



**“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**

This report is available on the HREOC website at:

<http://www.humanrights.gov.au/partnerships/religiousdefamation/>

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## Foreword by the Race Discrimination Commissioner

On behalf of the Australian Human Rights and Equal Opportunity Commission (HREOC) I thank the United Nations High Commissioner for Human Rights for the opportunity to submit this report on the issue of 'combating the defamation of religions'.

This report has been prepared by the Australian Human Rights and Equal Opportunity Commission to address the questions raised in General Assembly resolution 62/154 (18 December 2007). It is not a report by the Australian Government, nor does it claim to represent the views of the Australian Government.

As outlined in this report, HREOC notes that Australia decided not to support General Assembly resolution 62/154 which has been somewhat contentious, and there were a number of reasonable objections raised at the time of the vote relating to the wording within the resolution. However, the intent behind the resolution as I understand it (to promote a respect for individual religious belief, counter the upsurge in faith-related conflict, and to promote an international culture of human rights during an age of heightened apprehension about the threat of ostensibly faith-based acts of violence), is one that Australian governments and HREOC would generally and strongly support.

HREOC has felt that a detailed response to the invitation from the OHCHR is warranted. Since the events of 11 September 2001, Australia, like so many other countries, has faced numerous dilemmas. How do we maintain the rights and freedoms of our citizens while defending the Commonwealth at a time of perceived threat? How do we meet obligations under some UN conventions (such as the Refugee Convention), while maintaining the integrity of our borders? How do we have a public discussion about terrorism without creating an atmosphere of alarm in the general community, and without stereotyping or marginalising communities that are living in apprehension? How do we promote our anti-discrimination measures and human rights when these are seen by many in politics, media and the community as of secondary importance and easily subsumed to the need for national security? How do we understand and reasonably respond to the asymmetry of the threat posed by terrorism?

These are only some of the critical questions that must be addressed in this complex and contradictory discussion. As noted in the recent report by the International Council on Human Rights Policy, national human rights institutions (NHRIs) face particular dilemmas when considering these issues<sup>1</sup>. These dilemmas are not just ethical and legal ones. The mere discussion of the association between terrorism, religion, security and certain population groups living within national boundaries raises potential concerns about the role, independence and community expectations of NHRIs.

HREOC experiences these complexities and contradictions on a daily basis as we negotiate the path between the competing priorities of supporting vulnerable communities, our national legal and governance systems, HREOC's human rights mandate, ethical concerns, and HREOC's reporting obligations to government.

HREOC notes that the General Secretary has been asked to report back to the General Assembly on resolution 62/154 during the 63<sup>rd</sup> session. I hope this report on Australia's response to faith-based hate and fear, will help inform the United Nations' future response to this important subject and, should a further resolution on this issue be put to vote at the General Assembly, that some of the concerns raised in this report will be recognised in any new resolutions, thus encouraging a larger proportion of member states' support.

Tom Calma  
Race Discrimination Commissioner and  
Aboriginal and Torres Strait Islander Social Justice Commissioner  
on behalf of HREOC

# Preamble

## 1.1 About the Human Rights and Equal Opportunity Commission

Australia's NHRI, the Human Rights and Equal Opportunity Commission (HREOC, or, the Commission) was established in 1986 by an act of the national parliament. HREOC is an independent statutory authority that reports to parliament through the Attorney-General.

HREOC's goal is to foster greater understanding and protection of human rights in Australia and to address the human rights concerns of a broad range of individuals and groups. HREOC's responsibilities include:

- education and public awareness
- resolving discrimination and human rights complaints
- promoting human rights compliance
- supporting policy and legislative development

HREOC achieves this through:

- developing human rights education programs and resources for schools, workplaces and the community
- conciliating complaints of discrimination or breaches of human rights under federal laws
- holding public enquiries into issues of national importance
- providing independent legal submissions to courts of law in cases that involve human rights principles
- providing assistance and advice to parliaments and government to develop laws, programs and policies
- undertaking research into human rights and discrimination issues

HREOC has been established in conformity with the Paris Principles. The Commission are world leaders in working co-operatively with other countries to establish and strengthen independent NHRIs in accordance with these Principles. As such, HREOC works closely with other national human rights commissions, particularly through the Asia Pacific Forum of National Human Rights Institutions, to address major human rights issues in the region. HREOC also undertakes bilateral international activities as part of the Australian government's development program run by the Australian Agency for International Development (AusAID), including the Human Rights Technical Assistance Program.

HREOC is a collegiate body made up of a President (who is also the Chief Executive Officer) and five Commissioners. The six positions are currently held by four people, these being:

John von Doussa, HREOC President

Tom Calma, who is both the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Race Discrimination Commissioner;

Graeme Innes AM, the Human Rights Commissioner and Disability Discrimination Commissioner; and

Elizabeth Broderick, the Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination.

### 1.1.1 A note about Australian governance

Australia is a constitutional monarchy, 'constitutional' because the powers of the Commonwealth government are defined by the Australian Constitution, and 'monarchy' because the head of state is Queen Elizabeth II (represented in Australia by the Governor-General). Australia was formed in 1901 when six independent British colonies agreed to join together to become states within a new nation. Australia's Constitution created a federal system with the powers divided between a central (Commonwealth, national) government, and individual states as well as two territories.

Under Australia's Constitution, the Commonwealth government can pass laws (section 51) that relate to the entire country, with state governments retaining the power to make their own laws over matters not controlled by the Commonwealth under section 51; these governments have their own constitutions, legislature, executive and judiciary. State and territory governments are generally responsible for managing services, and so look after such issues as education, hospitals, transport infrastructure and the like. Australia has three tiers of government, the third being local councils which are formed

by state governments and are responsible for many community services; they have their own legislature and executive, but no judiciary.

HREOC is an independent statutory body created by the Commonwealth government and this report largely focuses on activities at that level (although it should be noted this report is not submitted on behalf of the Australian government). However, the complexity of Australia's system of governance should be understood when reading this report and that various actions taken to 'combat the defamation of religions' may fall into state jurisdictions that have different laws, and which may have their own projects and programs to do so. In Australia, state/territory and Commonwealth relations are managed through the Council of Australian Governments (COAG). National programs can be porous across various administrative and legislative domains making an understanding of the responsibility, as well as consistency, and the collection and auditing of national activities, difficult.

## 1.2 General Assembly resolution 62/154 (18 December 2007)

The Office of the United Nations High Commissioner for Human Rights sent an invitation dated 29 April 2008 to (inter alia) all NHRIs to submit a report to its office by 24 June 2008 (by 4 July in HREOC's case) on the implementation of the resolution, in particular, the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

In summary, the resolution seeks a response on the following issues:

- negative stereotyping of religions and the continuing discrimination against some religions
- physical attacks upon the cultural centres, places of worship, businesses and symbols of religions
- the actions of extremist organisations to defame religions, particularly when this is condoned by governments
- the association of Islam with human rights violations and terrorism
- ethnic and religious profiling of Muslims in the aftermath of 9/11
- the impact of counter-terrorism measures have on the human rights of target groups, as well as their economic and social exclusion
- the use of print, audio-visual, electronic media and the web to incite violence, xenophobia and discrimination towards Islam, but religion generally
- the need to combat the defamation of religions, but Islam and Muslims in particular
- the rights of freedom of belief and expression, and the necessary rights and responsibilities that come with these freedoms as well as reasonable limitations under law
- the provision under legal and constitutional systems to adequately protect against acts of religious hatred and discrimination as well as complementary intellectual and moral strategies to combat such hatred and intolerance
- ensuring public officials (including police, educators and public servants) respect people equally in the conduct of official duties, and provide appropriate training to help them do so
- local, regional, national and international strategies and harmonising actions to combat defamation of religions through education and awareness-raising
- equal access to education
- the fostering of global dialogue to promote a culture of peace and the respect for human rights that includes the participation of government, non-government and religious organisations, as well as the print and electronic media
- to collaborate with other international organisations to hold joint conferences that promote dialogue among civilizations and the universality of human rights, and
- a report on the possible correlation between the defamation of religion and an upsurge in incitement, intolerance and hatred in many parts of the world.

The General Assembly resolution acknowledges a range of previous United Nations resolutions, declarations and reports including the United Nations Millennium Declaration, the Durban Declaration, and the Alliance of Civilizations initiative. Although not referenced in the resolution, the context of this resolution is also a number of other United Nations responses to the escalated risk of global terrorism, including the United Nations Security Council resolution 1373 of 28 September 2001, passed to respond to the real and urgent threat posed by international terrorist networks.

There are inherent challenges, complexities and dichotomies associated with the subject, as described, of countering the defamation of religions. On the one hand promoting freedom, respect, human rights and cross-cultural dialogue, and on the other establishing a framework of control, security and protection. This is reflected in the resolution which itemises a long and disparate list of areas where member states are asked to act.

Resolution 62/154 was approved by a recorded vote of 95 in favour, 52 against and 30 abstentions. The United States, New Zealand, Australia and members of the European Union did not support the resolution in its current form and India abstained from voting. The reasons given for this were, firstly, because the resolution focuses primarily on one religion (Islam) and the prevention of defamation and stereotyping should be extended to all religions and, secondly, because the concept of defamation is not applicable to religions and, therefore, is invalid in human rights discourse which should address the rights and freedoms of individuals. Nevertheless, there was overall agreement that vilification and discrimination on the grounds of religious belief is unacceptable and there was concern about serious instances of religious intolerance and violence which should be addressed through international effort.

### 1.3 HREOC's understanding of the invitation to report on combating the defamation of religions

HREOC understands that resolution 62/154 requests the Secretary-General to submit a report to the 63<sup>rd</sup> session on implementation of the resolution, including the correlation between attacks against religions and increasing intolerance and hatred in many parts of the world. This report is being submitted to the Office of the High Commissioner for Human Rights (OHCHR) to help inform the Secretary-General's report. HREOC hopes that this report will assist the General Assembly to consider the issues, generally, more fully and may assist the General Assembly to pass a future resolution that has a greater level of support from member states.

The contentious issue associated with resolution 62/154 was the specific referencing to the experience of Muslims and the inference that Islam has borne the brunt of worldwide defamation of religions. Not only is this recognised internationally, including in United Nations documents<sup>2</sup>, it is also a concern recognised within Australia.<sup>3</sup> This has been extensively debated in numerous government reports, discussed in government committees and reflected in policies and programs, in media opinion pieces, academic and research publications, and the work of civil society institutions. It is also reflected in governments' legislation to respond to the increased security environment. This is discussed in detail in section 2.5 because of the unavoidable appearance that counter-terrorism legislation is specifically targeted at Muslim Australians. HREOC is of the view that the use of the term 'defamation of religions', as demonstrated by the debates at the General Assembly, may not be the best way to describe ongoing discrimination, violence and exclusion on the basis of religious belief or affiliation.

In interpreting this resolution, HREOC takes it to mean that the word 'defamation' is used in the widest possible way. HREOC understands defamation to be an act of communication that causes an individual to face a false claim (stated or implied) made about them and claimed to be factual; to be shamed, ridiculed, held in contempt, lowered in the estimation of the community, or otherwise suffer from a damaged reputation. Defamation may also apply to a business, product, group, government or nation. This defamation may involve stereotyping, sensationalising, vilifying, dehumanising and otherwise attacking the cultural, spiritual, ethical and related elements of religions diversity and their associated values.

While recognising the complexity of the issues, and the lack of clarity in the resolution, HREOC interprets that reporting to the OHCHR should address:

1. legal issues relating to religious vilification under Australian laws since clause 12 "*...urges States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion.*" and also because the concept of 'defamation' is generally seen as a legal one
2. more general issues associated with the disparaging of religions and their associated cultural practices and belief systems
3. wider policy and program response to address cultural and religious diversity, and to foster community harmony within Australia that is compatible with the spirit of the resolution.

Not only is HREOC concerned about the use of the word 'defamation', the verb 'combating' is also one that may not be helpful given the nature of the issues being addressed. HREOC agrees that religious and associated discrimination must be responded to with authority and clarity. Nevertheless, the use of the term 'combat' is perhaps inappropriate under the circumstances. Combat means 'to fight or contend against... a fight between two men, armies etc', a combatant is 'a person or group that fights' and combative is 'ready or inclined to fight' (Australian Macquarie Dictionary, 1985). The language of the resolution, therefore, may not be sending the best message about positive engagement with the challenges of faith-based discrimination, conflict and violence, but may, at a subliminal level, tend to compound the idea that religion, in particular Islam, is generally amplifying the problems of global violence.

Despite the ambiguity of the language in the resolution, HREOC understands and supports the intent behind their use, and quotes the phrase 'combating the defamation of religions' throughout this document to avoid confusion, while registering its concerns.

As well as these concerns, HREOC also notes that a number of issues that could have been included in the resolution were omitted and this has further excluded groups which face the experience of defamation on the grounds of religion. HREOC, in recognition of this omission, has made reference to the issues of gender and the rights of indigenous peoples within this document.

In this report the approach HREOC has taken is to try and strike a balance between the opportunities and costs, the good and the bad, and the issues that are clear and those that are obscure. The report attempts to describe what are; an enmeshed set of security challenges, human rights dilemmas, complex legislative responses and intractable ethical issues.

#### **1.4 HREOC's assessment of the relationship between defamation of religions and the risks to national security and social cohesion<sup>4</sup>**

There is an increasing body of literature that links the defamation of religions to a growth in the risk of retaliatory violence and an accompanying damage to social cohesion within nation states. As noted in resolution 62/154, this has been identified in the High-Level Group report of the Alliance of Civilizations, it has also been affirmed in other reports<sup>5</sup>. There is also growing recognition that an effective response to international terrorism should not just rely upon 'hard security', but must also take human rights-based approaches to addressing conflict and disequilibria in wealth, freedom and opportunity, as well as recognising the need for dignity and respect (defamation is about disrespect, not poverty).<sup>6</sup>

Australia, like other countries that have assessed their national interests and security as at-risk, has responded in many ways in an attempt to address the economic, political, cultural and other complexities associated with emerging patterns of faith-based violence, inter-religious and inter-cultural conflict, and the exclusion of certain communities by a mainstream apprehension of difference and the escalating speed of social change.

Government response to these challenges is ongoing and this report is submitted to the OHCHR at a time when a policy reorientation is occurring due to the change of government at the Commonwealth level late in 2007.

##### **1.4.1 Social cohesion, social inclusion and social connectedness**

Within Australia there is a public policy trend to replace the term 'social cohesion' (favoured by the previous conservative Commonwealth government) with that of 'social inclusion' (a term preferred by the new, centralist government)<sup>7</sup>. Sometimes used inter-changeably, there is, nevertheless, a distinction between them and the lack of definitional clarity needs to be resolved.

The word cohesion refers to bonding, about bringing together, about adhesion. It is a more centripetal idea, of the disparate being attracted towards a centre, or a 'mainstream'. Inclusivity, on the other hand, is a term that is about inviting or helping others to join in, to participate, or to be part of something on equal terms.

The distinctions between the concepts are significant and, in terms of social capital theory, it could be said that cohesion is about bonding social capital (or building strength within largely homogenous communities when 'core values' are already largely shared and understood), whereas inclusion is about bridging social capital (or bringing diverse communities together

to build a shared understanding and a civic discourse that is mutually respectful). Indeed, it has been questioned<sup>8</sup> whether social cohesion is really a virtue at all. Social cohesion actually infers, and promotes, homogeneity and (hence) implies that pluralism may be harmful to social relations.

Not only is it unrealistic (no society can be completely homogenous)<sup>9</sup>, it denies the dynamism and strength of societies that function within an environment of creative complexity, and, that many members of society may actively choose diversity over mono-culturalism. Nevertheless, others have argued this reads too much into the phrase and it really describes a model of reciprocal recognition of rights and responsibilities within a liberal, plural, democracy.

Social inclusion, on the other hand, is a more elastic term, partly because it is often vaguely defined. It could be described as a 'value', which is essentially an intangible quality, as well as a policy principle upon which tangible programs may be built. In Australia, the new Commonwealth government has strongly endorsed social inclusion as a process to resolve systemic disadvantages and barriers to human development. The use of the term is associated with programs of the previous Blair government in the UK which saw social inclusion as a means to address immediate material issues that also have a social justice dimension, such as homelessness, workforce participation, education, and costs of living.

Hitherto, and in what is still an evolving social policy environment in Australia, social inclusion is yet to be considered in a broader way, particularly in how it encompasses culture. In genuinely socially inclusive communities, members of these communities' religious, cultural, ethnic and racial beliefs and backgrounds will be, as an absolute minimum, respected. More properly, they should be seen as an asset that enriches civic life.

Another concept that may be useful as a way of describing the goal of building respectful civil societies, and members of those societies with a strong sense of wellbeing, is that of 'social connectedness'. This is a term that HREOC uses to describe some of the project goals of its *Community Partnership for Human Rights Program* (for details, see section 4.3.2).

Social connectedness is normally understood as a psychological term that describes the quality and quantity of connections that people have with others within their social circle of family, friends and colleagues. These can be in real life, or on-line. The more socially connected a person is in their life, the greater their sense of self-control and self-determination. While still predominantly used in the health promotion literature, it is being increasingly used in wider social policy<sup>10</sup>. Alternative social policy models may be helpful to understand how a human rights-based approach to counter-radicalisation may be developed and implemented. The concept of social connectedness, as a way of understanding the dynamics within tightly knit and vulnerable communities, is worthy of close examination.

On 13 February 2008 the first act of the new national Government, led by Prime Minister Kevin Rudd MP, was to deliver a National Apology to Indigenous Australians for the highly damaging policies implemented over many decades by previous governments, in particular, the forced removal of children from their families (often described as 'Stolen Generations'), allegedly to aid their 'assimilation' into the wider Australian society.

This reconciliation initiative could, ideally, be extended to other communities that have experienced discrimination, degrading treatment, or social exclusion over recent years. Such recognition of past wrongs could be a valuable way of 'integrating' such groups into the wider community through a reconciliatory process modelled, in a more modest way, on the Stolen Generations Apology. This could also be a method of 'de-stigmatising' certain communities, and sending a message that racist behaviour and stereotyping is not tolerated.

#### 1.4.2 Multiculturalism as a key aspect of social inclusion

In 2004, the United Nations Development Program (UNDP) recognised, for the first time, that culture was a critical element to promote human development<sup>11</sup> in its annual report that examined cultural liberty. In particular, it noted that most nations are culturally diverse and what it describes as 'multicultural democracies', while imperfect, are the closest that humans have come to developing an optimal form of governance.

Along with Canada, Australia developed and implemented a national multicultural policy well before many other countries. Just prior to its loss at the November 2007 election, the previous government declared that multicultural policy in Australia

had ended – a position reversed by the incoming government. In the months leading to this election HREOC was concerned, that at a time when the rest of the world had recognised the importance of multiculturalism as a means to maintain social harmony, promote human rights, and to progress human development (as demonstrated in the UNDP report), Australian policy was heading in the wrong direction.

The Commission published a paper<sup>12</sup> defending multiculturalism to add to public discourse about the importance of both the policy and the principles it supports. In summary, HREOC's paper mirrors many of the critical themes outlined in the UNDP report, including that:

- policies recognising cultural identities and encouraging diversity to flourish do not result in fragmentation, conflict, weak development or authoritarian rule. It is often the suppression of culturally identified groups that leads to tensions
- a sense of identity and belonging to a group with shared values and other bonds of culture is important for all individuals. But each individual can identify with many different groups
- cultural liberty is a human right and an important aspect of human development and thus worthy of state action and attention
- multicultural policies that recognise differences between groups are needed to address injustices historically rooted and socially entrenched
- maintenance of a liberal society depends upon respecting the rule of law, listening to political claims and protecting fundamental human rights – even of vile people, and
- individuals have to shed rigid identities and respect human rights if they are to become part of diverse societies.<sup>13</sup>

HREOC's position paper also emphasises that multiculturalism is not about establishing a system of special favours for minorities, nor is it about encouraging segregationism. Multicultural policy in Australia has always demanded commitment to the democratic systems and institutions of the country and the respect of the rights of all its members. It is about inclusion, while recognising the cultural liberty and preferences of its citizens; importantly, multiculturalism is also about human rights, in particular, confronting race and related forms of discrimination. Increasingly, it is also about recognising the importance of religion as a dimension of peoples' cultural lives, personal identity, and as a means of building social capital.

Social inclusion principles and policy, which are now being developed by the new government, would be strengthened if they embraced a multiculturalism that focuses on inter-cultural respect, a rejection of racism in its widest definition, and is underpinned by a new charter of rights for Australian citizens. Structural discrimination can continue to appear at unlikely times and in vehement ways as, for example, was recently illustrated at Melbourne's RMIT University, which refused to provide the appropriate prayer facilities that were promoted in its literature to overseas fee-paying students.<sup>14</sup> These kinds of scenarios not only impact negatively on the institutions where they occur, they can have wider economic and social impacts upon the community and the nation.

## 2. LEGAL ISSUES

Australia's laws provide limited protection from religious discrimination and vilification. The uneven protection that is available exists mostly under laws relating to racial discrimination and laws in some states that cover religious discrimination and vilification.

Issues concerning defamation of religion have also arisen in Australia in the context of cyber-racism and counter-terrorism debates.

### 2.1 Australia's federal protections from racial and religious discrimination and vilification

#### 2.1.1 The Constitution

The Australian Constitution contains no protection against discrimination, except on the narrow grounds of state residency. However, clauses under the Constitution have led Australia to be described as a secular state, most specifically because of section 116, which states that the Commonwealth government cannot pass legislation:

*"...establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion and no religious test shall be required as a qualification for any office or public trust..."*

This has been interpreted to mean that the Australian government cannot pass laws that:

- (i) create a religion
- (ii) endorse one specific 'state religion'
- (iii) require particular religious observances, or
- (iv) prohibit the doing of an act done in the practice of religion.

Moreover, the Australian government cannot, whether by law or otherwise, require that a prospective holder of public office be affiliated with a (or any) particular religious views.

Australia's federal parliament has passed laws to prohibit racial discrimination and vilification on the basis of its power under the Constitution with respect to 'external affairs'. This power has been held to extend to passing laws to ensure that Australia complies with international human rights obligations.

#### 2.1.2 The Racial Discrimination Act

Australia ratified the 1966 *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) on 30 September 1975. This has been implemented through the *Racial Discrimination Act 1975* (Cth) (RDA).

The central prohibition against racial discrimination is contained in s 9(1) of the RDA which provides:

*"...any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."*

As well as this general prohibition, the RDA makes racial discrimination unlawful in a range of specific areas such as employment, housing and the provision of goods and services.

The RDA prohibits both direct and indirect discrimination. An example of direct discrimination (also called 'disparate treatment' discrimination) is refusing to serve a person of a particular race at a hotel.

Indirect discrimination (also called 'disparate impact' discrimination) refers to the imposition of policies or rules that unreasonably disadvantage people of a certain race, colour, descent or national or ethnic origin, even if it is applied equally and appears to provide equality of treatment. An example of this kind of indirect discrimination is a company that may require night stackers to have high levels of English language competency to be employed, even though this is not required for the discharge of their duties as employees. There are, however, situations where this kind of discrimination may be

reasonable if it has a clearly demonstrable purpose, for example, if that same business had a position taking telephone orders, then it might not be discriminatory to require good English language skills.

