



August 2019

Religious Discrimination Bill – Exposure Draft

Your Submission

B”H

Submission on the Exposure Draft of the Religious Discrimination Bill

by the Institute for Judaism and Civilization

Prepared by Rabbi Dr Shimon Cowen

The following issues, in our opinion, remain either unclear or inadequately treated by the Bill:

(a) The bill does not clearly state a necessary standard for conscientious objection provisions in legislation.

In a number of bills in Australian states, practices have been legalized which for many religious faiths continue to constitute murder. These include abortion on demand, where there is no threat to the life of the mother, and in Victoria in the Voluntary Assisted Dying Act, the provision that the doctor actively intervene to end the life of a patient when the patient cannot suicide by himself or herself.

The present provisions for conscientious objection in these bills, require the doctor who does not want to participate out of conscientious objection nevertheless to refer the patient to another doctor who is prepared to carry out the killing either of the baby or the sick patient. For doctors, whose religion describes these actions as murder, the present “conscientious objection” provisions force the doctor nevertheless to refer to doctors who are willing to carry out these acts, and so to be complicit in, or to act as an accessory, to what his or her religious faith prohibits as murder. This is analogous to having to give the contact details of a “hitman” or to facilitate an underground “contract” on the life of another by requiring one to supply contact details of the “hitman”, the one who will carry out the killing.

The Religious Freedom Bill needs to provide that conscientious objection entitles the doctor to be free of any complicity whatsoever in an act which religious tradition deems murder and in so doing set a standard for States’ legislation in these matters.

(b) The bill does not demonstrably - explicitly and consistently - protect religious institutions in selecting their own staff on the basis of beliefs and behaviours which model the institution’s religious beliefs. Whilst Explanatory note 180 to the Exposure Draft of the Bill states that the intent of the bill is “to ensure that religious bodies are able to maintain their religious ethos through staffing decisions”, there does not appear to be consequential legislation that ensures that this is not undermined by other legislation. A school should be entitled, for example, to require that teachers not manifest sexual life-styles at variance with the religious ethos of the school. This rule should apply to all staff and not simply those who teach religion. The concept of the test as to whether the behaviour is “inherent characteristic” for a particular task or not, is insufficient. A religious school may require behaviours of all staff – not only those teaching religion – not to contradict the school’s ethos. Yet attempts have been made in State legislatures to force religious schools to take on staff – who do not teach religious subjects – whose behaviours contradict the school’s values on the spurious grounds that conformity with the schools religious ethos is not an “inherent characteristic” requisite for a mathematics teacher. The reality, however, is that a student learns from the school environment – from all staff – and not just from the instruction of the religious studies student.

Politicians are exempted under federal law from employing any staff in their office, whose views are inconsistent with their

own. Even though consistency in political views is not an inherent characteristic requisite of a typist and receptionist in the office, yet politicians are allowed to discriminate in the fulfilment of these positions and select employees whose values are consistent with their own. The very same right should be afforded to schools to preserve and overall consistency of religious ethos.

(c) The Bill does not appear to grant the same rights to religious individuals as it does to religious institutions, in the provision, or right to refusal of provision, of goods and service. Thus it protects religious institutions from having to hire facilities for a wedding which runs against their religious views. It does not, however, extend that right to a religious individual, who for example does not want to cater for a wedding, which offends his or her religious sensibilities. The bill must protect the religious rights of an individual as much as it does those of an institution.