Submission in relation to the Religious Discrimination Bill 2019 (Draft Exposure)
Executive Overview
Australia is a signatory to a number of international treaties that are relevant to religious freedom. It is noted that the Religious Discrimination Bill does not propose to create a positive right of religious freedom. The question has to be why not, and what, instead, is the Australian Government intending to do in regards to its obligations relevant to religious freedom under the international treaties.

For a start, it is noted that this bill doesn’t provide protection for religions from government interference. The government can pass any law that infringes on religious freedom and the Religious Discrimination Act no longer applies as it contains an exemption for anything covered in another piece of legislation, including the other antidiscrimination acts.

This bill has a number of issues that need to be addressed, the most important of which it is trying to do too many things at once. This bill is not only trying to address discrimination against religion but, despite its statement of intent, it is also trying to address freedom of speech in relation to religion.

I would strongly encourage this bill to be deferred in favour of a freedom of speech bill after which the religious discrimination aspect could be addressed more clearly.

In regards to religion, it needs to be understood that, for a genuine adherent to a religious belief, it is as much an integral part of the person as other protected characteristics such as sexual identity. When laws contravene an adherent’s religious belief they effectively criminalise the adherent who is left with no choice but to obey the laws of their religion.

This bill has more holes in it than swiss cheese and as such is unlikely to actually prevent religious discrimination considering all the exemptions and the ability for the AHRC to create even more exemptions, should it deem fit. In fact, I think I would rather have the current situation rather than the legislation in its current form.

Recommendations
1. The Religious Discrimination Bill 2019 be removed from the legislative agenda of the current parliament and be reviewed after a Freedom Of Speech Bill has been legislated.
2. A Freedom of Speech Bill 2019 be created in its place.
3. The Australian Government address all of its responsibilities under the various treaties, of which it is a signatory, in relation to freedom of religion.

If the bill is to proceed:
4. That the definition of “religious belief or activity” remain consistent with other legislation, i.e. religious belief requires belief in a supreme being and that the phrase “non-religious belief or activity” is clearly defined and used throughout the bill. Although this may make the bill slightly more cumbersome to read, it will greatly improve the clarity around understanding the implications of the bill and how it might be interpreted by the court.
5. Define the term “Religious belief” and “Religious activity” so as to resolve the issue of the High Court defining the term so narrowly that it almost becomes of no practical use in the field of discrimination.
6. That when the terms relevant to religion are defined that they are flexible enough to recognise that different individuals have variations of “doctrines, tenets, beliefs and teachings” within a
“particular religion” and a consequent right to freedom of discrimination based on their own interpretation of their religion. (Consider recommendation 11 of the Ruddock report)

7. In the statement of belief in the Definitions section remove (a) (iii) so that the religious and non-religious person have the same burden of proof in relation to their statement of belief. At present the text places a much higher burden of proof on the religious person which is in itself discriminatory in contravention of the purposes of the Bill.

8. That the Religious Discrimination Bill 2019 repeal section 18C of the Racial Discrimination Act 1975 to align the Racial Discrimination Act 1975 and the Religious Discrimination Act 2019. That section 28 of the Sex Discrimination Act be modified to remove the words “offended, humiliated or intimidated” and a consistent phrase (with a much higher legal standard) be used in ALL discrimination acts in its place.

9. That the changes to the Sex Discrimination Act 1984 be implemented as recommended by the Ruddock Report Recommendation 5.

10. That recommendation 7 of the Ruddock Report be implemented.

11. That all words from “unless” be removed from 8(3)(b) regarding causing employer financial hardship.

12. That 8(4)(a) regarding malicious exemption be removed.

13. That 8(4)(b) referring to harass, vilify, etc be replaced with “incites violence against another person or group of persons”

14. In regards to conscience objection, that all words from “unless” in clause 6 including the whole of 6(a) and 6(b) be removed.

That 10(1) in relation to religious bodies be re-written as follows: “A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that may reasonably be regarded as being in accordance with the religious beliefs or activities of the religious body.”

