Religious Discrimination Bill – Exposure Draft

Your Submission

In response to the exposure draft for the Religious Discrimination Act 2019:
I have a few problems with this bill, and I do not think I am the only one to entertain such objections. The bill sets forth its objects as (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 beliefs, with regard to the additional considerations of (a) the indivisibility and universality of human rights and (b) the principle that every person is free and equal in dignity and rights.

The principles regarded may be viewed as laudable. But the assumptions made in the arrangement of this process are not. Under the first object of this bill, acknowledging that it may not always be possible to eliminate discrimination against persons seems thoughtful. Sadly, the limitation of this restriction on discrimination to ‘a range of areas of public life’ is ambiguous. To what extent can this ‘range’ be specified, delimited, or enforced in a satisfactory manner or with satisfactory timeliness? The primary point of appeal and delegated authority in this bill is a ‘Freedom of Religion Commissioner’ appointed by the Governor-General. Can this commissioner possibly assess, address, or enforce the range of complaints that this bill would elicit? To ensure under the second purpose of this bill ‘that everyone has the same rights . . . regardless of religious belief or activity’ is hardly helpful. Is allowing ritual human sacrifice as expected in some religions or adopting Sharia Law as demanded by many followers of Islam compatible with the peaceful coexistence of a constitutional monarchy with republican aspirations? Are the historical contributions of Christian institutions to the education of Australia’s youth, the maintenance of Australia’s legal systems, and the feeding of Australia’s poor to be equated with the food-waste of idol-worshippers? Religious beliefs and activities are not similar to the extent that they can all be viewed similarly. A religion that sanctions human sacrifice does not bring comparable benefits to the commonwealth of Australia to a religion that fosters life.

Perhaps the most problematic of the bill’s goals is the third. The limits indicated in goal number three do not ensure freedom of religion or freedom of expression as much as they ensure that these are limited to the obligations the government of Australia may choose to legislate and the limits it may prefer to apply. The third goal does not state that people can make statements of belief in Australia in a manner that is free and protected. Instead, the third goal states that the government can obligate and delimit how and what statements can be made. The freedoms addressed are freedoms removed, not freedoms gained.

This bill outlines a procedure whereby it is unlawful to discriminate ‘on the ground of religious belief or activity in a range of areas of public life’ including work, education, and providing goods and services. What is worth noting is that certain exemptions apply under Division 4 of Part 3 of this draft. For one, it is not unlawful to discriminate against a person for religious reasons if ‘in expressing the belief, the person is counselling, promoting, encouraging or urging conduct that would constitute a serious offence . . . [defined as] an offence involving harm (within the meaning of the Criminal Code)’. This stipulation seems within the range of government oversight.
The bill also specifies in a series of subscript notes throughout its parts that complaints concerning religious discrimination are to be handled by the Australian Human Rights Commission, a commission that at this point handles complaints concerning discrimination on account of race, sex, disability, or age. Granted, if this bill is passed a new commissioner for a new commission dealing with religious discrimination may be appointed. Is a commission tasked with handling freedom of religion and other issues over a range of remarkably different categories to be expected to judge these issues with remarkably uniform judgment? If the judgment is uniform across the categories of potential discrimination, it should not be; each category of discrimination relates to actions and outlooks that are remarkably different one from the other. If the judgment is not uniform across the categories of potential discrimination, additional complaints may arise from those who feel that discrimination favors certain categories of discrimination or certain types of rights more than others. And who is to resolve these complaints? The courts. The bill is designed to channel human rights complaints to the Australian courts.

Another problem with this bill pertains to the extended meaning of ground of discrimination of a person’s religious belief or activity to include areas of religious characterization, belief, or activity, past or present, imagined or real, within the realm of human recognition. This definition would remove the ability of almost anyone to mention almost anything about religion almost anywhere throughout or relating to Australia. Would this help religious adherents or hinder them from being heard? It certainly would not allow them or their beliefs to be known, discussed, or shared with the Australian public. Is this effect of the bill implicit, or is it not obvious?

If it is a risk to even refer to someone as a believer of such-and-such a faith, why would any law-conscious resident of Australia ever dare bring up religion again? Is religion a weakness to be hidden behind law, or a light to be shown for the nation and the world to see? Are the practical goods sincere and law-abiding religion brings to be rewarded with its removal from public reference?

The exemption from the claim of discrimination where a statement of belief ‘would, or is likely to, harass . . . against another person or group of persons’ in this bill is reminiscent of discrimination of another sort. What, one must wonder, is a religious person to do who expresses views that may be perceived as harassment or exhibiting the potential to harass another protected person or group? How is the Australian Human Rights Commission to prioritise the types of discrimination, one wonders? We can know the answer to this question because it has been included in writing on page eleven of this bill draft: If this bill goes into effect, a statement of belief that ‘would, or is likely to, harass . . . another person or group of persons’ is not legally recognized as acceptable or protected speech. In effect, religious statement of belief is not defended; it is restrained.

This bill is difficult to condone and, like previous discrimination bills, impossible to enforce without serious human fallout and the risk of increasing contentions between Australian residents through soliciting complaints, given the likely incapacity of informal conciliation, for courts to redress. If it is to be compared with other protections provided in similar discrimination bills, the question must be asked: Why does the Bill not provide the same extent of protection to faith-based schools in relation to religious beliefs as the Sex Discrimination Act does in relation to gender identity?

