Korus Connect’s Response to Exposure Draft- Religious Discrimination Bill 2019

1. Part 1- Definitions

A) Please include a definition of ‘religion’ for example this one, as taken from https://www.britannica.com/topic/religion: “human beings’ relation to that which they regard as holy, sacred, absolute, spiritual, divine, or worthy of especial reverence. It is also commonly regarded as consisting of the way people deal with ultimate concerns about their lives and their fate after death. In many traditions, this relation and these concerns are expressed in terms of one’s relationship with or attitude toward gods or spirits; in more humanistic or naturalistic forms of religion, they are expressed in terms of one’s relationship with or attitudes toward the broader human community or the natural world. In many religions, texts are deemed to have scriptural status, and people are esteemed to be invested with spiritual or moral authority. Believers and worshippers participate in and are often enjoined to perform devotional or contemplative practices such as prayer, meditation, or particular rituals. Worship, moral conduct, right belief, and participation in religious institutions are among the constituent elements of the religious life.”

B) ‘Religious belief or activity’- it needs to be broadened to include acting in accordance with one’s religion, or acting in accordance with one’s non-religion. In the case of the activities of a religious person, this acknowledges the role that worldview plays in framing all activity, even when that activity may not be perceived by others as being ‘religious activity’. For religious people, the artificial sacred/secular divide is not representative of the way they live life; similarly the non-religious person would be consistent in living out their non-religious beliefs in all aspects of life.

C) ‘statement of belief (iii)’ - it needs to be changed to read, ‘is of a belief that may reasonably be regarded as being in accordance with the person’s understandings of the doctrines (and where that person is an organisation: the particular religious doctrines adopted by the organisation, rather than the generic doctrines of the religion to which the organisation is affiliated) ...’ This recognises that the understanding of the doctrines, tenets, beliefs and teachings of a particular religion may vary significantly among adherents to that religion (cf Christian Youth Camps vs Cobaw, Wesley Mission Council vs OV and OW).

It may also be better to frame the phrase in terms of the genuineness of the belief rather than the reasonableness of the belief. This captures genuinely held beliefs, and rules out stated beliefs made for an ulterior or vexatious motive.

2. Part 2 - Concept of discriminating on the ground of religious belief or activity

(3) ‘is not reasonable unless compliance...’ - this is likely to have the unintended consequence of encouraging sponsors to
pressure organisations to require employer conduct rules that favour the interpretation of contentious social or religious positions that agree with the stance of the sponsor and do not allow freedom of religion nor reasonable statements of belief to be expressed by the employee.

(4) ‘that would, or is likely to, harass, vilify...’- ‘Harass’ and ‘vilify’ need to be carefully defined so that a general ‘I am offended’ is not included in this statement (as in the current TAS Anti-Discrimination Act 1998).

Please include the definition of ‘hate speech’ adopted in the International Covenant on Civil and Political Rights (ICCPR) which in Article 20.2 defines it as requiring three elements in order to be accepted as hate speech:
   i. It must include advocacy of national, religious hatred
   ii. This advocacy must constitute incitement to engage in a particular conduct
   iii. The incited conduct is discrimination, hostility or violence.

This also applies to part 4 Section 41 (2) (b).

Freedom of expression needs to be respected so that free public discourse is able to be enacted, allowing for a diversity of opinions to be expressed, debated and challenged. Without such a basic freedom, we cannot claim to be a liberal democracy.

(10) Religious bodies may act in accordance with their faith

In (2) and (3) the definition of a religious body includes the condition, ‘other than a registered charity that engaged solely or primarily in commercial activities’. The Explanatory Notes (EN) at 171 comments, ‘are operating within the secular marketplace...should be subject to the prohibition of discrimination in this Act, regardless of their religious affiliation.’

All activity, outside the confines of religious services within religious buildings or buildings hired for the conduct of religious activities, can be regarded as ‘operating within the secular marketplace’.

This explanatory note appears to be in conflict with Explanatory Notes for 162 which states that, in all areas of public life (Part 3, Divs 2, 3) it recognises, ‘the right to freedom of religion, including the freedom to manifest one’s religion through worship, observance, practice and/or teaching in community with others’. This needs to apply both to persons and to organisations that can be reasonably deemed to be conducted/ live life according to the beliefs and tenets of a particular religion.