The RDA applies to businesses of all sizes, schools, local governments, state, territory and Commonwealth government agencies and departments, and individuals. It covers a wide range of circumstances such as employment, housing and accommodation, education at all levels, the provision of goods and services, access to facilities meant for use by the public, advertising, and trade union membership. Nevertheless, it is not against the law to make racial distinctions in private life (for example, when you choose friends, or who you allow into your home).

The RDA also permits racial distinctions to be made if they are considered to be 'special measures'. The special measures exemption to the RDA is intended to permit positive discrimination for racial groups who have been disadvantaged and who suffer from great social and economic disadvantage or exclusion compared to other groups in society and may require assistance to better enjoy their human rights to the same level that other Australians enjoy.

### ***Racial vilification***

In addition to prohibiting racial discrimination, the RDA also prohibits public behaviour that is racially offensive or abusive (see s 18C). Examples include: writing racist graffiti in a public place, making racist speeches at a public event, placing racist posters in a public place, making racially abusive comments, jokes, songs or gestures in public, offensive comments or drawings in newspapers or publicly available websites. In a number of cases it has been confirmed that 'cyber racism' may be covered by the prohibition in s 18C.<sup>15</sup>

The RDA, nevertheless, recognises that there is a need to balance rights and values, between the right to communicate freely ('freedom of speech') and the right to live free from racial vilification. To attempt to manage these potentially conflicted human rights, the racial vilification provisions only apply to an act done 'otherwise than in private'. Further, s 18D of the RDA provides an exemption for acts done 'reasonably and in good faith':

- (a) in the performance, exhibition or distribution of an artistic work, or
- (b) in the course of any statement, publication, discussion or debate made or held for genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest, or
- (c) in making or publishing:
  - (i) a fair and accurate report of any event or matter of public interest, or
  - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment

### ***Religious discrimination under the RDA***

Religious discrimination is not, per se, made unlawful by the RDA. However the Act does prohibit discrimination on the grounds of 'ethnic origin'. The term 'ethnic origin' has been interpreted broadly in a number of jurisdictions to include certain religious groups such as Jewish and Sikh people.

### ***Complaints by Jewish people***

A New Zealand court in *King-Ansell v Police*<sup>16</sup> held that Jewish people in New Zealand formed a group with common ethnic origins within the meaning of the *Race Relations Act 1971* (NZ).

In *Miller v Wertheim*,<sup>17</sup> the full Federal Court of Australia stated that it could be "*readily accepted that Jewish people in Australia can comprise a group of people with an 'ethnic origin'*"<sup>18</sup> for the purposes of the RDA, and cited with approval the *King-Ansell* case. In *Jones v Toben*<sup>19</sup> Branson J held that she was "*satisfied that Jews in Australia are a group of people with a common 'ethnic origin' within the meaning of s 18C of the RDA.*"<sup>20</sup>

### **Complaints by Sikhs**

In *Mandla v Dowell Lee*<sup>21</sup> the House of Lords held that Sikhs are a group defined by a reference to ethnic origins for the purpose of the *Race Relations Act 1976* (UK). The Court held that for a group to constitute an ethnic group for the purposes of the legislation in question, it had to regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics.

### **Complaints by Muslims**

There have been no cases decided on the question of whether Muslim people constitute a group with a common 'ethnic origin' under the RDA. It is noted, however, that the Explanatory Memorandum to the *Racial Hatred Bill 1994* (Cth) (which became the *Racial Hatred Act 1995* (Cth) and introduced Part IIA of the RDA which prohibits offensive behaviour based on racial hatred) suggests that Muslims are included in the expressions 'race' and/or 'ethnic origin'. It states:

*"The term 'ethnic origin' has been broadly interpreted in comparable overseas common law jurisdictions (cf King-Ansell v Police [1979] 2 NZLR per Richardson J at p.531 and Mandla v Dowell Lee [1983] 2 AC 548 (HL) per Lord Fraser at p.562). It is intended that Australian courts would follow the prevailing definition of 'ethnic origin' as set out in King-Ansell. The definition of an ethnic group formulated by the Court in King-Ansell involves consideration of one or more of characteristics such as a shared history, separate cultural tradition, common geographical origin or descent from common ancestors, a common language (not necessarily peculiar to the group), a common literature peculiar to the group, or a religion different from that of neighbouring groups or the general community surrounding the group. This would provide the broadest basis for protection of peoples such as Sikhs, Jews and Muslims.*

*The term 'race' would include ideas of ethnicity so ensuring that many people of, for example, Jewish origin would be covered. While that term connotes the idea of a common descent, it is not necessarily limited to one nationality and would therefore extend also to other groups of people such as Muslims".<sup>22</sup>*

This issue has, however, been considered by the Administrative Appeals Tribunal in NSW which upheld a race discrimination complaint brought by a man who was a Lebanese Muslim. In New South Wales (NSW), however, unlike under the RDA, the anti-discrimination legislation defines 'race' to include ethno-religious origin.<sup>23</sup>

### **2.1.3 Protections under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) ('HREOC Act')**

Under the HREOC Act, discrimination or vilification of people on the basis of religion may be dealt with in two ways.

#### ***Acts or practices of the Commonwealth that are inconsistent with the right to freedom of religion***

The Commission is given the function to inquire into, and attempt to conciliate allegations that, an act or practice of the Commonwealth (including things done 'on behalf of the Commonwealth') is inconsistent with any human right.

'Human rights' mean the rights and freedoms recognised in the international instruments which are declared or scheduled to the HREOC Act. Two such instruments have particular relevance to the freedom of religion:

- the *International Covenant on Civil and Political Rights* (ICCPR), and
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (Religion Declaration).

The freedom to hold and manifest religions and other beliefs is guaranteed by article 18 of the ICCPR.

The ICCPR also provides that:

- advocacy of religious hatred which amounts to incitement to discrimination, hostility or violence must be prohibited by law (article 20)
- everyone is entitled to equality before the law and equal protection of the law without discrimination on the ground of religion among other grounds (article 26), and
- minority groups are entitled to profess and practice their own religion (article 27).

The Religion Declaration is a comprehensive statement of the right to freedom of religion and belief and elaborates on the ICCPR guarantees. This freedom is not to be inhibited by discrimination on the ground of religion or other beliefs (article 2). Some of the elements of the freedom to manifest one's religion or belief are listed in article 6 and include the freedom to assemble for worship, freedom to use the articles and materials related to rites or customs, freedom to write and disseminate publications, and freedom to teach the religion.

### ***Discrimination in employment or occupation based on religion***

Under the HREOC Act, the Commission is also given the function to investigate and attempt to conciliate complaints of discrimination in employment or occupation on a number of specified grounds including religion. This part of the HREOC Act has its basis in the International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958* (ILO Convention 111). ILO Convention 111 defines discrimination to mean any distinction, exclusion or preference made on the basis of, amongst others, religion, that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

The definition of discrimination in s 3 of the HREOC Act relevant to this particular function is based on the definition of discrimination in article 1 of ILO 111. However, the definition of discrimination in s 3 of the HREOC Act also recognises that a distinction, exclusion or preference will not amount to discrimination when it is:

- based on the inherent requirements of a particular job, or
- 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, and
- is 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.

#### **2.1.4 Other laws**

The *Workplace Relations Act 1996* (Cth) prohibits discrimination in the area of federally regulated workplace agreements and terminations, the *Public Service Act 1999* (Cth) and the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* (Cth) also impose some obligations on Commonwealth authorities and public service agencies to combat race discrimination.

#### **2.1.5 Possible reforms**

HREOC has recommended that a federal law be introduced making unlawful discrimination on the ground of religion or belief, and, vilification on the ground of religion or belief.<sup>24</sup> The issue of combating the defamation of religion by the Commonwealth government, from a legal perspective, might be most succinctly answered if the RDA was amended to make religious vilification unlawful. Many advocates have argued that such an amendment is required for the RDA<sup>25</sup>.

## **2.2 Existing legislation under State/Territory laws**

Some states and territories have legislation that expressly prohibits religious discrimination and vilification.

In other states and territories religious discrimination and vilification is not, per se, made unlawful. However, the racial discrimination and racial vilification laws in these other states and territories may provide some protection against religious discrimination or vilification.

### ***Express prohibition of religious discrimination***

Discrimination on the basis of religion is unlawful in the Australian Capital Territory (the ACT), Northern Territory, Queensland, Western Australia, Tasmania and Victoria.<sup>26</sup>

In the ACT and Western Australia, the term used is 'religious conviction'.

In Queensland, the Northern Territory and Victoria, the terms used are 'religious belief or activity'.

In Tasmania the terms used are 'religious belief or affiliation'.

Furthermore, in Queensland<sup>27</sup> and Victoria,<sup>28</sup> these terms include the absence of religious belief as well as any refusal to participate in religious activity.

### ***Express prohibition of religious vilification***

Queensland, Victoria and Tasmania are the only states in Australia that expressly prohibit religious vilification.

Vilification based on 'religion' is against the law in Queensland; vilification based on 'religious belief or activity' is against the law in Victoria and vilification based on 'religious belief or affiliation' is against the law in Tasmania.<sup>29</sup>

The key elements of the provisions in these states are as follows:

- there (firstly) must be a public act (the Victorian legislation talks about 'engaging in conduct'),
- which (secondly) incites hatred towards, serious contempt for or severe ridicule of another person or group (the Victorian legislation also includes revulsion), and
- because (thirdly) of the persons'/groups' religion, religious belief, religious activity or religious affiliation.

The legislation in these states contains exceptions to what would otherwise be unlawful conduct similar to the exceptions provided for racial vilification complaints under the RDA.<sup>30</sup>

The Victorian law also prohibits 'serious' religious vilification which requires the conduct referred to above to be done 'knowingly'.<sup>31</sup> The Tasmanian and Queensland legislation do not have an equivalent offence.

### ***Race Discrimination in other states and territories***

In NSW and South Australia the anti-discrimination laws do not expressly prohibit religious discrimination.

In NSW, however, the *Anti-Discrimination Act 1977* (NSW) prohibits 'race' discrimination and defines 'race' to include 'ethnic origin' or 'ethno-religious origin'.<sup>32 33</sup> 'Ethnic origin' has been interpreted broadly in the federal context as including some religious groups. As indicated above, a man who was discriminated against on the basis of his Muslim faith and middle-eastern appearance succeeded in his race discrimination complaint under the NSW legislation as such discrimination was considered by the Tribunal to be ethno-religiously based.<sup>34</sup> In an earlier decision, however, the Tribunal held that in order to establish a complaint under the ethno-religious ground, a person cannot rely solely on their religion, such as Islam.<sup>35</sup>

The South Australian law definition of 'race' does not expressly include ethnic origin.<sup>36</sup> The South Australian law defines 'race' to mean 'nationality, country of origin, colour or ancestry'. As such in South Australia a person who is subject to religious discrimination is probably left without any remedy.

### ***Racial vilification in other states and territories***

The Northern Territory does not have any provisions that prohibit vilification whether it be racial or religious vilification.

The ACT, Western Australian, South Australian, and NSW laws prohibit 'racial vilification' which covers vilification against groups on the basis of 'ethnic origin'.<sup>37</sup> The NSW racial vilification provisions also cover vilification against an 'ethno-religious' group.<sup>38</sup> 'Ethnic origin' and 'ethno-religious' origin may be interpreted to include certain religions and as such vilification against certain religious groups may be covered by the racial vilification provisions in these states and the ACT.

The elements of racial vilification under NSW, ACT and South Australian laws are the same as the elements of religious vilification in Tasmania, Queensland and Victoria except the prohibition is against vilification on the ground of 'race' rather than religion. These states and territory also have similar exceptions to racial vilification claims to those available under the RDA.<sup>39</sup>

NSW, the ACT and South Australia also have laws that make certain types of racial vilification an offence.

The NSW and South Australian Acts make racial vilification that involves either of the following an offence:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.<sup>40</sup>

The NSW and South Australian laws do not expressly require the act to be done with intent, however, there is generally a presumption that intent (or mens rea) is required in the case of statutory offences.<sup>41</sup>

The ACT offence contains essentially the same elements as the offences in NSW and South Australia except it expressly requires the act to be done with intent or recklessness.<sup>42</sup>

The NSW, South Australia and ACT provisions creating these offences do not have the exceptions that exist in the case of civil racial vilification claims.

The Western Australian racial vilification provisions are more extensive than the racial vilification provisions in the other states and territories. The provisions that deal with racial vilification in Western Australia are in Chapter XI of the *Criminal Code* (WA). This Chapter contains provisions that create the following criminal offences:

- engaging in conduct, otherwise than in private, that the person either intends (s 78), or is likely (s 79), to create, promote or increase animosity towards, or harassment of a racial group or person who is a member of a racial group
- possession of material for dissemination intended (s 79), or likely (s 80), to create, promote or increase animosity towards, or harassment of, a racial group or member of a racial group
- engaging in conduct intended (s 80A), or likely (s 80B), to harass a racial group or member of a racial group
- possession or material for display intended (s 80C), or likely (s 80D), to harass a racial group or member of a racial group.

In the case of the offences of conduct or possession of material for dissemination likely to create, promote or increase animosity towards, or harassment of, a racial group or person who is a member of a racial group there are similar exceptions available to defend such offences as those available to defend a claim of racial vilification under the RDA.<sup>43</sup>

### 2.3 Case study: *Islamic Council of Victoria v Catch the Fires Ministries Inc (Final)*<sup>44</sup>

Probably the most significant legal interpretation of religious vilification in Australia, and one which also aroused considerable media interest as well as intense debate within religious communities, was the *Islamic Council of Victoria v the Catch the Fires Ministries* case.

In this case the Islamic Council of Victoria sought to apply s 8 of the Victorian *Racial and Religious Tolerance Act 2001*, which provides remedies for religious vilification, against the Catch the Fires Ministries (a non-denominational evangelical group) to apologise for its defamation of Muslims. This Victorian Act prohibits conduct "that incites hatred against, serious contempt for, or revulsion or severe ridicule" of others on the grounds of religious belief.

The Islamic Council of Victoria complained that, during an all-day seminar organised by the Catch the Fire Ministries in March 2002, which was promoted as an "insight into Islam", Pastor Daniel Scot who led the

seminar, made a number of statements including:

- the Qu'ran promotes violence, killing and looting, and encourages domestic violence
- Muslims are liars and demons
- Muslims use money to induce people to convert to Islam and have a plan to overrun western democracy by the use of violence and terror
- Muslims intend to take over Australia and to declare it as an Islamic nation
- people we call terrorists are true Muslims
- Muslims in Australia are increasing at substantial rates and have influence or control over the migration of people to Australia.

A newsletter, written by a second respondent in the case, Pastor Danny Nalliah, described Muslims as "the enemy" and asked rhetorical questions inferring that Muslims will eventually rape, torture and kill Christians in Australia. Other material on the Catch the Fires Ministries website further suggested that Islam is an essentially violent religion and implied that Muslims endorse the killing of people based on their religion.

The Victorian Civil and Administrative Tribunal ruled in 2004 that the ordinary, reasonable person would understand from Pastor Scot's seminar that they were being incited to hatred or serious contempt or ridicule of Muslims and that this, along with the newsletter and article, all constituted activities in breach of s 8 of the Act.

This decision caused an outcry from a wide spectrum of Christian groups, and included their political parties such as the Festival of Light and Christian Democratic Party, which argued that the ruling denied them freedom of speech. On the other hand, the Roman Catholic and Uniting Churches actually sought to intervene in the case to support the Islamic Council of Victoria.

The Catch the Fires Ministries appealed the ruling in the Supreme Court of Court of Victoria. All three judges in the Supreme Court upheld the appeal and set aside the decision of the Tribunal but for varying reasons.<sup>45</sup> The only findings common to the reasoning of all three judges in relation to the substantive decision of the Tribunal were their findings that:

1. s 8 requires consideration to be given to the effect of the impugned conduct on a reasonable member of the class of persons to whom the conduct was directed rather than the effect on a reasonable reader<sup>46</sup> (Neave JA, Ashley JA agreeing, held that the standard should be the effect on an 'ordinary' member rather than a reasonable one)<sup>47</sup>
2. for the purposes of s 8, the motivation of the impugned conduct is irrelevant.<sup>48</sup>

Nettle JA<sup>49</sup> and Ashley JA<sup>50</sup> both held that the Tribunal had erred by failing to take into account aspects of the seminar which ameliorated any risk of inciting hatred of Muslims.

The Supreme Court set aside the penalties laid down by the Tribunal and sent it back to be heard again. The Supreme Court also ordered the Islamic Council of Victoria to meet half the appeal costs of the two pastors, and there was also a risk that they would have to meet other costs as well. The parties subsequently resolved the matter through conciliation.

## 2.4 Cyber-racism

While racism can manifest itself in many ways, one of the most pernicious and increasingly common, is cyber-racism - the use of a range of on-line methods to promote racism. Some of these methods include:

- racist websites, racist chat-rooms, discussion groups, blogs and other forms of on-line dialogue (some of these are pass-word protected, others are not)
- racist games
- racist music and music merchandising
- spam – unsolicited, uninvited racist email messages, often including highly offensive images such as photographs and cartoons

- racist vandalism - 'unconstructive editing' or other forms of mischievous tampering with websites, for example, Wikipedia lists a range of topics as 'semi-protected against vandalism', or no further editing, because of racist entries associated with listings including on Islam and Judaism.

As elsewhere, in Australia cyber-racists tend to be, but are not exclusively, white supremacists: neo-Nazi revisionists who promote the myth of white race superiority and destiny and the cultural, moral, intellectual and physical inferiority of all other peoples. Australian cyber-racist sites tend to be vectors for shared vilification, conspiracy theories, propaganda and humour. These sites, generally, are helping to reinvent and maintain race and religious hatreds, in particular hatred targeted at both Muslims, Jews and (by race) Asians, 'blacks' and Indigenous Australians.

Because web-based racism goes beyond the boundaries of nation states it is difficult to control under Australian laws. It is also a contentious area because of the discourse around what is, or is not, deemed to be 'public' and 'published'. Another important issue concerning cyber-racism relates to whether the host of an internet site can be responsible for, or has a duty of care over, its content.

In 2002 the organisation Electronic Frontiers Australia provided a submission to HREOC's paper on cyber-racism. Broadly, the EFA argued against control. Its paper states:

*"... while open web sites are certainly not 'private', they are public in a rather different fashion to radio or television broadcasts, since the web is a 'pull' medium... in particular, they are not intrusive: web sites do not appear on computer screens unbidden; one must choose to view a view site, taking affirmative action to do so. (The delivery of offensive material in unsolicited email... would be a different matter)..."*

While there has been a focus in recent years on controlling both terrorist networks that use the internet and digital technologies to organise terrorist attacks and motivate recruits, as well as local and internationally networked cyber-paedophiles, there would appear to have been less effort expended in countering cyber-racism.

#### 2.4.1 Cases concerning cyber-racism

In Australia there have been three notable cases that are relevant to cyber-racism.

In *Jones v Toben*,<sup>51</sup> Jeremy Jones (representing the Executive Council of Australian Jewry) argued that Frederick Toben (a member of the Adelaide Institute) had breached s 18C of the RDA by publishing material on a website that included Holocaust denial materials.

Justice Branson held that placing material on a website which is not password protected is an act to which s 18C of the RDA applies as it is taken not to be done in private.<sup>52</sup> Justice Branson further held that the material was offensive and was done because of the applicant's ethnic origin, namely because he was Jewish.

Justice Branson ordered Toben to remove all reference from the site which denied the Holocaust or were offensive to Jewish people. It could be argued that this case demonstrates Australia's capacity to manage, through the courts, the defamation of religion although this may have only been possible because Judaism is considered to fall within the phrase 'ethnic origin', and hence is classified as a 'race' under the RDA. The case also demonstrates that the RDA does apply, in a limited way, to racist material placed on websites. The racial vilification provision may not, however, apply to racist comments, images or language sent via text messages or emails or placed on websites that are password protected as the provision only applies to acts done otherwise than in private and these acts may be held to be done in private.

The second case is *Silberberg v The Builders Collective of Australia Inc*<sup>53</sup> ('*Silberberg*'). In *Silberberg* the applicant, who is Jewish, alleged a breach of the racial hatred provisions of the RDA in respect of two postings on an internet discussion forum. The claim was brought against the individual who posted the relevant postings, as well as against the incorporated association which hosted the forum as part of its website.

Gyles J held that it was reasonably likely that a person of the applicant's ethnicity would have been offended, insulted, humiliated or intimidated by the messages. Accordingly, his Honour upheld the complaint against the individual respondent and ordered a restraint against him from publishing the same or similar material.<sup>54</sup>

In relation to the website host, his Honour held that the failure to remove material “known to be offensive” within a reasonable time is an act caught by s 18C(1)(a).<sup>55</sup> Ultimately, in that case, the Court did not find the website host had breached s 18C(1) because its act of not removing the material was not connected to the race or ethnic origin of the applicant. The case, however, demonstrates that a website host could potentially be found to have committed racial vilification under the RDA.

The third case, although not a response to cyber-racism, is relevant to it. In this case, *Dow Jones v Gutnick*<sup>56</sup>, an Australian (Joseph Gutnick) claimed that he had been defamed in an article reproduced by Dow Jones on a website available on the World Wide Web. Dow Jones was an American company and it had uploaded the article onto the website in New York. Mr Gutnick commenced the defamation proceedings in the Victorian Supreme Court. The Victorian Supreme Court of Victoria held that it had jurisdiction to hear the claim because the claim was about damage done to Mr Gutnick’s reputation in Victoria. On appeal, the High Court upheld the decision of the Victorian Supreme Court. The decision was based on the wording of the rules of the Victorian Supreme Court, however, in the course of the judgment of Gleeson CJ, McHugh, Gummow and Hayne JJ said the following about the meaning of the term ‘publishing’:

*“Harm to reputation is done when a defamatory publication is comprehended by the reader, the listener, or the observer. Until then, no harm is done by it. This being so it would be wrong to treat publication as if it were a unilateral act on the part of the publisher alone. It is not. It is a bilateral act — in which the publisher makes it available and a third party has it available for his or her comprehension”.*<sup>57</sup>

This case is important because it could be used to support an argument in other contexts, such as racial vilification cases, that even though material is placed on a website overseas, the Australian courts may still have jurisdiction to deal with a claim in relation to such material if it is accessible in Australia.

#### **2.4.2 Section 474.17 of the *Criminal Code 1995* (Cth)**

Under s 474.17 of the Commonwealth *Criminal Code 1995* (Cth) it is an offence to use a carriage service (which includes the use of the internet or e-mail) in such a way that reasonable persons would regard as being menacing, harassing or offensive.

#### **2.4.3 Complaints to the Australian Communications and Media Authority**

The Australian Communications and Media Authority (ACMA) is the Commonwealth agency responsible for dealing with prohibited materials, including those which would be considered excessively violent, of an inappropriate sexual nature, or which contain offensive racist content. ACMA investigates all complaints, but makes its assessment against classification guidelines. In recent years only a very small handful of complaints have related to racially offensive websites and there is no special team at the agency that monitors extremist sites.

