1. The cornerstone of the Religious Discrimination Act (RDA) 2019, is discrimination on the ‘ground’ of religious belief or activity, and for related purposes, as stated by the title. Therefore, the RDA revolves around the meaning of the word ‘ground’ as defined under Part 1, Section 6. Further, Part 1, Section 5 covers all the defined terms used within the RDA. This review, in the first instance, therefore, covers the issues identified in Part-1 of the RDA, which then raises concerns over the other parts of the RDA.

Review Comments

Part-1, Section 6 – Extended Meaning of ‘Ground’

2. This review has highlighted serious reservation of the definition of the term ‘ground’ which forms the basis on which discrimination will be judged under this Act.

3. According to the definition, the ‘ground’ can be based on a ‘general’ understanding or a ‘presumed general’ understanding of the characteristics of a certain religious group. Since it has not been clarified further, it can only be assumed that this ‘general’ understanding or ‘presumed general’ understanding could only come from the information available in the public domain, which is through the electronic and print media. Therefore, the RDA is establishing the basis of the religious discrimination or profiling, based on the understanding of the person committing the act of discrimination on the ‘ground’ of their understanding.

4. The definition of ‘ground’ was further considered in conjunction with other words used in the Act, such as below:
   a. Reasonably
   b. So far as is possible
   c. As far as practicable.

5. It is our considered opinion that in the absence of clear definitions of the above terms or words, the ‘ground’ on which basis discrimination can occur will solely be based on the ‘general’ understanding or a ‘presumed general’ understanding of the characteristics of a certain religious group. As highlighted above, this definition encourages discrimination on the basis of a person’s understanding developed by the media sources, which may not be completely true, and therefore cloud that judgement.

6. This review recommends that:
   a. The definition of ‘ground’ be reconsidered, and
   b. The words highlighted above be also defined, or alternative words employed, noting that these words are defined terms under the WHS Act 2012.

Part-1, Section 3 – Objects of this Act

7. Within the context of the review comments above, regarding defined or undefined terms, this review recommends that:
a. The ‘Objects of the RDA’ be articulated clearly and succinctly, at sub-sections 1(a) and 1(b)

Part-1, Section 5 – Definitions – Statement of Belief
8. The term ‘reasonably’ at sub-section a (iii) requires definition, just as the use of this word ‘reasonable’ in the context of the ‘Objects of this Act’ requires definition.
9. Further, it is not clear why a ‘Statement of Belief’ from a person holding a religious belief has been equated to a ‘Statement of Belief’ from a person not holding a religious belief?
10. This review recommends that:
   a. The word ‘Reasonable’ should be a defined term, under this Act
   b. The term ‘Statement of Belief’ requires more definition and clarification of the issue highlighted above

Part-4, Section 29, Sub-Section (2) – Law enforcement, national security, and Intell functions, etc
11. This review finds that since the term ‘ground’ has again been used here to make discrimination lawful, for the reasons of law enforcement, national security etc, the ‘grounds’ which form the basis of this understanding in a person who discriminated against another person, may be the false basis purported by the media sources. This review, therefore, recommends that the term ‘ground’ should be reviewed.

Part-4, Section 29, Sub-Section (5) – National security
12. The sub-section (2), for reasons of national security, when read in conjunction with the sub-section(5), indicates that an AGSVA security clearance may be ‘revoked’ or ‘denied’ on the ‘ground’ of a mis-understanding of the religious beliefs of a group.
13. This review recommends that:
   a. The term ‘ground’ is quite pivotal in this Act and therefore must be reviewed and revised in the light of the comments made throughout this review, and any similar observations highlighted by other organisations.

Part-4, Section 41 – Statements of Belief
14. Within the Note, under Subsection (2), the words “a reasonable person’ have been used. Similar words, for example, reasonably, so far as reasonable, etc have been used throughout the document. Therefore, this review recommends that:
   a. Reasonable, reasonably or similar words (for example ‘possible’, ‘practicable’) should be defined within the Definitions Section 5, Part-1
15. To conclude, this organisation wishes to thank the government for providing this opportunity to put these review comments forward for consideration.