Submission on the Religious Freedom draft laws

Submission from the Church and Nation Committee
Presbyterian Church of Victoria

This submission is from the Church and Nation Committee representing the Presbyterian Church of Victoria. The Presbyterian Church of Victoria represents 136 congregations with about 10,000 people under our care and ministry. In addition, we have five schools that educate 4,300 students and one aged care facility in Victoria and one theological college.

We welcome the government’s consultative approach and its invitation for us to submit our comments and concerns on the proposed draft bill on religious freedom. Although we support some aspects of the bill, we have serious reservations about others.

We also endorse submissions from the following churches and organisations:

- The Presbyterian Church of Australia
- The Presbyterian Church of Queensland
- Anglican Church Diocese of Sydney
- Freedom for Faith
- Christian Schools Australia

1. Religious freedom as a human right

It should be noted that religious freedom is already a human right that flows from our humanity and isn’t bestowed upon people because of government legislation. Once government begins a legislative process in religious freedom, it moves from a human right to a legal right.

Article 2 of the UN’s ‘Universal Convention of Human Rights’ states¹:

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.

About this declaration of rights and freedoms the Australian government has observed:²

As a founding member of the United Nations, and one of only eight nations involved in the drafting of the Universal Declaration on Human Rights,

² Australia and Human Rights: An Overview (4th edition), Section 6, cited 09/02/2018,
Australia was, and is, of the view that human rights deliver peace, security and prosperity to Australia and the world.\(^3\)

It is our belief that religious believers help work towards the common good of our society, and to benefit society through words and positive law abiding actions.

In section 15 of *Australia and Human Rights: An Overview* (4th edition), it speaks of the universality and indivisibility of human rights:\(^4\)

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\text{The universal nature of these rights and freedoms is beyond doubt (paragraph 1). Australia also considers human rights to be interrelated, interdependent and indivisible. That is, there is no hierarchy or priority of the rights enshrined in the UDHR, nor are there preconditions imposed on the enjoyment of some of these rights.}
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The right to religious freedom is thus to be considered equal with other human rights. There is not meant to be a hierarchy of rights. Unfortunately, however, many current laws that are aimed to protect designated categories of people from discrimination too often override the autonomy of institutions and individuals and seriously diminish religious freedom in comparison to other human rights.

The complaint of discrimination against the Roman Catholic Archbishop of Hobart, Julian Porteous, which was brought before Tasmania’s Anti-Discrimination Commission in late 2015, is an example of this. All that the Archbishop had done was to produce and distribute among Catholic parish schools a booklet, *Don’t Mess With Marriage*, which explained the Catholic Church’s traditional teachings on marriage.

As this particular case vividly illustrates, once the right to religious freedom becomes a legal matter, then judges will become responsible for determining questions of theology. How likely are they to call in expert theologians? How is a “Christian” statement or any other religious statement to be assessed? How will an expert theologian’s credentials be ascertained? How will a judge know? The result will be that secular courts will gain the power to decide what is and is not the official doctrine of religious bodies. (The Bill currently protects religious organisations only if they act “in ways regarded as being in accordance with the doctrines, tenets, beliefs or teaching of the religion” S10).

Discriminatory practices for religious purposes do not always arise directly from doctrine/scripture. For example, the proportion of faith-based staff employed in a Christian educational institution or students is pragmatic, not scriptural.

Essentially, there needs to be protection against government interference in these areas, as a change of government may bring increasingly adverse rulings against religious bodies. We do not welcome the appointment of a Commissioner of Religion as we feel that the role’s effectiveness will depend

\(^3\) Australia and Human Rights: An Overview (4th edition), Section 6, cited 09/02/2018,

\(^4\) Australia and Human Rights: An Overview (4th edition), Section 15, cited 09/02/2018
too much upon the person appointed. What guarantee is there that such a person will even be sympathetic to the interests of the church?

2. Employment policies of faith-based institutions

We have justifiable fears that our theological institutions and schools’ staffing policies will come under increasing scrutiny and pressure for breaching anti-discrimination laws. Currently, some states – but not all – provide protection or exemptions from anti-discrimination laws for faith-based schools to be able to appoint staff who adhere to the tenets, doctrines and teachings of the respective religions. However this is by no means universal across the Commonwealth, States and Territories.

It is the belief of the Presbyterian Church of Australia that our denomination’s schools and other bodies should be able to appoint staff who not only believe in our tenets and doctrines and beliefs, but also exemplify them in their personal lives. Without this sort of autonomy, a school will no longer be able to provide a distinctively Christian education.

The distinctiveness of a faith-based school depends not only on the content of the curriculum being taught in the classroom, but also the character and deportment of the teaching staff. Like Presbyterian schools, Catholic and Muslim schools will naturally prefer to employ people who adhere to their respective religious beliefs.

We note that politicians are free to employ staff who support their respective political beliefs. Why should religious organisations be denied similar autonomy in their staffing choices?

Our faith-based schools must be allowed to retain the right to select their own staff, as our schools are part of the ministry and mission of our church. This is not “discrimination” in the common understanding of the word, as people of different or opposed beliefs are still free to apply for jobs at other institutions more sympathetic to their convictions.

A faith-based school, then, must to be able to employ staff who adhere to its beliefs and who live out that faith, so that the school’s distinctiveness may be preserved. Otherwise it will become indistinguishable from any other school and will lose it reason to exist.

The government’s draft Religious Freedom Bill, section 10, says the following:

Religious bodies may act in accordance with their faith.

(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.

We agree with the Freedom for Faith submission that it would be better wording to eliminate ambiguity in other existing laws, by adding the following positive statement in the proposed legislation:
‘that it is lawful for a religious body, a faith-based educational institution or charity established for religious purposes to appoint or prefer to appoint, staff who practise the religion with which the organisation is associated’, to thus override State or Territory or other Commonwealth legislation.

The current wording of the government’s proposed legislation is not sufficient to override state laws. “Unlawful activities” are too broadly defined. A state government, for example, in prohibiting “sexual reorientation therapy”, could define it so broadly that any school teaching or proclaiming Christian sexual morality would have no protections under the bill.

Similarly, the proposed bill lacks sufficient provisions to protect the conscience rights of medical staff. The bill needs to include a clearly defined positive right for health professionals not to be coerced to speak or act against their consciences or religious beliefs.

3. Corporate profits trump freedom of religion

The draft bill, in Section 8(3), refers to employer conduct rules. The so-called ‘Israel Folau’ clause, which would have made his sacking illegal, is subject to significant constraints however. Employers with over $50 million in turnover will be able argue ‘unjustifiable financial hardship on the business’ to justify terminating an employee for religious expression outside of work.

Furthermore, the clause may also cause unintended consequences, such as weaponising third-party sponsors and organised social media boycotts to help large corporations reach the ‘financial hardship’ threshold. It also means, given the prevalence of ‘professional codes of conduct’, that small to medium sized businesses will continue to be able to terminate employees for religious expression outside of work.

We believe that people’s freedom of religious expression outside of their work should not be curbed merely because they work for a large corporation. The provision would give large corporations a privileged power to “own” their employees beliefs by threatening them with dismissal. This provision should be removed from the bill.

Conclusion

Although the Australian government’s proposed Religious Freedom Bill seeks to improve religious freedom, we feel we must warn the government that the bill’s provisions are insufficient to achieve this purpose and, in its current form, may do more harm than good.

We have only highlighted a small number of our concerns. We hope and pray that the Attorney-General will take note of them and the many others that are highlighted in the submissions that we have endorsed.

We thank you for the opportunity to make this submission and we are happy to speak further on this matter.
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