



Wednesday, 31
January 2018

ISLAMIC COUNCIL OF VICTORIA RELIGIOUS FREEDOM REVIEW SUBMISSION

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1. PREAMBLE

- 1.1. The Islamic Council of Victoria (ICV) welcomes the opportunity to contribute to the Federal Government's Religious Freedom Review Submission. One of the ICV's core objectives is the, 'Promotion of all matters concerning the well-being of Muslims in Victoria, including human rights and fundamental freedoms and the maintenance of harmony and friendship in Victoria' (emphasis added).¹ We appreciate that the Panel defines freedom of religion or belief as recognised in Article 18 of the International Covenant on Civil and Political Rights to which Australia is a State Party.²
- 1.2. The ICV is the peak Muslim body representing an estimated 200,000 Victorian Muslims and over 60 member societies. It offers advocacy and social welfare services while leading state and national initiatives on cohesion and harmony through community consultations and advice to Government. It has experience in building meaningful engagements, partnerships and projects with over 70 organisations (Muslim and non-Muslim) including over 20 multi-faith and multicultural groups.³

¹ See *Constitution of the Islamic Council of Victoria*, as adopted 4 September 2016, Article 6.1(iii)(g), p. 6.

² Specifically Article 18 stipulates that: '1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his [sic] choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his [sic] choice. 3. 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. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.' UN Human Rights Office of the High Commissioner, 'International Covenant on Civil and Political Rights', accessed 15 January 2018 at www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.'

³ See 'About Us', ICV Website at www.icv.org.au/about/, accessed 23 January 2018.

2. AUSTRALIAN LAW'S PROTECTION OF HUMAN RIGHT TO FREEDOM OF RELIGION

2.1. At the Commonwealth level, religious freedom intersects with four (4) other human rights legislative acts – while there appears to be nothing in the Disability Discrimination Act 1992:

2.1.1. Racial Discrimination Act 1975 (RDA)

2.1.2. Sex Discrimination Act 1984 (SDA)

2.1.3. Australian Human Rights Commission Act 1986 (AHRCA)

2.1.4. Age Discrimination Act 2004 (ADA)

2.2. Specifically, the Australian Human Rights Commission Act 1986 (3 *Interpretation, Part I-Preliminary*), '**discrimination**' is defined as:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, **religion**, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation... but does not include any distinction, exclusion or preference ... in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed (*bold added*).⁴

2.3. Furthermore, both the Age Discrimination Act 2004,⁵ and the Sex Discrimination Act 1984, provide adequate exemptions for religious bodies, including 'educational institutions established for religious purposes'.⁶

2.4. The recent passing of the 'Marriage Equality Bill' could potentially lead to unintended consequences, including claims of discrimination against religious

⁴ Australian Government, Federal Register of Legislation, Australian Human Rights Commission Act 1986, no. 125, Latest compilation including amendments, 13 April 2017, at www.legislation.gov.au/Details/C2017C00143, accessed 23 January 2018.

⁵ Specifically, under General Exemptions (Division 4 - 35 Religious bodies), ADA stipulates that, 'This Part (2 Application and constitutional provisions) does not affect an act or practice of a body established for religious purposes that: (a) conforms to the doctrines, tenets or beliefs of that religion; or (b) is necessary to avoid injury to the religious sensitivities of adherents of that religion.' Australian Government, Federal Register of Legislation, Age Discrimination Act 2004, registered C2018C00022, 17 JJanuary2018, at www.legislation.gov.au/Details/C2018C00022, accessed 25 January 2018.

⁶ See Compilation 39, Section 37 and Section 38. Australian Government, Federal Register of Legislation, Sex Discrimination Act 1984, No. 4, 1984, Compilation No. 39, Compilation date: 9 December 2017, at www.legislation.gov.au/Details/C2017C00383, accessed 26 January 2018.

groups seeking to faithfully practice their religious principles and to restrictions upon access to funding and permits. Whilst it has been argued that existing laws provide adequate exemptions, the ICV is concerned that the rights of faith groups to teach their views and for parents to successfully object to curriculum content without fear of repercussion is potentially at risk.

