2 October 2019

Religious Discrimination Bill – Exposure Draft 2019
C/- Attorney Generals Department
Canberra ACT
Via email to FoRConsultation@ag.gov.au

Dear Sir/Madam,

Thank you for the opportunity to make a submission regarding the Religious Discrimination bill exposure draft 2019. Our submission is in the following pages.

Kind Regards,

Phil Edwards
Board Chair
Christian Media and Arts Australia
Religious Discrimination Bill 2019 – Exposure Draft Submission from Christian Media & Arts Australia

Introduction

Christian Media & Arts Australia (CMAA) is a national association representing Christian media organisations, individual content makers and artists. Its members include licenced community broadcasters, narrowcasters and subscription TV.

CMAA is a member of the Community Broadcasting Roundtable. It is the peak group and Sector Representative Organisation for broadcasters licenced to represent and serve Christian communities.

CMAA believes that the freedom to hold, act in accordance with and express religious views is a cornerstone of the Australian democracy.

When broadcasters, content makers and artists express their faith through their work they contribute to a vibrant and healthy society. They benefit, their community of belief benefits and the wider nation benefits from the existence, side by side, of cultural work inspired by different faith traditions. This celebration of diversity should always be the true expression of a secular Australian nation.

Yet the present debate takes place at a moment in which, for some, religious expression should be stifled.

CMAA believes that the national interest is served by a public square in which all genuinely held beliefs are welcome, dialogue is respectful and different communities engage with an authentic sense of goodwill despite any differences.

Sadly, today’s public square in its various forms is far from that ideal. Increasingly it is a highly contentious space in which those expressing views informed by religious faith are likely to be shouted down or worse, in a culture increasingly characterised by assumed outrage. At times it appears as though we are losing the ability to have a civil discussion, especially in matters concerning values, beliefs and morality.

Rather than the human right of freedom of religion, more often the demand is for freedom from religion, on the mistaken assumption that religion has no place in the public square.
So does the expression of faith belong in public life or should it be quarantined, as some would have it, as a purely private matter?

Religious faith matters to vast numbers of Australians. Indeed, a substantial majority identifies with one of the many religious traditions that make up the Australian population. It is foundational and formative to who they are.

Religious beliefs establish culture, identity and values. And if religious faith is important to individual Australians then by definition it is important to the nation.

Faith, and the values it informs, is part of our public life precisely because Australians of all faiths (and none) bring their beliefs with them when they participate in, and contribute to our society: in families, neighbourhoods, communities, clubs, associations and corporations both small and large.

Yet in a nation where tolerance, diversity and inclusion are said to be among our core values, increasingly the experience of people of faith is the opposite. Inclusion means for all, and freedom to hold a religious faith must include the right to manifest that faith.

Indeed, we would argue that a diverse, tolerant and inclusive society is only created in the active exercise of rights, even (or perhaps especially) competing rights.

Pluralism exists only when plural views are manifest. Diversity is served when diverse cultures are encouraged.

CMAA’s membership of content makers, broadcasters and artists express the Christian faith through their work. In doing so they serve not only the Christian community but, in a larger sense, serve the national interest by the very exercise of religious faith in culture and discourse.

CMAA believes it is vital that people of all faiths, and none, must be able to do likewise. The present Bill is one attempt at creating a legislative framework within this can happen. Legislation alone is not however enough. Out of a very fractious and often unedifying period of history there is much work to be done in rebuilding the values of respect, trust and goodwill. We must do this together. The task is to create an environment in which difference is not only tolerated, but rather is celebrated out of respect.

CMAA is committed to playing its part in this rebuilding process.
Comments on aspects of the Bill

We now turn to comments on some aspects the Bill as it relates to the specific context of our membership.

Affirming freedom of thought, conscience and belief

We welcome the acknowledgement by the Government, in bringing this Bill, that religion has been an under protected right in some States and in Commonwealth law.

Also welcome is that the Bill adopts a positive affirmation in relation to the right of religious bodies to act in good faith in accordance with their tenets, beliefs and teachings, distinguishing this from discrimination.

(1) 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 doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted. ¹

The scope of this provision

Section 10 (2) defines a religious body as:
(a) an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or
(b) a registered charity that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion (other than a registered charity that engages solely or primarily in commercial activities); or
(c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion (other than a body that engages solely or primarily in commercial activities).

Communicating the beliefs, tenets and values of the faith is a core function of the Christian religion. Historically, the Christian faith has utilised all available technology to do so – indeed the church (denominationally and as a body of believers) have often led the development of the means of mass communication.