#### **2.4.4 Complaints to the police re websites that threaten harm or violence**

Websites which, apart from being racist, also threaten people of a certain race or background with harm or violence, can be referred in Australia to the police. Most state police agencies have special units that work on computer crime and which may fall under state legislations (for more information, see section 3.1).

It should be noted that the RDA was enacted in 1975 and its most recent amendment was in 1995. This means that the Act has not always kept abreast of new technologies, for example those exploited by cyber-racists. The *Jones v Toben* case took 6 years to resolve, but still continues with ongoing defiance of the court ruling by the Adelaide Institute.<sup>58</sup>

The internet also poses a number of challenges regarding public/private dichotomies and this is clearly one area where the law needs to reflect changed circumstances and Commonwealth administering bodies such as HREOC would be assisted by having greater scope to respond to new methods, and varieties of discrimination based on race, culture, ethnicity and religious belief.

## **2.5 Australian counter-terrorism legislation and its impacts on potential ‘target’ communities**

Since 2001 the Australian government has introduced more than 40 pieces of legislation to respond to terrorism and related activities.<sup>59</sup> The key pieces of counter-terrorism and their rationale are:

- i. the *Anti Terrorism Act (No.2) 2005* which amends the Criminal Code to extend the definition of terrorist organisation to allow for the listing of organisations that advocate committing acts of terrorism, updates the offence of sedition, and establishes procedures for control orders and preventative detention orders, strengthen offences of financing terrorism and to increase search and seizure powers of ASIO and the AFP<sup>60</sup>
- ii. the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* which empowers ASIO to detain and question a person whom they think may have information relevant to intelligence gathering related to terrorism
- iii. the *Criminal Code Amendment (Offences Against Australians) Act 2002* which makes certain harmful acts committed against an Australian outside of Australia an offence, thus making extradition easier
- iv. the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002* which makes it an offence to place explosives in prescribed places with the intention of causing death, or, destruction which would cause major economic loss
- v. the *Security Legislation Amendment (Terrorism) Act 2002* modernises treason offences, inserts a series of new terrorism offences and creates offences relating to membership, or other links to, terrorist organisations
- vi. the *Suppression of Financing of Terrorism Act 2002* targets those who provide or collect funds where the person is reckless as to whether those funds will be used to assist a terrorist act
- vii. the *Telecommunications Interception Legislation Amendment Act 2002* permits law enforcement agencies to use interception warrants in connection to their terrorism-related investigations, and
- viii. the *National Security Information (Criminal and Civil Proceedings) Act 2004* protects information from disclosure during a proceeding for a Commonwealth offence where such disclosure could prejudice Australia's national security.

The previous government argued that this legislation was needed for national security, and that it helped Australia to conform to United Nations resolutions.<sup>61</sup> However, because of the context in which these laws have been changed and some of the public debate that has surrounded the issue of national security, there has been a perception in some parts of the Australian community that the purpose of the legislation is to control threatening behaviour by Australian Muslim communities.

The *Review of Security and Counter Terrorism Legislation*, conducted by the Parliamentary Joint Committee on Intelligence and Security (December 2006) acknowledges the impact that the laws have had, specifically upon the Australian Muslim community. The committee noted that:

*"(3.8) It is not the intention of the Parliament that anti-terrorism laws should have a negative impact on the integrity of normal life of Arab and Muslim Australians or any other sector of Australian society. It is central to Australian democratic values that people are free to practice their religious beliefs in community with one another. A healthy and robust civil society promotes both social interaction and political participation. The voluntary involvement in faith based, social and welfare organisations, and the participation of young people in group activities are all aspects of the Australian way of life that promote social inclusion and personal development."*

The committee's report elsewhere honestly assesses the extent to which Australians of Arabic heritage, and Australian Muslims, feel under greater surveillance and suspicion, and that the counter-terrorism laws have increased distrust of authority and alienation from the wider community within these groups.

Reports from NGOs such as AMCRAN advised that Muslims have felt that the laws are selectively applied to them and the fact that it was only Muslim organisations that were listed as 'terrorist organisations' under the *Criminal Code*, compounded by uncertainties around the definition of terrorism and terrorist organisations, increased this perception and has fuelled confusion and fear. In many instances this has led to self-limiting behaviours, a form of self-censoring that has reduced personal freedom and choices.<sup>62</sup>



### 3. Issues Outside the Legislative Domain to Counter the Defamation of Religions in Australia

#### 3.1 Ethnic and religious profiling by policing and security agencies

There has been, and continues to be, concern about what is often described as 'ethnic profiling' as a form of race discrimination. While this concept can be seen as a form of stereotyping – which often occurs in the media – there are difficult issues, particularly in the policing context, where it is often important to describe a wanted, lost, missing or dangerous individual who is urgently sought. Police agencies have argued that it is difficult to put out a description that does not rely upon certain, widely based, assumptions on how people look.

In an attempt to manage the competing concerns of racism with the legitimate need for descriptors, there has been a national standard in Australia for ethnic descriptors since 1997. There are four categories in this national standard: Aboriginal, Asian, Caucasian and other. The standard has been adopted by all state police forces except New South Wales, who distinguish eight groups: Asian, Aboriginal, Black/African, White/European, Indian/Pakistani, Pacific Islander, South American and Middle Eastern/Mediterranean.

NSW Police also have a Middle Eastern Organised Crime Squad and an Asian Crime Squad. HREOC's *Unlocking Doors* report (see section 4.3.1) noted that policies that distinguish ethnic groups as being more predisposed to crime increases distrust of law enforcement agencies. Some NSW and Victorian participants in the *Unlocking Doors* forum felt that they had been racially profiled by police. While acknowledging racism did occur, police representatives argued that these were isolated incidents and did not reflect the practices of the entire police force.

It should also be noted that police are public servants of the state or territory government where they are based, unless they are members of the Australian Federal Police, in which case, they are members of the Australian Public Service. As such, they are bound by the relevant anti-discrimination legislation (under Commonwealth, state or territory laws), as any other Australian citizen, as well as their professional codes of conduct as members of the executive arm of government. As discussed under section 4.1.2, Australia has a *Charter of Public Service in a Cultural Diverse Society*, this also sets clear parameters for services and conduct by police officers.

Policing agencies are also closely monitored to ensure proper conduct by sworn officers. Information about these professional standards are available through the relevant websites of police departments and well-publicised information about complaints processes are available to the public, so that this avenue is available if a person feels they have been abused, treated unfairly or discriminated against by a police officer, or by police department staff, or their concerns have not been taken seriously, or not properly documented.

Police departments do treat the diversity of Australia's population seriously and, as noted above in relation to crime units, there are teams of staff dedicated to work with various communities. For instance, most commands have Multicultural Liaison Officer staff (known as Community Liaison Officers in some states) whose responsibility it is to build and maintain close relationships between the police and the communities they serve. Agencies also have policies that address the issue of discrimination by their staff and standards that guide recruitment from ethnic communities. Most also conduct research into community perceptions and attitudes towards policing, crime and safety (some can be found at the APMAB site – see reference below).

It is worth noting that Australia also has its own independent statutory authority, responsible for monitoring the conduct of its six security agency. The office of the Inspector General of Intelligence and Security (see: [www.igis.gov.au](http://www.igis.gov.au)) is an important branch of government that also helps to ensure that Australian security agencies are accountable and that they meet national standards of conduct and adhere to Australian laws.

Australian police previously supported an organisation called the Australasian Police Multicultural Advisory Bureau (APMAB) which provided expert advice on issues pertaining to religious and cultural diversity. Among other work, they produced a specific publication for police officers to build their cross-cultural competence when working with members of the community from different religious backgrounds.

Some police departments have gone even further to address the issue of religious diversity, for example, in Victoria there is now a specific multi-faith advisory committee. Unfortunately, APMAB was discontinued in 2007, (although its helpful site is still active at: <http://apmab.gov.au/>) and a new secretariat for Australasian police commissioners has been set up: the Australian New Zealand Police Advisory Agency (see: <http://anzpaa.org/>). Under this new organisation issues relating to policy, and responses to cultural and religious pluralism, will be addressed once it is fully established.

### 3.2 Influence of the media in Australia

The mass media in Australia broadly reflects the widely held view in the community that Australia has developed as a secular society with, what is often called 'Judeo-Christian' values. However, tensions between a broadly secular view of the world, and Christianity-influenced values and behaviours, often finds expression in the media. Most religious conflict tends to be reported in the media as a consequence of the cultural practices of certain ethno-religious groups, rather than a direct result of the specific beliefs associated with religious teachings, although many of the arguments used within the media may do so from a specific religio-cultural perspective that reflects Australian 'norms'.<sup>63</sup>

In Australia, the media's relation with Islam is, this century, almost certainly the most controversial dimension of the media and how it responds to cultural and religious diversity. The popular media have been the most criticised for its portrayal of Muslims, its encouragement of hysteria about Islamic fundamentalism, and its willingness to reinforce stereotypes and prejudices about Australian Muslim communities.

Australian research has shown systematic stereotyping, the promotion of negative images and perspectives, and a strong tendency to link any reporting or discussing of Islam with terrorism<sup>64</sup>. The main incidents that attracted media attention were, firstly, the series of events in 2001 when the Norwegian boat *Tampa* rescued asylum seekers from a sinking vessel off the Western Australian coast. This occurred just prior to the September 11 terrorist attacks and were followed by the Bali bombings of 2002 and 2005, the Jakarta Australian embassy bombing of 2004, the London bombings of 2005 and the attempted terrorist attacks in 2007, the arrests of the 'home grown' terrorists in England and Australia, and the continuing horrific internecine conflict in Iraq.

Numerous commentators have examined the successful way in which the government of the day were able to use the *Tampa*, and then subsequent incidents, to reinforce through the media a potential connection between Muslim asylum seekers and the risk of terrorism being introduced into Australia.<sup>65</sup>

This was repeated in coming years and embedded a relationship between the communication agents of government and certain members of the media which compounded perceptions in the wider community that Australian Muslims were a threat to public safety, Islam is a religion of violence and that national security management should be higher priority than individual rights<sup>66</sup>. The concept of 'dog whistling' has also been widely discussed by media academics who have raised concerns about these issues, in particular, how certain religious communities and ethnic groups have been labelled and discriminated against.<sup>67</sup>

While terrorism has clearly been a matter of continuing concern for the Australian community, and the media has an important role to inform the public about this threat, there have been innumerable claims that careless or mischievous reporting that associates Islam and the Muslim community in Australia with violence and terrorism has had a major impact upon Muslims with no association with terrorism, and has effected community relations between Australian Muslims and their fellow citizens.<sup>68</sup>

Local and state media have played a role in publicising one of the more divisive issues that involve Muslim communities. With the rapid growth and increasing prosperity of Muslim communities in Australia, as well as the communities' diversity and geographic spread, there have been many occasions where communities have sought to build new religious schools or mosques. Planning decisions on these applications are the responsibility of local governments in Australia, and these attempts have often triggered local protest. These protests have not been limited to the usual concerns relating to zoning and development, such as changes in traffic flow and increased noise, but have often demonstrated religious bigotry, cultural ignorance and racial discrimination.

Local newspapers have often reported these issues; their approach has ranged from the balanced to the inflammatory. The most recent controversy relating to this issue was the decision in May 2008 to deny an application to build a large Islamic school in the far-out, south western Sydney region of Camden. The local council rejected the application on zoning grounds, however, this has been viewed critically given the enormous community pressure to reject the request. The event raised national media coverage, and locals complained that they didn't want the school built because, for amongst other reasons, they "didn't speak Islam".

The print media publishes all types of material that range from the (ostensibly) balanced and neutral news reports, to far more personal opinion columnists, as well as a range of reader comments in 'Letters to the Editor'. The most relevant material to this report is probably that written by columnists, where for the most part the views represented are often suspicious of diversity and multiculturalism.

There has often been debate about the intent, content, and effects of reporting from news rooms. Some analysts have argued there persists a systematic bias in news reporting so that a review of the print media over time reveals a deeply embedded set of views that reinforce Anglo-Christian (or at least Euro-Christian) world views. If this is true, such biases would essentially reflect the broad nature of Australian society, even if it is not desirable and may have negative long-term consequences for community harmony.<sup>69</sup>

The news media, generally, does face a reporting 'vicious circle'. Fear of social conflict, terrorism, inter-cultural and religious violence – as covered in the media - fuels fears in the wider community which, in turn, generates more media material for analysis or reporting. However, in the long-run, heightened conflict is most certainly not in the media's interest, as it is not in the interest of the wider community.

The media, itself, does look at some of these issues through its own institutions, as do civil society organisations that attempt to combat some of the more discriminatory and unprofessional conduct by the media. Some of these are:

#### Reporting Diversity

This project builds on an earlier initiative called *Journalism in Multicultural Australia*, a project funded under *Living in Harmony* (see section 4.1.2) and involving a partnership between the Murdoch, Griffith, South Australia, Canberra and Western Sydney universities, Media Monitors, the SBS network and Journalism Education Association (see below). The goals of this project are to:

- increase understanding of the links between media reporting and community perceptions of safety, harmony and multicultural issues
- provide media practitioners, academics and students with tools to improve their understanding of multicultural issues and to equip them for better reporting
- provide members of the community with information about how the media reports multicultural issues, and how this impacts upon community harmony, and
- to develop curriculum resources for students of journalism and communication.

Information about this alliance, its work, and the available resources, can be sourced at:

<http://reportingdiversity.murdoch.edu.au/rdpaims.html>

#### Media Watch

Media Watch is a program broadcast on Australia's national, free-to-air television network, ABC1. It is an independent forum of media analysis and comment (for example, often the ABC is an object of criticism). The main intention of the program is to expose unprofessional or inaccurate media coverage and to alert the general public to such failings in the media. Many of the issues discussed in Media Watch relate to matters covered in this section of the report including defamatory or stereotyping reporting about various ethnic, racial or religious communities. Information about this program can be found at: <http://abc.net.au/mediawatch/more.htm>

#### The Walkley Foundation

This organisation was established in 1956 to recognise excellence in media reporting and journalism. In particular, it aims to award professional and ethical journalism, particularly in the areas of print, television, radio, photography and on-line media through, amongst other things, a major annual awards ceremony.

### Journalism Education Association (JEA)

JEA is a collection of people from within Australia and the South Pacific who are either involved in media education, training, or who support the organisation's objective of raising standards in the teaching of journalism and communications, as well as improving links between mass media organisations and professional media associations. Like the Walkley Foundation, it conducts an awards program to promote accuracy, ethics and professionalism in the industry. See: <http://www.jea.org/>.

As well as the role of Australia's media industries, the influence of overseas media, in a globalised world, cannot be neglected. This media may be picked up via satellite, pay television, or on free-to-air networks such as Australia's Special Broadcasting Service (SBS). Some of this, including media produced in Australia and broadcasted, printed (or reprinted) in languages other than English, can be discriminatory and inflammatory, particularly introducing political, military and cultural conflict overseas as a local concern.<sup>70</sup>

Like many countries, Australia experienced a period of national introversion driven, since 2001, by the fear of terrorism. Security and exclusion have been a common and shared community concern as people have felt under threat. However, this would now appear to be abating with the gradual shift in news reporting away from international to national concerns and the passage of time has seen (as is evident from recent national research, for example by Unisys<sup>71</sup>) that fear of terrorism has gradually been replaced by economic fears, such as the fear of rising interest rates and the escalating cost of petrol, which are now getting far greater media coverage. Indeed, there is probably a correlation between media reporting about terrorism and the level of 'defamation of religions' and ethno-religious discrimination within Australia.

This is also reflected in recent research released by Monash University and the Scanlon Foundation that maps social cohesion within Australia and demonstrates that most Australian's feel socially and economically included, satisfied and comfortable; although significant pockets of resentment, exclusion and fear (including fear of 'the other') remain<sup>72</sup>.

The media is a diverse industry and, while this report notes the role of news rooms, a small group of newspaper columnists and commercial broadcasters, Australian print media is full of what can be described as lifestyle stories – indeed, this comprises the bulk of the media. These lifestyle stories continue to reflect Australia and Australian culture, society and consumer preference as one increasingly integrated into a globalised world with a fascination with international travel, cuisines of the world, foreign film, arts, crafts and goods reflecting cultures and values very distinct from those of 'mainstream' Australia.

#### **3.2.1 Case study: the Cronulla Riots**

In Australia the most analysed event has been the December 2005 riots at Cronulla, a beachside suburb in southern Sydney. Some 5,000 people gathered to 'protect their beach' from the perceived threat of young Muslim men or people of Lebanese ancestry (not necessarily making any distinction between the two) arriving from western Sydney to use the beach. Cronulla is the only seaside suburb with a rail link to the much hotter western suburbs where many Australian Muslims and Australians of Arabic or middle-eastern ancestry live. Not only was there an attempt to protect 'territory', the leaders of the crowds alleged that the 'outsiders' harass local women and attack local lifesavers. Following this riot, there were 'revenge attacks' by members of those communities targeted earlier.

The subsequent police report noted the role of certain players in the media in helping to instigate and organise the event, in particular detailing the participation of commercial radio talk-back commentators who took a sensationalist approach to events and gave airtime to racist agitators and their inflammatory hate speech.

### **3.3 Anti-discrimination and cross-cultural education in schools**

All Australian governments strive to provide access to good quality primary and secondary education for all young people in the country – indeed, this is compulsory up to certain ages. There are no deliberately constructed barriers or policies by the State that exclude young people (on any grounds such as gender, ancestry, disability or religion) from gaining a free, government education. This is not to say that the state education system is never without its critics. Most commonly, this relates to arguments about adequacy of funding or accommodation of the special needs of some students. However, from

time-to-time debate arises about the quality of values education in schools, and this is discussed further below, or about structural discrimination. A recent example of this were a series of media reports earlier in 2008 (that are not necessarily substantiated) about the 'white flight' out of state schools in NSW and the resulting risk of segregation of communities along ethnic or religious lines and the consequences this may have on wider social harmony.<sup>73</sup>

Australian education services in schools are provided by either the public or the private sector (often schools established by a religious community with strong continuing connections to the faith, although there is a large secular sector such as the Steiner and Montessori schools). State and territory governments, as service providers, are responsible for the public education system and, as the major funders, they are also responsible for the curriculum design for public sector schools.

Both the public and private education systems have a wide range of programs and policies designed to build cross-cultural understanding within school communities, and it is not possible within this report to audit them. The Commonwealth (in comparison with state and territory governments) has a more limited involvement in public education and HREOC (although it does produce its own range of education and schools resources, as described under 4.3.1 and 4.3.2) can only broadly comment in three areas: those limited areas where it is involved in relevant project or strategic influence, the National Safe Schools Framework, and some comments about the role of the private sector and the contributions of civil society organisations.

#### Commonwealth activities

The new Commonwealth government intends to develop a national school curriculum, and work on some subjects has already commenced. This is supported by HREOC which also believes that such a curriculum should have an increased focus on human rights, civics and citizenship (especially in line with the United Nations World Program for Human Rights Education). Anti-discrimination programs which encourage equity, accessibility, tolerance and diversity should also be promoted further in all educational institutions (schools, universities, private colleges, technical colleges). HREOC produces, as noted above, a range of educational resources for schools to support these goals and to promote human rights generally.

The Commonwealth often supports pilot projects in schools, with the agreement of state or territory departments. A current example, relevant to the combating defamation of religions resolution, is the work being trialled by the Department of Education, Employment and Workplace Relations (DEEWR), under the National Action Plan (NAP) for detailed background information, see section 4.2.2). DEEWR is running an inter-faith pilot in the Lakemba and Macquarie Fields regions of Sydney (in the Western and South Western suburbs). The pilot has three education components: inter-school cooperation, the development of educational resources, and support for teacher professional development. 16 pilot schools have been involved in this initiative, which will be evaluated under the overall NAP and reporting on their success will be available at a later time.

#### National Safe Schools Framework

This Framework is the result of an agreement between the Commonwealth, state and territories, as well as non-government school authorities through the Ministerial Council on Education, Employment, Training and Youth Affairs. The purpose was to establish an approach in schools, that was national, and which addresses such issues as bullying, harassment, violence, child abuse and neglect. The Framework recognises that school attitudes and values impact upon the behaviour of students in their school communities and therefore encourage all members of school communities to value diversity, contribute positively to the safety and wellbeing of themselves and others, and to act independently, justly, cooperatively and responsibly in school, within their families, and in their wider civic relationships.

The government has also released its *Values Education for Australian Schooling*. This is a non-curriculum-based set of resources for schools (primary and secondary levels) incorporating a professional learning program to help better support and educate about values, it includes funding for community engagement programs and can also be used within religious schools.<sup>74</sup>

It should be noted that school principals (in both public and private schools) have certain levels of discretion regarding how the curriculum is delivered in their schools. This can include inviting volunteers (from the community, secular or religious institutions) to provide supplementary education. However, there has been criticism that there is not always good quality control with the use of these volunteers and religious education may not necessarily be monitored in these

circumstances. The previous government also introduced a chaplaincy program for state schools, this was voluntary and school principals could choose not to accept the funding available. HREOC cannot comment on this initiative; anecdotally, there have been mixed responses with some good results reported, but there has also been some criticism that the program is not necessarily supporting the values agenda of the government and could be open to misuse.<sup>75</sup>

#### Private schools and the non-government sector

Public schools are mainly funded by the state or territory government in which they are located with only a relatively small amount coming from the Commonwealth, on the other hand, private schools are much more substantially funded by the Commonwealth.<sup>76</sup> The majority of private schools are associated with religions, in particular, Catholicism in Australia. There are, however, also Muslim, Jewish schools as well as those linked to the major Christian denominations.

There has been some controversy in Australia about religious schools in particular. This has not been so much about the size and rationale of funding (although this is a separate issue) but the type of education being provided by the schools, especially as it relates to the sciences and theories of evolution, as well as any potential religious biases (including negative attitudes towards other faiths). Most of these concerns have been associated with schools that are generally seen as fundamentalist Christian schools which are a small minority.<sup>77</sup> Other matters such as potential discrimination against staff and students (that is, employment or enrolment) of those who are not of the faith community are also issues that periodically arise. A recent case in Queensland when a Sikh student was allegedly discriminated against at an Anglican school is a case in point.<sup>78</sup>

It is also worth noting that often civil society organisations develop resources that are used in schools (public and private) on a voluntary basis. These may be resources developed by organisations associated with a particular religion (normally these would be used in schools connected with the particular faith that produced them), or by secular groups. An example of the later is a project with which HREOC is associated, that is being developed by Australian Red Cross, called *Red Connections*.

Australian Red Cross (ARC) is affiliated with the international Red Cross movement and is a humanitarian organisation established to (without discrimination) assist those in need. With a wide-range group of programs, ARC conducts community education project, and amongst these is *Red Connections* (a *Living in Harmony* funded initiative) and a school-based program designed to give resources to students at the secondary level to design their own, local, cultural diversity program (for example, getting to know about the cultural mix in the region of the school; designing programs to increase cross-cultural respect and understanding). The program involves developing a comprehensive tool kit for teachers and students that guides them in the task, but also provides a range of useful information about cultural difference and how to negotiate it. The program is being trialled in a number of schools in Western Australia, prior to a roll-out to the rest of the country. Another good example of how a resource that has been developed outside of the schools sector which has been picked up by education departments, is the Making Multicultural Australia website (see also 3.4 under Institute of Cultural Diversity) although there are many other educational resources available for potential use by schools.

