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Submission by the Australia/Israel & Jewish Affairs Council (AIJAC) to the Religious Freedom Bills – Second Exposure Drafts.

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Executive Summary

This document is the submission by the Australia/Israel & Jewish Affairs Council (AIJAC) to the Australian Federal Parliamentary Freedom of Religion Inquiry into the proposed Religious Freedom Bills Second Exposure Draft.

For over 40 years, AIJAC has furthered the policy and public affairs interests of the Australian Jewish community. We work with government, media and a broad array of community organisations and associations in the interest of building a strong, harmonious and multicultural Australia. AIJAC has long held a strong interest in, and has played a significant role contributing to, the national public debate regarding racial discrimination legislation and continues to take a firm stand against all forms of bigotry, including religious discrimination, the subject of this inquiry.

AIJAC appreciates the opportunity to provide a submission on the Second Exposure Draft of the Religious Freedom Bills. AIJAC welcomes federal legislation that would make it unlawful to discriminate against others on the basis of their religious belief or activity. However, AIJAC also believes there are aspects of the Bills that still require refinement and consideration.

1. Philosophical Underpinnings

During the course of the public discussion and debate on the Religious Freedom legislation, there has been considerable focus on details of legal protections and freedoms. It is important prior to finalising any legislation that the guiding principles behind reform in this area are reiterated. Australia is a multi-ethnic and multi-religious society. There is enormous diversity within religion in Australia and Australia has developed a strong multicultural society. The issues of religious freedom and religious discrimination are amongst the most complex and difficult areas to address for a number of reasons.

Australia is a majority Christian country and institutions and cultural practices have reflected this. Christmas and Easter are Public Holidays while no other religious days are accorded the same status. Elections are held on the Jewish Sabbath and members of all faiths need special exemptions such as absence from school on occasions which are significant to them. AIJAC is not suggesting that this be changed, but we do believe that it is important that no Australian is penalised for simply practising their religion.

It is also essential to understand that for many Australians religion is a matter of core identity, which may or may not be reflected in religious practice. This can be particularly relevant when a person is in need of proper consideration in times of, for example, illness. On matters relating to attitudes towards members of religious groups, while there may be instances where bigotry and discrimination are premised on a consideration of religious texts or practice, it is also, more often, an expression of prejudice similar to racial prejudice.

AIJAC is not arguing for any special privileges for members of any religious denomination. We do believe that the current freedoms enjoyed by minority religions should be protected and that there should be access and equity in the treatment of members of religious groups by Governmental authorities.

2. Freedom of Religion Commissioner

AIJAC supports the establishment of a Freedom of Religion Commissioner, and believes that role should be established prior to the Bills being finalised in order to assist with further consultation and consensus building on key issues arising from the submissions. This role is well-suited to such consultation with stakeholder groups, especially those of religious communities which the Bill seeks to protect. Given the public discourse prior to the release of the Second Exposure Drafts, we submit that this role will be crucial to the credibility of any work in this area.

3. Clarity of definitions provided in the Religious Freedom Bills

AIJAC recognises that there have been significant improvements from the first exposure draft in the area of definition of religious activity. AIJAC supports the further submissions on this matter made by the Executive Council of Australian Jewry (ECAJ), relating to the importance of institutions such as hospitals, which have unique perspectives on the religious needs of those whom they serve and also the needs of individuals with specific religious identities. This relates both to positive discrimination of, for example, patients and the governing boards of institutions with a religion-specific ethos.

There are still major problems with the definitions of *religion* and *religious belief*. We appreciate the revisions in the Second Exposure Draft in this matter, particularly as related to the role of Courts in determining the reasonableness of religious practice by an individual but we believe that these definitions need still further refinement.

4. Further clarification of important terms

The Second Exposure Draft has now defined ‘*vilify*’ to mean ‘*incite hatred or violence*’. This definition falls far short of a useful understanding of the experiences of members of religious groups who are subject to group defamation, malicious misrepresentation and being accused of immoral and antisocial behavior. If there is reference to *vilify* in the legislation it needs to be defined appropriately.

A related issue is the behaviour of one person towards another where religious beliefs or doctrines provide an individual with justification or rationale for vilification or otherwise seeking to harm members of another religious community. It is important that there is harmonisation between the new legislation and existing legislation such as the Federal Racial Discrimination Act.

5. Provision of services and facilities

The Second Exposure Draft’s Explanatory Notes consider religious hospitals and aged care facilities in the context of discrimination. AIJAC submits that the issue of employment of staff in such facilities is secondary to that of the needs of clients of these services and facilities. Facilities which provide active consideration of the needs of people of a specific religious background have been accepted as an important part of Australian multiculturalism, particularly with our elderly and those suffering the trauma of medical difficulties. It is essential that they are as comfortable as possible, and if they have specific requirements which can be met by one or other institution, then they should be given preference over those not requiring the same considerations.

An important feature of institutions such as hospitals and aged care facilities with a religious ethos is their management and governance. In the Second Exposure Draft there is no guarantee that a religious specific institution can protect the integrity of its board of management through positive discrimination in favour of members of that faith. AIJAC submits that organisations should be permitted to continue the practice of having membership of boards comprised of members of the faith community which is being served as they see fit.

Conclusion

AIJAC appreciates the effort and expertise which has gone into the preparation of the series of draft Bills. We repeat our offer to assist the Government in any way in ensuring the Bills which are submitted to Parliament for debate are the most effective possible. We reiterate our concerns that the limited protections currently provided for minority faiths should in no way be eroded and that religion should not be permitted to become a defence for otherwise unlawful behaviour.



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