

Submission on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012

Submitted on behalf of:

Australian Baptist Ministries

Global Interaction

Baptist World Aid Australia

Queensland Baptists

The Baptist Union of Victoria

Baptist Churches of Tasmania

Baptist Churches of South Australia

Baptist Churches of Western Australia

The Baptist Union of the Northern Territory

The Baptist Union of New South Wales

Approximately 1,000 local Baptist churches throughout Australia

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This submission is in response to the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012.

Australian Baptist Ministries, State Baptist Unions their associated agencies and organisations together with local Baptist churches welcome the opportunity to contribute to this important issue by way of this submission. If requested or required we are happy to discuss any part of this submission or matters relating to the discussion paper with the committee at any time.

We look forward to the opportunity of continuing to interact with the Government as it further develops policies on these matters.

Who we are

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a regular combined regular attendance of around 150,000 people. At the 2006 census over 315,000 people listed their religious affiliation as Baptist.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State Baptist Union entities.

While some local Baptist Churches are incorporated entities most operate as separate unincorporated entities. Many of our State Baptist Unions are incorporated by acts of state parliaments.

In many ways Australian Baptist Ministries would be seen by the community as the peak body of the Baptist movement in Australia.

While the Baptist ethos values the autonomy of the local congregation, there are many times, places and occasions where a national voice or opinion is sought from Christian denominations and other times and occasions where, in our view, a national statement on behalf of the Baptist movement in Australia can contribute significantly to the national debate or thinking.

What we do

Together with the State Baptist Unions, Australian Baptist Ministries is committed to:

- supporting and equipping local churches,
- training and equipping individuals for professional and lay ministry,
- supporting overseas missions,
- assisting the disadvantaged within our own communities and overseas.

There are a number of ministries that operate under the auspices of Australian Baptist Ministries to provide these many and varied opportunities to serve the public amongst the many communities in which our congregations and agencies operate.

These ministries include:

- Approximately 1,000 local Baptist congregations of varying sizes
- State Baptist Unions in all states and territories of Australia
- Baptist Care Australia and State Baptist Care organisations in each state
- Global Interaction
- Baptist World Aid Australia
- Crossover Australia
- Remote Churches Ministry
- Baptist Financial Services
- Australian Baptist Insurance Services

Local Baptist Churches and many of the above organisations commenced and continue to exist through the generosity and foresight of Australian Baptists. In many cases they have been

contributing through the generosity of members to the social fabric of Australian communities and in an International setting for well over 100 years.

While some of the above organisations operate solely within the Baptist community of churches, many of them have a far-reaching impact on Australian communities and each of them contributes to the public benefit of Australians and Australia. For example Baptist Care Australia encompasses 2,700 packaged community aged care places, over 4,400 residential aged care places, family services, refugee services, employment services, youth services, low cost housing, chaplaincy, counselling, disability and mental health services and other diverse programs to meet community need.

The international ministries listed above (Global Interaction and Baptist World Aid Australia) provide humanitarian, development, medical and educational support services and capacity building amongst some of the world's most disadvantaged people.

General Comments on the Exposure Draft

ABM (Australian Baptist Ministries) acknowledges the perceived need to simplify and consolidate human rights and anti-discrimination legislation. However, in the opinion of the ABM the draft legislation is likely to have a severe adverse impact on the rights of members/adherents of local churches and other faith based organisations. Issues of particular concern include the following:

Impact on smaller faith-based communities

The Baptist churches of Australia are generally small congregations averaging 70 members. As indicated in the introduction Baptist churches and their associated organisations are deeply involved in the provision of a variety of community-based services. Given the financial constraints of the local Baptist church a significant proportion of these services are provided by volunteers. The proposals in the legislation to include volunteers in the definition of employment potentially exposes local churches to heavy financial burdens.

This, together with the inclusion of "offend, and insult" as forms of "unfavourable treatment," the breadth of the definition of the term "public life" could give rise to an avalanche of claims that could seriously jeopardise the capacity of faith-based community groups continuing to provided the volunteer services so fundamental to the cohesion of local communities. Coupled with the recently introduced Australian Charities and Not-for Profits Commission, and the proposed changes to the Not-for Profits Taxation Concessions, the combined impact on local churches and related faith based agencies gives rise to a growing concern in the church community about the underlying intent of the proposed legislative changes and the lack of appreciation for the significant positive contribution of the church to Australian society in a multitude of ways.

Clarity of freedom of religion

There is a lack of a clear reference to the freedom of religion in the Objects of the Act. While reference is made to the ICCPR, it is not clear if this is meant to include the freedom of religion in Article 18. The inclusion of the words including freedom of speech, freedom of religion and freedom of association in Clause 3(a) would over come this lack of clarity.

The burden of proof

ABM continues to be concerned about the shift in the burden of proof. At the very least this shift should be applied when there has been there is a potential unlawful discrimination on the balance of probabilities. This concern is exacerbated by the definition of discrimination. Baptist churches want to obey the law but this is difficult when it is not clear what the law requires. A local church needs to understand how its conduct toward an individual might constitute discrimination so that it could avoid such action. At present the proposed legislation does not provide this clarity.

