Religious Discrimination Bill – Exposure Draft

Your Submission

In my submission I make the first point that there has been no consultation with Heads of Churches - we have simply been told what the proposed Religious Discrimination Bill 2019 states. We need time to think aloud with the Attorney General. I have written and asked the Attorney General to meet with the Heads of Churches at the Dealing with Diversity Conference. My second point is a series of statements that are needed in the RD2019 Bill so as to allow religious freedom for religious institutions as currently the protection granted in the RD Bill seems to be inadequate:

1) Faith schools need a clear statement indicating they are free to question applicants who desire to become teaching staff or to be a student at the school as to their willingness to abide by the School’s stance on all religious matters and to attend ceremonies to which as students or as staff they are requested to attend. This does not mean they should be in personal agreement, but simply that they will abide by the school’s teaching position and attend such ceremonies as are required of all other students or all teaching staff. Clause 25 of the Draft Bill does seem to prevent “questioning” applicants for teaching and counselling jobs about their religion. But clause 10 is an “over-riding” provision which operates despite anything else in the Bill (see cl 10(3)). It applies to “religious bodies”, which specifically includes “educational institutions” conducted in accordance with religion – see cl 10(2)(a). Under cl 10(1) such a body does not discriminate 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. So one would imagine that applying a policy that staff and students will not undermine the doctrines of the faith, or refuse to attend religious ceremonies, is in accordance with the doctrines of the school and hence not forbidden by the legislation. Nevertheless we need more clarity in the proposed Bill to spell this out and so confirm that this is what the Bill (the proposed ACT) is stating.

2) Faith schools need a clear statement indicating that they have freedom to advertise for staff or to make known availability for students to apply to attend and or to apply for scholarship and in the advertisement to indicate that as a faith school all applicants are required to indicate willingness to abide by the doctrinal teaching without being committed to being in agreement with such teaching and attend ceremonies as required of all students or of all staff.

3) Faith schools with boarding facilities need the freedom to indicate that applicants desiring to become boarders need to have the same sexual physical body features as do the other boarders of the sex being catered for in the boarding house and that applicants to be teachers in charge of or assistants to other teachers who are responsible for a boarding house declare their position as reflecting the School’s doctrine on marriage.

4) Religious institutions also need to have the right to advertise for staff who are in agreement with the doctrine of the institution and that the choice of one person for reason of being in compliance with the Schools doctrinal teaching cannot be used as grounds for discrimination against another not accepted for employment.
The right of a Court to determine if discrimination has occurred or that the Religious Discrimination Act has not been correctly applied does not include a declaration by the court as to whether the doctrine of the religious institution or any other organisation, charity or company is valid. A court cannot adjudicate the truth or validity of any religious belief. However, it could be helpful for Parliament to mandate certain actions as unacceptable such as slavery, sexual abuse, infant marriage, polygamy and bestiality.

The right of all religious institutions to determine what other organizations or other religious institutions may or may not use any or all of their property at any point of time and that allowing one organisation to use the property does not automatically allow another organisation to claim discrimination on the grounds of not being allowed to use any or part of the property. Clause 10 may cover this but we need an exemption from clause 19.

My third point is to emphasize that freedom of religion is central to our society, it is part of our inheritance and it grants dignity for every person as an expression of our culture and such dignity needs to declare that each person has and must be allowed to choose to have a religious conscience without fear of intimidation:

The fundamental position of a Court is to protect the dignity of any applicant allowing freedom of speech and freedom of conscience, but noting the need not to incite hate of those not in agreement. This freedom allows for religious institutions and individuals to exercise their conscience so as to reject an activity considered inappropriate for them due to the religious doctrine held by the individual or by the religious institution to which they belong.

My fourth point is to ask the following questions:

C5(1) refers to engaging in lawful religious activity, but who defines such activity? “Unlawful” is a very wide category. Can State Parliaments or local Councils define some activity as not lawful? Can there be a limitation on local government regulations perhaps narrowed to “serious crimes”. If the Bill defines lawful activity as actions in accordance with the written documents of the faith to which a person is committed then what about other activity which may be unlawful under another Act or activity which is considered to be appropriate but not written in the doctrine taught in the religion held by the person?

Can the RD Bill protect the public declaration of a religious doctrine, hope or purpose and the freedom of citizens to do so without seeking to express hate or specifically generate violence? This seems to be a necessary statement in our so called free society.

Submission by the Rev Canon Dr David Claydon OAM (Chair of Dealing with Diversity)