### **3.4 The work of civil society institutions**

Australia has an enormous third sector of non government organisations, by some estimates this is as many as 700,000. These are a diverse group of organisations which span peak bodies, charitable and benevolent institutions, think tanks, ethnic or culturally based organisations, sporting clubs, religious associations and the like. They range in size from small memberships without legal status, to large incorporated organisations with big budgets, employing hundreds, if not more, staff. It is therefore difficult to audit civil society institutions within a short period of time and to report on the range of activities undertaken to combat the defamation of religions.

It is safe to assume, however, that large numbers of such organisations consider this as one of their important functions, or have chosen to adopt activities that promote inter-cultural understanding and respect as either part of their core or ancillary business. As demonstrated by the *Living in Harmony* Program, administered by DIaC (see 4.1.2), very diverse

organisations are funded for this purpose, for example, they could be surf life-saving clubs, the Country Women's Association, Girl Guides, or public schools, just to list a few examples.

Distinct from such organisations that tend to address the inter-cultural and inter-religious issues on an ad hoc basis, a number of others do address them as core business. Below, are listed some of these organisations and the range of work that they have done, or do regularly undertake, and which are germane to the issue of combating the defamation of religions.

#### Australian Multicultural Foundation (AMF)

The AMF is a national NGO, incorporated as a company limited by guarantee, and based in Victoria. The AMF manages a trust fund that was established by the Australian Bicentennial Authority in 1988 (the year of Australia's bicentenary) when it became an independent organisation. The objectives of the AMF are to cultivate national solidarity, given Australia's demographic pluralism, to advance Australia's economic and social well-being; to promote cultural diversity and the contribution of people from all cultural backgrounds to Australia's development, and to spread respect and understanding between all cultural groups. The AMF achieves these aims by working on projects of national significance in consultative partnerships.

In recent years the AMF has worked intensely in local, international, and (British) Commonwealth fora and research projects on inter-faith, inter-cultural, media, policing and security programs. The AMF co-ordinated the report *Religion, Cultural Diversity and Safeguarding Australia* (see section 4.2.1) and is managing programs under the NAP (see section 4.2.2) including the HREOC *Community Partnership for Human Rights* projects on policing and freedom of religion and belief. The AMF also co-ordinated a series of Muslim youth summits across Australia, and a national Imams' conference in 2006, on behalf of DIaC and linked to its NAP and security programs in the aftermath of reporting by the national Muslim Community Reference Group (see section 4.2.2).

The Executive Director of the AMF, Dr Hass Dellal, is active on many committees relevant to this report including APRO (see below in this section), the Victorian Police Multi-faith Advisory Council and is the Chair of the Community Advisory Committee of the National Centre for Excellence in Islamic Studies (see section 4.2.2 under 'Department of Education, Science and Training'). For more information about the work of the AMF relevant to resolution 62/154 please refer to the AMF website at: [www.amf.net.au](http://www.amf.net.au)

#### Federation of Ethnic Communities' Councils of Australia (FECCA) and the Australian Partnership of Religious Organisations (APRO)

FECCA is Australia's peak body representing ethnic communities. Each Australian state and territory (as well as some regions) has established local representative bodies, membership of these being ethno-specific organisations operating within their jurisdictions. FECCA is, effectively, the executive council of these ethnic and multicultural communities' councils. It is partly funded by affiliation fees, but most comes from an annual grant from DIaC. The organisation's main area of concern is the interests of its constituents, being Australia's culturally diverse communities; multicultural and settlement services policies and programs.

FECCA does have a number of particular challenges, especially given its incredibly diverse constituency. Traditionally, FECCA has attempted to focus its advocacy on those issues where there is near-universal agreement across community organisations, areas such as access and equity policy, settlement service funding, post-settlement services (such as culturally appropriate aged-care services), workforce participation, and discrimination on the grounds of race or cultural background. Other issues are problematic for the organisation. An example is asylum seeker policy. Not only are there complex ethical issues associated with this policy, but communities are strongly divided on government responses, with almost as many groups supportive of tough controls as those against. Racial, religious and cultural tensions do exist within certain ethnic communities in Australia. Multicultural policy, rather than a process of encouraging segregationism, has attempted to build a shared commitment to Australia that includes leaving behind conflicts and prejudices still prevalent in home countries. However, the inter-ethnic and inter-religious tensions that continue make the work of a peak body such as FECCA often challenging, although historically, it has tended to focus on secular matters and has avoided the issues of a multi-faith society.

FECCA does not have a particular mandate to look at issues of religious diversity although it is interested in the national inter-faith processes from a cultural diversity perspective. FECCA is, however, significant in its historical role in advocating for the establishment of influential bodies (such as the AMF), support for other programs and related services (such as migrant resource centres), advocacy of issues associated with cultural and religious pluralism, for example, through publication of its magazine *Australian mosaic*, its national and international conferences (eg: the *Transformations* in 2005 which incorporated an inter-faith strand) and its secretariat support to APRO.

APRO was established in 2003 as a 'peak-of-peaks' body. It was an initiative led by the Chair of FECCA at that time, Professor Abd Malak, who was concerned, in the aftermath of September 11 and Australia's involvement in the war with Iraq, that community harmony was threatening to fracture along religious lines and that a genuine demonstration of inter-religious solidarity and mutual respect would help model good social relations in Australia. Originally established as 'APER0' (this included 'ethnic' organisations in the title), APRO includes in its membership ethno-specific national bodies, but the name was changed to emphasise the importance of religion as the primary rationale for its establishment. APRO is not exclusively an inter-faith group, and therefore not listed below under that category, although there are inter-faith bodies, representatives of which are also included in APRO (such as the National Dialogue of Christians, Muslims and Jews).

The goals of the APRO partnership are to provide advice to government at the national level, promote community harmony, inter-ethnic and inter-faith acceptance, exchange information about issues of importance, issue joint statements relating to shared values, and report on discriminatory behaviours, and to support communities at risk. Membership of APRO includes:

- FECCA and the AMF
- National Council of Churches in Australia
- Australian Federation of Islamic Councils
- Executive Council of Australian Jewry
- Australian Baha'i Community
- members of the Hindu, Sikh and Buddhist communities
- the Federation of African Communities' Councils
- National Council of Migrant Resource Centres and Migrant Support Associations
- Council for a Multicultural Australia (or its replacement body)
- World Conference of Religions for Peace (Australia)
- UNESCO Observatory for Inter-religious and Intercultural Relations, Asia-Pacific

Members of APRO have all agreed to a shared 'statement of principle'. This is significant as a model of cross-faith values, it provides collective endorsement of issues including:

- an Australia of ethnically and religiously diverse peoples that is their home
- the practices and principles of social justice (this encompasses the equality of access to political and legal rights, the right to full social and economic participation through the reduction of material disadvantage)
- Australian multiculturalism as a core value that defines what it means to be an Australian in the 21<sup>st</sup> century and encompasses respect and celebration of our diversity, and an Australia that:
  - is democratic
  - adheres to the rule of law
  - promotes and protects freedoms of speech, religious belief, assembly and movement, association, expression (including the freedom to dress as an expression of cultural identity) and freedom of thought
  - condemns any form of abuse or discrimination based upon race, ethnicity, religion, gender, nationality, age (or any other grounds) by either individuals or organisations
  - actively supports equal access to opportunity, services and information, and
  - treats individuals and communities with acceptance and respect without regard to their ethnicity or religion.

Additionally, the member organisations undertook to:

- uphold the right of all Australians to live without the fear of violence in any form
- respect the rights of all Australians no matter their ethnicity, religion or beliefs

- work together to promote these values in practical ways
- work together to minimise community disharmony, inter and intra-faith, ethnically and/or nationality-based tensions within Australian society, and
- promote Australian multiculturalism, and the principles it enshrines, as a good-practice model of social harmony and community participation to diverse communities within Australia and the rest of the world.

#### Other NGOs

Below, are listed some of the better known, new, or particularly influential groups. There are many others (such as Chain Reaction, Australian Red Cross, Jesuit Social Services, Affinity Intercultural Foundation) that also directly or indirectly undertake activities to combat defamation of religions as a facet of their work.

#### *Scanlon Foundation*

The Scanlon Foundation is a member of Philanthropy Australia and was established in 2001 with the mission of supporting the creation of a larger, cohesive, Australian society. The foundation provides grants for general charitable purposes but with a principle interest in cultural diversity and social cohesion. The foundation believes that the future prosperity of Australia will depend on its ability to maintain social cohesion in a society even more culturally diverse than it has been in the past. It has recently funded research projects into Australian population targets for 2050, and a national benchmark survey of social cohesion in 2007, which has been quoted elsewhere in this report.

#### *Diversity Council of Australia (DCA)*

The DCA is the independent, not-for-profit, diversity advisory body to Australia's business community. It was established to lead in diversity thought and practice in Australia, with its member organisations, to embed cultural diversity values and practice into businesses, influence the direction of the 'diversity debate' in Australia and its region, and to promote compliance around diversity in a changing legislative environment. The DCA is funded by its membership: those Australian businesses that are strategically oriented towards diversity as (inter alia) an important business opportunity.

### *Issues Deliberation Australia/America (IDA)*

IDA is a not-for-profit, non-partisan, political psychology and public policy think tank. It was established to undertake and disseminate high quality research, public consultation, education and public debate on topical social and public policy issues impacting upon Australia, America and the world.

In 2007 IDA undertook an interesting study relevant to this report *Australia Deliberates: Muslims and Non-Muslims in Australia*. Under this project, between 2005 and September 2007 IDA consulted with 1,700 people drawn from over 100 religious, academic and community organisations, and political leaders. Random surveying and focus group meetings were also held. To conclude, over 300 people were brought together for three days of discussion between their peers about Islam and Muslim Australians. The results of this process indicated that contact, and a chance for exposure to the views and experience of others (in this case Muslims) substantially changed attitudes from, generally, fearful and negative, to far more positive and informed.<sup>79</sup>

### *Institute for Cultural Diversity (ICD)*

This is a new civil society organisation established to contribute a non-partisan perspective to the role that a diverse population can play in building Australia's future. ICD is a think tank, a broker of relationships across communities and sectors (government, tertiary, business and civil society), and an initiator of policy debate across the field of cultural diversity. It initiates research, undertakes evaluations and builds cross-sector partnerships (one of these is currently in development with HREOC as described in section 4.3.2)

### *Making Multicultural Australia*

Not actually an NGO, but worth a particular mention. This website has been auspiced by the University of Technology, Sydney, and is the work of Andrew Jakubowicz and his team. It is a free on-line library of resources relating to the history of immigration, multiculturalism, human rights, racism and cultural and religious conflict in Australia's history. The site includes academic articles and papers as well as moving images, recordings of speeches, images and the like. It is primarily targeted at students and teachers (and is linked to the curricula of a number of education departments) as a schools resource, but is an excellent source of primary material to those interested in the issues and has the goal of broadening knowledge, debate and understanding within Australia about the country's diversity. See [www.multiculturalaustralia.edu.au](http://www.multiculturalaustralia.edu.au).

### *SAVE – Australia Inc*

SAVE – Australia Inc is a not-for-profit organisation responsible for the management and supervision of the continuing work of the Ausnews Global Network, Aborigines for Refugees, United Against Racism, Coalition for Justice for Refugees and the Australian Human Rights Newsletter. Its main aim is to promote awareness of social justice and human rights issues and to provide volunteering opportunities in these areas in Australia and internationally. In the recent past SAVE has held seminars on Australia's anti-terrorism legislation, and an education series on diversity discrimination that encompassed inter-religious dialogue and understanding.

### Inter-faith groups

It is not within the scope of this report to describe fully the extent of inter-faith activities, and the publications explaining what inter-faith events are, the protocols around conducting them and the breadth of inter-faith organisations in Australia. Below, is a list of some of the larger inter-faith organisations, and the most comprehensive resource on the inter-faith approach.

Inter-faith activities in Australia can take a variety of forms and may be conducted in a variety of ways. Inter-faith services are becoming increasingly common in response to tragic events that have substantial impacts upon communities. The memorial service to commemorate the Boxing Day 2004 tsunami ("A Response to the Tsunami – an inter-faith gathering for prayer and solidarity" held at the Great Synagogue, Sydney on 5 January 2005) and organised by a wide range of religious associations is a good example.

Other events may be the hosting of religious festivals of a particular community at which a wide number of invitees from other faith communities may attend. They could be local gatherings of parishioners in religious establishments, cross-faith artistic groups and the like. Some of the better known and larger Australian inter-

faith groups are:

#### *Women's Inter-faith Network (WIN)*

WIN is a Sydney-based network established in 1999 to help expand the participation of women in the inter-faith dialogue. The group focus on treasuring and sharing faith, rather than engaging in political issues, details about WIN's activity can be seen on the FECCA website where it is hosted, at: [www.fecca.org.au/interfaith/index.html](http://www.fecca.org.au/interfaith/index.html)

#### *National Dialogue of Muslims, Christians and Jews*

This dialogue was officially launched in 2003 with five people from each of the faith communities appointed by the National Council of Churches in Australia, the Australian Federation of Islamic Councils, and the Executive Council of Australian Jewry. It is an ongoing opportunity and dialogue between the national bodies to model inter-faith harmony, understanding, good-will, to share knowledge, and provide support to the other organisations during times of difficulty. The Dialogue has also co-operated around projects such as the *Journey of Promise* (another *Living in Harmony* initiative) which brought together groups of young people from the three faiths into a safe environment to build mutual respect and cross-cultural understanding.

#### *World Conference of Religions for Peace (Australia)*

WCRP (Australia) was formed in 1970 as part of the 49 member country WCRP, the world's largest coalition of religious persons and organisations working for peace and harmony. WCRP (Australia) chapters have been established in Melbourne, Sydney, Hobart, Brisbane and Canberra. It focuses on research, educational activities, and supporting smaller, locally-based inter-faith networks. More information can be found at [www.wcrp.org.au](http://www.wcrp.org.au).

#### *APRO*

APRO is not exactly an inter-faith group, although its processes and purpose reflect many inter-faith approaches to dialogue. It is described in detail elsewhere in this section.

#### *Parliament of the World's Religions (PWR)*

PWR is an organisation that revised an original Parliament in Chicago (in 1893) which was the first formal world gathering of representatives of the western and eastern spiritual traditions. The vision of the international council of PWR is for harmony between the world's religious and spiritual communities. It holds international events every five years, these are the largest inter-faith conferences in the world. The 2009 PWR will be held in Melbourne, Australia. It is being organised in Australia by the AMF in partnership with WCRP (Australia) and is being sponsored generously by both the Commonwealth and Victorian governments.

A number of publications on inter-faith activities have been prepared by local councils and religious institutions, one good example of a national resource was funded by DfAC under a *Living in Harmony* grant in 2004 *Constructing a Local Multifaith Network*, this can be found at on the AMF's website at:

[http://www.amf.net.au/PDF/religionCulturalDiversity/Multifaith\\_Kit.pdf](http://www.amf.net.au/PDF/religionCulturalDiversity/Multifaith_Kit.pdf). An excellent example of the kind of work done by local councils is the inter-faith harmony kit produced by the Wollongong City Council (with DfAC, *Living in Harmony* funds) called *Different Faiths One Vision: Harmony*.

#### Ethno-specific or religion-specific organisations

##### *Australian Muslim Civil Rights Network (AMCRAN)*

Established in 2004, AMCRAN is operated on a voluntary basis by staff dedicated to promoting civil rights for all Australians. The organisation draws upon the cultural heritage of Islam and provides a Muslim perspective on civil rights through its work of lobbying, providing submissions to government, community education and communication through the media. AMCRAN have recently produced a book explain people's rights under the counter-terrorism legislation (*ASIO, the Police and You*), see [www.amcran.org.au](http://www.amcran.org.au).

#### *Executive Council of Australian Jewry (ECAJ)*

ECAJ is the national representative body for the Australian Jewish community – it links groups across the country and is networked with international Jewish bodies. ECAJ is active in inter-faith events and groups (such as APRO and the National Dialogue) and in wider acts of social inclusion such as reconciliation with Indigenous Australians. Antisemitism (hostility to persons of the Jewish faith) continues to be a problem for many Jewish communities in Australia. This takes on many forms, ranging from bigotry and prejudice, through discrimination, to persecution. In contemporary Australia, it has verbal and physical manifestations, and is present across a range of political, national and religious sub-sections of Australian society.<sup>80</sup>

#### *Australian Federation of Islamic Councils (AFIC)*

AFIC is the peak representative body for Muslims in Australia. It has an executive, democratically elected by its membership which is drawn from state and territory-based Islamic Councils. AFIC is involved in Halal certification, the promotion of Islam amongst Australian Muslims and the protection of the rights of its community; it is the umbrella organisation that represents Australian Muslims in national-level inter-faith organisations such as APRO and the National Dialogue. AFIC was also the major participant in the Muslim Community Reference Group established to respond to concerns about 'home grown' terrorism developing in Australia (see also 4.2.2).

#### *National Council of Churches in Australia (NCCA)*

The NCCA is a body representing 17 national Christian Churches in Australia and has strong relations with several others (although this is by no means all). Members of the Council believe their churches "*share a common future (and)... that the future of Christians in Australia lies together, not in separation.*" The NCCA has to negotiate the considerable diversity of its members (historical, cultural and theological) while recognising their shared faith, it is an important grouping that helps build and maintain good relations and dialogue between the Christian communities while aiming to be a visible expression of the unity of the Church. As well as Christian inter-faith activities, the NCCA also participate in other fora such as APRO and the National Dialogue.

### 3.5 Gender issues

Issues pertaining to combating the defamation of religions and gender were not specifically referenced in the General Assembly resolution – this is an oversight. Many Muslims, particularly young people and women, face limited opportunities for social advancement, as well as social exclusion and discrimination which could give rise to alienation and marginalisation. The hijab is often recognised by non Muslims as a symbol of Muslim women's 'oppression'.<sup>81</sup> Islamic women's dress may heighten their visibility, and therefore vulnerability, to racial and religious abuse and vilification by some non-Muslim members of the community.

Very little specific research, however, has been undertaken in relation to perceptions of Muslim women by non Muslims, and the experiences of Muslim women in relation to discrimination, racial and religious vilification. There is clearly a need for further research that addresses the intersections of gender, ethnicity and religion in the lives of Muslim women.

#### *Academic Research*

One of the few Australian studies with a focus on Muslim women is a recent research study undertaken in relation to Muslim women and public space.<sup>82</sup> The methodology for the study was principally qualitative and constituted a series of individual interviews and two focus groups with Muslim women.

The study was geographically focused on the inner west region of Sydney where the Muslim population is concentrated. Focus groups were organised with the assistance of Muslim women interviewees. In all, 23 Muslim women were involved in the study, ranging in age from approximately 16 to 50 years. The women were born in or had lived in Australia, Afghanistan, England, Iran, Kuwait, Lebanon and Turkey. Not all women involved wore the hijab, although the majority did.

The Muslim women in the study talked about having a perception of 'otherness' and not belonging to the broader Australian community, despite this country now being their home. They linked this perception to individual experiences of discrimination, prejudice and abuse. They also reported being affected by popular opinions expressed in the media that Muslims are to be feared and not trusted. This reinforced their feelings of otherness, discomfort and not belonging. This

has been magnified since the events of September 11 and more recently by terrorist attacks in Indonesia and London. The Muslim women's perception of otherness underpins a significant aspect of their behaviour in public space, as well as their attitudes towards public space.

Every Muslim woman interviewed had experienced some form of verbal or physical abuse. This included being shoved while waiting on train platforms, being told to go back to their own country, and having their hijab tugged and pulled off their bodies. Many women also experienced abusive treatment, such as being served last or not at all, as they went about daily activities such as shopping or seeking service in banks, post offices and local offices. More subtle forms of abuse were also recalled.

HREOC has also undertaken specific consultations and research with Muslim women in the past, for example its *Living Spirit* project, see page 45 of this report.

### ***Actions taken by Non-Government Organisations***

#### ***(a) Islamic Women's Welfare Council of Victoria (IWWCV) / Myer Foundation / Equal Opportunity Commission (Victoria)***

The IWWCV obtained funding through the Myer Foundation (an Australian philanthropic organisation) to further explore the basis of discrimination and vilification of Muslim women, and identify strategies to address women's experiences of isolation and alienation.

In summary, whilst it is important to note there have been many positive initiatives undertaken by government and non government organisations aimed at improving perceptions of Muslim women, and Muslim communities generally, widely held perceptions of Muslim women are often negative and stereotypical. The quantitative study also highlighted that images in the media falsely portray Islam as an inherently aggressive and expansionist religion that works against social inclusion and civic participation, and instead builds on fears and prejudicial stereotypes.

Throughout the four year study Muslim women, as the key focus of the research, expressed their frustration and disappointment at statements made by politicians and other people of influence which served to do little else than fuel religious intolerance and discrimination. This unfortunately has manifested itself in the ways in which members of the non Muslim public perceive Muslims and Islam. The effects of discriminatory attitudes have clearly caused suffering and worked against policies and programs promoting inclusion and the protection of human rights for all. Responsible politics, in the view of many of the Muslim women interviewed, should be working to promote unity and respect in the community, and implementing measures to eradicate prejudice and discrimination, instead of inadvertently reinforcing them.

Muslim women, unfortunately continue to report to the IWWCV, experiences of discrimination and vilification. Such experiences threaten to undermine efforts to promote equality and further increase the vulnerability of Muslim women and their communities to human rights violations and marginalisation. This impacts profoundly on Muslim women's participation in Australian civil and political life and erodes their confidence in political and public authorities.

#### ***(b) Young Women's Christian Association (YWCA)***

YWCA delivers community services and advocacy for young women. These programs include job placement, housing, education, training and mentoring programs. To address stereotypes and intolerance directed at young women, particularly Muslim women, the YWCA undertook a project which recruited culturally and linguistically diverse young women (15-18 years old) as 'harmony ambassadors' to participate in leadership, mentoring and communication skills development.

The 'harmony ambassadors', empowered as young community leaders, developed and delivered interactive workshops at schools and community groups. The workshops were aimed at increasing community understanding and tolerance of diversity.

***(c) Believing Women for a Culture of Peace - Asia-Pacific Inter-faith Symposium on Women, Faith and a Culture of Peace***  
Believing Women for a Culture of Peace is an inter-faith women's organisation operating in Brisbane, Australia. This symposium was held at the Multi-Faith Centre on the Nathan Campus in Brisbane of Griffith University in February 2008. The objectives of the symposium were to:

- strengthen efforts of women's faith/inter-faith groups and initiatives to transform conflict and foster a culture of peace at all levels
- develop understanding of critical elements in conflict generation and prevention from women's experience and perspectives
- provide opportunities for participants to learn from best-practice in inter-faith activities for conflict resolution and peace-building
- learn about positive initiatives within faith communities and institutions, including by men in those communities and institutions, to empower women and promote their equitable participation
- enhance the capacity and leadership potential of women engaged in inter-faith initiatives to be involved in relevant policy and decision-making arenas
- build stronger and sustainable connections among women's interfaith initiatives within the region and beyond for sharing of resources and mutual support.