15. At the end of 10(c) insert “The actions of a not-for-profit organisation whose principles are primarily for a religious purpose does not constitute commercial activity”

16. That 10(2) be reworded to ensure that all organisations that operate for a primarily religious purpose are included.

17. The Act should be amended so that exemptions provided in relation to the Act must be in accord with the objects and principles of the Act.

18. Remove Subdivision C and related clauses so that there is no scope for the AHRC to exempt people or organisations from complying with the act.

19. If Subdivision C is to remain clause 37 should require the person or organisation to be directly affected by the exemption were it to be successful.

20. In part 4, remove Clause 41(2)(a) and change 41(2)(b) to “incite violence against another person or group of persons.”
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Intent

There are three pieces of legislation to be considered in the bill:

- Religious Discrimination Bill 2019
- Religious Discrimination (Consequential Amendments) Bill 2019, and

This submission only deals with the Religious Discrimination Bill 2019 which is where most of the issues arise.

Overview of the legislative package
According to the Summary Document (AGD, 2019b, p.1):

- The legislative package is aiming to implement recommendations 3, 4, 5, 12 and 19 of the Religious Freedom Review.

  Recommendation 5 suggests an amendment to the Sex Discrimination Act 1984 which does not appear to be included in this bill. It is recommended that the changes to the Sex Discrimination Act 1984 be included.

  Recommendation: Recommendation 7 to be implemented.

  Recommendation 11 raises the issue of how religious legislation adapts to smaller and emerging religious groups. This recommendation needs to be considered in how religion, religious body, etc. is defined in this act.

- Religious Discrimination Bill 2019 will prohibit discrimination on the grounds of religious belief or activity and establishes a Human Rights Commissioner in AHRC.

Religious Discrimination Bill 2019

General
The intent of the bill is to prevent discrimination rather than to create a positive right to freedom of religion (AGD, 2019b, p.1).

The bill claims that it is similar to the other discrimination bills although notes that because of the nature of freedom of religion, it has required some variation (AGD, 2019b, p.1).
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It is interesting to note that in the *Racial Discrimination Act 1975* the following is stated in regards to racial discrimination:

> It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. (Section 9(1))

There is no equivalent in the *Religious Discrimination Act 2019*. It is also interesting to note that the infamous section 18C:

> (1) It is unlawful for a person to do an act, otherwise than in private, if:
> 
> (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
> 
> (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

There is no equivalent in the *Religious Discrimination Act 2019*.

It is noted that in the *Sex Discrimination Act 1984* Section 28A includes:

> in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Again there is no concern in the *Religious Discrimination Bill 2019* for an adherent of a religion being “offended, humiliated or intimidated”. This is inequitable.

**Recommendation:** The *Religious Discrimination Bill 2019* should repeal section 18C from the *Racial Discrimination Act 1975* and reword section 28 of the *Sex Discrimination Bill*.

**International obligations**

Australia is a signatory to a number of international treaties in relation to freedom of religion. At present the Australian Government seems to be attempting to side step its responsibilities in regard to these treaties by only addressing the matter of discrimination.

**Universal Declaration of Human Rights (1948)**

It is noted that this is not officially a treaty, however, it is an important document in the interpretation and application of the various treaties. The interesting aspect of the Universal Declaration of Human Rights is that it commences with Article 1 which is a responsibility more than a right.

**Article 1:**

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Rights and responsibilities are inextricably linked. It is important than it any discussion of rights, including the right to be free from discrimination, that we also consider the responsibilities of the*
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various people involved, in particular the responsibility to “act towards one another in a spirit of brotherhood.”.

Some clauses of particular interest:

Article 2:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Clearly, at the moment, were the bill to be passed it would not place the protection of rights for religion on the same basis (without distinction) as race or sex.

Article 7:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The Bill has so many exceptions and exemptions that it hardly provides any protection for freedom from religious discrimination for the religious adherent at all.

Article 12:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

There is a distinct negative attack on people of religion by many in Australia which, were it to be directed at people based on their sexuality, would not be accepted. Religious people have no protection against attacks on their honour as the LGBTIQ+ people possess, nor does the Bill attempt to redress this.

Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The Bill does not adequately address the right of an individual to manifest his religious beliefs or practices.

Article 19:
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

As has been made abundantly clear in the Folau case, this is just not the case in Australia and the Bill does not rectify this issue.

Article 26(3):

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 29:

1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

International Covenant on Civil and Political Rights, 1966 (ICCPR)

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Australia is reticent in its obligation in this regard.

3. Each State Party to the present Covenant undertakes:

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 17:**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 18:**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19:**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 20(2):**

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

This is not addressed in the Bill although it is in other antidiscrimination bills.

**Article 26:**
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**United Nations Human Rights Committee General Comment 22, 1993**

Although non-binding, it is important to consider the committees comment on the reasoning relevant to any restriction of religious freedom. It can be summarized as:

General Comment 22 also sets out guidelines on the circumstances in which religious freedom may be limited. The internal aspect of freedom of thought, conscience and religion (sometimes known as the forum internum) may never be interfered with by the government, even in times of national emergency. The right to manifest a religion or belief may be limited but only if the state can show that this was both ‘prescribed by law’ and ‘necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others’. The Committee rightly notes that these are the only grounds on which limitations are permitted and that any restrictions ‘must be directly related and proportionate to the specific need on which they are predicated’ (Evans, 2009, p. 13).

It is clear that religion can be exercised individually or corporately (Evans, 2009, p. 14). The Religious Discrimination Act 2019 doesn’t make this distinction assuming that all religious belief or activity must be consistent with a particular defined religion. This is just simply not the case. Again, it is noted that the requirement for the non-religious person is “good faith” and yet the requirement for a religious person is linked to the tenants of the religion (corporate) rather than good faith (individual religious belief).

Australia has an obligation under the ICCPR to enact legislation to protect the rights of its citizens.

**A note on discrimination and free speech**

The current approach to discrimination has an impact on freedom of speech, which is currently not legislated in Australia. We need to review the approach to discrimination and its intersection with freedom of speech. Although under a different legislative regiment, the US courts have ruled that hate speech is protected under freedom of speech. It should be in Australia as well. I would hope societal norms would impact on restricting the audience for hate speech. There are, however, no valid grounds for attempting to do this through legislation, particularly when it only applies to certain protected groups (race and sex).

The easiest way to do this is to repeal section 18C from the Racial Discrimination Act 1975. Speech is not discrimination and should not be legally restricted to try to make people feel better. Section 28C of the Sex Discrimination Act should also be reworded. It is worth noting that the Religious Discrimination Bill 2019 lacks these provisions.

The other interesting note in regards to the discrimination legislation is the concept of “treat less favourably”. We all treat people more favourably and less favourably for many and varied reasons and this is a normal part of the interaction between people. The discrimination legislation should be reviewed to make it clear that discrimination has to violate a person’s human rights.
Part 1 - Preliminary

3 Objects of the Act

(1) The objects of this Act are:

(a) to eliminate, so far as is possible, discrimination against persons on the ground of religious belief or activity in a range of areas of public life; and

(b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity; and

(c) to ensure that people can, consistently with Australia’s obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief.

(2) In giving effect to the objects of this Act, regard is to be had to:

(a) the indivisibility and universality of human rights; and

(b) the principle that every person is free and equal in dignity and rights.”

5 Definitions

Educational institution: The phrase “at which education or training is provided” is unnecessarily vague and would seem to include every institution as all institutions would provide education and/or training to their staff.

Recommendation: Change the definition to require education and training to be the primary purpose.

Statement of belief: A statement is a statement of belief if:

(a) the statement:

(i) is of a religious belief held by a person; and

(ii) is made by the person in good faith; and

(iii) is of a belief that may reasonably be regarded as being in accordance with the doctrines, tenets, beliefs or teachings of the religion; or

(b) the statement:

(i) is made by a person who does not hold a religious belief; and

(ii) is of a belief held by the person that arises directly from the fact that the person does not hold a religious belief; and

(iii) is made in good faith; and

(iv) is about religion.
The statement of belief of a religious person must be “in accordance with the doctrines, tenets, beliefs or teachings of the religion” yet the person who makes a statement who does not hold a religious belief only has to make the statement “in good faith”. This is inequitable. The person of religious belief should have the same test “of good faith” as the non-religious person.

