



Australian Bahá'í Community

Submission by the Australian Bahá'í Community on the exposure draft Human Rights and Anti-Discrimination Bill

The Australian Bahá'í Community appreciates the opportunity to comment on the exposure draft of the Human Rights and Anti-Discrimination Bill 2012.

The Australian Bahá'í Community supports the Government's project to consolidate existing Commonwealth anti-discrimination legislation into a single, comprehensive law. We welcome the exposure draft Bill and commend the manner in which it deals with a number of key issues that were raised by many groups, including the Bahá'í Community, during the consultation process. These include the approach taken to the definition of discrimination; the treatment of intersectional or compound discrimination; and the provision for special measures to achieve equality across all protected attributes.

We believe, subject to the following considerations, that the Bill is well-balanced, and it substantially achieves the Government's objectives of ensuring the highest current standards are consistently applied and enforced across all areas of public life, while at the same time making these laws easier to understand. Accordingly, we recommend that the Committee support the passage of the Bill by Parliament.

The Australian Bahá'í Community

The Australian Bahá'í Community was established in 1920 and its membership reflects the diversity of modern Australia.

As members of the Bahá'í Faith—a worldwide religion, founded over 160 years ago, with more than five million members around the globe—we work to promote and apply principles derived from Bahá'í teachings which contribute to the solution of current challenges facing humanity.

Our efforts are focussed on the development of a peaceful, just and sustainable civilisation, in which the human rights of all individuals are upheld, and all are empowered to develop their capacities and to channel their collective energies towards service to humanity and the betterment of their communities.

Objects of the Act

The Australian Bahá'í Community supports the Objects of the Bill which include eliminating discrimination, sexual harassment and racial vilification; providing for the continued existence of the Australian Human Rights Commission as Australia's national human rights institution; and promoting recognition and respect within the community for the principle of equality and the inherent dignity of all people.

Prejudice and discrimination originate in the human mind. Remedies to redress them must accordingly address, first and foremost, the mental illusions that for thousands of years have generated false concepts of superiority and inferiority among human beings. The reality is that there is only one human race. We are a single people, inhabiting one planet: one human family bound together in a common destiny. Recognition of this eternal spiritual truth is the true antidote to racism, sexism, and all other forms of prejudice and discrimination. Accordingly, we believe that acknowledgement of the oneness and equality of all people in the Objects of the Bill is particularly important. Indeed, we would further recommend that the oneness of humanity should be adopted as a guiding principle underlying all the Government's efforts to strengthen human rights and advance equality in Australian society.

We note that the Objects of the Bill include explicit reference to seven international human rights instruments: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities. While recognising that this provides consistency with the definition of human rights under the Human Rights (Parliamentary Scrutiny) Act 2011, we recommend that the Bill and its supporting materials should also include specific reference to the Universal Declaration of Human Rights, which, building on the United Nations Charter, underpins the United Nations human rights system. Over more than six decades since its adoption, the Declaration has been the basis for ongoing standard-setting in human rights, inspiring over sixty international treaties and conventions which in turn have acquired increasing authority through incorporation into national legal systems and through customary law. All States have the duty to promote and protect the rights and responsibilities articulated in the Declaration. We believe the seminal importance of the Declaration and the framework and standards it established should be explicitly noted in the Objects of the Bill and relevant supporting materials.

Protected attributes

Religion

The Australian Bahá'í Community welcomes the inclusion of religion among the protected attributes in the Bill. In our submission on the discussion paper "Consolidation of Commonwealth Anti-Discrimination Laws",¹ we advocated the inclusion of religion or belief as one of the attributes protected from discrimination under Commonwealth law, which we believe will contribute towards Australia's compliance with its international human rights obligations.

We note, however, that discrimination on the grounds of religion will only be unlawful if the discrimination is connected with work and work-related areas, and not in any other area of public life. We do not see a strong basis in principle for this limitation, under which discrimination on the basis of religion will remain permissible under Commonwealth law in such areas as education and training; the provision of goods, services or facilities; access to public places; and provision of accommodation. Accordingly, we recommend that protection against discrimination on the grounds of religion be extended to all areas of public life.

¹ Available on-line at <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/ConsolidationofCommonwealthantidiscriminationlaws.aspx>

We note that article 4 of the “Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief”, proclaimed by the UN General Assembly in November 1981, clearly articulates the obligation of States in relation to religious discrimination:

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

At the present time, there is considerable inconsistency in the protection offered from discrimination on the basis of religion in Australia. Some State and Territory anti-discrimination laws provide coverage for discrimination on the basis of religion or belief, while others do not. Instead of resolving the gaps and inconsistency and providing clearer and more efficient laws, which was the intended outcome of the consolidation project, the partial protection provided by the draft Bill adds a new degree of complexity and inconsistency in this area.

In its submission to the Committee, the Australian Human Rights Commission has expressed concern that “providing narrower coverage for some attributes than others could result in some complexity and confusion”, with particular implications for intersectional matters and consistency between Federal law and State and Territory discrimination laws. This is the basis for Recommendation 4 in the Commission’s submission:

The Commission recommends further consideration of possibilities for the Bill to cover discrimination on the basis of all protected attributes in all areas of public life, in the interests of simplicity and improved consistency with state and territory discrimination laws.

In our view, the appropriate standard of protection of the right to freedom of religion and belief is that set out in article 18 of the Universal Declaration of Human Rights:

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in teaching, practice, worship and observance.

The Australian Bahá’í Community has consistently recommended that this standard be embodied in Australian law.