(d) *Women in Victorian Prisons 2005*

This report was prepared by the Federation of Community Legal Centres, and the Victorian Council of Social Service. It examines the experience of CLDB women in the prison system, focusing on issues of racism, religion, interpreters and translations, health, release from prison programs, other programs and food. The report highlights that:

- the population of CLDB women prisoners is growing
- racist treatment experienced by CLDB women in prison is a form of direct discrimination and in contravention of the *Racial and Religious Tolerance Act (Vic) 2001*
- there is a lack of transparency surrounding the provision of training around issues of cultural, racial and religious diversity
- CLDB women experience less favourable treatment as they face difficulty in accessing culturally specific foods or religious activities that differ from that of mainstream Australia. By providing more religious services to women of certain religions, the prison directly discriminates against women who are of other religions
- the systemic operational practices of the prison are based on the presumption that prisoners speak English. Prisons' failure to provide interpreters and translations constitutes indirect discrimination
- by failing to provide culturally and linguistically appropriate medical and health services for CLDB women, the prison indirectly discriminates against them
- prisons treat women who do not speak English less favourably than it treats women without that attribute in relation to education and programs.

## 4. Actions Taken by the Commonwealth Government

### 4.1 Government strategies and programs to build cross-cultural respect and inter-religious dialogue

#### 4.1.2 Programs administered by the Department of Immigration and Citizenship (DlaC)

DlaC programs are particularly relevant to cross-cultural respect and inter-religious understanding. Unfortunately, the Department did not provide any response to HREOC's request for information to be included in this document. This restricts our capacity to comprehensively report on that agency's activities.

The Office of Multicultural Affairs was moved out of the central co-ordinating Department of Prime Minister and Cabinet into the Commonwealth's immigration department in 1996, where it became a branch and has since stayed. This is a relatively small branch in a huge agency with largely compliance and control functions. It is responsible primarily for maintaining a network of community liaison officers, for multicultural and related policy (for example, promoting the economic benefits of migration and cultural diversity), various secretariat services (for instance, to the Council for a Multicultural Australia before its term expired, and the Muslim Community Reference Group, and to the COAG Ministerial Council on Immigration and Multicultural Affairs), for administering a grants program called *Living in Harmony* and implementing the department's responsibilities under the NAP (see 4.2.2).

The *Living in Harmony* program was introduced in 1998. It was the previous government's response to its 1996 election commitment to deliver a national race discrimination program, and incorporated this with the International Day for the Elimination of Racism (21 March). Rather than focusing on the 'negative' of race discrimination, it made the policy decision to focus on the positive, and to promote inter-community dialogue and understanding. Through the program, not-for-profit community organisations could submit proposals for relatively small grants to undertake information, communication, promotion and capacity building programs at the local level to help build understanding and respect for diversity. This was very much linked to the government's agenda of supporting social cohesion. Each year, across Australia, dozens of community grants would be given under *Living in Harmony* – many of these focused on inter-faith dialogue and, at a broad level, could be interpreted as a way of combating racial and religious fear and alienation. As well as the grants program, there were nation-wide activities organised to support Harmony Day which became a celebratory series of events.

With the change of government last year, the Parliamentary Secretary for Multicultural Affairs has called for a review of *Living in Harmony*. The program has been criticised in the past, for example, that it has favoured non-ethnic organisations over ethnic ones, that it is administratively expensive (most of the program's budget goes in costs, rather than grants), that it avoids the difficult challenges of race hatred, and that a much more comprehensive, whole-of-community campaign is needed to raise awareness about racism and xenophobia.

At present, the Branch is making funding available under its Community Relations Funding, its Partnerships, and its Emerging Priorities Programs. Generally, these could all be described as funding initiatives that support the promotion of respect, fairness and inclusion at the local level. A good example of the kind of work that the Branch is supporting is the recently launched *StepOne* project – an online resource for local councils and community groups to develop local area community harmony initiatives.<sup>83</sup>

Successive Australian governments have developed public policy relating to access and equity – particularly in terms of availability and relevance of services, and opportunity (now seen as social inclusion). This has been both driven by a concern to eradicate discrimination, but also to help ensure fairness and economic participation. These policies were designed to address the access and equity requirements, not just of CLDB citizens, but also sought to ensure the needs of what used to be referred to as other 'special needs' groups as well, such as people with a disability and Indigenous peoples. Always intended for secular purposes, the principles underpinning these approaches were also intended to improve cross-cultural understanding and capacity, particularly in the public services sectors.

The previous government introduced the *Charter of Public Service in a Culturally Diverse Society* (which was released in 1998). The goal of this charter is to establish a standard of conduct, provide opportunity for employment and related

participation, and to help ensure that those people from diverse cultural, religious, linguistic, racial and other backgrounds are properly assisted and accommodated by government services.<sup>84</sup>

DlaC publish an annual report on access and equity performance in the Commonwealth public service, which is tabled in parliament each year (see <http://www.immi.gov.au/about/reports/access-equity/index.htm>). This report, however, focuses on access and equity for CLDB Australians and is a form of audit and appraisal of compliance with the *Charter of Public Service*. While a thorough reporting process it has often been criticised as tokenistic, mainly because reporting is voluntary. If agencies do not meet required standards there are no penalties and the only form of incentive to comply is good will and good publicity.

DlaC is also responsible for the development and implementation of national multicultural policy. At the time of writing this is now somewhat overdue, however, the new government will release a revised policy and the department is currently working on this task, which will be referenced to the government's agenda for social inclusion. HREOC cannot therefore report on this important policy development and its relevance to Australia's future response to the combating defamation of religions declaration.

## 4.2 Policy and programs of the previous and current governments, including future directions in counter-radicalisation/ social inclusion/ multiculturalism

### 4.2.1 Immediate responses in post 9/11 environment

The immediate responses of the previous government, in the aftermath of September 11, were focused on national security management, urgent legislative change (see section 2.5) and foreign policy. It took some time, and continuing terrorist events in various parts of the world, before a more consistent policy and program response emerged to the threat of terrorism through active social policy. This work was generally administered by DlaC, or undertaken by other agencies with funding from DlaC in the first instance.

DlaC commissioned or administered a range of other work that is now generally subsumed under the NAP (see below) but included research, community liaison, demonstration and pilot projects (for example, those it commissioned HREOC to undertake, as described under 4.3.1) and provided secretariat support for the Muslim Community Reference Group (see 4.2.2 below).

Some of the more significant work was undertaken by the Australian Multicultural Foundation under DlaC commissions. These included:

1. preparation of the report *Religion, Cultural Diversity and Safeguarding Australia* (2004). This study examined religion and trends in religious belief in Australia, internationally, and the challenges posed by religious and cultural diversity, in particular how they related to social cohesion in an age of global terrorism. As supplements to this report, two important companion works were also published: a guide to Islam in Australia *Australian Muslims* aimed at the senior-level secondary education market (by Abdullah Saeed) and *Constructing a Local Inter-faith Network* (by Des Cahill)<sup>85</sup>
2. a national Imams' conference which brought together Australia's Muslim religious leaders to look at issues the communities are facing, strategies to work with communities (especially regarding the media and relations with the general community) and how this should relate to the NAP, and
3. a series of Muslim youth summits (national and state-based) to look at current and emerging issues impacting on young Australian Muslims and, also, how this could be reflected in NAP projects (also see section 3.4).

#### 4.2.2 National Action Plan to Build on Social Cohesion, Harmony and Security (NAP)<sup>86</sup>

Following the London underground bombings in July 2005, and concern that the experience in the UK demonstrated that 'home-grown' terrorists had planned and executed the attacks, the previous government held a summit with Australian Muslim leaders to discuss potential and comparable threats to Australia. As a result of the summit, COAG commissioned the development of the NAP, for which the Commonwealth provided \$5.9million. The Muslim Community Reference Group was established for a 12 month period to assist with community consultations during development of the NAP, which was also informed by research, government action and international benchmarking. Subsequently, \$35.1million was provided over four years to support a range of initiatives under the NAP.

The purpose of the NAP, as its full name describes, is to reinforce social cohesion and harmony while supporting the national security imperative in Australia by addressing extremism and the promotion of violence and intolerance, in response to the increased threat to global religious and political terrorism. Under the NAP all Australian governments committed to work in partnership so that it is implemented in a co-ordinated and co-operative manner, duplication is avoided, and the differences in regional, demographic, social, cultural and others factors are respected.

The NAP seeks to address the underlying causes of terrorism, including social and economic factors that encourage radicalisation and motivate extremist behaviour. As such, it contributes to a comprehensive national approach to counter-terrorism. It sets out a co-ordinated community and government approach until 2010 and aims to:

- reduce the vulnerability of Australians to extremist recruiters through targeted education, mentoring and employment programs
- support education and community programs and projects that encourage loyalty and commitment by all Australians to their country, especially its parliamentary democracy, legal structures and what were described by the previous government as "Australian values". (This was a rather contentious idea in Australia, especially when it was given tangible form with the introduction of a new citizenship test, however, these values essentially describe a cluster of ideas common to most democracies such as respect for human rights, diversity, individualism, and a rejection of violence as a means of resolving difference)
- build leadership capacity so that community leaders can actively help to address the potential for extremism developing within their communities, and
- promote, and build closer collaboration, liaison, information-sharing and trust between governments and communities, and to encourage increased participation in mainstream Australia by those communities currently feeling disengaged or marginalised.

While the NAP has direct benefits in terms of promoting social cohesion and supporting Muslim communities, it is not designed to address all the elements of the complex processes of radicalisation leading to violent extremism. The four broad focus areas of the NAP are:

##### 1. Education

The NAP recognises that acceptance and social cohesion occurs through public education, employment and community activities, building leadership capacity and supporting teachers.

There are three principal areas of education programs under the NAP, these being:

- I. reinforcing values and civics education (this will include through both government and non-government education systems and sectors)
- II. informing Australians about religious and cultural diversity (this will include multi-faith, inter-faith and multicultural collaborative activities to promote mutual respect and understanding across communities)
- III. the training of religious leaders and teachers in Australia (for example, professional development courses for newly arrived religious workers or teachers from overseas).

##### 2. Employment

Recognising that some immigrant families (even those that are second or third generation) continue to remain in low socio-economic circumstances (often due to employment) and that young people are more likely to be unemployed but

that workforce participation brings both economic advantage as well as positive self-esteem and greater social inclusion, the NAP aims to address issues of employment barriers by:

- commissioning research into the reasons for higher unemployment rates within certain CLDB communities
- better linking job-seekers with employment service providers
- encouraging business, industry, corporations and local employers to work with communities to address specific cultural issues relating to employment and to provide career development opportunities for potential CLDB employees
- assisting communities to develop their own solutions to unemployment problems.

### 3. Integrating communities

Research evidence has shown that in Australia young members of some communities do not participate widely in mainstream Australian sporting, social and cultural activities. This isolation, alienation and marginalisation of some youth will be addressed through a strategy of engagement between governments, communities and individuals. This may include such activities as:

- informing communities about existing opportunities available and how to use support services
- leadership training programs
- media communication training programs to help counter negative or inaccurate reporting in the media
- mentoring and volunteering opportunities for young people to help build their leadership and representational skills.

### 4. Enhancing national security

This will include government-commissioned research into the underlying causes of violence and extremism, the causes of religious intolerance, stereotypes, perceptions, and racism and discrimination. It will also involve:

- improving relationships between communities, law enforcement, security and emergency managers
- improving community understanding of national crises and emergency management planning, and to help communities respond should such crises occur
- encouraging communities and their leaders to publicly condemn acts of violence and to confront signs of radicalisation within their communities if they occur.

A copy of the NAP can be read at:

<http://www.immi.gov.au/living-in-australia/a-diverse-australia/national-action-plan/nap.htm>

Seven Commonwealth agencies were funded through the NAP – four under a four year national program and four (one department was funded for both) under a three year program piloted in south western Sydney (NSW). These agencies, and a short description of their top-level funding responsibilities, are outlined below.

#### ***Agencies funded under the four year national program:***

##### Department of Immigration and Citizenship

###### *Integrating Australian Muslims*

Through this initiative, DIaC is supporting programs that promote wider community engagement and participation by Australian Muslims in mainstream social, arts and cultural activities. Further research into the causes of extremism is also being commissioned. Other activities include:

- continuation of a Muslim Advisory Group
- providing a Muslim Youth Helpline
- community projects, particularly those working with women, youth and interfaith groups
- state and territory government partnership projects

##### Department of Education, Employment and Workplace Relations

###### *National Centre of Excellence in Islamic Studies*

The multi-hub centre of excellence is being established to prepare Australians for religious leadership and teaching roles by delivering world-class, accredited courses in the study of Islam in an Australian environment. The Centre is holding its first national conference in November 2008 on the theme of the social inclusion of Muslims into Australian society.

#### Attorney-General's Department

##### *Improving Crisis Management for the Muslim Community*

Measures are being implemented to empower the Muslim community to plan for, and respond to, issues, incidents and crises, and to enhance linkages between the Muslim community and emergency management and counter-terrorism agencies.

#### Human Rights and Equal Opportunity Commission

##### *Measures to Combat Extremism through Human Rights Education*

Under its human rights education mandate, HREOC was asked to implement community-level programs, in particular targeting groups at risk of being marginalised such as youth, and working with law enforcement agencies to address discrimination and vilification – HREOC's programs are described in detail at 4.3.2.

#### ***Agencies funded under the three Year pilot program – Lakemba / Macquarie Fields (in central and outer suburban Sydney, NSW):***

##### Department of Education, Employment and Workplace Relations

(note: prior to the last federal election, the following three programs were administered by two separate departments that have now since merged with machinery of government changes)

##### *Better Connections Workshops*

These workshops are being held in Lakemba and Macquarie Fields to address local unemployment issues; they bring together employment services providers, local chambers of commerce and industry, and representatives of local employers.

##### *Community Employment Coordinators*

Coordinators are placed in Lakemba and Macquarie Fields to engage with the community and build bridges between job seekers, employment service providers and employers, with a view to increasing labour force participation and employment.

##### *Increasing the Connectedness of Muslim Students through Schooling*

The connectedness of Muslim students is being developed through an initiative promoting inter-school cooperation, the development of educational materials and support for the professional development of teachers. This initiative is designed to complement and build on the government's existing initiatives in civics, citizenship education and values education.

#### Australian Sports Commission

##### *The All Australian Sporting Initiative*

This initiative engages more Australian Muslim children in community sport through the expansion of the Active After-school Communities program and is being run in 10 primary schools.

#### Department of Families, Community Services and Indigenous Affairs

##### *Mentor Marketplace Programme*

Mentoring program are being trialled in Lakemba and Macquarie Fields, aimed at young people aged 12 to 25 years, particularly those at risk of disconnection from their families and communities.

With the NAP due to end in mid 2010, government is now considering how to respond in both a policy and strategic sense to what is perceived as an ongoing threat of terrorist violence and its potential association with certain religions and communities. A question being asked is: at what point does the counter-radicalisation and national security processes intersect with the new focus on social inclusion? This question is, to use a metaphor, somewhat synaptic, inferring there is clear point where security management ends and human rights start, or vice versa. In coming months the

Commonwealth government intends to consult with its state and territory government colleagues, with experts and communities, in particular Muslim communities, to develop its future responses as the current NAP draws to a close. How Australian governments respond to these issues will also inform a significant part of Australia's future contribution to combating the defamation of religions domestically.

### 4.3 HREOC's recent and current activities to combat the defamation of religions

#### 4.3.1 Work prior to 2007

HREOC has had an ongoing concern about religious vilification, given its responsibilities under the *Race Discrimination Act*, and the limitations and ambiguities associated with the legislation, as outlined above (see section 2.1). As well as its responsibilities in relation to the administration of the Act, it has also had a policy and research interest in issues pertaining to religious freedom for approximately 10 years.

#### *Article 18*

In 1998 HREOC published a major report entitled *Article 18: Freedom of Religion and Belief*. It explores these freedoms in Australia as outlined in the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Civil and Political Rights* (1966). In summary, *Article 18* recommended that:

- Commonwealth parliament should enact a religious freedoms act which, inter alia, recognises and gives effect to the right to freedom of religion, belief, and the other rights recognised in ICCPR and the Religion Declaration (articles 1,5 and 6). This act should affirm the right of all religions (widely defined) and organised beliefs to exist and to organise within the law and according to their tenets
- the proposed religious freedoms act should make unlawful discrimination on the grounds of religion and belief in all areas of public life (with only minor and reasonable exceptions, such as a commitment to a certain religion if this is a mandatory requirement for an occupation)
- state and territory laws creating the offence of blasphemy should be repealed, and that the advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be proscribed unless as an act done reasonably (for example, as a performance of an artistic work, or as a statement made in relation to any genuine academic, artistic, scientific or other purpose that could be argued to be in 'the national interest')
- there should be a range of measures to protect indigenous heritage (such as religious and spiritual heritage) including the development of national standards on the preservation of traditional burials and associated rituals
- there should be changes in practice, or new measures introduced, pertaining to autopsies, medical procedures, female genital mutilation, anti-witchcraft and fortune telling laws, and religious coercion.

A full copy of this report can be read at:

[http://www.hreoc.gov.au/pdf/human\\_rights/religion/article\\_18\\_religious\\_freedom.pdf](http://www.hreoc.gov.au/pdf/human_rights/religion/article_18_religious_freedom.pdf)

#### *Ismae – Listen*

The next important body of research and consultation that HREOC undertook in relation to combating the defamation of religions was publication of its report in 2004 *Ismae – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*. This report has been widely quoted in research and government reports as a definitive study of impacts on the community in the aftermath of the September 11 events.

Following these terrorist attacks, and then subsequently the Bali bombings of October 2002, as well as national and local events (such as the growing number of asylum seekers from the Middle East and Muslim countries seeking entry to Australia, and the trial, conviction and sentencing of gang rapists in Sydney in 2001-02) certain communities came under intense scrutiny, and were often the targets of racist attacks, verbal and physical, as well as a range of other discriminations. These included Australia's Muslim community, Australians of Arabic ancestry (whether Muslim or not – the majority of Australians of Arabic background are associated with various branches of Christianity), the Sikh community (mistakenly believed to be Muslim) and the Jewish community. Some of these, most notably Muslim Australians, had not previously been particularly subject to fear and vituperation by the general community.

While the number of formal complaints of racial discrimination and racial hatred received by HREOC did not increase at this time, in 2002 the Commission heard mounting anecdotal evidence from a range of Arab and Muslim community members and organisations about the rise in prejudice they were experiencing. *Ismae* was launched with a view to understanding and accounting for this discrepancy.

The report provides background information about the reasons for the project, the role of the Commission, the demography and history of Arab and Muslim Australians, federal and state anti-discrimination law, and the Commission's past involvement in issues relating to discrimination against these communities. The report also summarises the experiences of Arab and Muslim Australians, after September 11, who participated in the project and describes how they were effected by, and responded to, these experiences.

What HREOC heard during the course of the *Ismae* project was that a significant number of Arab and Muslim Australians felt fearful, isolated and vulnerable. The majority of consultation participants reported experiencing various forms of prejudice because of their race or religion increasing, particularly after international as well as national and local events. These experiences ranged from offensive remarks about race or religion to physical violence by both strangers as well as people known to them, and took place on the street, in shopping centres, in the media, in schools and universities, on public transport, in government, particularly police services, and non-government services, at airports, hospitals, from neighbours and so on.

Participants felt that those most at risk were readily identifiable as Muslim because of their dress, physical appearance or name, particularly Muslim women who wear the hijab. Arab and Muslim youth felt they were particularly at risk of harassment. This has led to feelings of frustration, alienation, loss of confidence, and a fall in trust in authority. Many newly arrived Arab or Muslim migrants and refugees reported that their experiences of prejudice have made it harder for them to negotiate the already difficult process of settling into a new country.

Participants also indicated they were more likely to complain about these experiences to their families, friends or their local ethnic or religious community organisations than to police or government organisations, and that this reluctance to complain through official structures was due to fear of victimisation, lack of trust in authority, lack of knowledge about the law and complaints processes, the perceived difficulty in making a complaint, and the perception that outcomes were likely to be unsatisfactory for them.

Consultation participants also felt that the major and underlying cause for the rise in prejudice against them was a lack of knowledge and misinformation about their history, culture and faith. They were also concerned about the absence of consistent legal protection from religious discrimination and vilification across Australia and the biased and inaccurate reporting of issues relating to Arabs and Muslims. Participants and survey respondents not only felt this reporting was commonplace, but that increases in anti-Arab and anti-Muslim prejudice, discrimination and violence, were linked to negative media portrayals.

*Ismae* reported a number of areas for improvement and future action. These included improving legal protections, promoting positive public awareness through education, addressing stereotypes and misinformation in public debate, ensuring community safety through law enforcement, encouraging effective community action and the fostering of cross-culture respect and understanding. *Ismae* was an important rationale for future HREOC activities under the NAP, as outlined as section 4.3.2. The *Ismae* project report can be read at: [http://www.humanrights.gov.au/racial\\_discrimination/isma/index.html](http://www.humanrights.gov.au/racial_discrimination/isma/index.html)

### ***Living Spirit***

The *Muslim Women's Project 2006* was conducted by HREOC to engage Australian Muslim women in a dialogue about human rights and responsibilities. The project aimed to increase understanding among Muslim women about human rights principles and the laws for protecting people against racial, religious, and gender discrimination in Australia. The project also aimed to identify further strategies to improve the capacity of individuals and communities to respond to discrimination and vilification, in particular racial and religious discrimination and vilification. The project culminated in a forum entitled *Living Spirit*.

A copy of this report can be read at: [http://www.humanrights.gov.au/racial\\_discrimination/livingspirit/](http://www.humanrights.gov.au/racial_discrimination/livingspirit/)

### ***Unlocking Doors***

The *Unlocking Doors Project* was a series of fora, workshops and consultations held in 2006 which brought Muslim peoples and communities in New South Wales and Victoria into a dialogue with police. This dialogue sought to strengthen Muslim peoples' relationship with law enforcement agencies and build on the capacity of the police to respond to the incidents of racial and religious hatred and abuse currently being experienced by Muslim Australians. The project was undertaken by HREOC with funding from DIAC (then the Department of Immigration and Multicultural Affairs).

A copy of this report can be read at: [http://www.humanrights.gov.au/racial\\_discrimination/unlocking\\_index.html](http://www.humanrights.gov.au/racial_discrimination/unlocking_index.html)

### ***Voices of Australia***

To mark the 30<sup>th</sup> anniversary of the *Race Discrimination Act* (the Commonwealth law which was passed in 1975), the *Voices of Australia* project collected and published the stories and experiences of Indigenous Australians, migrants, refugees and Anglo-Celtic Australians over the last 30 years in hard copy, electronic, and audio CD formats. It also aimed to educate the broader community about the importance of the RDA and harm caused by racism. This can be seen at: <http://www.humanrights.gov.au/education/voices/index.html>

The *Voices of Australia: Education Module* allows for the different stories of Australian people to be heard and celebrated in the classroom. By studying the module, students will be able to increase their awareness about experiences of diversity, discrimination, race relations, friendship, and respect. The teaching and learning activities in this module are curriculum-linked and applicable for use in:

- upper primary Civics and Citizenship
- lower secondary Civics and Citizenship, English, Personal Development, and Arts
- post-compulsory Legal Studies, English, and Modern History

The education module can be found at: <http://www.humanrights.gov.au/education/voices/index.html>

### ***HREOC Educational Resources***

HREOC has also developed a structured on-line human rights education program for teachers of upper primary and secondary school students which it has run since 1997. HREOC's human rights education program has detailed links to the curricula of each state and territory and includes strategies for teaching about international instruments and domestic laws, but most importantly, encourages students to explore the relevance of human rights to their own experiences and communities.