Recommendation: Remove clause (a)(iii).

Religious belief or activity
The bill attempts to force the term “religious belief or activity” to include religious belief or activity as well as belief or activity based on not having a religious belief (AGD,2019,p.2). This is not the way the language is used and creates a bill that is confusing, difficult to read and, I would suggest, open to a legal minefield of interpretation by the court.

“The concept of religious belief is not defined for the purposes of this Bill.”(AGD,2019b,p.2). This means that the definition will be left up to the AHRC and the courts. The bill needs to clearly define what it means by religious belief because the High Court has typically taken such a narrow view of the term as to render it almost useless in the context of assessing discrimination (Evans, 2009).

“The concept of religious activity is also not defined for the purposes of this Bill.” (AGD, 2019b, p.2). Again this needs to be clearly defined if it is not to be left to the AHRC and the courts to define the term.

6 Extended meaning of ground
Definitions section 6 becomes really confusing when you realise that religious belief or activity includes not having a religious belief or activity. Let’s just take (a) as an example, which now effectively becomes:

on the ground of a characteristic that people who have or engage, or don’t have or don’t engage, in the religious belief or activity generally have

This clearly becomes absurd. The solution to this dilemma is to ensure that a religious belief or activity is exactly what it says, and that the legislation deals with the non-religious person as separate clauses where required.

An alternative phrase, which may be helpful, is the right to freedom of religion or belief and the principle of non-discrimination on the basis of religion or belief. (Evans, 2009, p. 13).

Part 2—Concept of discrimination on the ground of religious belief or activity

7 Discrimination on the ground of religious belief or activity—direct discrimination
This bill creates an opportunity to review how the discrimination legislation is functioning in practice and its potential for abuse. The phrase “the person treats, or proposes to treat, the other person less favourably” is extremely vague and a very low bar. We all treat different people differently for a large variety of reasons. Discrimination should only become a factor where it is denying someone their human rights. For example, if I invite a group of people to the pub to have a drink, but don’t invite the Islamic person in the group because I’m aware they don’t drink and won’t go to the pub, then I have treated them less favourably (by not inviting them). The Islamic person could then take me to the AHRC.
On the other hand, if I did invite the Arab(Muslim) person to the pub, they could then say that I was offending them and take me to the AHRC for racial discrimination. This is clearly ludicrous.

8 Discrimination on the ground of religious belief or activity—indirect discrimination
The grounds of indirect discrimination becomes a potential minefield.
Indirect discrimination is “where an apparently neutral condition has the effect of disadvantaging people of a particular religious belief or who engage in a particular religious activity.” (AGD, 2019b,p.3). The exception to this is “by imposing a condition, requirement or practice that is reasonable in all the circumstances.” (AGD, 2019b,p.3).
Let’s take an example where an Islamic\(^1\) person takes a fast food business to court over the use of bacon in their store. Their argument is that, by selling bacon, they are being indirectly discriminated against because they can’t go to the store to buy a hamburger.
Let’s consider the logic against the act:
8(1)(a) – The person (the shopkeeper) is imposing a practice (selling bacon).
8(1)(b) – The condition disadvantages the Islamic person because everyone else can go to the shop to buy a hamburger but they can’t. It is also likely to have an impact on the availability of employment to people who refuse to work in a shop selling bacon.
8(1)(c) – Is the practice reasonable... This is covered in 8(2)
8(2)(a) – The nature of the disadvantage is the person can’t go to the fast food shop to buy food and/or is denied employment. There may well be a valid argument to say they can’t go to ANY fast food restaurant if they all sell bacon.
8(2)(b) – The feasibility of overcoming the disadvantage: To stop selling bacon is not difficult and if every fast food restaurant in the locality was required to do the same thing, then it would not be likely to have a financial impact on the stores.
8(2)(c) – As shown there is very little disadvantage to the shopkeeper in making the change. In fact if he doesn’t reduce the cost of the burger, he make actually increase his profit.
It would seem likely then that the AHRC or the court would rule in favour of the Islamic person and ban bacon from the fast food stores. This could also apply to things like Easter Eggs and Christmas Carols.
I would hope that this type of scenario is not the intent of the Act.

