C 2014, 'Combating sexual harassment in the workplace: policy vs legislative reform', *Canberra Law Review*, vol. 12, no. 1, 209.

³⁸ *SDA (No. 4) 1984* (Cth) s 28.

³⁹ *The Australian Human Rights Commission Act 1986* (Cth) s 49b.

⁴⁰ *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).

⁴¹ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 42.

⁴² Ibid.

⁴³ *Abortion Law Reform Act 2019* (NSW)

⁴⁴ Baird, B 2017, 'Decriminalisation and a women's access to abortion in Australia', *Health and Human Rights Journal*, vol. 19, no. 1, 198.

⁴⁵ *Abortion Law Reform Act 2019* (NSW) s 9(3).

⁴⁶ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 8.

⁴⁷ McGowan, M 2019, 'NSW abortion law: the decriminalisation reform bill explained', *The Guardian*, viewed 11 September 2019, <https://www.theguardian.com/australia-news/2019/aug/19/nsw-abortion-law-the-decriminalisation-reform-bill-explained>.

⁴⁸ State of Victoria, Department of Premier 2019, 'Ensuring Better Protections for All Victorian Children', Media Release, viewed 10 September, <https://www.premier.vic.gov.au/ensuring-better-protections-for-all-victorian-children/>.

⁴⁹ Towell, N 2019, 'Laws forcing priests to report child abuse passed in Victorian parliament', *The Age*, viewed 11 September 2019, <https://www.theage.com.au/national/victoria/laws-forcing-priests-to-report-child-abuse-passed-in-victorian-parliament-20190911-p52q1m.html>.

⁵⁰ Ibid.

⁵¹ King, C 2018, 'Vatican requires bishops to 'cover up child sex abuse' in absence of reporting laws, experts says', *ABC*, viewed 3 September 2019, <https://www.abc.net.au/news/2018-08-02/vatican-law-requires-catholic-bishops-cover-up-abuse-expert-says/10057532>.

⁵² *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) ('UDHR'), Art. 18 s 3.

⁵³ Hall, A 2013, 'Kevin Rudd's gay marriage referendum offer dismissed by advocates', *ABC*, viewed 19/09, <https://www.abc.net.au/news/specials/rudd-returns/2013-06-28/kevin-rudd-gay-marriage-referendum-dismissed-by-advocates/4788796>

⁵⁴ Ireland, J 2016, 'Christian lobby seeks anti-discrimination override for plebiscite campaign', *The Sydney Morning Herald*, viewed 11 September, <https://www.smh.com.au/politics/federal/christian-lobby-seeks-antidiscrimination-override-for-plebiscite-campaign-20160215-gmu4kd.html>.

⁵⁵ State of Victoria, Department of Education and Training 2018, 'Safe Schools', viewed 18 September 2019, <https://www.education.vic.gov.au/about/programs/Pages/safeschools.aspx>;

State of Victoria, Department of Education and Training 2016, 'Respectful relationships education in schools: the beginnings of change – final evaluation report', 5.

⁵⁶ *Masterpiece Cake-shop v Colorado Civil Rights Commission* (2017) 584 U.S. 16-111, 138 S. Ct. 1719.