In EN 172, Commercial activities are listed as including, ‘providing goods or services...to the public...on a fee basis.’ Further in EN 173, it qualifies that not-for-profits are not exempt if they engage in such activity.

This is an overly narrow definition of both religious bodies and commercial activity. Many thousands of religious bodies engage in some sort of commercial activity according to this definition as a way of being able to financially undergird the provision of religious and charitable services. If left as it is, it will have the unintended consequence of discriminating against religious bodies that also engage in activities that attract a fee. For-profit and government agencies are not likely to be able to provide adequate care to all those who currently benefit from the thousands of religiously-affiliated charities who work in the social sector.

EN 174 excludes religious hospitals and aged care providers because they are not ‘captured by the definition of “religious body”’. This is in reality, contra to 10 (2) (c) which explains that a religious body includes ‘any other body that is conducted in accordance with the doctrines, tenets, beliefs or teaching of a particular religion.’

However, this is not so clear in practice.

For example, the St John of God hospital website states, ‘Welcome to St John of God Health Care, a Ministry of the Catholic Church.’ and, ‘As a Ministry of the Catholic Church, St John of God Health Care models its service delivery on the healing Mission of Jesus Christ. As a leading health care provider this means offering hospitality, hope and healing to all in our care
and to all who choose to work with us.’ This religious position continues,

Our Vision
Is to live and proclaim the healing touch of God’s love where we invite people to discover the richness and fullness of their lives, give them a reason to hope and a greater sense of their own dignity.

Our Mission
Is to continue the healing mission of Jesus Christ through the provision of services that promote life to the full by enhancing the physical, emotional, intellectual, social and spiritual dimensions of being human.

Our Values
The core Values reflect our heritage and guide our behaviours:
Hospitality – A welcoming openness to all; to the familiar and the mystery of self, people, ideals, experience, nature and to God.
Compassion – Feeling with another in their discomfort or suffering and striving to understand the other’s experience with a willingness to reach out.
Respect – An attitude treasuring the unique dignity of every person and recognising the sacredness of all creation.
Justice – A balanced and fair relationship with ourself, neighbour, all of creation and God.
Excellence – Giving the optimum standard of care and service within available resources.


The religious nature of a body/organisation should be defined by its self-proclaimed adherence to recognised religious belief (not spurious or for an ulterior motive), demonstrated in its practices, posture and policies and not by the ways in which its activities are supported financially.

3. Part 3 Unlawful discrimination Division 4 Exceptions and Exemptions
(31) Exceptions relating to work

In 31 (2) (b) and (4) the term, ‘inherent requirement’ is used. EN 348 details where this applies.

The inherent requirements exception applies in relation to all work relationships covered by this Act (being employees, which has an extended meaning under this Act, and partners) and applies to the following work-related activities: c. the arrangements made for determining who should be offered employment d. determining who should be offered employment or who should be invited to become a partner e. the terms or conditions on which employment is offered, or on which a person is invited to become a partner f. the terms or conditions of employment that the employer affords the employee g. determining who should be offered promotion or transfer; or h. dismissing the employee or expelling a partner.

It would be helpful to clarify that an inherent requirement may be applied not only to a particular position within an organisation but to any position within an organisation (just as we would expect that an inherent requirement to work in the Labor Party would include to be supportive of the aims and objectives of the party and not be an active member of another political party), so that the ethos and culture of the organisation is able to be maintained, upheld and promoted by all (or fewer at the sole discretion of the organisation) its employees.

It would also be helpful to clarify that the determination of ‘inherent requirements’ is the responsibility (within legal activity) of the organisation, not external persons, bodies or government.

4. Part 4 Statements of belief do not constitute discrimination etc

(i) It would be helpful to confirm that where the freedoms afforded by the current Act are more robust than those in any state or territory legislation, that in all cases, the Act overrides the provisions of such state or territory legislation. Currently, a number of acts are listed, but these may be added to in the future and would then be outside this provision.