Restrictions on freedom of religious speech
8(3) Says that an employer can restrict freedom of speech in relation to religion of an employee outside the workplace when “necessary to avoid unjustifiable financial hardship to the employer.” This would seem to relate to the type of situation involving Folau, i.e. that Rugby Australia was within its rights to

\(^1\) Sorry about using Islamic/Muslim examples throughout this document. They are, however, the types of examples raised in the media in relation to traditionally Australian practices that have been advocated against by people of the Islamic Religion. I’m not familiar enough with the other religions to use examples that relate to them.
limit the religious speech of Folau because it was necessary to avoid unjustifiable hardship to the employer, relating to the impact of a boycott by fans and/or sponsors.

However, this is not a valid argument. The financial hardship to the employer is not caused by the employee directly. It is caused by activists trying to extort the employer to take action against an employee by threatening to withhold consumption and/or sponsorship if the employer doesn’t take action against the employee. This is only an issue because at the moment the public believe that the employer can take action against the employee. Were this clause to be removed, it would be clear that the employer is not responsible for the speech of the employee and as such there would be no grounds for the public and/or sponsors to take action to try and pressure the employer as there would be nothing the employer could actually do.

Recommendation: All words from “unless...” be removed from 8(3)(b).

8(4)(a) – Malicious. This is not defined in the act, however the general definition is similar to “characterized by malice; intending or intended to do harm.” (Oxford). Intention is a very difficult thing to prove in relation to speech. So how would a statement be determined to be intending to cause harm. A religious passage that expresses disagreement with the LGBTIQ+ communities position would be deemed to be causing harm by the LGBTIQ+ advocates. Does that mean that religious people are no longer allowed to teach passages of their religious text that oppose LGBTIQ+ or that oppose same-sex marriage.

NB: This would not be an issue in this bill if this bill was delayed until a freedom of speech bill had been implemented as this would be dealt with by that legislation.

Recommendation: That 8(4)(a) be removed.

8(4)(b) The words “harass, vilify or incite hatred” have all been used by the LGBTIQ+ advocates against the statements of the more traditional religious positions.

Recommendation: That 8(4)(b) be replaced with “incites violence against another person or group of persons.”

Conscientious objection – healthcare

(6)(b) would be likely to require a healthcare practitioner to perform an abortion in a rural area where they were the only doctor, despite any conscientious objection. This should simply not be the case. Were this to be implemented, rural Australia would potentially lose a number of doctors making access to healthcare even more problematic for rural communities.

A healthcare practitioner choosing not to provide a service is no different to if there was no healthcare practitioner at all.

Recommendation: Remove all words from “unless...” from clause 6 and hence remove 6(a) and 6(b).

Conscientious objections by health practitioners – indirect discrimination

This section attempts to pay lip service to conscience within the health industry by stating, “from conscientiously objecting to providing the health service on the basis of their religious belief or activity” (AGD, 2019b, p.4). However, this can be overridden if it negatively impacts the financial position
of the business. This puts the health practitioner in the unenviable position of having to take their employer to the AHRC to justify their conscientious objection.

10 Religious bodies may act in accordance with their faith
Again this section has the complication of “the teachings of their religion”. As previously noted, this is a higher level of test than is required for a non-religious person and does not take into account the large variation in teachings amongst individual churches within a denomination.

**Recommendation:** Rewrite 10(1) as follows:

A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that may reasonably be regarded as being in accordance with the religious beliefs or activities of the religious body.

10(c) refers to “(other than a body that engages solely or primarily in commercial activities).” Commercial activities is not defined in the act. Not-for-profit organisations such as religious bookstores need to be included in the section 10 clause allowing a religious body to act within their faith, which would include allowing them to sell materials and employ staff consistent with their ethos.

