I support the establishment of religious belief or activity (including absence of religious belief or activity) as a ground or attribute in Commonwealth anti-discrimination law. Commonwealth law currently offers inadequate protection for religious freedom and anti-discrimination statutes provide limited and piecemeal protection from discrimination on grounds of religious belief or activity. The proposed religious freedom reforms may improve protections against religious discrimination for all Australians, and may be particularly welcome for people from minority religions.

The Australian Human Rights Commission noted in its complaint statistics from 2017-2018 (the most recent data publicly available) that in that year it received 8 complaints on the ground of religion which constituted 5% of the complaints received under the Australian Human Rights Commission Act 1986 (Cth). In other words, complaints about religious discrimination are not numerous, although that does not mean that they are not important.

However, I would prefer to see the Commonwealth Parliament introduce nationally consistent rules with regard to religious discrimination. I am not sure that the proposed religious freedom reforms provide consistent or uniform protection with regard to religious belief or activity as a ground of discrimination.

I am particularly concerned that the Religious Discrimination Bill 2019 currently provides for religious exemptions that are too broad, and are inconsistent with other anti-discrimination protections. The Bill may allow discrimination on grounds of religious belief or activity of a nature and scope that would not be permitted for comparable conduct on other protected grounds such as age, race or disability.

In my view, existing anti-discrimination laws already provide considerable protection for religious groups to engage in selective recruitment, employment and training that might otherwise constitute unlawful discrimination if it excluded individuals on other protected grounds. I am concerned about and would object to the further enlargement of existing categories of religious exemptions.

Some of my concerns about specific clauses in the Religious Discrimination Bill 2019 are explained below.

Clause 8: Indirect discrimination on ground of religious belief or activity

I am concerned that cl 8(5) and (6) of the Bill regarding indirect discrimination on the ground of religious belief or activity may allow health practitioners to withhold health care and services for women who are pregnant, seek to become pregnant though assisted reproduction or seek to terminate their pregnancies. I believe that a health practitioner’s care and advice should be based on a clinically supported approach to women’s health and well-being in their particular circumstances,
rather than on the health practitioner’s own religious beliefs about women, motherhood, pregnancy or termination.

Many religious doctrines, tenets, beliefs or teachings pre-date contemporary attitudes and standards with regard to equal treatment of women and the medical options that are (or should be) available to women in various circumstances. Just as we no longer accept that menstruating women should be regarded as unclean, despite this approach being enshrined in various religious doctrines, we should not accept that a health practitioner can withhold appropriate and available health care and services on the ground of his or her religious belief or activity.

Health practitioners should be expected to provide the best health care and services which are clinically appropriate and available for any medical procedure. Allowing a practitioner to object to providing a health service on the ground of religious belief or activity may result in outcomes that are not the best for patients.

On this basis, I support the removal of cl 8(5) and (6) from the Religious Discrimination Bill 2019.

Clause 10: Religious bodies acting in accordance with their faith

I am also concerned that cl 10 of the Bill provides extremely broad protection for conduct by a religious body that is engaged in ‘in good faith’ and ‘may reasonably be regarded as being in accordance with’ religious doctrines, tenets, beliefs or teachings. This casts the net too wide: numerous examples of otherwise discriminatory conduct may be attributed to historical religious doctrines, tenets, beliefs or teachings that do not accord well with contemporary standards regarding fair or equal treatment of individuals and groups who have traditionally been overlooked, marginalised or condemned by religions.

The definition of ‘religious body’ is also too broad and would protect conduct that might otherwise constitute unlawful discrimination by bodies that engage in commercial activities (such as religious charities or hospitals) provided that the body engages in other activities in addition to its commercial activities.

In practice, protecting conduct that may reasonably be regarded as being in accordance with religious doctrines, tenets, beliefs or teachings may result in significantly less favourable treatment, practical harm and adverse outcomes in professional and public life for many women, single mothers, LGBTI people, people with disabilities or members of other religious groups. It also winds back many of the protections currently in Commonwealth and State and Territory anti-discrimination laws.

I ask that cl 10 of the Religious Discrimination Bill 2019 be amended to limit its scope to bodies established for religious purposes and to exclude conduct connected with commercial activities.

Clause 41: Statements of belief exempted from discrimination

Another concern is with regard to cl 41 of the Bill, which exempts statements of religious belief from constituting discrimination unless such statements are malicious or likely to harass, vilify or incite hatred or violence. The term ‘statement of belief’ is defined very broadly and would protect statements made purportedly in good faith ‘that may reasonably be regarded as being in accordance with’ religious doctrines, tenets, beliefs or teachings.

In practice, protecting such statements of religious belief may lead to less favourable treatment, significant practical harm and adverse outcomes in professional and public life for women, single mothers, LGBTI people, people with disabilities or members of other religious groups.


Thank you for considering my submission.

Dr Nicky Jones.