This program can be seen at: <http://www.humanrights.gov.au/education/index.html>

### ***Face the Facts***

*Face the Facts* remains HREOC's most requested publication. It was first published in 1997 and has been updated several times since. The 2005 edition also forms part of a number of publications issued by the Commission to celebrate the 30th anniversary of the RDA. Publications like *Face the Facts* recognise the importance of education in addressing racism and the importance of ensuring that the prevailing attitudes within the community are constructed on a sound factual base. The 2008 edition will be released later this year, this updated version will include a whole new section which has been written by Professor Gary Bouma, and will look at religious diversity in Australia, and answer some common questions about religion, faith-based violence and discrimination on the grounds of religious belief.

*Face the Facts* education module can be found at: [http://www.humanrights.gov.au/education/face\\_facts/index.html](http://www.humanrights.gov.au/education/face_facts/index.html)

## **4.3.2 Work since 2007**

### ***Community Partnerships for Human Rights Program***

HREOC was one of seven Commonwealth agencies selected to implement elements of the NAP (see above, 4.2.2). HREOC has been funded A\$4.4million over four years (2006-2010) to undertake "...measures counteracting extremist views at the community level by targeting groups at risk of being marginalised, focusing on assisting law enforcement

*agencies in addressing discrimination and vilification, and impacting on the thinking of Muslim young people'. Under the program, HREOC "...will utilise (its) credibility with young people and minority communities, and its experience and expertise at the community level: in resolving human rights issues, in human rights education, and in conciliation and conflict resolution..." (as described in the funded policy proposal).*

Based on this short brief, HREOC has built a complex and broad program that takes a whole-of-community approach. Under the NAP, it has used the funding it received from the government to develop what it calls its *Community Partnerships for Human Rights (CPHR) Program – working with and for Muslim communities*. The goal of this program is to help increase the social inclusion of Muslim Australian communities and counteract discriminatory views, intolerance and their effects, towards them. To achieve this goal the program aims to:

- contribute to a decrease in the discrimination, vilification and marginalisation that individual Muslims and communities, particularly young Muslims, experience in Australia, and
- help empower Australian Muslims to increase their social connectedness and inclusion through participation in the social, economic, cultural and political life of Australia.

The program objectives are to:

- increase awareness of human rights and responsibilities in both the broader community, and Muslim communities
- increase awareness within Muslim communities of the different ways of responding to discrimination and vilification including using existing legal, community support and complaints mechanisms
- raise awareness in the broader Australian community of the moderate profile of Islam and the human rights issues faced by Muslim communities
- build community capacity; increase the skills and the opportunities available for groups and individuals (teachers, parents, community leaders/members and police) to help reduce the impact of marginalisation and vilification
- assist with relationships and opportunities to help build trust between Muslim communities and policing, justice and the judiciary agencies
- increase social connectedness of individuals and communities; to help build social capital and empower Muslim communities
- establish and maintain effective strategic partnership and participatory approaches to deliver the projects under the overarching program
- gain the input and participation of Muslim Australians in the planning, delivery and benefits of projects within the CPHR program

While not specifically described as such in HREOC's CPHR program, the overall intent of the strategy and most of the specific projects being undertaken under it, are very much complementary to the process of combating the defamation of religions, specifically Islam and Muslim communities, in Australia.

The primary strategies that the CPHR program is using are:

1. *Human rights education* – increasing awareness, understanding and knowledge of human rights and avenues of complaint as alternative ways of responding to discrimination and vilification.
2. *Whole-of-community and Muslim community approach* – Muslim communities in Australia are diverse and include emerging African Muslim communities, Muslims communities from Asia and longer-term settled communities such as Australia's Arabic Muslim communities. One of the challenges is to work in a culturally appropriate way that achieves reach but is also responsive and relevant across this diversity. To do this some projects will work in various settings, for example;
  - education settings that can potentially reach all Australians
  - some will focus on issues Muslim communities as a whole have identified, such as the marginalisation and disempowerment of young Muslims

- others will aim to enable individual Muslim communities to tailor an activity to their specific needs, for example, addressing the trust issues between a local community and their law enforcement agency.
3. *Partnership approach* – forming partnerships, community participation and engagement are key principles of social and community programs and a consistent theme in the literature. Programs that engage communities through partnership, consultation, participation, collaboration, and leadership in all stages of planning and decision making are more likely to be effective as is demonstrated in the health sector (for example: in Australia as described under the NHMRC's *A Model Framework for Consumer and Community Participation in Health and Medical Research*).<sup>87</sup>
  4. *Strategic partnerships* - the CPHR program design also uses strategic partnerships where each project is developed collaboratively with a peak body, or bodies, around shared agendas. Partnerships at this level have demonstrated community ownership, sustainability and efficacy. Public sector programs with strategic partnerships, especially when these have included cross-sectoral arrangements, have demonstrated how shared capacity, resources and skills can be more cost effective and more likely to achieve planned outcomes.
  5. *Engaging the Muslim community* - to continue engaging the Muslim community in the active CPHR program, a community engagement plan with Muslim community and other stakeholder participation objectives and strategies will be built into each project. The strategic partner in any project with HREOC will develop a community engagement process with HREOC support. The evaluation strategy will include activities to assess the quality and effectiveness of this engagement and participation.

The principal, funded projects (many of which have multiple sub-projects) that HREOC is delivering under the CPHR program are listed below:

#### Community Policing Partnership Project - Helping to Build Social Cohesion and Harmony with Australian Muslim Communities

In partnership with the Australian Multicultural Foundation, this project aims to address discrimination and vilification by increasing community-based dialogue between Australian Muslims and police. Joint community and police projects will receive funding of up to \$10,000 to establish local networks and initiatives that aspire to build understanding and trust, facilitate a stronger sense of social participation, respect and inclusion within communities, particularly amongst young people.

#### Adult English as a Second Language - a Human Rights Curriculum Resource for New Arrivals to Australia

The aim of this project is to help newly-arrived migrants and humanitarian entrants who are entitled to over 500 hours of English language classes under a Commonwealth-funded settlement service program called the Adult Migrant Education Program (AMEP). Given the enormous diversity of this target group the project is an excellent way to promote racial, cultural and religious respect as a national 'value' to newly arrived Australians.

The project will help its audience to learn English while, at the same time, the 'language' of human rights, to recognise different types of discrimination, to be informed about avenues of complaint if they are treated unfairly under the law, such as HREOC's complaint service. Two resources targeting two literacy levels are being produced and should be available late in 2008. Students follow the story of an Ethiopian Muslim woman as she experiences discrimination in her workplace. The project is a partnership between HREOC and the Adult Multicultural Education Services (AMES) (Victoria) and sits under the CPHR program's whole-of-community approach. The resources will be free to all providers who teach the English language under AMEP.

#### Community Language Schools' Human Rights Curriculum Resource and Campaign project

In partnership with Community Languages Australia (Australia's peak body representing the non-government ethnic schools sector) this project will develop a bilingual Language-other-than-English learning resource about human rights and discrimination. The resource will be translated into a language most likely to reach Muslim communities. A Muslim reference group and project advisory group will identify this language using evidence-based criteria.

The project has four stages of development over a timeline from early 2008 to June 2010. These stages are:

1. developing the curriculum resource
2. if successful, the resource will be translated into several more languages
3. promotion, distribution, launch (using a high profile event with participating schools and stakeholders)
4. a media campaign using the material developed by students.

A key message of the resource will be that there are user-friendly mechanisms in place for dealing with discrimination such as the HREOC conciliation service.

#### Freedom of Religion and Belief in the 21<sup>st</sup> Century project

HREOC has commissioned the Australian Multicultural Foundation, in association with RMIT University, Monash University, and the Australian Partnership of Religious Organisations, to prepare a report on *Freedom of Religion and Belief in the 21<sup>st</sup> Century*. The project will work with both faith communities, including Islamic faith communities, and other civil society organisations to record their concerns and proposed solutions to build a more socially cohesive and harmonious society.

The project aims to complement the work being undertaken by the inter-faith movement and will build on the work of:

- HREOC's earlier report *Article 18: Freedom of Religion and Belief* released in 1998 (see 4.3.1)
- The 2004 report funded by the (then) Department of Immigration, Multicultural and Indigenous Affairs, *Religion, Cultural Diversity and Safeguarding Australia* (see 4.2.1).

An evaluation component will assess the Islamic inter-faith participation and the effects of this contribution.

#### African Australians - a Report on their Human Rights and Social Inclusion

The aim of this project is to explore the issues of integration and resettlement of African people into the Australian community within a human rights perspective. Issues, findings and recommendations will be presented in two formats: a report, and a plain English community guide. Through this initiative, the experiences of African Australians will be examined nationally for the first time. The project will include a special focus on issues faced by vulnerable groups such as African Muslims, African Muslim women and youth. The project will be undertaken as a partnership between HREOC, the Commonwealth Department of Families, Community Services and Indigenous Affairs; AMES (Victoria); Australian Red Cross, and the Diversity in Health Institute.

#### Web/e-forum project (in development)

In partnership with the Institute of Cultural Diversity (ICD), this project will develop an online forum to debate arising and relevant issues for Muslim communities. Participation will include Islamic communities, service providers, non-government advocates, government policy makers, academic and other relevant sectors with an interest in Islamophobia, racism and the promotion of human rights, cultural and religious diversity. The forum will be used for the provision of advice; the commissioning of peer reviewed articles; as a clearinghouse for upcoming events and news relevant to the CPHR Program; and, most importantly, as a chat room to consult and discuss topical issues with Muslim community representatives.

#### A Community Arts Initiative with Muslim Australians (in development)

The initiative is a national partnership project with the Australia Council for the Arts (a Commonwealth statutory authority and Australia's peak arts-funding body) as a co-partner and co-funder. It will deliver a range of community, arts-based projects in several states over several years. The projects will work with different communities (both a variety of Muslim communities and whole-of-community, but particularly with young Muslim Australians) in urban, fringe urban and rural locations.

#### Intersections between the Law, Religion and Human Rights: A Roundtable Dialogue (in development)

This project will bring together members of the judiciary, key legal representatives, academics, religious and community leaders to explore the interface between religion and the law. These issues have both human rights, ethical, as well as practical implications for the administration of law in Australia. The main focus of this roundtable will be on the issues for

Muslim communities. A report will be developed which highlights the key issues and a strategy for future work in the area.

#### 4.3.3 Other HREOC work not included under the CPHR Program

Various units within HREOC, while not specifically working towards combating the defamation of religions, nevertheless, undertake activities which indirectly (and sometimes directly) relate to it. These are described under sections 4.3.4 and 4.3.5; the Indigenous Social Justice Unit also undertakes human rights work relating to Australia's Indigenous peoples and input relating to this is at section 4.4. Periodically, work of the Sex Discrimination, and other units, may also relate to the issue. However, the section that sits alongside the CPHR, Strategic Policy (Race Discrimination Unit), is the most relevant to this report.

Elsewhere, HREOC's position paper on multiculturalism has been referred to, as has the international comparison of race discrimination legislation – this work was undertaken by Strategic Policy over the last year.

Of particular relevance is a new project being undertaken by the section on the media in Australia. This is a continuation of its work to encourage media outlets to avoid racial vilification. The project (which is a guide for people working with the Australian media) is also a response to community concerns about the role of media in shaping race relationships in Australia. This concern was reflected in one of the recommendations of the *Ismae* report: that government agencies responsible for promoting multiculturalism help improve consultation between media organisations and ethnic and religious community organisations, including Arab and Muslim groups, to improve mutual understanding. This media project will be completed and released later in 2008.

The section's work, however, generally has a more 'policy' focus, including attention to the legislative issues relating to race discrimination in Australia. For instance, it recently prepared a submission to the government on the citizenship test which was introduced in 2007 and was controversial in some quarters in Australia.<sup>88</sup>

#### 4.3.4 HREOC and an Australian Charter of Rights

As noted throughout in this report, Australia's current governance system does not adequately protect human rights. Many of the international human rights standards agreed to by the Australian government have not been incorporated into Australian law and victims of human rights violations are often left without legal remedies.

The need for reform is highlighted by numerous examples. The wrongful detention of Cornelia Rau and wrongful removal from Australia of Vivian Alveraz,<sup>89</sup> illustrate that human rights can be the casualty of poor governance. Some recent counter-terrorism laws have been enacted without adequate scrutiny or necessary human rights safeguards as described under section 2.5.

A federal Charter of Rights created in consultation with the Australian community could foster a human rights culture in government and Australian society, by:

- making human rights an integral part of law-making and policy-setting processes
- requiring federal parliament to consider whether laws comply with human rights
- enabling courts to interpret laws consistently with human rights where possible, and to identify laws which do not comply with human rights, and
- providing accessible and appropriate remedies for human rights breaches.

The new Commonwealth government has stated its intention to initiate a public inquiry about the best way to protect human rights and freedoms in Australia. The national inquiry should be provided with sufficient time and funding to include a community-level public consultation process accessible by all Australians; special effort should be made to include those who are isolated or disadvantaged such as Indigenous Australians and members of CLDB communities. HREOC's CPHR program research into freedoms of religion and belief will also complement any enquiry into a future Charter of Rights through its comprehensive consultations with faith communities.

HREOC expects to be a critical commentator and participant in this public enquiry with the Commission having a policy of strongly endorsing the introduction of a Commonwealth-level Charter of Rights. HREOC believes that such a charter should help resolve some of the outstanding matters that impact upon religious communities and, if properly worded, will help address some of the concerns about freedom of speech associated with faith, race and culture thus, hopefully, assisting Australia to further combat the defamation of religion.

#### 4.3.5 HREOC – Complaints

One of HREOC's most important functions is to have a complaints service available to the Australian public. If somebody feels that they have been discriminated against, or had their human rights breached, under the various legislation that covers different forms of discrimination (such as race, gender, disability or age) they can lodge a complaint with HREOC who will investigate their claims. Because Commonwealth law does not cover discrimination on the basis of religion (other than in employment), HREOC does not have the authority to investigate complaints about religious vilification. Complaints that raise elements of discrimination on the basis of religion are often framed as complaints based on race, ethnic origin or national origin.

HREOC's complaints department cannot provide specific statistics on what complaints it receives and does not have any way of disaggregating those matters that might raise issues of religion but have been accepted as a legitimate complaint under the RDA. Nor does the complaints department keep specific statistics on enquiries that relate to religious vilification or defamation. The only data it can provide is that in the year 2006-07 HREOC did receive 231 enquiries about religion and religious organisations, and, in 2007-08 year-to-date (end May) had received 209 enquiries.

HREOC has recorded an increase in matters that relate to people of Arabic and Middle Eastern origin who may, or may not be, Muslim. Where the assumption is made they are Muslim, they reporting being harassed, treated less favourably or vilified for that reason. An example of the type of complaint HREOC receives is:

*"The complainant is of Arabic origin. The complainant claimed that the respondent, a 'white Australia'- type political party, distributed leaflets in Western Australia which contained offensive comments about Arabic people and Islam. She provided a copy of the leaflet which included remarks such as "Islam is primarily a religion of the Arab race and culture"... "look out if it becomes the ruling religion in Australia"... "to re-establish social cohesion, we need to stop Arab and other Third World immigration..." The complaint was accepted under the racial hatred provisions of the RDA."*

HREOC has also received a number of complaints about press articles from various religious groups, some of which have been accepted under the RDA because the comments about religion can also be linked to race (for example, articles about Jewish people or Mandaenes which criticise or vilify beliefs or religious practices). There have been a number of contacts with the Commission complaining that Muslim people and their organisations are being vilified or harassed on websites and in newspaper articles. HREOC is unable to deal with these matters and have referred them either to a state body that may be able to deal with the complaint, or to another remedy such as the Australian Communications and Media Authority.

HREOC has also received a range of complaints pertaining to employment, such as comments made by co-workers about Muslim employees and which link race, ethnicity and religion. These have included:

- comments made to complainant that he is a "terrorist", a "ticking time bomb", a "thief", and accusing him of having sex with animals, in front of other workers
- a Muslim complainant was taken off duties as a security guard because their supervisor thought the retailer would prefer staff who do not wear a head scarf
- Muslim complainant upset that photographs of her children on desk at work had the word 'terrorist' written across them
- complainants told "they looked like those Arab's/Muslims who flew the planes on 9/11"
- Muslim complainant asked how "his wife was chosen for him"
- introducing complainant to a female secretary, saying "he's an Arab, don't trust him"
- various comments including, for example, "all the Arabs love to fight and kill", "the Arabs love to kill throughout their history everywhere", "all Arabic people hate America", "they are stupid they don't think", "they all like to kill others, they also kill each other", "all Arabic people are stupid killing each other in Iraq".

#### 4.4 Indigenous Australians' right to freedom of thought, conscience and religion

The combating defamation of religion resolution does not make reference to the issues for Indigenous peoples. This is an oversight in the resolution.

2.4% of the Australian population are Aboriginal and Torres Strait Islanders peoples. They experience greater levels of social, economic and political exclusion and marginalisation than the rest of the Australian community. There are also unique human rights issues that they face relating to their cultural and religious circumstances.

Indigenous beliefs, traditions and spiritual issues do pertain to the right to freedom of religion and belief in Australia. Many Aboriginal and Torres Strait Islander peoples maintain their traditional religious beliefs and practices. Many who have adopted other religions continue a close association with traditional customs and attach great significance to places and sites of cultural and religious importance to the communities. The spiritual connection that Indigenous peoples have to traditional lands is an important element of their spiritual beliefs.

*"Aboriginals are not identified in the table of religions in Australia. Part of this population may, of course, be included in the Christian religion. However, the Aboriginals have their own beliefs, which are manifested by their sacred ties to the earth and which have to be taken into account as part of Australia's religious diversity. In the view of the Aboriginals, maintaining the integrity of the land takes on a religious dimension, which therefore has to be preserved."*<sup>90</sup>

The United Nations Declaration on the Rights of Indigenous Peoples (Article 34) recognises Indigenous peoples' rights in this respect as follows:

*"Indigenous peoples have the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards."*<sup>91</sup>

In Australia, in addition to the general protections available for the freedom of religion and belief, heritage protection legislation provides some limited and indirect protection for the religious beliefs of Aboriginal and Torres Strait Islander peoples, by providing for the protection of sites with heritage or cultural significance for Indigenous peoples.

Some current government laws, policies and programs have a limiting effect on Indigenous peoples' exercise of freedom of religion and belief. In particular, there are limitations on Indigenous peoples' connections to land and the protection of their traditional rights.

It is vital to Indigenous peoples, and their future, that there is recognition of the rights and interests they have in land, according to their traditional laws, customs and spiritual beliefs.<sup>92</sup> The High Court of Australia has recognised the relationship between Indigenous people and their land as a spiritual one and native title, as a recognition of Indigenous relationships to land, as encompassing this spiritual dimension.<sup>93</sup> While native title legislation can be an important means of sustaining Indigenous rights to land, and thereby their rights to religion, there have been concerns about the extent of extinguishment of Indigenous rights under the native title legislative scheme.

Current interpretations and applications of the *Native Title Act* have seen narrow legalistic interpretations be imposed on the requirement for continuity of observance of traditional laws and customs. With the effect of impeding the recognition of Indigenous religious and spiritual beliefs, related with their lands. The further impact of this is that resurgences in culture, including resurgences in Indigenous belief systems, are also not recognised as native title rights and interests by Australian law as it stands and therefore also creates impediments to Indigenous rights to freedom of religion. Justice Michael Kirby of the High Court has specifically noted the lack of attention in native title cases that has thus far been given to the freedom of religion.<sup>94</sup>

The Human Rights Committee has, in commenting on the *Native Title Act*, also expressed its concern that "*protection of sites of religious or cultural significance for (ethnic, religious and linguistic minorities), which must be protected under article*

27 (of the International Covenant on Civil and Political Rights (ICCPR)) *are not always a major factor in determining land use*".

The Committee has clarified that article 27 does relate to the protection of rights "to ensure that the survival, and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole."<sup>95</sup> Thus confirming the need under ICCPR for native title and other land rights legislation to also ensure the freedom of religion for Indigenous peoples, in relation to their relationships with land.

In addressing the socio-economic disadvantage of the Indigenous communities, particularly in rural and remote areas, it is important to ensure that governments do not introduce policies and programs that in turn jeopardise the freedom for religion and belief. The rights to freedom of religion and belief, and freedom from discrimination on the basis of religion, are fundamental human rights protected by a number of international treaties and declarations, including article 18(1) of the ICCPR. This right encompasses freedom of thought on all matters and the freedom to manifest religion and belief individually or with others, in public or in private.

#### 4.5 International, multi-lateral, foreign aid and similar activities

##### *Department of Foreign Affairs and Trade*

Australia plays an important role in facilitating inter-faith dialogue in the region with the goals of promoting tolerance and mutual understanding between religions, cultures and strengthening moderate voices within their respective communities.

In December 2004, Australia and Indonesia co-hosted the first Regional Inter-faith Dialogue in Yogyakarta. The Dialogue aimed to highlight the key role of faith and community leaders in bridging differences and building harmony in the South-East Asia region. The Philippines and New Zealand joined Australia and Indonesia in co-hosting the second Regional Interfaith Dialogue in Cebu, the Philippines, in March 2006, and the third Regional Interfaith Dialogue in New Zealand in May 2007.

At Australia's suggestion, Cambodia hosted the fourth Regional Interfaith Dialogue in Phnom Penh in April 2008. The theme for the dialogue was cooperation for peace and harmony. The overall emphasis of the Dialogue was on identifying practical action to promote stability and cohesion at community level. Delegates noted the many practical initiatives at all levels of society that had already been implemented and the positive effect these were having in reducing disharmony among the participant nations' communities.

The Dialogue resulted in the Phnom Penh Declaration and Action Plan. This included specific recommendations for further action at local, national and regional levels in areas including education, conflict resolution and peace building, grassroots initiatives and media. For example, delegates recommended calling on well-regarded religious leaders to assist in resolving inter-communal conflicts and tensions within the region. They also advocated strengthening multi-religious youth networks across the region, including through exchange programs, camps and training programs.

Building on the success of the Regional Interfaith Dialogue, Australia and the European Union co-hosted the Regional Youth Inter-faith Forum of religious and community leaders under the age of 35, in Perth in December 2007. The theme of this forum was *Embracing Diversity: Delivering Messages of Understanding*. The Forum provided an environment in which youth leaders could freely and openly discuss some of the challenges facing young people today and set about developing practical strategies aimed at promoting messages of tolerance and understanding among young people in their communities in their home-countries.