2.5. *Racial Discrimination Act 1975*

2.5.1. While adopting several relevant international convention such as the 'International Convention on the elimination of all forms of racial discrimination' – it does not include the 'Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief' (UN GA, 1981).⁷ However, Section 18C of Australia's Racial Discrimination Act 1975 (RDA) does not specifically factor in ethno-religious discrimination.⁸ There are currently a number of groups that are recognised as having both a religious and ethnic identity such as Jewish and Sikh communities,⁹ but the ICV understands that no case law exists in Australia to offer the same protection to Muslims. Frustratingly, as the ICV is not funded to provide specific legal advice on s18C, ICV can only continue to support and advocate for a growing number of claims which are increasing in regularity and intensity.

2.5.2. Australia's Race Discrimination Commission has affirmed that religion can also be used as a surrogate for race or ethnicity, and this fact strongly reflects the ICV's community feedback on verbal attacks and threats on Muslims in Victoria. In May 2017 at Ethnic Community Council of Victoria's (ECCV) Walter Lippmann Oration to Victorian ethnic communities, the President of the Australian Human Rights Commission Gillian Triggs stated her alarm at the growing

⁷ Which Australia adopted as an international instrument under the Human Rights and Equal Opportunity Commission Act 1986, Australian Government, Federal Register of Legislation, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, at <https://www.legislation.gov.au/Details/F2009B00174>, accessed 27 January 2018.

⁸ Specifically, s18C 1.b, 'the [unlawful] act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group', omits religion as a category, Australian Government, Federal Register of Legislation, Racial Discrimination Act 1975, accessed 15 January 2018 at www.legislation.gov.au/Details/C2014C00014.

⁹ See Australian Human Rights Commission Australian Human Rights Commission, Combating the Defamation of Religions: A Report of the Australian Human Rights and Equal Opportunity Commission to the United Nations High Commissioner for Human Rights, 4 July 2008, Section 2.1.2, at www.humanrights.gov.au/partnerships/religiousdefamation/index.html, accessed 24 January 2018.

‘demonization’ of Muslims and hate speech directed at minorities. In particular, she noted the normalisation of hate speech and that her Commission’s evidence indicates that ‘Muslims are subject to higher rates of racism than pertains for all other racial and religious groups within the Australian community...the headscarf has become the lightning rod for attacking Muslim women’.¹⁰

2.5.3. ICV believes there is room for improvement in our legal framework for the protection of religious freedom as a fundamental human right. There is nothing in law that prevents a federal or state government from legislating laws that impinge upon religious freedom. The constitutional provision relating to freedom of religion is not definitive by any means. Article 7 of the UN’s ‘Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981’ states that, ‘The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself [sic] of such rights and freedoms in practice’.¹¹ As such, the ICV believes that there is a very strong case to support the introduction of a Charter or Bill of Human Rights, as has every other western democracy.

2.6. *Freedom of Speech and Freedom of Religion*

2.6.1. The ICV are very concerned that as rising Islamophobia further defines a Muslim as less of a person, and more of an idea in public policy and the media, breaches of our universal human rights in the name of national security and the media’s freedom of expression are taking a severe toll on our collective mental health, economic security, and the simple freedom to enjoy practising our religion in our families and communities.

2.6.2. Right-wing organised public protests against the building of mosques and openly Anti-Muslim editorial bias in major newspapers is effecting the mental health of the Muslim community. The rise of right-wing

¹⁰ ‘Gillian Triggs tells of alarm over “demonising” of Muslims in Australia’, *The Guardian*, 11 May 2017, at www.theguardian.com/australia-news/2017/may/11/gillian-triggs-tells-of-alarm-over-demonising-of-muslims-in-australia, accessed 27 January 2018.