- ⁵⁷ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 11.
- ⁵⁸ Ruddock, P 2018, 'Religious freedom review: report of the expert panel', (The Ruddock Review), *Department of Prime Minister and Cabinet*, viewed 3 September 2019.
- ⁵⁹ Jenichen, A & Razavi, S 2010, 'The unhappy marriage of religion and politics: problems and pitfalls for gender equality', *Third World Quarterly*, vol. 31, no. 6, 836.
- ⁶⁰ *Abortion Law Reform Act 2019* (NSW) s 9(3).
- ⁶¹ Baird, B 2017, 'Decriminalisation and a women's access to abortion in Australia', *Health and Human Rights Journal*, vol. 19, no. 1, 204.
- ⁶² *Ibid*, 203.
- ⁶³ State of New South Wales, Standing Committee on Social Issues 2019, 'Reproductive healthcare reform bill 2019', *Legislative Council*. Report 55, s 3.106 & 3.109.
- ⁶⁴ Smith, A 2019, 'Churches divided over bill to decriminalise abortion', *The Sydney Morning Herald*, viewed 11 September 2019, <https://www.smh.com.au/politics/nsw/churches-divided-over-bill-to-decriminalise-abortion-20190803-p52djw.html>.
- ⁶⁵ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, Final report: nature and cause, vol. 2, 12.
- ⁶⁶ *Ibid*, 3.
- ⁶⁷ Royal Commission into Institutional Responses to Child Sex Abuse 2017, Final report: recommendations vol. 7, recommendation 7, 17.
- ⁶⁸ McGowan, M 2018, 'Scott Morrison sends his children to private school to avoid 'skin curling' sexuality discussions', *The Guardian*, viewed 10 September, <https://www.theguardian.com/australia-news/2018/sep/03/scott-morrison-sends-his-children-to-private-school-to-avoid-skin-curling-sexuality-discussions>.
- ⁶⁹ State of Victoria, Department of Education and Training 2016, 'Respectful relationships education in schools: the beginnings of change – final evaluation report', 5.4 – 7.
- ⁷⁰ *Ibid*.
- ⁷¹ McGowan, M 2018, 'Scott Morrison sends his children to private school to avoid 'skin curling' sexuality discussions', *The Guardian*, viewed 10 September, <https://www.theguardian.com/australia-news/2018/sep/03/scott-morrison-sends-his-children-to-private-school-to-avoid-skin-curling-sexuality-discussions>.
- ⁷² *Ibid*.
- ⁷³ State of New South Wales, Department of Education 2007, 'Controversial issues in schools – procedures', *Implementation Document Policy*, 7 – 8.
- ⁷⁴ ABC 2019, 'Israel Folau committed high-level breach of player's code of conduct', *ABC*, viewed 11 September 2019, <https://www.abc.net.au/news/2019-05-07/israel-folau-breached-code-of-conduct-hearing-finds/11089234>.

⁷⁵ Main, L 2019, 'Israel Folau claims his contract was illegal', *The Australian Financial Review*, viewed 24 September 2019, <https://www.afr.com/work-and-careers/workplace/israel-folau-claims-his-contract-was-illegal-20190827-p52la3>.

⁷⁶ Robinson, G 2019, 'Rugby Australia and Israel Folau reach settlement, both apologise for any hurt or harm caused', *The Sydney Morning Herald*, viewed 10 December 2019, <https://www.smh.com.au/sport/rugby-union/rugby-australia-reaches-settlement-with-folau-20191204-p53gr6.html>.

⁷⁷ Ruddock, P 2018, 'Religious freedom review: report of the expert panel', (The Ruddock Review), *Department of Prime Minister and Cabinet*, viewed 3 September 2019, iii.

⁷⁸ Australian Law Reform Commission 2019, 'Review into the framework of religious exemptions in anti-discrimination legislation'.

⁷⁹ Ruddock, P 2018, 'Religious freedom review: report of the expert panel', (The Ruddock Review), *Department of Prime Minister and Cabinet*, viewed 3 September 2019, recommendation 20, 108.

⁸⁰ Australian Bureau of Statistics 2018, *The Census of Population and Housing (Census)*, Media Release, viewed 4 September 2019, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/8497F7A8E7DB5BEFCA25821800203DA4?OpenDocument>.

⁸¹ Veiszadeh, M 2015, 'Religion and the racial discrimination act: don't Muslims also deserve protection?', *ABC*, viewed 24 September 2018, <https://www.abc.net.au/religion/religion-and-the-racial-discrimination-act-dont-muslims-also-des/10098562>.

⁸² *Anti-discrimination Amendment (Religious Tolerance) Act 2005* (NSW).

