Your Submission

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1. Summary of this submission


1.2. There is a social contract or mutual obligation between people who practice a religious faith and those who do not practice that faith to be attentive to each other’s susceptibilities.

1.3. Section 10 of the Bill should be amended to limit the definition of ‘religious body’ to ‘bodies established for religious purposes’.

1.4. The protection of religious freedoms should be addressed only to natural persons.

1.5. The proposed section 41 should be removed from the Bill.

2. Background

2.1. The Diocese of Newcastle is one of 23 Dioceses of the Anglican Church of Australia.

2.2. The Diocese covers the geographic region from the Hawkesbury River to Lake Cathie, and from the Coast beyond the Burning Mountain.

2.3. The Diocese was established in 1847. It currently comprises 60 parishes. In addition, under the Anglican Church of Australia Bodies Corporate Act 1938 it has 4 schools, a welfare organisation and an aged care service provider. The Diocese through these activities and in partnership with other Anglican Dioceses and Bodies makes a significant contribution to Australian wellbeing.

2.4. The Right Reverend Dr Peter Stuart became the Bishop of the Diocese on 2 February 2018 and represents the Diocese in its public affairs.

3. Australian Law Reform Commission Review
3.1. The Commonwealth Attorney General has asked the Australian Law Reform Commission to review the impact of current anti-discrimination laws in Australia with a view to establishing an anti-discrimination framework that would provide protection against discrimination while still allowing religious institutions to conduct their affairs in accordance with their religious ethos.

3.2. Consideration of this Bill should be deferred until the Australian Law Reform Commission reports its findings in December 2020.

4. Balancing religious freedom and anti-discrimination

4.1. People should be free to practice their religious faith individually or in cooperation with others provided that such practice of religion does not result in harm to others.

4.2. There is a social contract or mutual obligation between people who practice a religious faith and those who do not practice that faith to be attentive to each other susceptibilities.

4.3. It is congruent with the free practice of religious faith by people of that faith that provision is made for religious bodies to be able to exercise discrimination in

4.3.1. the ordination or appointment of priests, ministers of religion or members of any religious order;
4.3.2. the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
4.3.3. the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice.

4.4. In exercising their faith, people of religious faith make a significant impact on Australia life by establishing charitable organisations for undertake education, aged care, welfare and similar activities.

4.5. It is congruent for charitable organisations established by people of faith to publicly articulate the basis for their work and practices. It also congruent for those charitable organisations to establish policies and practices which enable the charitable organisation to undertake its work in a manner that is consistent with the faith basis which led to its establishment.

4.6. Many charitable organisations established by people of religious faith knowingly undertake their activities in concert with or in support of people who do not practice all or part of that religious faith (associated persons). These charitable organisations often receive significant public funding.

4.7. As part of the social contract that enables religious people to undertake charitable work, people who practice religious faith should attend reasonably to the susceptibilities of associated persons.

4.8. Section 10 of the Bill would prevent associated persons seeking reasonable review if they are discriminated against in a way that would otherwise be unlawful except that the basis of that discrimination is proposed to be part of the doctrines, tenets, beliefs or teachings of the religious group which established the charitable body.

4.9. The existing provisions against discrimination involving another person “on the ground of the other person’s sex, sexual orientation, gender identity, marital or relationship status or pregnancy” are wider provisions than are necessary for the proper ordering of aged care and educational institutions which are permitted to exercise such discrimination in relation to employment under the Commonwealth Sex Discrimination Act 1994.

4.10. An effective protection of religious bodies would be provided if the definition of ‘religious body’ proposed in section 10 was limited to ‘bodies established for religious purposes’.

4.11. With the exception of activities directly related to religious practice, it is reasonable for organisations established
by people of religious faith to be held to the standards applying to other bodies.

4.12. If this framework is adopted charitable organisations established by religious organisations would be responsible for making the case there was an inherent requirement for adherence to the doctrines, tenets, beliefs or teachings of the religious group which established the charitable body. This would involve identifying the ways that adherence is essential to the specific role, the nature of the charitable organisation and the manner in which the business of the charitable organisation is conducted.

5. Human Rights Protection

5.1. The Acts Interpretation Act 1901 provides that the definition of person may include an artificial person such as a Body Corporate.

5.2. Under international conventions, protected rights are those that extend to natural persons not artificial persons.

5.3. Current legislation in Australia aimed at providing protections against discrimination address discrimination against natural persons.

5.4. The proposed definition of person in the Bill would extend protection against religious discrimination to artificial persons such as a Diocese or a Body Corporate established by a Diocese.

5.5. The case for such a significant change has not been made. A religious body should be able to bring representative action on behalf of the persons who are part of that organisation.

5.6. The protection of religious freedoms should be addressed only to natural persons.

6. Statements of Belief

6.1. A person or group of people who hold particular religious beliefs may collate and disseminate those beliefs through various media to the world at large.

6.2. The Bill proposes that the mere collation and disseminations of those statements does not form discrimination unless those statements are malicious, harass, vilify, incite hatred or violence, or promote conduct that causes serious offence.

6.3. Section 41 of the proposed bill would make it difficult for a person to seek remedy when a religious person or group of religious people produce and disseminate statements of beliefs which have the effect of engaging less favourably with a group of people with distinct characteristics to those of people who do not share those characteristics.

6.4. Section 41 should be removed from the Bill.