Dear Sir/Madam

Thank you for the opportunity to comment on the draft bills.

I raise the following points of concern:

1. **Restriction of rights**

   The Bill should recognise that international law uniquely protects freedom of religion and belief as recognised in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) – and that the freedom to manifest one’s religious freedom 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.” There is no recognition in the Bill that Article 18(3) of the ICCPR provides limits to conditions the government or an employer may put on religious freedom.

2. **Will the Bill protect freedom of speech so that a statement of religious belief would not be grounds for a complaint of discrimination or to sack an employee?**

   Conflicts arose particularly at the time of the marriage debate about the freedom of people to make statements of their faith-based beliefs about marriage. It led to some people being sacked by their employers.

   Archbishop Julian Porteous was taken to the Tasmanian Anti-Discrimination Commission under Section 17 of the Tasmanian Anti-Discrimination Act for circulating a statement of the church’s beliefs on marriage.

   Clause 41 (1) of the Bill does provide that statements of religious belief will not contravene Section 17 of the Tasmanian Anti-Discrimination Act. This is welcome and would have avoided Archbishop Porteous being dragged through mediation. However, Clause 41 (2) provides that any statement of belief that is likely to “vilify” another person or group of persons will not be protected by Clause 41 (1). What does “vilify” mean? Is a statement which someone feels insults or criticises (synonyms of vilify) them, enough to render a statement of belief discriminatory? This is a term that has caused widespread criticism of Section 17 and of Section 18C of the federal Racial Discrimination Act as being too low a threshold for a claim of discrimination.

3. **Israel Folau was sacked for a statement of his religious beliefs. Would the Bill protect Israel Folau if it was available to him?**

   Clause 8 (3) provides that an employer’s code of conduct rule can restrict or prevent an employee from making a statement of their religious beliefs outside work time if it is to avoid “unjustifiable financial hardship” to the employer. In Israel Folau’s case the threat of withdrawal of sponsorship could be found to amount to “unjustifiable financial hardship” for his employer, Rugby Australia. So this Clause, even if it was available to him, may not enable him to successfully claim religious discrimination. And employers who have revenue of less than $50 million do not have to show “unjustifiable financial hardship” to impose such a restriction on an employee, just that it was “reasonable.”

4. **Does the Bill protect the right of religious or faith-based schools and educational institutions to act in conformity with the tenets, doctrines or beliefs of the religion of the school or institution?**

   Present exemptions for faith-based schools and educational institutions in the Sex Discrimination Act (Sections 37 and 38) provide such protections in relation to beliefs about sex and gender. Those Sections provide that acts that conform to the doctrines, tenets or beliefs of the religion or are necessary to avoid injury to the religious susceptibilities of adherents of that religion are not discrimination. Those Sections have been referred to the Australian Law Reform Commission (ALRC) for report on how to remove these exemptions while protecting the right of faith-based schools to preserve their ethos and values. The ALRC
has until December 2020 to report. These exemptions should have formed part of the Religious Discrimination Bill or the Bill should not be finalised until the recommendations of the ALRC are published. They are related matters.

Clause 10 of the Bill does provide that “a religious body” (which would include a faith-based school) does not discriminate by “engaging, in good faith, in conduct that may reasonably be regarded as being in accordance with the doctrines, tenets … of the religion in relation to which … it is conducted.” How is a secular court or tribunal to decide what may “reasonably be regarded” as being in accordance with the tenets etc of a religion? Would refusal to employ or sacking an employee who actively opposed the doctrines, beliefs of the school or refused to participate in the religious activities be “reasonably regarded” as being in accordance with the doctrines, tenets or beliefs of the religion? It would be very likely to be seen as necessary to avoid injury to the religious sensibilities of the adherents of the religion of the school but, in contrast to Sections 37 and 38 of the Sex Discrimination Act, the Bill does not provide such protection.

5. **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?**

6. **Does the Bill protect freedom of conscience?**

   The UDHR and the ICCPR also expressly include “conscience” under freedom of religion. Freedom to act on conscience in relation to abortion, euthanasia, artificial reproductive services, adoptions, sex change surgery, surrogacy, explicit sex education in schools, fluid gender theory sex education, pharmacists and medical practitioners having to prescribe and dispense gender transitioning hormones, is being increasingly undermined.

   Clause 8 (5) provides that it amounts to discrimination against a health practitioner on the grounds of religious belief for a health practitioner code of conduct rule to deny a health practitioner’s freedom of conscience if a law of a state or territory allows a health practitioner to conscientiously object to providing a health service. However, state laws that do provide for conscientious objection still require referral to a medical practitioner who does not have a conscientious objection or who will provide the service (eg abortion).

