Your Submission

Submission on the Exposure Draft of the Religious Discrimination Bill

1 Who are we?

The name of our organisation is Sydney Diocesan Services (“SDS”).

SDS is a body incorporated at the instance of the Synod of the Anglican Church in the Diocese of Sydney (the “Diocese”) pursuant to the Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW). SDS exists to regulate the administration of the central affairs of the Diocese. We do this by providing a range of administrative and professional services to the Synod, to other diocesan bodies and to the 270 parishes of the Diocese in support of their contribution to the broader mission of the Diocese. Our services include financial management, corporate secretarial support, property oversight, IT and human resources services. We also manage the procurement of services from external providers of insurance and investment management.

We note that a submission on the Exposure Draft (the “Bill”) has been made on behalf of the Anglican Church Diocese Sydney. We endorse the comments made in that submission but wish to take the opportunity to make a number of further comments on two specific aspects of the Bill from the perspective of our organisation.

2 The ‘commercial activities’ disqualification in clause 10(2)

Our primary concern with the Bill is with the disqualification contained in clause 10(2) which excludes from the definition of “religious body” registered charities and other religious institutions that “engage solely or primarily in commercial activities”.

We can see no reason for this disqualification as a matter of principle. The disqualification appears to reinforce a fundamental misconception that religious belief and, in particular, the manifestation of religious belief is essentially a private matter. Further, that the manifestation of religious belief in public, including through the provisions of goods and services on a commercial basis, is something to be tolerated through a series of increasingly narrow exemptions to anti-discrimination law rather than embraced positively as a social good.
We consider the retention of the disqualification in clause 10(2) will damage and, over time, potentially extinguish the capacity of many religious bodies to maintain their religious beliefs and values. For some within our community this may be a desirable outcome. However most people recognise the significant contribution to the social capital of our community made by religious welfare agencies such as Anglicare and other religious service providers, and most understand that this contribution has, in large part, been achieved because of the religious beliefs and values of such organisations.

We accept that for some commercial activities there may be a need to balance the right of religious freedom with other rights, including the right not to be unfairly discriminated against in how and, in particular, to whom goods and services are provided. However the disqualification in clause 10(2) does not offer a balance in such matters. It entirely prevents certain religious bodies from being able to act in accordance with their religious beliefs and values. This is overreach.

We also observe, as a practical matter, that the lack of clarity regarding the scope of the term “commercial activities” in clause 10(2) and how to assess whether a religious body engages “primarily” in such activities introduces unnecessary uncertainty in the Bill for many religious bodies as to whether or not they will fall within this disqualification.

SDS is constituted by the Synod of the Diocese to provide central administrative and professional services to the Synod itself, to other diocesan bodies and to the parishes of the Diocese. Given the nature of our services, it is arguable that SDS engages in “commercial activities” for the purposes of clause 10(2). If so, this would lead to the strange outcome of a body constituted as a central service provider of the Diocese being unable to refuse to provide services to organisations outside the Diocese on the grounds they do not share our beliefs and values.

For these reasons, we recommend the removal of the disqualification from clause 10(2).

If, in the pursuit of balance, there is a need to qualify the manner in which certain religious bodies engage in commercial activities, this should be considered on a more granular basis in other pieces of legislation. An example of this is the qualification to the exemption given to religious bodies in relation to the provision of certain aged care services under section 37(2) of the Sex Discrimination Act 1984.

3 Preferring rather than requiring religious staff may not be ‘in accordance with doctrine’

As currently drafted, clause 10(1) enables religious bodies to engage lawfully in conduct in good faith that may reasonably be regarded as being in accordance with the doctrines, canons, beliefs or teaching of the religion in relation to which the religious body is conducted. However, it is highly unlikely that any religion will have a doctrine, canon, belief or teaching which will require a body of that religion to only appoint staff who are adherents of the relevant faith.

While we suspect the apparent inability of religious bodies to preference the selection of staff who adhere to the relevant faith is a drafting oversight, it is an oversight that needs to be corrected. The ability to preference the selection of such staff is foundational to a religious body maintaining its ethos and values, and therefore its capacity to fulfil its mission.
Our recommendation is the same as that recommended in the submission from the Anglican Church Diocese of Sydney, namely that the words “in furtherance of, or” be inserted before the words “in accordance with” in clause 10(1). This small insertion should be sufficient to rectify this issue.

Robert Wicks
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Sydney Diocese Services

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