Domestic and family violence

During the consultation period, the Equality Rights Alliance and other organisations recommended that “survivor of domestic and family violence” be included in the list of attributes upon which it is unlawful to discriminate. We note that this recommendation has not been adopted in the draft Bill. The Australian Bahá’í Community recognises that a relentless epidemic of violence against women and girls exists in every corner of the world, including in Australia, where it is estimated that one in three women will experience physical violence in their lifetime. A significant proportion of this violence occurs at home. We maintain the belief that those who are survivors of such violence should be protected from unlawful discrimination

and adverse treatment, and we commend consideration of the recommendation made by the Equality Rights Alliance on this issue in its submission to the Committee.

Exceptions

The Australian Bahá'í Community recognises that the inclusion of permanent exceptions in anti-discrimination law has a number of drawbacks, including introducing inconsistency, undermining the spirit and intention of the law, and weakening its moral authority. At the same time, we acknowledge that there are cases in which blanket implementation of the laws may produce a result which is unjust, interferes with other human rights, or undermines the fundamental purpose of the law in creating substantive equality.

We note that the draft Bill contains a general limitations clause providing an exception for justifiable conduct. Given that the general limitations clause is new to Commonwealth legislation, it seems appropriate that the Bill provides for a review of the exceptions within three years of its commencement. We will follow this process with interest.

In the view of the Australian Bahá'í Community, no attempt to address equality can ignore religion and the role of religious leaders. Indeed, given the defining role of religion in cultivating the values of communities, the support of religious leaders and people of faith needs to be harnessed in ending all forms of discrimination.

With regard to the exceptions related to religion in the Bill, we note the statement in the Explanatory Notes that:

Given the importance of freedom of religion, it is important to maintain explicit religious exemptions, particularly for matters fundamental to the practice of the religion.

The right of individuals to hold beliefs of their choosing and to practice their religion in accordance with its laws and teachings is central to human development, as it makes possible the individual's search for meaning. This right is clearly protected under the international covenants to which Australia is a party, and it should be similarly protected under domestic law. At the same time, it must be acknowledged that some voices raised in the name of religion constitute a formidable obstacle in the path towards achieving equality. We believe that religious practices and doctrines in flagrant violation of international human rights standards must be subject to deeper examination and scrutiny. We express the hope that the three-year review of exceptions provided for in the draft Bill may provide a suitable opportunity for all religious bodies to reflect deeply on their teachings and practices in this area. In particular, we encourage consideration of whether exceptions are necessary in relation to each one of the attributes listed in sections 32 and 33 of the Bill, or whether these lists may be gradually reduced over time.

Review and reporting

In supporting the draft Bill, the Australian Bahá'í Community recognises that reforming laws and legal systems is vital to achieving equality. Enacting and enforcing legal protections for equality and freedom from discrimination are unquestionably essential to human rights and human dignity. As the fact sheet produced to accompany the draft Bill points out, "this Bill is an important part of the government's efforts to strengthen human rights and advance equality".

Integral to any long-term approach to establishing equality is the measurement of progress towards stated goals and the use of monitoring tools and systems to gauge the impact of laws

and policies. Without regular monitoring and reporting against key indicators, Australian governments may not be held accountable to their obligations to achieve equality in key areas, such as workforce participation and promotion, pay equity, leadership, and harassment and violence. Such reporting can also play an important role in public education and awareness-raising. Accordingly, the Australian Bahá'í Community supports Recommendation 10 made by the Australian Human Rights Commission:

The Commission recommends that introduction of the Bill into Parliament be accompanied by a commitment to regular review of the effectiveness of the legislation in achieving progress towards equality and elimination of discrimination, in particular within the public sector.

Advancing human rights and equality

Legal measures outlawing discrimination, however important, will not be sufficient to create a society in which all members of the community can develop to their full potential. Experience in Australia and internationally has demonstrated that prejudice and inequality can stubbornly survive legal reforms.

In order to realise equality in Australia, systematic programs of human rights education are indispensable. All Australians need not only to learn about their own rights, but to develop respect for the rights of humanity in general. Education that instils in hearts and minds an awareness of and sensitivity to the human rights of all persons constitutes an essential tool for the promotion and implementation of international human rights standards. In the final analysis, individuals are respected – or discriminated against – by other individuals, even if they are acting in an official capacity. Accordingly, it is essential to put in place and provide adequate resources for educative programs that touch the hearts and elevate the behaviour of all members of the community.

The Australian Human Rights Commission and its Commissioners have played a particularly important role in the field of human rights education in Australia over many years. With the passage of the new Bill, the Commission will have the crucial role of promoting an understanding of the new legislation among the many constituencies affected by it. The Commission will also have an enhanced role in relation to the new measures to assist compliance with the Bill. To enable the Commission to fulfil its responsibilities adequately, we recommend that commensurate additional resources for information, education and compliance promotion activities be allocated to it.

In the view of the Australian Bahá'í Community, ending discrimination is part of a broader exercise. Full equality requires not only deliberate attempts to change the legal, political and economic structures of society, but, equally important, the transformation of individuals whose values consciously or inadvertently sustain inequalities. It requires a new understanding of who we are, our purpose in life, and how we relate to one another – an understanding that will compel us to reshape our lives and thereby our society.

*

The Australian Bahá'í Community thanks the Committee for the opportunity to make this submission. We look forward to the passage of the Human Rights and Anti-Discrimination Bill in 2013.

Australian Bahá'í Community
December 2012