Religious Discrimination Bill – Exposure Draft

Your Submission

The initiative of the Federal Government to protect religious freedom and freedom of expression through this Bill is appreciated by North Beach Baptist Church. Many of the provisions will enhance the ability for people, including our members, to express their faith in the public square without fear of discrimination.

There are a few areas of the legislation that we believe may have unintended impacts on Christians and people of other faiths, or would benefit from further consideration to clarify the intent of the provisions. Note that these comments relate to the Religious Discrimination Bill 2019 only.

Definitions – Religious activity

It is considered that the Bill should make clear that the term “religious activity” includes any ‘manifestation of religion or belief in worship, observance, practice and teaching’ (to pick up the language of International Covenant on Civil and Political Rights 18). Furthermore, “religious activity” includes any activity which the person genuinely believes is required by or is in accordance with their religious belief. This would allow certainty of which activities we undertake as a church are covered by the provisions, and would not unduly constrain the activities of the church due to a “narrow” interpretation of what religious activities involve.

Section 8 (Particularly 8(3))

The attempt to allow staff to be able to express their faith publicly outside of work without undue restriction is welcome. It is likely that this will reduce the likelihood of companies introducing general, overarching requirements for staff to restrict their expression of religious belief outside of work hours. This would allow our members to be able to continue sharing the Gospel, as we are encouraged and commanded to do in the Bible.

However, there remains a significant concern about the "unjustifiable financial hardship" clause in this section. Firstly, it appears that sponsors of major companies can effectively “buy” the right to control the out of work speech of employees by threatening to withdraw sponsorship or support, which would be seen to cause “unjustifiable financial hardship”. This appears to be unconscionable, given religious freedom is an important, recognised human right that should not be beholden to the desire of a sponsor to drive a social agenda.

Moreover, there is an issue related the rise of activism that seeks to have employees sanctioned or forced to quit from out of work organisations that uphold a traditional view of marriage. Non-work activities were argued to be inconsistent with diversity codes at work (for example the cases of Mark Allaby of IBM and Steven Chavura of Macquarie University). Similar
activism has also seen boycotts of companies such as Coopers for wanting to open up civil debate about same sex marriage.

With this rise in activism, it is possible that social media boycotts will be organised by activists that will allow companies to trigger the “unjustifiable financial hardship” provisions, and companies imposing restrictive out of work requirements in response to such boycotts. This would curtail the religious expression that the Bill is seeking to protect. This concern has been raised by legal experts such as Professor Aroney of the University of Queensland.

Finally, it is not completely clear whether the introduction of the specific provision for large companies might imply that a similar case for a small company would be rejected out of hand. Does this give the impression that a similar sort of speech protection is acceptable for smaller companies?

It seems that explanatory note 130 indicates that the intent is that the requirement in Section 8(3) is a more demanding test, but that other employees are still able to access a remedy for an unreasonable condition being imposed if the company’s turnover is less than $50 million per year.

For clarification, it may be useful for Section 8(3) to commence with words to the effect of “without affecting the general provisions of 8(1) and 8(2)...”.

Sections 8(4) and 41(2) – Vilify

It is unclear what the term vilify is seeking to achieve within the Bill. We would completely agree that speech ought not to incite violence or encourage criminal activity. However, it is not clear what constitutes "vilification", or even "harassment".

Explanatory notes 132 suggests that “employers may legitimately restrict their employees' religious expression where it may cause harm to a person, group of persons or the community at large.” The definition of harm is unclear. Some people have suggested that even discussing the traditional definition of marriage with a same sex attracted person may constitute actual psychological harm to them. Certainly, suggesting that there might be a consequence before God for acting against His will in relation to same sex activity is considered hateful by some, as has been exhibited in the Israel Folau case.

We are concerned that without clear definition and an objective test of what constitutes vilification and harm, there is a significant lack of clarity on when and whether an expression of Christian belief would be protected by the Bill. This also creates potential for substantial and costly legal action as subjective understandings are tested.

Ultimately, a broad, subjective understanding of these key terms could be used to restrict the very freedom of religious expression that the Bill is intended to protect, and punish Christians and people of other faiths for vigorously explaining their faith because they have breached restrictions imposed by their employer.

Section 10

Concerning Clause 10 of the Bill, legal experts such as Professor Aroney have questioned whether the provisions for a religious school remain in place in cases where there is a strong preference for teachers who adhere to the faith of the school rather than an absolute requirement. This raises a similar question for a church, where pastoral/teaching staff are required to adhere to the tenets and beliefs of Christianity, but it is possible that there are circumstances where an administrative or auxiliary role (e.g. a groundskeeper) may not be required to be a Christian.

It is considered that a positive statement such as “it is lawful for a religious body, a faith-based educational institution or a charity established for religious purposes, to appoint, or prefer to appoint, staff who practise the faith with which the organisation is associated” would better capture and protect the ability for religious bodies to hire staff who adhere to the tenets of their religion.

The requirement in clause 10 that religious bodies are not protected under the Bill when they run primarily commercial activities is also of some concern. As an example, North Beach Baptist Church is looking to open a counselling centre that will have an explicit Bible focussed modality. Staff would be required and expected to uphold and utilise the Scriptures as the primary focus of their counselling. This counselling centre would eventually be expected to be cost-neutral, with costs
covered by fees from clients.

If this was established as a body separate to the Church, it is unclear whether the proposed Bill would protect the centre from claims of discrimination when seeking to employ staff that adhere to Christian beliefs. This is especially the case given that no clear definition of commercial activities is provided. The explanatory notes appear to give commercial activities a wide definition, and suggest that commercial activities are more broad than activities that explicitly aim to generate a profit. Additional clarity on what would constitute “commercial activities” would be useful, and a more narrow definition of what constitutes “commercial activities” would be considered more appropriate, for example that it relates to organisations that have an explicit “for profit” objective.

Finally, we are concerned that certain for profit organisations such as Christian youth camps are not able to ensure that staff employed are Christian under this Bill. If our church entrusted our youth to such staff, we would expect that they were interacted with and taught by people who uphold the tenets of the Christian faith. However, the Bill does not appear to protect such organisations from discrimination claims if they seek to exclusively employ Christian staff.

Explanatory note 175 states that such an organisation may be able to rely on other clauses to maintain a Christian ethos if it was an ‘inherent requirement’ of the positions. We would argue that it was an ‘inherent requirement’ for all staff employed who interact, model behaviour and teach the youth to be Christian. However, demonstrating this legally would be likely be difficult, time consuming and expensive.

Thank you for the opportunity for commenting on this important piece of legislation.

Sincerely

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