¹¹ See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 7, *ibid*.

extremist political rhetoric, political parties with overt anti-Muslim policies and federal legislation disproportionately targeting Muslim communities has created a culture of surveillance for our families. Muslim youth especially are watched everywhere, every day, and this 24/7 surveillance is becoming internalised and leading to serious mental health issues for many Muslims and increasing family tensions.

2.6.3. The United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr Mutuma Ruteere, visited Australia in 2016. Mr Ruteere noted that ‘racists and extremists’ were becoming more vocal in Australia and other parts of the world and that ‘remarks made by newly elected politicians about newly arrived migrants and in particular against Muslims,’ qualified as a form of xenophobic hate speech and was on the rise. The United Nations clearly indicated that this was ‘leading to negative perceptions of migrants [and] particularly Muslims’ while urging ‘those sections of the media to resist the tempting descent into racist and xenophobic stereotyping rhetoric and scapegoating’.¹²

2.6.4. The ICV are pleased to see that the leading union for journalists in Australia, the Media and Entertainment Arts Alliance’s (MEAA) own MEAA Journalist Code of Ethics (the Code) seeks responsible and accountable news reporting. In particular, we are interested to see the Code’s second point practiced when reporting on stories about Muslim Australians. The Code demands of journalists: ‘Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability’.¹³

2.7. *Counter-Terrorism Laws*

2.7.1. We are aware that Australia has ratified the United Nation’s (UN) International Convention on the Elimination of Racial Discrimination and

¹² UN Human Rights Office of the High Commissioner, ‘Press statement delivered by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr. Mutuma Ruteere on 5 May [sic] 2016 in Canberra, Australia’, 5 December 2016, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20993&LangID=E>, accessed 27 January 2018.

¹³ See standard 2 of MEAA Journalist Code of Ethics, at <https://www.meaa.org/about-us/journalists-code-of-ethics/>, accessed 27 January 2018.

that Article 18 of the International Covenant on Civil and Political Rights (ICCPR) lays out key principles to protect people's freedom of religion. The ICV is concerned that Australian laws relating to counter-terrorism, such as the Counter-Terrorism Act, is pushing the UN's Article 18's third principle to its limit in any discussion of freedom of religion. Article 18's third principle states: '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.'¹⁴ As a crucial roundtable participant, the ICV highlighted that this law disproportionately effects Muslim families. We jointly advocated with ECCV for greater support for trained counsellors to support affected Muslim families, more cooperation between government agencies to discuss any damage done by this law to our communities and the goals of social cohesion and CVE, as well as greater infrastructure to support our vulnerable young people.

3. PREVIOUS REVIEWS AND INQUIRIES: ICV CONTRIBUTIONS TO SUPPORT FREEDOM OF RELIGION

- 3.1. In 2012-13, the ICV participated in the Joint Standing Committee on Migration Inquiry into Multiculturalism Australia which gave rise to Chapter 4 on religious diversity by focusing on Islam.¹⁵
- 3.2. As a result of the strong inter-faith outreach program among our members, the ICV receive support from other faith groups who recognise the effects of Islamophobia on our community where public policy does not. In its 2015 submission to the Human Rights Commission Religious Freedom Roundtable, the Uniting Church supported the right to religious worship.¹⁶

¹⁴ 'International Covenant on Civil and Political Rights, Adopted by the General Assembly of the United Nations on 19 December 1966', No 14668, p. 178, at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>, accessed 27 January 2018.

¹⁵ See Parliament of Australia, House of Representatives Committee, Joint Standing Committee on Migration, Inquiry into Multiculturalism in Australia, Report, at www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/multiculturalism/report.htm, accessed 30 January 2018.

¹⁶ See Uniting Church in Australia Assembly, 'SUBMISSION TO THE Australian Human Rights Commission Religious Freedom Roundtable, October 2015, at www.unitingjustice.org.au/human-rights/submissions/item/download/891_c9f4cc40f804aed90feb36ba55e2f9db, accessed 27 January 2018.

