Religious Discrimination Bill – Exposure Draft

Your Submission

Thank you for this opportunity to respond to the exposure draft of the Religious Discrimination Bill 2019. It is good to have Freedom of Religion expressed as a 'positive right' rather than as a 'list of exemptions'.

As one of the aims of the Bill is to provide the 'equal and affective protection of the Law' it makes sense to base the Bill on the other pieces of anti-discrimination legislation. However, Age, Sex, Disability, Race etc. are all physical attributes, whereas Religious belief is not. This raises many questions as one reads through the exposure draft of the legislation.

From the Explanatory Notes:

- Note 344.
Where is the distinction between Public and Private life defined?
The use of examples was very helpful throughout the Exposure Draft but this seemed only to highlight the need to clarify this point. Is this alluded to in note 289? 'those beliefs which have been outwardly expressed by a person'?

- Note 72.
Where is the concept of Religion defined - what are the adherents binding themselves to?
I note that the Bill identifies that it is 'The dignity of the believer and the freedom to adhere to a religion of his or her choice that is worthy of protection' and acknowledges that an attempt to define the concept more precisely may infact undermine 'the principle' that the act seeks to defend. Throughout the Bill (Note 75 for instance) the phrase 'in accordance with the doctrine, tenents, beliefs or teachings of a particular religion' are used. This goes a long way toward a definition as it separates out a 'Public Belief' as that with which a person identifies and a 'Private Belief' which has no such commitment. But what evidence is required to establish this?

- Note 34.
The phrase 'Australian Values' is used but not defined.
Is the implication that 'Religious Belief' as defined by the Bill reflects 'Australian Values'? Religious Belief has certainly always been foundational to Australian life as can be seen in our history of settlement and the large number of institutions which survive unto this day which sprang from those beliefs.

- Note 401.
The link between 'freedom of expression and freedom of religion' is a strong one as it comes back to one of the foundations of our democracy. Expression of course includes both words and actions arising from religious belief. This link between freedom of expression and freedom of religion may well be the 'defining moment' of this Bill.
As a Director of the Melbourne Anglican Diocesan Corporation and the Mentone Grammar School, I am most interested in the application of this element of the Bill. The 'commercial activity' test (Note 171) and the text of the Explanatory Notes seems to place such not-for-profit enterprises firmly under the protections of the Bill. It would be good to have this clarified and in particular, in what ways a corporation can be said to hold a religious belief.

I am also interested in the intersection between the definition of 'Other Religious Institutions' and Clause 63.

This phrase is also mentioned in Note 34 - My concern here is the example of the 1998 Tasmanian Act, where this concept was applied very widely. How is it defined here?

Indirect discrimination. This clause covers situations where a person's religious belief may prevent them from undertaking work inherent in the role for which they are employed. This clause does not seem to cover situations where the employer may ask the employee to act against their conscience in a way that is not inherent in the role for which they were employed. Say, by participation in a fund-raiser or by being asked to show their support for a cause which goes against their sincerely held religious beliefs.

Drafting Note: the double negative in this note is confusing - could this be rectified?

General questions:
- should the Bill enshrine the freedom to change religion? Changing religion is referred to as a possibility but not protected as a right.