As well as the work of the Department, the Australian Agency for International Development (AusAID) is an administratively autonomous agency within the Foreign Affairs and Trade portfolio. It is the Australian Government agency responsible for managing Australia's overseas aid program. The objective of this program is to assist developing countries reduce poverty and achieve sustainable development, in line with Australia's national interest. AusAID provides advice and support to the Minister and Parliamentary Secretary on development policy, and plans and coordinates poverty reduction activities in partnership with developing countries.

In 2006-07, AusAID provided scholarships to more than 600 Indonesians to study in Australia under its \$2.5 million Human Rights Fund. This "*contributed to sustainable development through practical projects that promote awareness and increase access to human rights: economic, social, cultural, civil and political*" (AusAID Annual Report 2006-07).

AusAID also supported the Asia-Pacific Forum of National Human Rights Institutions (see below), which advised governments and civil society on how to establish national human rights institutions, facilitated information exchange, and provided technical support and training to member institutions in the Asia-Pacific region. These aid-based activities with regional partners, drawn from a wide variety of religions, have all contributed to Australia's fostering of global dialogue to promote a culture of peace and a respect for human rights.

### ***HREOC activities***

As part of Australia's human rights dialogues with China and Vietnam, HREOC has participated in discussions with government authorities responsible for the protection of religious freedom in those countries. While HREOC manages, on behalf of AusAID, programs of technical co-operation with both countries, discussions have not advanced to the point where technical co-operation dealing with religious freedom is assessed as being viable.

HREOC also participated in the 2002 human rights dialogue with Iran. Religious freedom was an area of considerable interest and detailed discussion. A study visit to Australia by Iranian officials managed by HREOC dealt extensively with religious freedom. However, further technical co-operation was unable to proceed due to the suspension of the dialogue.

HREOC also regularly discusses issues with foreign delegations, in particular from the Asia Pacific Region, on fact-finding missions to Australia with interest in human rights, community development, multicultural and race discrimination policies, and how Australia addresses conflicts around religious diversity and the treatment of its Muslim communities. For example, on 16 June HREOC hosted a visit from a joint government and non-government delegation from the southern Philippines to consult on Australian law, anti-discrimination and complaints mechanisms, HREOC's Community Partnership for Human Rights program, and related community education initiatives.

The Asia Pacific Forum is a regional organisation comprising the national human rights institutions of member states and which meets annually for discussions around thematic issues. Although, to date, the issue of combating the defamation of religions has not been an area of specific activities under the APF, this does not mean that the organisation is disinterested in the issues, some member organisations already do work with religious organisations, and inter-faith dialogue may well be an item for detailed discussion and action at a future time should members deem it to be a priority.

## 5. Concluding Remarks

To summarise the key points raised in this report:

- 1) in relation to the combating defamation of religion resolution itself
  - Australia, along with approximately one third of the General Assembly, did not vote for this resolution
  - the reasons given for this refusal to support the resolution was that it over-referenced Islam and did not adequately address all religions. Further, it confuses issues around defamation and human rights – humans, not religions, have human rights
  - the terms ‘combating’ and ‘defamation’ lack clarity and the way they are used in the resolution are confusing
  - most nations, even many of those not supporting the resolution in the form it was put to the General Assembly, supported the principles and intent of the resolution
  - the Secretary General will report back to the General Assembly at the 63<sup>rd</sup> session on the resolution.
- 2) actions taken by government and civil society to combat the defamation of religion
  - Australia has a relatively good record responding to the defamation of religions. Our national Constitution does not allow for any favour on the basis of religion; there is a legislative regime at state and national levels that prohibits race and, in some jurisdictions, religious discrimination and/or vilification; there are also a range of policies and statements that promote the values of cross-cultural and cross-religious respect and support equal opportunity, access and equity without discrimination on any grounds
  - all Australian governments (federal, state and territory) have committed to a national action plan to promote social harmony and security. Funding is associated with this commitment. A wide range of projects, ranging from community development, research, promotion, education, communication, sport and cultural activities are being implemented by several agencies, including HREOC. There are other grants and activities also underway
  - state and territory governments have also invested in promoting greater understanding about culture and religion through their education services
  - many NGOs, service providers, peak bodies, tertiary institutions and philanthropic organisations are investing money and effort into understanding the connections between terrorism and religion as well as ways to overcome this and to build better social connectedness and cross-cultural respect across all communities
  - faith-based organisations are themselves often building inter-faith networks and collaborating to improve relationships with each other.
- 3) HREOC’s position on combating the defamation of religions
  - HREOC is concerned about some of the wording, focus and omissions of the resolution, but supports of the broad rationale and goals that informed it
  - HREOC condemns all forms of violence and endorses the idea that the ‘civil path to peace’ across the world is one that must be taken within the framework of human rights
  - given the extreme complexity of the issues, novel approaches should be used to find solutions to existing and emerging problems
  - There is a role for NHRIs in the area of counter-radicalisation, terrorism, and the defamation of religion. However, this comes with certain risks for such organisations which must walk a difficult path between the competing aspects of promoting and protecting human rights, condemning violence, supporting communities, monitoring security measures, and informing policy development
  - HREOC is using a whole-of-community/partnership model, based on the methodology of health promotion and the principles of human rights, to respond to this complex environment.
- 4) Key issues for future action in Australia
  - there is a need for either the introduction, or the strengthening, of existing laws that relate to religious vilification and/or discrimination, also a broader definition of the category ‘ethno-religious’

- Australia's human rights continue to be poorly protected without a legislated charter of rights which should ensure freedoms of religion and belief
- protections against religious vilification (while also ensuring that freedom of speech is protected) needs to be covered in Commonwealth legislation
- the government's social inclusion agenda should be broadened to include culture as a clear determinant of inclusion – this may be articulated in the forthcoming iteration of multicultural policy
- steps should be taken by federal, state and territory governments (for instance, through both moral leadership and public education campaigns) to better promote inter-cultural and inter-religious respect and dialogue, to reflect the ever-increasing ethnic, racial, cultural and religious diversity of Australia
- the media, as a key shaper of social culture and knowledge, must be supported to conduct itself with increased objectivity, less sensationalism, improved accuracy, and a greater inclusion of diversity
- generally, federal government should play a greater role in encouraging both the inter-faith movement, as well as supporting greater responsibility by religious leaders in promoting human rights, and respect between religions.

## Appendices

### APPENDIX I

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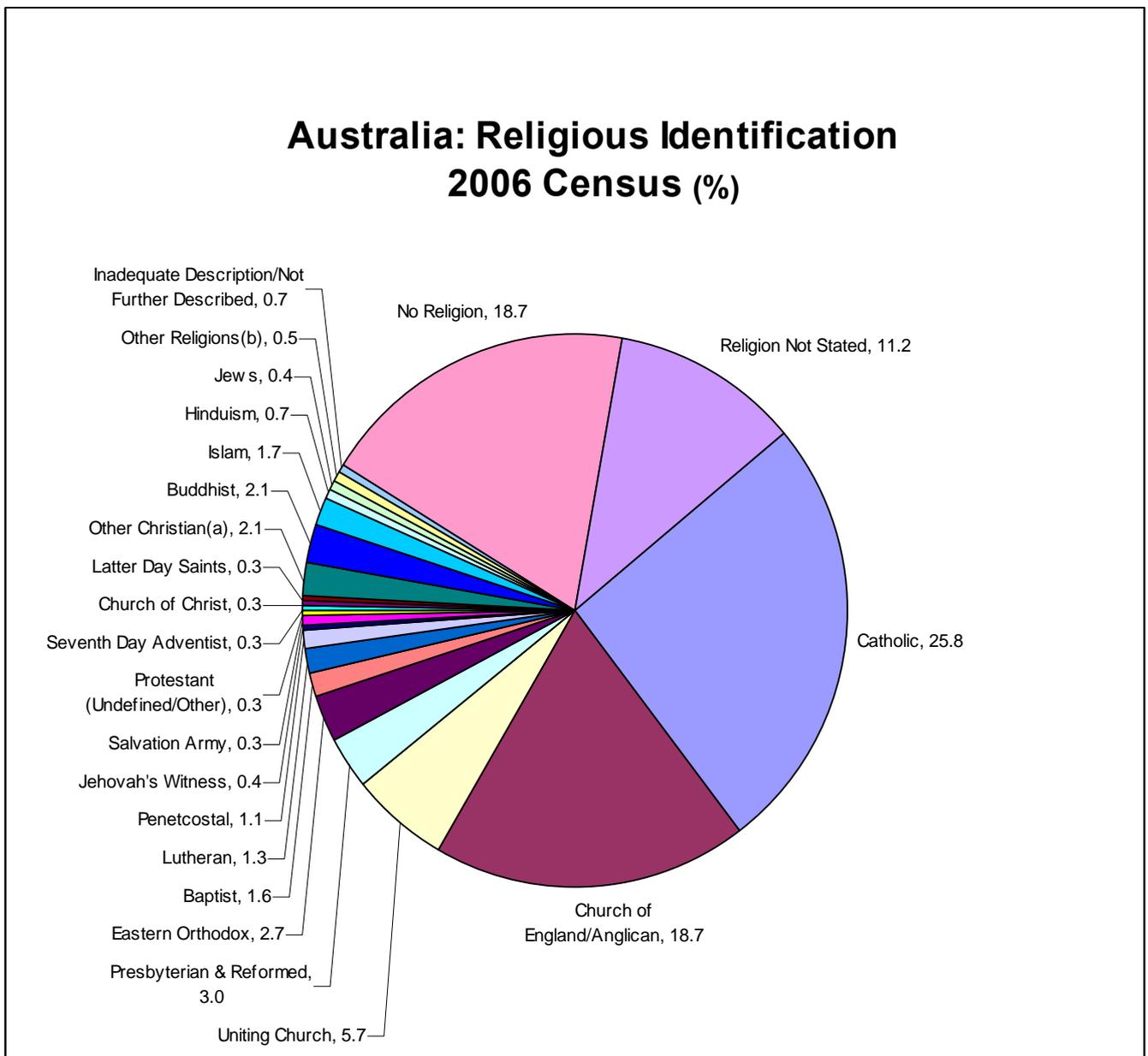
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**Profile/chart on Australia's changing religious profile (based on 2006 Census data) accompanied by a statement on trends in growth over the last ten years, and ancestry**

At the beginning of the 20<sup>th</sup> Century Australia was a predominately Christian nation. In 1921 Christianity peaked at 96.9 %, dropping to 86.4% in 1933. Since 1961, Christianity has progressively decreased and was 63.9 % for the 2006 Census.

In 1921, the Anglican Church was the largest religious organisation in Australia with 43.7 % of the population. This percentage has progressively decreased and by the early 1990s, Catholics were a greater portion of the population than Anglicans.

In 2006, Catholics were the largest religious group in Australia at 25.8%, of the total population, while Anglicans were second largest at 18.7%. The next largest religious groups were also Christian: Uniting Church at 5.7%, and Presbyterian and Reformed at 3.0%.



- (a) includes Christian denominations with smaller percentages of the total population including Oriental Christian/Orthodox, Brethren, Assyrian Apostolic and all other Christian.
- (b) includes Australian Aboriginal religions at 0.03% and religions at 0.01% including Scientology, Wicca, Other Nature Religions, Paganism, Satanism, Chinese Religions and Japanese Religions.

In 2006 Buddhists were 2.1% of Australia's population and Muslims, 1.7%. While small, these groups have progressively increased since the early 1990s, and in 2006 were greater than two small but older Christian faiths: Baptists, who were 1.6 % of the population; and Lutherans, 1.3%. In 2006, Hindus at 0.7% of the population exceeded Jews at 0.4%.

Also significant in 2006 was that 18.7% or almost one fifth of Australians, claimed to have 'No Religion'. The percentage of Australians declaring 'no religion' has been steadily increasing since the 1930s.

### **Australia's Diverse Society: A Statistical Overview (2006 Update)**

#### **Overseas born**

In the 2006 census, one-fifth of Australia's population stated that they were born overseas. In 2006, overseas born residents in Australia comprised of 2.7 million people, or around 13.6% of the population (note: if counting all people residing in Australia, as opposed to Australian residents, overseas born are 4.4 million people, or 22% of population).

Within the western world, Australia has a high proportion of overseas born persons (22.2%).

This is not higher than New Zealand at 23% (see NZ Ministry of Social Development, *The Social Report 2007*, accessed at: <http://www.socialreport.msd.govt.nz/people/people-born-overseas.html>),

but is higher than Canada at 19.8% (see Statistics Canada, *Census Snapshot: Immigration in Canada: A Portrait of the Foreign Born Population, 2006 Census*, accessed at: <http://www.statcan.ca/english/freepub/11-008-XIE/2008001/article/10556-en.pdf>),

and much higher than the US at 12% (see US Census Bureau, *The Foreign Born Population in 2004*, accessed at: <http://www.census.gov/population/pop-profile/dynamic/ForeignBorn.pdf>).

At the 2006 Census, of the overseas born population, most came from England (14.8%), New Zealand (6.7%) and China (3.6%).

#### Ancestry

In 2006, there were 8,048,204 Australians with one or both parents born overseas (41% of the population). In the 2006 census, the three most common ancestries that people identified were Australian (37.7%), English (31.6%) and Irish (9.1%). Other common ancestries included Scottish (7.6%), Italian (4.3%), German (4.1%), Chinese (3.4%), Greek (1.8%), Dutch (1.6%), Indian (1.2%) and Lebanese (0.9%).

#### Language

In 2006, 17% of Australians spoke a language other than English in the homes. This represents an increase of 1% since 2001. Collectively, Australians speak over 200 languages. In 2006, Italian (with 316,894 speakers) was the most popular language other than English spoken at home followed by Greek (252,216), Cantonese (244,557), Arabic (243,672) and Mandarin (220,597).

AMCRAN – Australian Muslim Civil Rights Advocacy Network

AMES – Adult Multicultural Education Service

APRO – Australian Partnership of Religious Organisations (a national inter-cultural / inter-religious peak-of-peak bodies)

CLDB – culturally and linguistically diverse background. This is a preferred Australian government reference to describe national ethnic, or multicultural, diversity.

COAG – Council of Australian Governments

CPHR – HREOC's *Community Partnerships for Human Rights* program

DlaC – Commonwealth Department of Immigration and Citizenship

HREOC – Human Rights and Equal Opportunity Commission (Australia)

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination (1966)

ICCPR – International Covenant on Civil and Political Rights (1979)

NAP – National Action Plan to Build on Social Cohesion, Harmony and Security (Australia, 2006)

NGO – non-government organisation or organisations

NSW – New South Wales: the largest state in Australia

HHRI – National Human Rights Institution

OHCHR – Office of the High Commissioner for Human Rights

RDA – Race Discrimination Act , 1975 (Cth)

UK – the United Kingdom

UDHR – Universal Declaration of Human Rights (1948)

UNDP – United Nations Development Program

UNHCR – United Nations Higher Commission for Refugees

## Endnotes

<sup>1</sup> International Council on Human Rights Policy *Talking about Terrorism – Risks and Choices for Human Rights Organisations* p.5

<sup>2</sup> For example, see Alliance of Civilizations *Report of the High-level Group* particularly noted in chapters 4 and 5, pp.11-19

<sup>3</sup> See Bouma, G et al *Managing the Impact of Global Crisis Events on Community Relations in Multicultural Australia*, p.7

<sup>4</sup> "There is no agreed definition of social cohesion. Most current definitions dwell on intangibles, such as shared values, sense of belonging, attachment to the group, willingness to participate and to share outcomes. The common key elements are:

- shared vision: most researchers maintain that social cohesion requires universal values, mutual respect and common aspirations or identity shared by their members
- a property of a group or community...
- a process:... a continuous and seemingly never-ending process of achieving social harmony.

The key spheres (of social cohesion) are:

- economic...
- political...
- socio-cultural..." quoted from Markus *Mapping Social Cohesion Summary Report* p.8

<sup>5</sup> For example, as argued in the Chatham House and School of Political and Social Inquiry, Monash University report: *Globalisation's New Challenge: Social Cohesion in Diverse Communities*; as discussed in terms of the 'push' and 'pull' factors the ICOCO report *Young People and Extremism*; and, as in Sen, A. *Civil Paths to Peace* "...group violence...is not only – perhaps not even primarily – a military challenge. It is fostered in our divisive world through capturing people's minds and loyalties, and through exploiting the allegiance of those who are wholly or partly persuaded (2)...Military initiatives can sometimes be of limited use... but many interventions... typically leave the root causes of violence unaddressed. They can also generate immensely counter-productive results, by creating fresh hostilities and by giving reasons to distinct violent groups to join hands in 'resisting aggression' (3)... Respect and understanding are intimately connected with human rights expressed in terms of the four great freedoms (from hunger, disease, ignorance and fear) – to which one might add freedom from violent conflict. (13)"

<sup>6</sup> For example, see Kruger and Maleckova who argue that there is no strong evidence of a causal connection between poverty and terrorism (although they do not present a case that the disadvantage and impoverishment of others is insufficient motivation for some to act with violence on others' behalf).

<sup>7</sup> Social cohesion, community cohesion (and more currently) social inclusion, are closely linked concepts derived from the academic view of social advantage and disadvantage. Increasingly the terms are being used nationally and internationally in community, economic, business, government and policy settings. As a result, scope and definitions of these concepts differ widely, for example, ranging from a focus on respect for diversity/multiculturalism to security and economic priorities and can thus depend on emerging evidence (but limited from peer reviewed sources) or new social modelling, organisational and sector agendas, favoured policies or new policy direction.

Social inclusion can be defined as an active process to empower and enable individuals, less powerful, marginalised groups to participate in the social and economic life of their broader community – but most importantly to do this from a position of equality. Increasing social inclusion may require changing systems and policy barriers, extending rights to the marginalised and less powerful, strengthening processes that lead to equality, empowering and skilling communities, and increasing trust and building bridges of connectedness and understanding between individuals, groups and different communities. As such, social inclusion is a concept that should have strong links with human rights.

Social connectedness can be used as an indicator of social inclusion and may be measured by determining both the extent of bonding and bridging social capital. Social connectedness also suggests a dynamic where communities retain their identity but can still forge links or bridges with other more 'powerful' communities. This is a concept and term which is distinct from 'cohesion' and even 'inclusion', which may be treated with scepticism by communities in social and economic subaltern positions because of their potentially perceived meanings of integration and acculturation.

<sup>8</sup> See Jakubowicz, A. in *Social Cohesion in Australia* 158ff

<sup>9</sup> See Bouma, B and Ling, R. *Religion and Social Cohesion*

<sup>10</sup> For example, in New Zealand, see [www.socialreport.msd.govt.nz/documents/2005/sr05-social-connectedness.pdf](http://www.socialreport.msd.govt.nz/documents/2005/sr05-social-connectedness.pdf)

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- <sup>11</sup> See UNDP *Human Development Report: Cultural Liberty in Today's Diverse World*
- <sup>12</sup> HREOC *Multiculturalism: a position paper by the Acting Race Discrimination Commissioner*, Sydney, 2007
- <sup>13</sup> UNDP op.cit. quoted selectively from pp.2-12
- <sup>14</sup> See [http://en.wikipedia.org/wiki/Margaret\\_Gardner](http://en.wikipedia.org/wiki/Margaret_Gardner) which refers to the controversial decision by the Vice-Chancellor to close down the university's Muslim prayer room.
- <sup>15</sup> See, for example, *Jones v Toben* [2002] FCA 1150; *Jones v The Bible Believers' Church* [2007] FCA 55; *Silberberg v The Builders Collective of Australia* [2007] FCA 1512.
- <sup>16</sup> [1979] 2 NZLR 531.
- <sup>17</sup> [2002] FCAFC 156.
- <sup>18</sup> Ibid [14].
- <sup>19</sup> [2002] FCA 1150
- <sup>20</sup> See also *Jones v Scully* [2002] 120 FCR 243, 271-273 [110]-[113], *Jeremy Jones v Bible Believers Church* [2007] FCA 55, [21] and *Silberberg v Builders Collective of Australia Inc* [2007] FCA 1512, [22] where it was also found, in the context of complaints of racial hatred under Part IIA of the RDA, that Jews in Australia are a group of people with a common 'ethnic origin' for the purposes of the RDA.
- <sup>21</sup> [1983] 2 AC 548.
- <sup>22</sup> Explanatory Memorandum, Racial Hatred Bill 1994 (Cth), 2-3.
- <sup>23</sup> *Abdulrahman v Toll Pty Ltd trading as Toll Express* [2006] NSWADT 221 – decision upheld on appeal by the Appeal Panel of the ADT in *Toll Pty Ltd trading as Toll Express v Abdulrahman* [2007] NSWADTAP 70. The decision of the Appeal Panel has, however, been appealed. Also see *Khan v Commissioner, Department of Corrective Services* [2002] NSWADT 131 and the UK decisions of *Tariq v Young* (Unreported, Employment Appeals Tribunal, 24773/88) and *Nyazi v Rymans Ltd* (Unreported, Employment Appeals Tribunal, 6/88).
- <sup>24</sup> Human Rights and Equal Opportunity Commission, *Isma – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians* (2004), p.129
- <sup>25</sup> For example: HREOC's report *Article 18* recommends that religious discrimination should be made unlawful under a religious freedoms act ; the National Human Rights Network of the National Association of Community Legal Centres Australian Non-Governmental Organisations' Submission to the Committee on the Elimination of Racial Discrimination, 2005 (<http://info.humanrights.curtin.edu.au/pdf/NGOExecSumm2005.pdf>) recommends that both the Commonwealth and state/territories enact legislation to prohibit discrimination and vilification on the grounds of religion, and criminalises such activity; FECCA Submission on Australia's compliance to the UN International Convention on the Elimination of all Forms of Racial Discrimination, 2008 ([http://www.fecca.org.au/Submissions/2008/submissions\\_2008003.pdf](http://www.fecca.org.au/Submissions/2008/submissions_2008003.pdf))
- <sup>26</sup> *Discrimination Act 1991* (ACT) s 7(i); *Anti-Discrimination Act 1992* (NT) s 19(1)(m); *Anti-Discrimination Act 1991*(Qld) s 7(i); *Equal Opportunity Act 1984* (WA) – Part IV; *Anti-Discrimination Act 1998* (Tas) s 16; *Equal Opportunity Act 1995* (Vic) s 6(j).
- <sup>27</sup> *Anti-Discrimination Act (1991)* (QLD), Schedule.
- <sup>28</sup> *Equal Opportunity Act 1995* (Vic) s 4.
- <sup>29</sup> *Anti-Discrimination Act 1991* (Qld) s 124A(1); *Racial and Religious Tolerance Act 2001* (Vic) s 8; *Anti-Discrimination Act 1998* (Tas) s 19(d).
- <sup>30</sup> *Anti-Discrimination Act 1991* (Qld) s 124A(2); *Racial and Religious Tolerance Act 2001* (Vic) ss 11 and 12; *Anti-Discrimination Act 1998* (Tas) s 55.

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<sup>31</sup> *Racial and Religious Tolerance Act 2001* (Vict) s 25.

<sup>32</sup> *Anti-Discrimination Act 1977* (NSW) Part 2; *Equal Opportunity Act 1984* (SA) Part 4.

