Your Submission

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Submission on the Exposure Draft of the Religious Discrimination Bill

By Anglican EdComm

This matter is of particular importance to Anglican schools in the Diocese of Sydney. The families of over 39,400 students choose to have their children educated within the framework of the tenets, doctrines, beliefs, teachings and practices of the Anglican Church. Anglican schools want to maintain their educational programs without the risk of being in breach of the legislative and regulatory framework within which schools operate. The endeavours of the Federal Government to protect the choice of families is applauded.

Anglican EdComm is aware of the submission being made by the Anglican Church Diocese of Sydney and is in support of the submission. Anglican EdComm is particularly concerned that the Religious Discrimination Bill achieves its intent to "protect against discrimination on the basis of religious belief or activity in key areas of life". We are concerned that in its current form this may not be the outcome for Anglican Schools.

Anglican EdComm welcomes the opportunity to respond to the Exposure Draft and offer the following for consideration:

1. The wording of clause 10 is inconsistent with the Explanatory Memorandum

Clause 10 states: "A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that may reasonably be regarded as being in accordance with the doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted."

This is qualified in the Explanatory Memorandum where the conduct of a school is required to apply to "all" staff. (Paragraphs 180 and 181)

Shortages of qualified staff means that from time to time Anglican schools are unable to employ "all" Christian staff. Their position is best described as having a "preference" for Christian staff.
The ambiguity between Clause 10 (which on face value allows schools to have a preference for Christian staff) and the examples in the Explanatory Memorandum which imply that discriminatory behaviour is permitted only when applied to "all" staff needs to be addressed to ensure that schools know clearly what is required to be compliant with the legislation.

There is a further related issue, identified by Professor Patrick Parkinson, which relates to a school's employment policy. Clause 10 will require such a policy, whether it relates to "all" staff or a "preference" for staff, to be in accordance with "the doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted." The schools (in this case Anglican schools) want to maintain their ethos by having a critical mass of Christian staff. This emanates from the purpose of Anglican schools and only indirectly from religious doctrine.

The submission of the Anglican Church Diocese of Sydney offers the following solution which is supported by Anglican EdComm:

"Clause 10 in its current form would not appear to allow this flexibility, because religions do not generally have a “doctrine” that prescribes a percentage of teachers in a religious school who must be of that faith.

"This could be rectified by a small addition to clause 10(1), as highlighted below.

10(1) A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that may reasonably be regarded as being ‘in furtherance of, or’ in accordance with the doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted.

The Explanatory Memorandum should then give an example which clarifies that the preferencing of staff who hold or support the religious belief of the organisation, or (for a school) the enrolment of students of that faith, is conduct which is in pursuit of the religious purposes of that institution.

An alternative means of achieving the same result would be to add a new clause

10(3) Without limiting the generality of sub-section (2), for the avoidance of doubt, a religious body does not discriminate against a person under this Act by giving a preference in its hiring decisions, or (if it is an educational institution), its decisions in relation to enrolment, to persons who support the doctrines, tenets, beliefs and teachings of the religion in relation to which the body is conducted."

2. Australian Law Reform Commission referral

It is noted that the reporting timetable for the ALRC has been extended to the end of 2020. The separation of the Religious Discrimination Bill from the ALRC Report has the potential for inconsistencies and ambiguities to develop because the issues are not being treated as a whole.

Anglican EdComm recommends that the ALRC recommendations be considered with the Religious Discrimination Bill to ensure holistic integrity of the measures taken.