- 3.3. They also highlighted their concern at growing intolerances towards Muslims leading to violations of our rights and abuses with special attention to Muslim women who wear traditional garments such as the hijab.¹⁷ Victoria's Jewish community have strongly supported us, as has a cross-section of Christian churches and the wider community who regularly stand against Islamophobia.
- 3.4. In May 2017, the ICV made a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into the status of the human right to freedom of religion or belief, much of which applies to this review.¹⁸ We would particularly like to draw the Review's attention to the detrimental effect that islamophobia is having – in all its manifestations – to the Muslim-Australian's freedom of religion. As a pivotal stakeholder in State and Commonwealth countering violent extremism (CVE) programs and tertiary research, the ICV are now taking steps to ensure that future CVE research partnerships balance their focus on Muslims with a focus on right-wing extremism and data that can improve policy issues that have been neglected due to narrow understandings of the experiences of Muslim communities in public policies such as CVE/Preventing Violent Extremism (PVE) and counter-terrorism (CT) programs.
- 3.5. The overwhelming views of our members and the broader Muslim Victorian community is that Islamophobia in public policy remains unaddressed, and is resulting in less attention on Muslim-led policy responses to family violence, mental health, employment, education, settlement services, youth work and the court and justice system. For Victorian Muslims Islamophobia is a real, and not imagined, daily threat limiting their freedom to enjoy going to work and school, to apply for jobs, to walk safely in the street, to wear what they want and to practice their faith free of fear and intimidation.
- 3.6. Despite the ICV's efforts to highlight Muslim-Australian achievements, ICV knows that fear of Muslims is having a detrimental effect on Muslim communities and the mental health, employment pathways and safety of Muslim youth. Islamophobia is widespread and visible to Muslims across the social and political spectrum.

¹⁷ Ibid., p. 9.

¹⁸ Parliament of Australia, 'The ICV Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into the status of the human right to freedom of religion or belief', Submission 191, May 2017, at www.aph.gov.au/DocumentStore.ashx?id=802254ea-909e-4907-968e-1a478114b9db&subId=511581, accessed 28 January 2018.

- 3.7. The ICV also welcomed the recommendations made by the Select Committee on Strengthening Multiculturalism.
- 3.8. If implemented, these actions would contribute to the strengthening of freedom of religion within Australia by improving protections, enforcing standards of responsible media reporting, and institutionalising multiculturalism and diversity as a top national priority which would include Australia's rich religious diversity.
- 3.9. The ICV's media advocacy has focused on issues of religious freedom as illustrated by a joint media release between the ECCV and the ICV condemning anti-mosque protests in Victoria.¹⁹ The ICV have a long standing relationship with the AFL and are a part of their Multicultural advisory group, an extension of which is the Multicultural Ambassadors and key events including the AFL iftar in Ramadan, Multicultural Round and the Unity Cup. Where possible we endorse projects and grant applications from both Muslim and non-Muslim not for profit organisations to build capacity to support Muslim and non-Muslim engagement.
- 3.10. The ICV's 2017 Victoria University research project, 'The civic potential of Muslim community organisations for promoting social cohesion in Victoria' is the first Victorian evidence-based insight into the activity profile of Muslim community organisations across the state. It underscored our manifold contributions to promoting social cohesion in Victoria's diverse and multi-faith society.²⁰ The ICV are leading contributors to Muslim youth projects and our post release rehabilitation program Muslim Connect and Community Integration Support Program (CISP) are national best practice models that address complex issues in partnership with State Government agencies.²¹
- 3.11. The ICV were also integral participants in ECCV's community roundtable on the only national community consultation on the Counter-Terrorism Amendment Bill (No1) 2015 - Punishment as Prevention 5.0 - which passed new control orders for children as young as 14, legal surveillance of their families, schools and

¹⁹ ECCV, 'Leading Victorian multicultural organisations condemn planned anti-mosque protests', posted 9 October 2015, at <http://eccv.org.au/community/media-releases/leading-victorian-multicultural-organisations-condemn-planned-anti-mosque-protests/>, accessed 27 January 2018.