Australian Baptist Ministries is a founding member organisation of the Freedom 4 Faith organisation and fully endorses the proposed amendments (as listed below), specifically addressing the concerns of ABM with respect to the exposure draft Bill, in Freedom 4 Faith's submission. The proposed amendments are listed in the order in which they appear in the draft Bill.

1. Section 3(1)(a): Amend as follows - 'to deal with discrimination, sexual harassment and racial vilification, consistently with Australia's obligations under the human rights instruments and the ILO instruments (see subsections (2) and (3)), and taking account of the other rights and freedoms protected by those instruments including freedom of speech, religion, conscience and association.'
2. Section 6: Remove 'voluntary or unpaid work' from the definition of employment.
3. Section 7: Delete as a consequence of proposed amendment to section 22.
4. Section 14: Amend as follows;
 - (1) This Act is not intended to exclude or limit the operation of a State or Territory anti-discrimination law.
 - (2) This Act does not apply to any action that is not unlawful under any anti-discrimination law in force in the place where the action is taken.
5. Section 19: Amend as follows;
 - (1) A person (the first person) discriminates against another person if the first person exercises, or proposes to exercise, a power to affect the interests of the other in such a way as to treat the other person unfavourably because the other person has a particular protected attribute, or a particular combination of 2 or more protected attributes.
 - (2) The exercise or proposed exercise of a power includes, but is not limited to, the making of a decision in relation to employment or the refusal to provide a service.
 - (3) In determining whether a person is treated, or proposed to be treated, unfavourably, comparison may be made with the treatment of someone who does not have the protected attribute.
 - (4) For the avoidance of doubt, unfavourable treatment of the other person includes (but is not limited to):

- a. conduct that sexually harasses the other person;
- b. conduct that intimidates the other person.

(5) The expression of an opinion does not constitute unfavourable treatment.

6. Section 22(1): Amend as follows - 'It is unlawful for a person to discriminate against another person if the discrimination occurs in the course of the following:'
Then list the areas currently in subsection (2). Re-number the remainder of the subsections accordingly.
7. Part 2-2, Division 4: Amend the heading to say: 'When discrimination is not unlawful'.
8. Subdivision A: Amend the heading to say: 'Reasonable grounds for different treatment'.
9. Division 4: Delete the word 'Exception' throughout the Division, with such consequential amendments as are required.
10. Section 23: Insert after subsection (3) -

'Without limiting the generality of the previous subsection, the protection, advancement or exercise of another human right protected by the International Covenant on Civil and Political Rights is justifiable conduct.'
11. Subdivision C: Insert a new section before section 32 as follows -

'This subdivision is a means of giving effect to Australia's obligations under Articles 18, 19, 22 and 27 of the International Covenant on Civil and Political Rights, and to appropriately balance these rights with rights concerning non-discrimination.'

Note: Additional protection for these rights is provided in section 23 (justifiable conduct).
12. Section 33(2): Amend as follows - Subject to subsection (3), it is not unlawful for a person (the first person) to discriminate against another person if:

(a) the first person is a body established for religious purposes, or a body that is intended to be conducted in accordance with religious doctrines, tenets, beliefs or teachings, or an officer, employee or agent of such a body; and

(b) the discrimination:
 - a. is connected with the appointment or retention of persons to work within the religious body to ensure that they share the religious commitment of that body or are supportive of its religious purposes; or
 - b. consists of conduct, engaged in in good faith, that:
 - i. conforms to the doctrines, tenets or beliefs of that religion; or

- ii. is necessary to avoid injury to the religious sensitivities of adherents of that religion; and
- iii. the discrimination is on the ground of a protected attribute to which this exception applies, or a combination of 2 or more protected attributes to which this exception applies.

13. Section 51(2)(a): Amend section 51(2)(a) to state: 'the conduct incites unlawful discrimination, hostility or violence.'
14. Section 47: Confine the review within three years to provisions other than sections 32 and 33, or review the entire Act and operation of the Australian Human Rights Commission within this time.
15. Section 124: Amend as follows - If, in proceedings against a person under section 120, the applicant:
 - (a) proves that he or she has a protected attribute;
 - (b) proves that he or she has experienced unfavourable treatment because of the exercise of a power by another person or that such treatment is proposed;
 - (c) alleges that the other person engaged, or proposed to engage, in such conduct because of the protected attribute; and
 - (d) adduces evidence from which the court could decide, in the absence of any other explanation, that the alleged reason or purpose is the reason or purpose (or one of the reasons or purposes) why or for which the other person engaged, or proposed to engage, in the conduct; it is to be presumed in the proceedings that the alleged reason or purpose is the reason or purpose (or one of the reasons or purposes) why or for which the other person engaged, or proposed to engage, in the conduct, unless the contrary is proved.

Australian Baptist Ministries is pleased to have the opportunity to comment on the exposure draft Bill and welcomes the opportunity to discuss the matters outlined above and any other relevant matters with the Senate Committee.