CMAA’s membership includes many Christian organisations whose work is a direct consequence of the imperative to educate, inform, teach and advance the cause of the Christian religion utilising media. Their Christian ministry functions are exercised through publishing, broadcasting, public interest

¹ Religious Discrimination Bill 2019, Exposure Draft (RDB), section 10.
journalism, discussion of local and global events, making and distributing content on various media platforms, or creating and displaying works of art, music and other cultural artefacts. These functions are a direct expression of the doctrines, tenets, beliefs and teachings of the faith. Their purpose is to serve believers and generally advance and propagate the faith.

Some media ministries are affiliated with churches and denominations but increasingly many are para-church ministries, serving across denominations as a broader expression of the Christian community. Typically formed as either as companies limited by guarantee or incorporated associations the religious nature of these ministries is established by their constitution and/or by the adoption of a statement of faith.

Critically, CMAA’s media ministry members have a charitable or public good purpose, operate on a non-profit basis and are registered with the ACNC.

It is essential that the scope of “religious body” in Section 10 of the RDB is held to include organisations that exercise ministry functions in accordance with the doctrines, tenets, beliefs or teachings of the religion through media and the arts, where those organisations operate on a not for profit basis and with a religious charitable purpose.

Commercial activities

CMAA joins with others including Freedom for Faith, the Institute for Civil Society and the Anglican Church Diocese of Sydney in expressing significant concerns about the potential for a narrow reading of S 10(2) to severely restrict the genuine exercise of Christian ministries by its members.

The inclusion of “commercial activities” as a limitation should not be necessary when those activities flow from a genuine religious charitable purpose.

CMAA believes that the “commercial activities” test should be removed from 10(2).

If not, at the very least the Explanatory Memorandum and Minister’s Second Reading Speech should make it very clear that activities flowing as a genuine expression of the beliefs or ‘calling’ of religious bodies, including para-church ministries, are by their nature charitable and not commercial.
Community broadcasting

In addition, CMAA’s licenced broadcast members are subject to the Broadcasting Services Act (1992) (BSA). Under the BSA Community broadcasting licenses are allocated on the basis, among other things, that:

(b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated or was last renewed;
(c) the licensee will encourage members of the community that it serves to participate in:
   (i) the operations of the licensee in providing the service or services; and
   (ii) the selection and provision of programs under the licence;
(d) the licensee will provide the service or services for community purposes;
(e) the licensee will not operate the service or services for profit or as part of a profit-making enterprise.  

In other words it is an essential requirement of being granted a community broadcasting license that the organisation is found to be represent and serving the needs of a specific community (in this case, the Christian community).

Community broadcasters are precluded from broadcasting advertisements and are regulated to five minutes per hour of sponsorship announcements.  

In other words the operation of a community broadcasting license is, by definition of the BSA, not commercial. If the “commercial” provisions of 10(2) are not deleted (our preference), on behalf of its members CMAA seeks an assurance in the Minister’s Second reading Speech that operating community broadcasting licenses is not considered “commercial” under S 10(2) of the RDB.

Membership and employment

In order to fulfil their particular purpose as an expression of the wider church Christian media ministries must be able to select staff on the basis of genuine adherence to the Christian faith.

It also follows that however they are constituted (as companies, associations etc) media ministries must be able to set genuine adherence requirements on membership, as it is to the members that the committee, board and staff (including volunteers) are accountable for fulfilling the organisation’s mission and purpose.

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2 Broadcasting Services Act 1992 (BSA) Schedule 2 (9) (extract)
3 ibid
Any Act arising from the current process needs to ensure the protection of these rights in relation to both prospective and employed staff (including volunteers), together with the ability to enforce conduct in keeping with the genuine expression of the religion. Where applicable the right to establish faith requirements for organisational membership must also be protected.

CMAA supports the notion that statements of faith and belief, and expectations of conduct flowing from them, should be transparently available.

**Freedom of expression**

The free exercise of thought, conscience and religion is indeed a foundational human right. This includes the right to express that belief. Any regulation of these rights must be undertaken with great caution and, in the words of the International Covenant on Civil and Political Rights (ICCPR) itself, only as is necessary:

> 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.\(^4\)

For the reasons articulated in our introductory remarks, CMAA places a very high value on the free and respectful exchange of views in a pluralistic democracy.

We are concerned at the lack of a common approach across the commonwealth, states and territories, and further that in many cases discrimination laws are weaponised to stifle reasonable debate.

With others we are concerned at the imprecision of the term “vilify” and recommend its deletion.

Further we urge that the Commonwealth legislation should be amended so that it overrides the states and territories.

We would be pleased to provide further clarification or consultation as required.

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\(^4\) International Covenant on Civil and Political Rights (ICCPR) Article 9 (2)