⁸³ Uniting Church in Australia, 2019, 'Religious discrimination submission – Uniting Church in Australia', *Submission to the Attorney-General's Department*, 2.

⁸⁴ Ireland, J 2019, 'Harm Bar set too high: Uniting Church warns on religious discrimination laws', *The Sydney Morning Herald*, viewed 11 September 2019, <https://www.smh.com.au/politics/federal/harm-bar-set-too-high-uniting-church-warns-on-religious-discrimination-laws-20191003-p52x92.html>.

⁸⁵ Ibid.

⁸⁶ Porter, C 2019, 'Religious Discrimination Bill 2019', speech, Announcement of the Religious Discrimination Bill, Great Synagogue Sydney, NSW, 29 August 2019.

⁸⁷ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 42, 1(b).

⁸⁸ Ibid s 8.

⁸⁹ Ibid s 8.

⁹⁰ Ibid s 11.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Attorney-General's Department 2019, Religious Discrimination Bills – Second Exposure Drafts, viewed 10 December 2019, <https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx>.

⁹⁴ Ireland, J 2019, 'Church groups threaten to withdraw support for religious discrimination bill', *The Sydney Morning Herald*, viewed 10 December 2019, <https://www.smh.com.au/politics/federal/serious-unintended-consequences-church-groups-threaten-to-withdraw-support-for-religious-discrimination-bill-20191129-p53fbj.html>.

⁹⁵ Ibid.

⁹⁶ Attorney-General's Department 2019, 'Religious freedoms legislation; key changes from first exposure draft', *Summary of Amendments to the Bills Since the First Exposure Draft*, viewed 10 December 2019, <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/summary-of-amendments-to-the-bills-since-the-first-exposure-draft.pdf>, 1.

⁹⁷ Hunyor, J 2019, 'Religious Discrimination Bill Remains a Threat to Human Rights', *Public Interest Advocacy Group*, viewed 11 December 2019, <https://www.medianet.com.au/releases/182528/>.

⁹⁸ Attorney-General's Department 2019, 'Religious freedoms legislation; key changes from first exposure draft', *Summary of Amendments to the Bills Since the First Exposure Draft*, viewed 10 December 2019, <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/summary-of-amendments-to-the-bills-since-the-first-exposure-draft.pdf>, 2.

⁹⁹ Ibid, 1.

¹⁰⁰ Ibid, 1.

¹⁰¹ Australian Law Reform Commission 2019, 'Review into the framework of religious exemptions in anti-discrimination legislation'.

¹⁰² Australian Human Rights Commission 2019, 'A model for positive human rights reform (2019)', *A Discussion Paper*, viewed 9 October 2019, 11 and 17 – 19.

¹⁰³ Ibid.

¹⁰⁴ Independent Schools Council Australia, *Independent Schools Overview*, viewed 13 October 2019, <https://isca.edu.au/about-independent-schools/about-independent-schools/independent-schools-overview/>.

¹⁰⁵ Rhodes, D 2018, 'Australian sex education isn't diverse enough. Here's why we should follow England's lead', *The Conversation*, viewed 11 October 2019, <https://theconversation.com/australian-sex-education-isnt-diverse-enough-heres-why-we-should-follow-englands-lead-100596>.

¹⁰⁶ State of New South Wales, Department of Education 2007, 'Controversial issues in schools – procedures', *Implementation Document Policy*, 7 – 8.

¹⁰⁷ Lyons, A, Mitchell, A, Schlichthorst, M & Walsh, J 2011, 'Sexuality education in Australian secondary schools: results of the first national survey of Australian secondary teachers of sexuality education 2010', *National Survey of Australian Secondary Teachers of Sexuality Education 2010*, 13.

¹⁰⁸ Bouma, G 2018, 'Young people want sex education and religion shouldn't get in the way', *The Conversation*, viewed 11 October 2019, <https://theconversation.com/young-people-want-sex-education-and-religion-shouldnt-get-in-the-way-96719>.