**Recommendation:** Insert at the end of 10(c). The actions of a not-for-profit organisation whose principles are primarily for a religious purpose does not constitute a commercial activity.

10(2) attempts to define a religious body. This is important because a religious body is effectively exempt from the rest of the Act. Again, this definition fails to take into account the large variability in religious belief within religions and as to exactly what constitutes a religion.

**Recommendation:** This clause to be reworded to ensure all organisations that operate for a religious purpose are included in this clause.

Part 3—Unlawful discrimination
The Religious commissioner can provide exemptions. There doesn’t appear to be any requirement in the Act for those exemptions to have to comply with the purposes of the Act.

**Recommendation:** The Act should be amended so that exemptions provided in relation to the Act must be in accord with the objects and principles of the Act.

Complaints process
Under this bill complaints can be made to the AHRC for conciliation. Where a complaint cannot be conciliated an individual may apply to the Federal Court or the Federal Circuit Court (AGD, 2019b).

It needs to be understood that, for the average individual or small business, access to the Federal Court or Federal Circuit Court is cost prohibitive. This enables these type of referrals to be weaponized, particular in the case of large organisations, including government, or individuals with financial backers, which is often the case with identity based lobby groups, who may be targeting small business or individuals.

Even just engaging with the AHRC is expensive and time consuming. Given that the AHRC can provide the respondent’s documents to the court, it would seem apparent that a respondent is going to need to
engage legal representation in the creation of the documents to ensure that they are worded in such a way that is not detrimental to any possible subsequent court case.

**Who can make a complaint?**
According to the Summary Document, a complaint can be made by someone if the:

- person has or engages in a religious belief or activity
- person has been subject to direct or indirect discrimination on the basis of their religious belief or activity
- discrimination occurs in a specified area of public life, and
- conduct is covered by this Bill and an exception does not apply. (AGD, 2019b, p.2)

The bill actually goes much further than this, for instance addressing the issue of not holding a religion in such a manner, that a person who does not hold a religion may also make a complaint. The bill also seems to fail to require the complainant to have any form of standing (i.e. be personally involved) in the complaint.

It is also noted that many of the conciliation findings from the AHRC involve compensation paid by the respondent. This is interesting given that the AHRC has no legal power to impose a fine of any description. Is the respondent being pressured to pay compensation rather than go to court?

For example:

“The complainant was employed at the respondent food processing company. She alleged a coworker sexually harassed her by actions which included touching and groping her, asking her about her sex life, demanding hugs and kisses, commenting on her appearance and making sexual gestures. The complainant said she had made an internal complaint but no action was taken. She claimed that it became increasingly difficult to do her job while the coworker was present and she therefore left her employment.

The company said such allegations are taken very seriously but claimed an internal investigation did not support the complainant’s allegations.

The complaint was resolved with an agreement that the company pay the complainant $4,500 ex gratia. The parties also agreed not to make disparaging comments about each other.” (AHRC website, 2019 case)

This act is supposed to protect people of faith from religious discrimination. I predict, that for Christians, the opposite will happen and that the AHRC will be used to extort money from Christians in conciliation hearings where the respondent is unable to afford to go to the Federal Court and so is required to pay whatever money is demanded of them in conciliation.

**Subdivision C—Exemptions granted by the Commission**
Why does this subdivision exist? It doesn’t appear to exist in the Racial Discrimination Act.

**Recommendation:** Remove Subdivision C and related clauses so that there is no scope for the AHRC to exempt people or organisations from complying with the act.
37 Applying for an exemption

Any person or organisation can apply for an exemption. This is going to potentially encourage a foray of applications by activist groups. People and organisations should only be allowed to apply for exemptions that specifically affect them.

**Recommendation:** If Subdivision C is to remain, then a clause be added to 37 stating that the person or organisation must be directly affected by the exemption were it to be successful.

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

**Recommendation:** Remove Clause 41(2)(a) and change 41(2)(b) to “incite violence against another person or group of persons”.
Glossary

AAT  Administrative Appeals Tribunal
AGD  Australian Government Attorney General’s Department
AHRC  Australian Human Rights Commission

Bibliography


