Religious Discrimination Bill – Exposure Draft

Your Submission

1. Freedom of religion is more than freedom to worship, it is freedom to live out one’s faith in public. It is also freedom to not be compelled to engage in, or affirm, acts that are contrary to deeply held religious beliefs. Religious activity in the bill should be clarified to include both activities that are thought of as traditional expressions of worship e.g. going to church; and other activities, that may not be traditionally thought of as acts of worship but are nonetheless expressions of religion e.g. an Instagram post sharing biblical passages or paraphrases. To avoid the approach of courts overseas, it should also recognise that compelling someone against their conscience is a form of discrimination.

2. The Religious Discrimination Bill does not provide protections for individuals who suffer a claim under the Sex Discrimination Act for their religious beliefs. The Bill should do so and, as recommended by the Ruddock Review, incorporate the “Siracusa Principles” for balancing religious freedom rights against other competing rights. This clash of rights and need for balancing is the very reason this process began.

3. By their very nature, statements of belief about moral standards can offend people. Terms used in the Bill such as “good faith” and “vilify” subjectively measure a religious person’s intentions and should be removed or clearly defined.

4. Employers should only be able to limit statements of belief in the workplace if it is “necessary” as currently defined in Article 18 of the International Covenant on Civil and Political Rights. The threshold of “reasonable” presently in clause 8(1) is subjective and too low. Who determines what is reasonable?

5. Religious schools have already begun facing claims for their beliefs, with a school currently being sued by a former employee for operating in accordance with a traditional view of marriage. Faith-based schools must clearly and unambiguously be able to proclaim and operate in accordance with their teachings (clause 41) and employ staff who share their beliefs (clause 10) without constraint. The major point of difference with religious schools is not just teaching about our faith, but living the faith. Identity is found in practising faith for employees of religious schools.

6. Parental rights are not enshrined to ensure that parents are able to educate their children in accordance with their beliefs and moral convictions in line with Article 18(4) ICCPR. Nor is there clarity as to how faith-based schools will be allowed to manage their affairs in accordance with their faith under the Sex Discrimination Act and other discrimination laws.

7. As the Bill stands, the “Folau clause” creates the presumption that the government or a company with revenue of less than $50 million can limit the religious expression of employees both inside and outside the workplace if “reasonable”. Employers should not be able to limit the statements of belief of their employees outside of the workplace.
8. Having a turnover of over $50 million should not give employers the right to limit their employees’ statements of belief outside the workplace by simply arguing that it is necessary for them to “avoid unjustifiable financial hardship”. This would not be acceptable in any sex, race, age or disability discrimination acts, and goes against the entire purpose of having protections for your religious beliefs. This “Qantas clause” not only effectively cancels out the “Folau clause” but enables sponsor boycotts and intimidatory behaviour towards organisations with religious employees who state their beliefs in public.

9. The Bill contains a clause allowing an employer to discriminate if an employee or professional (including a doctor, counsellor, lawyer or teacher) is unable to carry out the inherent requirements of the role which should be removed. Such permission makes sense for age, sex, gender and disability, but other than faith-based employment, when would a religious belief be a requirement to fulfil a role? Rather than protecting religious people, clause 31 could empower secular employers to insist that all staff affirm sex and gender values contrary to their beliefs and claim this to be an inherent requirement of the role. This would constitute substantial discrimination against people of faith.

10. For the first time in Australian law, the Bill proposes the removal of the rights of religious bodies that conduct ‘commercial activities’. Removing these bodies will set a precedent for other areas of the law. Technically, faith-based hospitals, welfare providers and aged care providers are engaging in commercial activities and there are many other charities that engage in commerce to fund their ministry efforts? The bill should clarify (via amending Clause 10(2)) that religious charities involved in commercial activities can have and evidence their beliefs, and should be able to recruit all staff based on their religious ethos and also refuse to undertake actions that would undermine their religious ethos.

11. The Bill makes it clear that charities will maintain their charitable status if they advocate a traditional view of marriage, this should be extended to include traditional views in relation to the closely related issues of gender-identity and sexual morality more broadly, which are increasingly being weaponised against people of faith.

12. The Bill also needs to explicitly ensure that charities will not lose charitable status via courts finding them to no longer meet the public benefit test (as per sections 5 and 6 of the Charities Act) on the basis of holding traditional or religious views. Australia needs to avoid a situation like that in New Zealand where Family First was deemed not to be a charity by the high court because: “it cannot be shown that Family First’s promotion of the traditional family unit, though no doubt supported by a section of the community, if achieved would be a ‘public benefit’”.

13. Health practitioners’ rights to exercise conscientious objection is supposedly protected in the Bill but this is undermined by the fact that the relevant clause does not address state legislation that fails to adequately allow conscientious objection. Pro-life health practitioners will still have to provide referrals for abortions if state law or health practitioner conduct rules requires it. Furthermore, faith-based providers engaged in commercial activities will not be protected from having to perform activities that contradict their religious tenets.