¹⁰⁹ El-Murr, A, Latham, J and Quadara, A 2017, 'The effects of pornography on children and young people', *Australian Institute of Family Studies*, Melbourne, 11.

¹¹⁰ Royal Commission into Family Violence 2016, 'Royal commission into family violence: summary and recommendations, recommendation 189. 18 & 178.

¹¹¹ Ibid 189.

¹¹² Fyfe, M 2019, 'Sex education in a time of moral panic – and how it's failing our children', *The Sydney Morning Herald*, viewed 15 October 2019, <https://www.smh.com.au/lifestyle/life-and-relationships/sex-education-in-a-time-of-moral-panic-and-how-it-s-failing-our-children-20191007-p52y87.html>.

¹¹³ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 10; Ruddock, P 2018, 'Religious freedom review: report of the expert panel', (The Ruddock Review), *Department of Prime Minister and Cabinet*, viewed 3 September, recommendation 9, 3.

¹¹⁴ Victorian Equal Opportunity & Human Rights Commission 2019, 'Submission regarding the exposure draft to Religious Discrimination Bill', *Submission to the Attorney-General's Department*, viewed 10 October 2019, 19 and 40.

¹¹⁵ Australian Medical Association 2019, 'Submission on the Religious Discrimination Bill 2019', *Submission to the Attorney-General's Department*, viewed 10 October 2019.

¹¹⁶ Ibid.

¹¹⁷ Keys, J in Remeikis, A 2019, 'Religious discrimination bill would create barriers to women's healthcare, advocates warn', *The Guardian*, viewed 2 October 2019, <https://www.theguardian.com/australia-news/2019/oct/10/religious-discrimination-bill-would-create-barriers-to-womens-healthcare-advocates-warn>.

¹¹⁸ Australian Medical Association 2019, 'AMA position statement on conscientious objection 2019', Media Release, viewed 8 October 2019, <https://ama.com.au/system/tdf/documents/AMA%20Position%20Statement%20on%20Conscientious%20Objection%202019.pdf?file=1&type=node&id=50323>.

¹¹⁹ Varga, A 2019, 'Religious freedom may help gay conversion: Dan Andrews', *The Australian*, October 14 2019, <https://www.theaustralian.com.au/nation/politics/religious-freedom-may-help-gay-conversion-daniel-andrews/news-story/5775f1c24f8b81fd06b653aa6fdf6c1e>.

¹²⁰ Towell, N 2019, 'Laws forcing priests to report child abuse passed in Victorian parliament', *The Age*, viewed 11 September 2019, <https://www.theage.com.au/national/victoria/laws-forcing-priests-to-report-child-abuse-passed-in-victorian-parliament-20190911-p52q1m.html>.

¹²¹ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 42.

¹²² Ibid.

¹²³ Victorian Equal Opportunity & Human Rights Commission 2019, 'Summary of key concerns with the exposure draft Religious Discrimination Bill', viewed 11 October 2019, <https://www.humanrightscommission.vic.gov.au/images/files/Five-concerns-with-the-Religious-Discrimination-Bill-Oct-2019.pdf>.

¹²⁴ Ibid.

¹²⁵ Exposure Draft Religious Discrimination Bill 2019 (Cth) s 42.

¹²⁶ *The Racial and Religious Tolerance Amendment Bill* 2019 (Cth); Elphick, L 2019, 'Victoria's new anti-vilification bill strikes the balance in targeting online abuse', *The Conversation*, viewed 2 October 2019, <https://theconversation.com/victorias-new-anti-vilification-bill-strikes-the-right-balance-in-targeting-online-abuse-123014>.

¹²⁷ Beck, L 2019, 'Right to be a bigot hidden in the government's religious freedom bill', *The Sydney Morning Herald*, viewed 7 October 2019, <https://www.smh.com.au/national/right-to-be-a-bigot-hidden-in-the-government-s-religious-freedom-bill-20191004-p52xs7.html>.