²⁰ Victoria University-ICV, *The civic potential of Muslim community organisations for promoting social cohesion in Victoria*, authored by Mario Pucker, Melbourne: Victoria University, January 2017, at www.icv.org.au/new/wp-content/uploads/2017/03/Civic-potential-of-Muslim-community-organisations_final-document.pdf, accessed 27 January 2018.

²¹ See ICV, 'ICV Stories: Muslim Connect Program', 21 July 2017, at www.icv.org.au/icv-stories-muslim-connect/, accessed 27 January 2018.

even their parent's employers in the now Counter-Terrorism Legislation Amendment Act (No. 1) 2016 (The Counter-Terrorism Act).²²

3.12. As discussed, the RDA does not specifically factor in ethno-religious discrimination and this is a contributing factor in identifying and addressing violations and abuse towards Muslims in Victoria. In 2017 the ICV were part of a multi-faith and cross sector submission to the 2016 Inquiry into Freedom of Speech in which we commented on the strength of Sections 18C to protect ethnic communities from discrimination but that religious freedom was a glaring omission which we want to see included in any future amendments to the RDA. Page | 9

3.13. We further commend our friends in other faith groups and religions who have publically stood with the ICV and the Muslim community to oppose religious violations and abuse in the form of anti-Muslim rallies, attacks on Muslim mothers and women on our streets, and rhetoric from opinion leaders in Parliament and the media.

4. RECOMMENDATIONS

4.1. The ICV recommends that:

4.1.1. A review be conducted by an independent human rights expert body to assess the degree to which existing laws, and in particular security and counter-terrorism laws, impinge on the right for religious minorities to lawfully practice their religious freedoms.

4.1.2. As per the Australian Federation of Islamic Councils' (AFIC) submission – which the ICV has endorsed as a signatory – that the Commonwealth legislate to give effect to Australia's obligations under the UN Universal Declaration of Human Rights and the ICCPR. The preferred form of that legislation should be by way of a Bill or Rights that is based on the Canadian and New Zealand models. If a Bill of Rights is not possible, then we urge the Inquiry to accept the previously proposed recommendation of the AHRC for the enactment of a Religious Freedom Act.

²² See ECCV, Punishment as Prevention 5.0, ECCV Social Cohesion Policy Brief 6, August 2016, p. 2, at [http://eccv.org.au/library/Final ECCV Social Cohesion Policy Brief Control Orders Aug 2016 6.9.16.pdf](http://eccv.org.au/library/Final_ECCV_Social_Cohesion_Policy_Brief_Control_Orders_Aug_2016_6.9.16.pdf), accessed 27 January 2018.

- 4.1.3. The existing Racial Discrimination Act 1975 be revised to incorporate the fundamental protective tenets of the UN's 'Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981' by including religion in section 18c.
- 4.1.4. That this review be extended to allow for extensive community consultation, including with all major faith bodies in all states and territories before finalising the report and recommendations.
- 4.1.5. That legislative safeguards are put into place at both the State and Federal levels, protecting religious bodies, personnel and institutions from discrimination claims with respect to same sex marriages. Specifically, that:
- 4.1.5.1. The right of religious ministers to refuse to conduct same sex marriages.
- 4.1.5.2. The right of Islamic venues – such as mosques and community centres – to refuse same sex marriages being conducted on their premises.
- 4.1.5.3. The right of parents and students to refrain/abstain from participating in classes and school activities where same sex marriages are advocated/promoted.
- 4.1.5.4. That religious schools and teaching are allowed to adhere to their religious principles without imposing contrary social values such as same sex marriage.
- 4.1.6. The Government implements the recommendations stemming from the 2013 Joint Standing Committee on Migration's Inquiry into Multiculturalism in Australia, the Joint Committee on Foreign Affairs, Defence & Trade in its review on Freedom of Religion and the Select Committee on Strengthening Multiculturalism 2017.

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