As an aside, what legislative document can assure the freedoms, dignity, and rights of all persons without panoptic meddling? Prison wards and institutions treating the insane come closest to this level of involvement. And why would a document set out to delimit principles and freedoms that in its earliest pages are acknowledged as indivisible and universal? Are people to be coerced into religious compliance, forced to be free? If these rights are human, they are to be upheld by humans, not withheld by laws.

The authorization that religious bodies may act in accordance with their faiths does not satisfactorily acknowledge the rights and needs of individuals to act in accordance with their faiths. The bill does not allow for the religious expression of persons in public spaces unless they fit within the scope prescribed by this bill.

Any benefit or protection this bill seems to afford religious adherents would apply equally to religious non-adherents. In other words, very few organisations may be authorized to deny membership or employment on the basis of belief or non-belief. Is it not the prerogative of an organisation to solicit or accept the membership of those it is in its interest to accept and serve? Why would any entity or individual consent to the putting into effect of additional grounds for lawsuits? Are people to be prevented by law from admiring or aligning themselves with those who hold beliefs and practices they admire or share? This bill seeks to remove the freedom of Australians to consider and weigh the merits of a person or persons, belief or beliefs, practice or practices that may or may not be religiously based on an assignation of categorical anti-discriminatory status. Are Australians to remain free to think and judge, or must the courts do it for them?

Referring matters of discrimination to the Australian Human Rights Commission is no guarantee for the satisfactory resolution of cases involving religious discrimination. If anything, it will cost those who discriminate, are considered to discriminate, are discriminated against, or are considered to be discriminated against money and time without determining by what right or basis someone can interfere with someone else for considering one belief less or more desirable or applicable than the next. The vested interests of religious adherents are against this bill, as those who feel discriminated against ought to be against discrimination bills.

This bill invites complaints without guaranteeing solutions. As a result, those who believe in God, gods, or no god may feel
authorized to feel discriminated against and to file complaints. Those who speak of God, gods, or no god may consider it in their best interests to remain quiet and be instead attacked by those who feel discriminated against by the religious or irreligious. How will religious freedoms or personal freedoms remain where their existence is clouded by the legislative assignation of personal and group interest and the recurrent fear of misstep and misspeak? If this bill passes, it will be this bill that we must thank that assignations and fears will haunt the halls of hospitals, businesses, organisations, and schools throughout Australia.

The bill at hand alleges to protect persons from discrimination on the grounds of religious belief or activity. The more salient question is, does this bill defend or in fact delimit adherence to religion? The mindful believer cannot place his or her commitment to live by faith within the boundaries of a bill to commence within six months of a day fixed by proclamation. Can a national government render lawful or unlawful the most inherent aptitude of human dignity? No sincere believer can allow a government to determine the value and relevance of his or her beliefs. Is the passage of an act echoing bans on discrimination of other types more capable of validating religious belief and practice than the Universal Declaration of Human Rights has already been? What exists as a human right cannot be reduced to an anti-discrimination category. Claims of discrimination that rest their primary pretension of authenticity on recognition by a group seek validation actual rights do not need.

Section 116 of the Constitution already precludes the Commonwealth of Australia from prohibiting the free exercise of religion. Is the reduction of the scope of religious practice in the proposed bill an improvement on existing law? A list of areas ‘unlawful’ to be discriminated may seem like a list of government benefactions. In bestowing them, it would seem, the government asserts the right to both define and decide who does and does not merit anti-discrimination benefits.

The thrust of this bill, as its anti-discrimination predecessors, is to set precedent for legal recourse where little previously has been made. If the residents of this majestic country are as equal as its government claims they are, one would think that to dwell in this land under law would merit respect. Are not all people entitled to respect under the law? Are not all people entitled to the right to think and believe and live? Why then is recourse sought for some to be more entitled to redress than others? Why are these discriminatory categories needed? I am not referring exclusively to religious protections here.

I do not assert that I would rather practice faith unprotected than under the legal protection of an organised government responsible for administering the public faith that is its trust. I do assert that allowances made for faith without allowances to hold that faith in practical public life are not allowances at all. No government relying on the blessing of Almighty God as the Constitution claims has the right to infringe on a right that precedes and grounds its right to rule, much less restrict public expression of this right.

Asking a panel of ‘experts’ on religious freedom to report on this issue may be informative but cannot confirm as comprehensive the twenty recommendations this panel made. The five recommendations determined as of this juncture as requiring further consideration (recommendations 1 and 5-8) indicate that the government has not formally voiced its support providing religious schools the freedom to discriminate in the employment of their staff or the admission of their students (recommendations 5 and 7). How can a religious school be considered in any serious light as religious if its employees and members cannot be expected to be?

In claiming that this bill ‘does not create a positive right to freedom of religion’ and instead allocating its domain to the artificial enclave of discrimination laws a few decades in the making, the Morrison Government has yet to recognize that religious freedom is more than a positive right; it is a divine right and a human one. A country cannot legislate away religious freedom or guarantee that the beliefs and actions of its inhabitants shall or shall not discriminate. Discrimination is the basis of culture, not its antithesis. Not to discriminate is to leave this human aptitude to a government eager to legislate what can and cannot be done when that right belongs to the God who wrote the Ten Commandments.

The framing of the issue by Attorney-General Christian Porter does not reflect the historic significance of religious belief and freedom in Australia, most namely the Christian religion, including the Attorney-General’s first name. If life were a person, that person would discriminate.