   Further Clause 8 (6) provides that if there is no state conscientious objection law a health profession code of conduct rule can require a medical practitioner to provide a health service even if it is against their conscience, if it is necessary to avoid an “unjustifiable adverse impact” on the ability of the practitioner’s employer (eg hospital) to provide the health service required or on the health of the person requesting the service. Clause 8 would not enable a medical or health professional to claim discrimination on the grounds of religious belief because, for eg, they did not want to participate in or refer for abortion or assisted suicide/euthanasia.

   Further the Bill does not protect teachers or principals who are directed by government schools policies on gender to support students transitioning and teach explicit and/or gender fluid sex education.

7. **Does the Bill adequately protect the charitable status of religious charities?**

   The Bill should provide that it is discrimination to refuse or withdraw charity status to an entity on the grounds of its religion or belief. Clause 3 of the Human Rights Legislation Amendment (Freedom of Religion) Bill 2019 proposes to amend the Charities Act to provide that “… the purpose of engaging in, or promoting, activities that support a view of marriage as a union of a man and woman to the exclusion of all others, voluntarily entered into for life, is not, of itself, a disqualifying purpose.” This means a religious charity that has a traditional view of marriage will not, for that reason alone, be denied charitable status.

   But what about adoption agencies being required to place children with same sex couples or lose their charitable status? Why is the view of religious adoption agencies that a child should be placed with a man and a woman not protected? In the UK Catholic adoption agencies had
to close down when their charitable status was removed by the UK Charities Commission because they would not place children with same sex couples.

And why is it restricted to charities with views on marriage? What of a religious charity that provides counselling or other services for children and young people which holds a religious view of gender that does not support gender fluidity or gender transitioning?

8. Does the Bill protect the right of religious bodies or organisations to act or refuse to act in accordance with its doctrines, tenets or beliefs and to promote the religious principles for which the body or organisation is established?

The right of churches and religious bodies to teach and state their doctrines, tenets and beliefs should be clearly stated.

Clause 10 does apply to a “religious body”. But does that include a church, mosque or synagogue or temple? "Religious body” includes a “body that is conducted in accordance with the doctrines, tenets … of a particular religion...” But a church, synagogue, mosque or temple is not a body that is conducted in accordance with the tenets, doctrines etc of the religion but actually teaches or promulgates those tenets, doctrines etc. So does the Bill protect churches etc from claims of discrimination in teaching its tenets, doctrines which are not shared by those of no beliefs or other beliefs? This needs to be clearly stated.

9. Does the Bill protect the right of parents to “ensure the religious and moral education of their children in conformity with their own convictions” as is recognised in Article 18.4 of the ICCPR?

Specific provision should be made that parents have the right to opt their children out of classes where gender fluid theory, or other models of marriage or family, or explicit sex education, which is against their religion or belief, is being taught.

The Bill would probably protect those parents who oppose gender fluid sex education because of their religious beliefs. It won’t protect parents who oppose gender fluid sex education because it is unscientific and they believe the evidence of biological science.

10. Mere “exemptions” are not positive rights

First and foremost, the Government’s proposed package sits within the framework of Australia’s existing anti-discrimination laws.

This is fundamentally unjust, because it treats matters of faith and conscience as mere “exemptions” to the law, rather than positive rights in and of themselves. Exemptions are essentially legal loopholes, allowing a person or body to do something where it would otherwise be banned (e.g. a faith-based school being allowed to “discriminate” in terms of employment or enrolment).

Any exemption granted by parliament can just as easily be taken away again. That’s not to say that simply rephrasing exemptions into positive rights would stop future parliaments removing them, but it would be a much more honest expression of reality – and draw a much firmer line in the sand for anyone daring to strip our rights away.

11. Granting more power to the Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is the federal body that oversees Australia’s anti-discrimination machinery. Its role, among other things, includes hearing and ruling on discrimination complaints.

Some of its past rulings should give serious cause for concern at the Government’s proposal to give the AHRC more power. Its role would be expanded not only by giving it dominion over religious discrimination cases, but even more so by creating with the AHRC the new role of religious discrimination commissioner.
Past cases have seen the AHRC play theologian – something the Government’s proposed laws would leave wide open for it to do in future.

12. What about conscience?

From the very beginning of this debate, we’ve insisted that any discussion about freedom of religion and belief should cover BOTH elements. Belief is not always formed by faith.

A number of Australia’s domestic laws already recognise this, such as conscientious objection protections for medical staff – or the Defence Act relating to service in particular conflicts or, indeed, in any conflict.

Why then, do the proposed new laws seem to offer little protection to those whose beliefs may be sincerely held, despite not being informed by religion?

The International Covenant on Civil and Political Rights (ICCPR), to which Australia is a signatory, upholds “the right to freedom of thought, conscience and religion”. In other words, our freedoms are a package deal – and the Government’s proposals should do much more to reflect this.

People can and do hold views on human life, the definition of marriage, and the nature of sex and gender quite aside from any religious belief - and their views should be protected.

Yours faithfully

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