<sup>33</sup> 'Race' is a contested term and racism does not necessarily exist because of the existence of what are commonly thought of as races. Rather, racism exists because there is a process of social division into categories. Many excuses can be used to invent these categories whether they are skin colour, religion, wealth or culture. Scientific racism theories are becoming increasingly indefensible with studies of human genetics demonstrating that race is a meaningless concept and many scholars now maintain race to be a social construct with potent social and political effects, but with no basis in biological science. (For example "...the consensus among most scholars in fields such as evolutionary biology, anthropology, and other disciplines is that racial distinctions fail on three counts - that is, they are not genetically discrete, are not reliably measured, and are not scientifically meaningful." Smedley, Audrey and Brian D. Smedley. (2005) "Race as Biology if Fiction, Racism as a Social Problem is Real." *American Psychologist* 60: 16-26.) Nevertheless, due to superficial differences in physiology, often accompanied by cultural difference, the persistence of the idea of 'race' continues and, as a regrettable consequence, racial discrimination.

Because an individual cannot change their physiology, 'race' is not a matter of choice – this is sometimes seen as an argument that makes race discrimination less acceptable than discrimination on the basis of religion. Religion, on the other hand it could be argued, is a matter of opinion, or choice. Nevertheless, distinctions between religious and racial discrimination, or vilification, are not always clear. Many groups identify themselves with ethnic, cultural and religious characteristics. When the group, or a member of the group, is discriminated against it is not always clear on what grounds, and whether the person doing the discriminating or vilifying is motivated by 'race', culture or faith, especially when a person's identity is enmeshed in a pattern of cultural and religious connectedness.

Some groups, such as Jews and Sikhs, have been classed as 'ethno-religious' because the aspects of their religious and 'racial' identity are so hard to disaggregate. This has meant that other groups, who do not fall under the category of ethno-religious, are not protected by anti-discrimination laws even though they may have equal, or even greater, claim that they are being persecuted on grounds of BOTH religion, racial appearance, and also perhaps appearance, especially when this may be distinct from socially conforming modes of dress. The challenge in Australia, as elsewhere, is that Muslims tend not to be seen as belonging to an ethno-religious group. However, especially since the events of September 11, and the subsequent increase in Islamophobia in many parts of the world, Muslims have often been victims of what must be described as discrimination and vilification that blends faith, culture and race hatreds.

It has been argued that existing race discrimination laws need to be updated to accommodate this new form of ethno-religious discrimination. Furthermore, the idea that some religions can benefit from being classified as a 'race', but not others, is illogical, inaccurate, unfair and, therefore, makes the current distinctions both meaningless as well as inherently (and ironically) racist (see Bloul, R *Islamophobia and anti-discrimination laws: ethno-religion as a legal category in the UK and Australia* who argues that while the 'ethno-religious' category is seen to benefit the Jewish community, its roots as a concept are anti-Semitic and reflect an essential racist bias in the wording of the race discrimination legislation.

<sup>34</sup> *Abdulrahman v Toll Pty Ltd trading as Toll Express* [2006] NSWADT 221 – decision upheld on appeal by the Appeal Panel of the ADT in *Toll Pty Ltd trading as Toll Express v Abdulrahman* [2007] NSWADTAP 70.

<sup>35</sup> *Khan v Commissioner, Department of Corrective Services* [2002] NSWADT 131.

<sup>36</sup> *Equal Opportunity Act 1984* (SA) s 5(1).

<sup>37</sup> *Discrimination Act 1991* (ACT) – s 66(1) creates the racial vilification offence and see definition of race in the Dictionary; *Criminal Code* (WA) – Chapter XI – see definition of 'racial group' in s 76; *Civil Liability Act 1936* (SA) s 73; *Anti-Discrimination Act 1977* (NSW) – s 20C(1) prohibits racial vilification and see definition of race in s 4(1).

<sup>38</sup> *Anti-Discrimination Act 1977* (NSW) – see definition of race in s 4(1) and also see *Khan v Commissioner, Department of Corrective Services* [2002] NSWADT 131.

<sup>39</sup> *Discrimination Act 1991* (ACT) s 66(2); *Civil Liability Act 1936* (SA) s 73(1); *Anti-Discrimination Act 1977* (NSW) s 20C(2).

<sup>40</sup> *Anti-Discrimination Act 1977* (NSW) s 20D; *Racial Vilification Act 1996* (SA) s 4.

<sup>41</sup> *Sherras v De Rutzen* [1895] 1 QB 918 ; *Cameron v Holt* (1980) 142 CLR 342.

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<sup>42</sup> *Discrimination Act 1991* (ACT) s 67.

<sup>43</sup> *Criminal Code* (WA) s 80G.

<sup>44</sup> [2004] VCAT 2510.

<sup>45</sup> (2006) 15 VR 207.

<sup>46</sup> *Ibid* [18] (Nettle JA), [123] (Ashley JA), [162] (Neaves JA).

<sup>47</sup> *Ibid* [132] (Ashley JA), [158] and [160] (Neaves JA).

<sup>48</sup> *Ibid* [24], [30] [70], [71] and [81] (Nettle JA), [129]-[131] (Ashley JA) and [140], [161] (Neaves JA).

<sup>49</sup> *Ibid* [37]-[63], [72]-[79].

<sup>50</sup> *Ibid* [189], [194], [195]-[196].

<sup>51</sup> [2002] FCA 1150.

<sup>52</sup> *Ibid* [74].

<sup>53</sup> [2007] FCA 1512.

<sup>54</sup> *Ibid* [37].

<sup>55</sup> *Ibid* [34].

<sup>56</sup> (2002) 210 CLR 575.

<sup>57</sup> *Ibid* [26].

<sup>58</sup> As reported in *The Australian* newspaper on 1 December 2007 "Dr Toben yesterday published a response on his Adelaide Institute website declaring "it's on", and that he would cease removing the banned material from his website as ordered by the court."

<sup>59</sup> The following section has been drawn from Renwick, J. "Counter-Terrorism and Australian Law" Security Challenges vol.3, no.3 (August 2007) and "Australia's Counter-Terrorism Laws and Practice", issued by the Human Rights Law Resource Centre, the National Association of Community Legal Centres and NSW Council for Civil Liberties.

<sup>60</sup> In 2005 the Australian government redefined the offence of sedition, previously believed to have fallen into disuse. The new law makes it a criminal offence if a person "*urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished)*". This new offence may go some way towards creating a criminal offence of racial vilification, at least in its most serious manifestation where it involves incitement to the use of force or violence. It has, however, a number of significant limitations. For example, the offence of sedition applies only where "*the use of force or violence would threaten the peace, order and good government of the Commonwealth*." This provision has been criticised on the basis that violence against small minority groups, which are the most vulnerable to racially or religiously directed violence, is unlikely to threaten either the geographic integrity or the government institutions of the Commonwealth and so is unlikely to fall outside of the law. The characterisation as this as a law of sedition has also led to concern that the focus of this law will be directed more towards the protection of the state than towards the needs and interests of racial and religious minorities (from HREOC *An International Comparison of the Racial Discrimination Act 1975*: Background Paper No.1, pp 50-51).

<sup>61</sup> There was a strong international law context for Australia's new counter-terrorism laws, in particular resolution 1373 of the United Nations Security Council, which was binding on all nations because of Chapter VII of the Charter of the United Nations. The resolution requires all states to:

- prevent and suppress terrorist acts
- deny safe haven to terrorist actors, financiers, planners and supports, and

- ensure that anyone participating in the financing, planning, preparation or perpetration of terrorist acts is brought to justice, and that such acts are made serious criminal offences under domestic law punishable in a manner that reflects the seriousness of terrorist attacks.

The report on Australia, by the special rapporteur, is generally supportive of the Australian response stating *"the legislative reform was at least necessary to bring Australia into compliance with... resolution 1373 (2001) and the work of the Al-Qaida and Taliban Sanctions Committee"* The special rapporteur's report, however, is critical in several areas (see Scheinin, M. *Australia: Study on Human Rights Compliance While Countering Terrorism* (the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) United Nations, 14 December 2006), in particular:

- that the government rushed the implementation of the counter-terrorism laws and that this has been heavily criticised within Australia. The report states *"...it is particularly important that Governments seek to secure the broadest possible political and popular support for such legislation. This is particularly relevant in Australia, which has no federal human rights legislation capable of guarding against undue limits being placed on the rights and freedoms of individuals. Given that this study identifies a number of actual and potential human rights violations within Australia's counter-terrorism regime... Australia (is urged) to move towards enacting federal legislation... providing remedial mechanisms for the protection of rights and freedoms."* The speed with which the government introduced the legislation, and the lack of time for community consultation, may have been one of the reasons for the widespread perception that the laws target the need to control a threat from the Muslim population in Australia
- the extended powers of the Australian Federal Police, especially their ability to declare a 28-day life to a 'specified security zone'; this may impose unnecessary or disproportionate interference with liberty and security, and could be used to restrict the ability of people wishing to undertake lawful demonstrations.
- the need to establish a clear demarcation between intelligence gathering (the work of ASIO) and criminal investigations
- the new powers of ASIO to detain a person for long periods of time, if not indefinitely
- lack of clarity and proscription around certain concepts in the legislation, including "incitement to terrorism" and a definition of "advocacy of terrorism".

Australia, like comparable democracies, has the difficult task of making their legal responses to the threat of terrorism both effective and proportionate. The legal system is designed for open justice, openly administered. The requirement to protect confidential information for broader security purposes establishes a clear challenge and conflict with this well-established system. It also reinforces the need to identify principles and human rights that must always be absolutely non-negotiable (for example: the presumption of innocence, the right to a fair trial, the prohibition of torture) and to embed these in a human rights statute so that they can be permanently protected. The threat that terrorism poses to civil society is well summed up in a recent UK discussion paper:

*"There is no greater challenge for a democracy than the response it makes to terrorism. The economic, social and political dislocation which... terrorist action can bring, threatens the very democracy which protects our liberty... that liberty may be exploited by those supporting... terrorism to avoid pre-emptive intervention by the forces of law and order. The challenge, therefore, is how to retain long-held and hard won freedoms and protections from the arbitrary use of power or wrongful conviction while ensuring the democracy and the rule of law itself are not used as a cover by those who seek its overthrow... those for whom prosecution and punishment hold no fear, and who are prepared to take their own lives in destroying others, do not recognise normal processes of law or fear the consequences of detection."* (Quoted from Renwick, op. cit. page 75)

As noted above, the suite of counter-terrorism legislation has prompted praise but, more often, concern, especially from legal and human rights experts, as well as a number of NGOs. There are two broad critiques of the legislation: human rights based, and ethno-religious based. The human rights based critique accused the government of acting mischievously, an example of this is quoted below:

*"It is sheer chicanery for the government to argue that the legislation is needed to fight terrorism. As the Law Council of Australia noted... at least 24 Acts of Parliament already specifically punish every conceivable terrorist crime, such as murder, grievous bodily harm, criminal damage, arson, conspiracy and attempt. Equally false is the government's claim that the legislation is needed to comply with... Resolution 1373... As the Law Council also observed, the government's first report to the UN Counter-Terrorism Committee on implementing Resolution 1373 stated that Australia already had 'a highly coordinated domestic counter-terrorism response strategy incorporating law enforcement, security and defence agencies' with 'extensive measures' to combat terrorist acts... the government is pushing ahead with measure that will, in the name of protecting liberty, overturn long-standing legal and democratic principles..."* (Head, M. "Counter-terrorism laws threaten democratic rights" *Alternative Law Journal*, vol.17 no.3 June 2002)

Another critique takes the approach that the introduction of counter-terrorism laws and the accompanying policing powers, especially those that involve police discretion are, in fact, an hegemonic project of the dominant Anglo-Celtic community in Australia (a form of 'white supremacy'), and that they are designed to intimidate, criminalise, exclude and generally control 'otherness', in particular the Muslim community. The argument extends to community policing and the promotion of 'moderate Islam' as a false inclusiveness that

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essentially "... shifts state power... to makes mechanisms of command and control appear ever more democratic, involving the policed in their domination." (Sentas, V. "Counter-terrorism policing – investing in the racial state" *ACRAWSA e-journal* vol.2 no.1 2006)

<sup>62</sup> Parliamentary Joint Committee on Intelligence and Security *Review of Security and Counter Terrorism Legislation*, see chapter 3 pp 23-38

<sup>63</sup> This section of the report is heavily indebted to Andrew Jakubowicz's paper *Religion, Media and Cultural Diversity*, an as yet unpublished section for the Encyclopaedia of Religion in Australia, Jupp et al (eds)

<sup>64</sup> Ibid, pp6-7; also see Manning, P. "Media Reporting Toes the Government Line" *Australian mosaic*, 2004, issue 7, no.3 pp24-25 and Luckman, S. "People Like That" *Australian mosaic*, 2004, issue 5, no.1 pp24-26

<sup>65</sup> Perhaps the best known example of this was by the then Minister for Defence, Peter Reith, who, during late 2001 used the *Tampa* incident to suggest that 'boat people' were a vector of terrorism into Australia. Two days after the attack on the World Trade Centre he gave four interviews during which he connected the government's clampdown on boat people with efforts to combat terrorism (Henderson, A. "Our wartime paranoia has a long and ignoble history" *The Age*, 13 January 2003) See also Hodge & O'Carroll *Borderwork in Multicultural Australia* "Rethinking Tampa" pp21-34.

<sup>66</sup> See Williams, G "Balancing National Security and Human Rights: Lessons from Australia" *Borderlands e-journal* 4.1, 2005 [http://www.borderlands.net.au/vol4no1\\_2005/williams\\_balancing.htm](http://www.borderlands.net.au/vol4no1_2005/williams_balancing.htm) and the alternative view in the Deakin Law School oration 2004, by the then Attorney-General, Philip Ruddock, "National Security and Human Rights" – although the argument is that counter-terrorism legislation is not inconsistent with protections contained within Australia's Constitution, which does not refer to human rights (<http://www.austlii.edu.au/au/journals/DeakinLRev/2004/14.html>).

<sup>67</sup> In recent years Professor Peter Manning, and other commentators on the media, politics and language, have debated the term "dog whistling". This is a phrase that refers to the use of coded messages within language that, at one level, may appear neutral, but at alternative levels, sends meanings to different audiences. These embedded messages are often of hate and division. This is another subtle, yet mischievous, use of language that threatens civil society. (also see Manning on 'otherness' referenced in Jakubowicz, "The Media and Social Cohesion" p159 and in issue 7 of *Australian mosaic*)

<sup>68</sup> For example, Muslim organisations have had to produce resources that try and help de-mystify and de-stigmatise their communities as in the Islamic Women's Welfare Council of Victoria's *Media Guide: Islam and Muslims in Australia*, Melbourne, 2005

<sup>69</sup> Jakubowicz from *Religion, Media and Cultural Diversity* p.7

<sup>70</sup> SBS, or Australia's Special Broadcasting Service, broadcasts foreign language programs on both television and radio, its charter states that it is to "provide multi-lingual and multicultural radio and television services that inform, educate and entertain all Australians and in so doing, reflect Australia's multicultural society". Over time SBS has become a unique multi-media service, providing greater linguistic and cultural diversity than any other. It provides 68 language programs on its radio network, more than 60 languages are represented on television, and its new media service provides text and audio-on-demand services in more than 50 languages. However, it has been criticised that some of its broadcasts provide inflammatory or politically contentious material – for example, the Vietnamese community furiously protested some years ago when SBS attempted to broadcast Vietnamese state television news programs. For more information, visit <http://www.sbs.com.au>

<sup>71</sup> Unisys, an international information technology services company, regularly surveys Australians (as well as people in other countries) about their overall security concerns. The Unisys security index for May 2008 has shown significant drops in Australians' concern about national security (war and terrorism) which has masked a sharp increase in worries about their financial security owing to increases in interest rates and workforce participation. See [http://unisys.com.au/services/security/security\\_resource\\_centre/security\\_index/australia.htm](http://unisys.com.au/services/security/security_resource_centre/security_index/australia.htm)

<sup>72</sup> Markus, A. *Mapping Social Cohesion* – see especially 107 ff. See also market research by SBS (*Living Diversity: Australia's Multicultural Future*, 2002) "The overall picture is one of a fluid, plural and complex society, with a majority of the population positively accepting of the cultural diversity at is an increasingly routine part of Australian life... In practice, most Australians, from whatever background, live and breath cultural diversity, actively engaging in the goods and activities of man different cultures. Cultural mixing and matching is almost universal."

<sup>73</sup> For example, see story as covered in the Sydney broadsheet, the Sydney Morning Herald at: <http://www.smh.com.au/articles/2008/03/09/1204998283744.html> and

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<http://www.smh.com.au/news/national/education-of-refugees-key-to-white-flight-mp/2008/03/21/1205602658586.html>

<sup>74</sup> For more information see: <http://www.curriculum.edu.au/values/>

<sup>75</sup> For an analysis of the alleged problems with this program, see the ABC Religion Report of 11 June 2008 at: <http://www.abc.net.au/rn/religionreport/stories/2008/2271288.htm>

<sup>76</sup> For example, see <http://www.aeufederal.org.au/Debates/PSfunding.pdf> as argued by the Australian Education Union (2003)

<sup>77</sup> For example, as discussed recently on the ABC (Australia's national television broadcaster) science program: <http://www.abc.net.au/catalyst/stories/s1486827.htm#transcript>

<sup>78</sup> See media story covered in <http://www.abc.net.au/am/content/2008/s2173643.htm> <http://www.news.com.au/couriermail/story/0,23739,23271380-3102,00.html> and (international coverage - India) <http://living.oneindia.in/insync/2008/ormiston-college-religious-270208.html> in which the college refused a Sikh boy attendance in February 2008 on the grounds that his wearing of a turban contravened uniform policy – the case has been referred to the QLD Anti-Discrimination Board.

<sup>79</sup> For details of this deliberative polling and the outcomes, see <http://ida.org.au/content.php?=dpprelease> . In summary, the process increased Muslim community sense of connectedness to Australia (32% to 44%) although Muslim youth reported continuing alienation away from mainstream Australia which it sees as continuing to reject them; from the non-Muslim participants' perspective, the experience changed negative attitudes towards Muslims (down 42% to 29%) and acceptance of the rights of people from different cultures to live by their own traditions (increased 42% to 71%).

<sup>80</sup> See Jones, J. *Report on Antisemitism in Australia* and his anti-Jewish attack report update of the following year (Executive Council of Australian Jewry media release of 29 November 2007).

<sup>81</sup> For example in a review of North American media, Bremen argues that the majority of articles about the *hijab* in the print media suggests that this practice is a sign of Muslim women's subjugation, and therefore should be condemned. The print media's negative stereotypes of the *hijab* are demonstrated in the following headlines: "Wearing a uniform of oppression", "Women's legacy of pain" "The new law: Wear the veil and stay alive" , "Lifting the veil of ignorance". These headlines illustrate how the popular media not only see the *hijab* as a mark of Muslim women's subjugation, but how the media perpetuate this image. The media's negative stereotypes raise the critical question of whether the *hijab* contributes to or inhibits the crafting of positive identities of immigrant

<sup>82</sup> Whitten, C. and Thompson, S. *When Cultures Collide: Planning for the Public Spatial Needs of Muslim Women in Sydney*, Social City 1, 2007

<sup>83</sup> This on-line resource was developed at Macquarie University and aims to reduce racism and negative stereotypes, build sustainable community relationships, and to address the challenge aspects of these relationships, not just 'soft multiculturalism' – to see this resource, go to: [www.stepone.org.au](http://www.stepone.org.au)

<sup>84</sup> This charter was recently replaced with a new strategy called *Accessible Government Services for All*, released in 2007. While not substantially different from the charter, the change in name has been criticised as reflecting the previous governments incremental intention to refrain from talking about Australia as a multicultural nation.

<sup>85</sup> These can be found at: [http://www.amf.net.au/PDF/religionCulturalDiversity/Resource\\_Manual.pdf](http://www.amf.net.au/PDF/religionCulturalDiversity/Resource_Manual.pdf) and: [http://www.amf.net.au/PDF/religionCulturalDiversity/Multifaith\\_Kit.pdf](http://www.amf.net.au/PDF/religionCulturalDiversity/Multifaith_Kit.pdf)

<sup>86</sup> See <http://www.immi.gov.au/living-in-australia/a-diverse-australia/national-action-plan/nap.htm>

<sup>87</sup> See [http://www.nhrc.gov.au/publications/synopses/\\_files/r33.pdf](http://www.nhrc.gov.au/publications/synopses/_files/r33.pdf)

<sup>88</sup> DIAC administers the Commonwealth's citizenship test which was introduced late in 2007, just weeks prior to the last federal election. In the months prior to its commencement, there was considerable debate in both Parliament (with some critics coming from within the government's own ranks) and the community. This criticism largely took the form that the test is culturally biased, is a disincentive to immigrants taking out citizenship, that it is trying to enforce a form of social cohesion that is actually compliance, and, that the government was using the test as a form of wedge politics. To quote from DIAC's website:

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*"The Australian Citizenship Test has been designed to assist people who want to become Australian citizens gain an understanding of Australian values, traditions, history and national symbols. The test is an important part of ensuring that migrants have the capacity to fully participate in the Australian community as citizens and maximise the opportunities available to them in Australia. It promotes social cohesion and successful integration into the community."*

The new government has stated that it does not necessarily oppose the concept of citizenship testing, but is reviewing the program to determine whether it is biased or discriminatory. HREOC has lodged a submission on this test which can be viewed at:

[http://www.hreoc.gov.au/legal/submissions/2007/aust\\_citizenship\\_amendment.html](http://www.hreoc.gov.au/legal/submissions/2007/aust_citizenship_amendment.html)

<sup>89</sup> The cases of Cornelia Rau and Vivien Alvarez gained notoriety in Australia because, as vulnerable citizens, they were wrongly incarcerated in immigration detention where they faced abuse (Rau) and were deported and left in poverty in another country (Alvarez) due to the incompetence of government staff and their implementation of draconian immigration policies. See:

<http://www.theaustralian.news.com.au/story/0,25197,16287942-2702,00.html> and <http://www.smh.com.au/news/national/we-owe-rau-and-alvarez-apologies-pm/2005/07/14/1120934347260.html>

<sup>90</sup> *Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief*, Report submitted by Abdelfattah Amor, Special Rapporteur, in accordance with the Commission on Human Rights resolution 1996/23, Addendum, Visit to Australia (Amor Report), UN Doc. E/CN.4/1998/6/Add.1, page 9

<sup>91</sup> The United Nations Declaration on the Rights of Indigenous Peoples, 7 September 2008, UN Doc A/61/L.67

<sup>92</sup> Aboriginal and Torres Strait Islander Commissioner, *Native Title Report 2007*, HREOC, Sydney, Report 2/2008, p3.

<sup>93</sup> Aboriginal and Torres Strait Islander Commissioner, *Native Title Report 2007*, HREOC, Sydney, Report 2/2008, p180.

<sup>94</sup> *Western Australia v Ward (2002)* 213 CLR 1, per Kirby J at para 586

<sup>95</sup> Human Rights Committee, *Concluding observation of the Human Rights Committee: Australia*, (UN doc A/55/40 paras 498-528) 24 July 2000