Religious Discrimination Bill – Exposure Draft

Your Submission

General approach

The Anglican Diocese of Tasmania understands that the general approach to this bill is to have a Religious Discrimination Act that runs and operates concurrently with other Commonwealth Discrimination Acts, and with state-based anti-discrimination laws. Our understanding is that the Commonwealth Government does not propose to override any state based legislation, but rather will create additional protections for the practice of religion, and for statements of religious faith or about religion, that would apply in addition to state based protections, and protections from other aspects of discrimination in Federal law.

The Diocese welcomes this approach as it should contribute to civil dialogue about the interplay of various important rights in different realms of public life and at different levels of government.

Clause 10 – Religious bodies acting in accordance with their faith

The Anglican Diocese of Tasmania welcomes this clause. It is an important expression of the right to free assembly. In providing this freedom for religious organisations, the Act would secure the interest in allowing individuals of like faith and beliefs to organise together to promote and express these beliefs.

The Diocese does note that this approach will increase the complexity for religious bodies as they negotiate their practices to ensure compliance with anti-discrimination legislation at different levels. This is particularly apparent in their capacity to recruit on religious lines or to enforce employee codes of conduct which follow the moral tenets of the faith. While the Bill makes it clear that conduct undertaken in accordance with the faith is not discrimination for the purpose of the Act, there would be many examples where such conduct might constitute discrimination under another anti-discrimination law. For example, a church might choose only to employ practising Christians (or even practising Christians of a particular denomination). There is considerable advantage to this, even for roles that are not public teaching or leadership roles, because the employee team would be better aligned to the values and mission of the church. This would not be discrimination under the Bill. However, it would still be discrimination under the Tasmanian Anti-Discrimination Act, unless the practice of the religion were a genuine occupational requirement of the role.

There is a wider problem of the intersection between clause 10 and other anti-discrimination acts. For example, a church might refuse to provide its facilities to celebrate or solemnise a marriage of a divorced person, on the grounds that the divorce and remarriage did not meet New Testament criteria. Such conduct would be conduct in accordance with the tenets of the religion, and therefore not religious discrimination, but could also constitute discrimination on the basis of marital
status. The effect of limiting the scope of clause 10 to discrimination ‘under this Act’ is to considerably dilute the freedoms for religious bodies that are created by the bill. It would be preferable to ensure that the conduct of a religious organisation in accordance with the tenets of its religion does not constitute discrimination for the purpose of any anti-discrimination law.

Clause 10(2)(b) – Registered charities engaged in commercial activities

The Diocese welcomes the distinction between organisations and institutions that are run for public benefit (the classical situation of churches, schools and other not-for-profit activity), and those organisations that have a religious element to them, but are operated as commercial activities.

The church would submit that the phrase "engages solely or primarily in commercial activities", at least as it appears in the context of registered charities, could be problematic. The reason for this, is that many religious organisations achieve their goal and their mission, and provide benefit to society, by means of commercial activity. By way of example, a body that receives government funding to employ chaplains in public institutions is operating on a commercial basis (acting as a conduit for the provision of chaplaincy services to the public). By doing so, it is able to advance aspects of its religious mission. Such a body needs to be able to act in accordance with its faith in employing as chaplains and as those in leadership, people who subscribe to the tenets and beliefs of the organisation. There is a risk that such an organisation would be excluded from the definition of religious body, because its activities are primarily commercial in nature. This is the case, notwithstanding that the body engages in these commercial activities for a religious purpose. There is the potential for this example to multiply out across many social services (such as organisations like Baptcare, Anglicare, CatholiCare and the like), as well as in targeted counselling and welfare organisations. Such organisations are involved in commercial activities, but not for commercial purposes. It is the Diocese's submission that the phrase "commercial activities" should either be replaced by another phrase that is directed to the types of competitive commercial activity that seems to be in view here (where a religious organisation competes with other secular businesses in the same space), or that the phrase "commercial activities" ought be defined so as to remove from its ambit those registered charities which are largely constituted for religious or social welfare type purposes.

Clause 41 – Statements of belief do not constitute discrimination

The Anglican Diocese of Tasmania supports the inclusion of clause 41 in its current form. The Diocese is of the view that the scope of that clause would provide important protection for people of faith (and for those of no faith expressing religious views) to make statements and express those views without fear of an anti-discrimination claim. It is our submission that this provides an appropriate balance between the interests of free speech on religious matters, and the interests of all Australians in protection from unwarranted harassment and discrimination. In making this submission, we note that the term "vilify" needs to be clarified or defined in some way, so as to strike the right balance between protection of vulnerable people and the rights of all Australians to express their views on religious matters.

We submit to that the outer boundaries of a protected statement of belief (Clause 41(2)) is appropriate, in that it would exclude malicious or harassing statements, or statements that would incite hatred or violence towards another group.

Conclusion

The Diocese welcomes the extension of anti-discrimination protection to statements of faith and to people of faith. This legislation fills a significant gap in Australian human rights legislation, securing important rights relating to freedom of religion, freedom of conscience, freedom of expression, and freedom of assembly. It is our submission that it strikes a suitable balance between State and Federal jurisdictions, and allows for respectful civil dialogue around matters that are important to the majority of Australians.