



Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA
By Online Submission

14 December 2021

Re: *SUBMISSION TO THE SENATE SELECT COMMITTEE ON RELIGIOUS DISCRIMINATION BILL 2021 [PROVISIONS]; RELIGIOUS DISCRIMINATION (CONSEQUENTIAL AMENDMENTS) BILL 2021 [PROVISIONS] AND HUMAN RIGHTS LEGISLATION AMENDMENT BILL 2021 [PROVISIONS]*

Dear Secretary,

Thank you for the opportunity to make a submission to this Committee. This submission has been prepared by the undersigned on behalf of Australian Christian Churches.

If you have any questions or require further information relating to the submission, please do not hesitate to make contact.

Yours sincerely,

Mark Edwards OAM
Senior Minister, Cityhope Church

SUBMISSION TO SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions]

16 December 2021

Introduction

My name is Mark Edwards and I am the Senior Pastor of Cityhope Church in Ipswich, Queensland, affiliated with Australian Christian Churches. This submission is made on behalf of Australian Christian Churches (ACC) of which I am their representative on matters of Religious Freedom.

ACC is the largest Pentecostal movement in Australia consisting of more than 1,000 churches, 3,300 Credentialed Pastors and 400,000 constituents.

General Observation on Necessity of Religious Discrimination Legislation

Freedom of thought, conscience and religion or belief is a fundamental human right. In fact, it can be seriously argued that freedom of religion is one of the most ancient human rights with unknown artists painting pictures of their deity on natural canvases such as cave walls tens of thousands of years ago with complete freedom and in pursuance of their culture of belief.

Without progressing into a thesis on Religious Freedom and its acceptance throughout history there are now numerous international treaties, declarations and other instruments which seek to protect religious freedom. Australia is a party to some and without doubt has an obligation in international law to comply with them.

Certainly, the most well known of these international 'accords', in a modern context, in terms of the protection of religious freedom, is the *1948 United Nations Universal Declaration of Human Rights* ('*Universal Declaration*'). Passed by the UN General Assembly, including Australia, it has not become part of Australian law but surely this must influence the lawmakers of any proposed legislation in relation to religious freedom or discrimination.

A number of the Universal Declaration's provisions relate to religious freedom, however, for the purpose of this submission Articles 2 and 18 are the most significant:

Article 2 prohibits discrimination in a number of areas including religion. However, one must note that the prohibition of discrimination is found in numerous international treaties and documents¹.

¹ See, eg, *Convention Against Discrimination in Education*, opened for signature 14 December 1960, 429 UNTS 93 (entered into force 22 May 1962) arts 1–2, 5; *International Convention on the Elimination of All Forms of Racial*

Article 18 states, ‘Everyone has the right to freedom of thought, conscience and religion; this right includes 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.’

As a clear reflection of those two Articles, surely there must be a necessity to extend the federal anti-discrimination framework to ensure that Australians are not discriminated against because of their religious beliefs or activities, just as Commonwealth law currently prohibits discrimination on the basis of age, disability, race, sex, gender identity, sex characteristics, and sexual orientation.

So there can be no misunderstanding, and this is important in the context of the current Religious Discrimination Bill (RDB), the *UN Human Rights Committee General Comment 22* on freedom of religion or belief defines the right to freedom of religion or belief as, ‘Protect[ing] theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 [International Covenant on Civil and Political Rights] is not limited in its application to traditional religions or to religions and beliefs with international characteristics or practices analogous to those traditional religions.’

The RDB also gives people certain rights if they have been discriminated against either because of their religious belief or because they don’t hold a religious belief.

General Comments Relating to Religious Discrimination Bill 2021 (RDB)

The RDB is certainly not a Bill that codifies or protects ‘Religious Freedoms’ as outlined in the *United Nations Universal Declaration of Human Rights* as espoused in Article 18 of the *International Covenant on Civil and Political Rights* and described above.

The Bill intends to add at a federal level, prohibitions on discrimination because of religious belief. Please note that these prohibitions already exist in 6 out of the 8 jurisdictions in Australia. This protection extends to all people of faith: Christians, religiously observant Jews, Muslims, Hindus, Buddhists, and people of minority religions. It also extends to people that do not hold a religious belief, as already indicated. So, an atheist or agnostic can make a claim that they have been discriminated against, for example, because they are not a Christian. In other words, the RDB is for the whole community. It is not a Bill to protect the rights of people of faith exclusively.

Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) art 5(vii) (‘ICERD’); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 2, 4, 18, 20, 24, 26-27 (‘ICCPR’); *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, UN GAOR, 36th sess, 73rd plen mtg, Supp No 51, UN Doc A/RES/26/55 (25 November 1981) arts 1-8 (‘1981 Declaration’); *Declaration on Race and Racial Prejudice*, UNESCO Gen Conf Res 3/1. 1/2, 20th sess, UN Doc E/CN.4/Sub.2/1982/2/Add.1 (27 November 1978) annex V art 3; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 2, 14, 20, 29 (‘CROC’); *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UN GAOR, 47th sess, 92nd plen mtg, Supp No 49, UN Doc A/47/49 (18 December 1992) annex arts 1-2, 4.

While the Bill is essentially about discrimination, not religious freedom, there are nonetheless provisions in the Bill that, in a very modest and limited way, protect the freedom to make statements of belief without being subject to unreasonable claims of 'discrimination' under state or territory laws or losing one's licence to practice a profession.

The Bill will reduce the harassment and intimidation of people of religious faith who express, in a moderate and reasonable way, statements of belief long held by all the world's great religions. The obvious example of this is the well-known Tasmanian case of Bishop Porteous and the case brought against him in relation to the publication of a document which outlined the Catholic Church's traditional position on marriage parenting.

ACC's Position on Specific Provisions of the Religious Discrimination Bill 2021

A. Prohibiting Religious Discrimination

Comment

The main effect of the federal Religious Discrimination Bill is to add a right to complaint in federal law to the rights already contained in most state and territory laws. In all states currently, except NSW and South Australia, it is unlawful to discriminate against someone on the basis of their belief. In South Australia there is a prohibition on discrimination against someone because of their religious dress. The two territories also prohibit discrimination on the basis of religious belief.

Statement of position

ACC welcomes this aspect of the RDB inasmuch as it adds to the body of laws across the country that prohibit discrimination on the basis of religious belief.

B. Religious Discrimination Commissioner

Comment

In addition to giving complainants a right to complain about discrimination, the Bill also creates the position of Religious Discrimination Commissioner in the Australian Human Rights Commission.

The title of the Religious Discrimination Commissioner changed from Religious Freedom Commissioner. This title was contained in the first two exposure drafts of the Bill. However, it has now been changed to focus on discrimination.

Statement of position

ACC would submit the title revert to 'Religious Freedom Commissioner'

The Australian Human Rights Commission's functions, for which the Religious Discrimination Commissioner will have primary responsibility, are tied to the objects of the Act - that is to prohibit discrimination against people based upon their beliefs or lack of beliefs. The objects also refer to the right to express statements of belief subject to limitations.

The Bill does not give the Commissioner broader functions in terms of the protection of religious freedom beyond these objects. This is unfortunate, as the International Covenant on Civil and Political Rights is not only concerned with discrimination; it seeks to protect religious freedom in a much more holistic way.

The appointment of a Religious Discrimination Commissioner will be a positive step towards promoting protection against religious discrimination and freedom of speech on religious matters. The ACC endorses this aspect of the Bill.

C. Protection of the Employment Rights of Religious Bodies

Comment

In any jurisdiction that has a prohibition on religious discrimination, it is necessary to have provisions that address the employment rights of faith-based organisations. A prohibition on religious discrimination can never be comprehensive. A person who is not of the Islamic faith has no right to be considered for appointment as an Imam. An atheist has no right to complain if a church will not accept him or her for ordination as a priest, pastor, or minister.

Freedom of religion necessitates that faith-based organisations have a right to select staff who are not only adherents of that faith but support the doctrines and practices of the religious faith to which the organisation is committed. This is no different from any other organisation that has a mission or purpose. For example, an environmental group can choose not to select as a member of staff someone who does not share the objectives or priorities of the organisation or who might actively seek to undermine it. Political parties and offices would never contemplate hiring people who do not share the objectives of the organisation or who would seek to undermine that organization.

The Religious Discrimination Bill protects employment rights of religious bodies well, so far as federal law is concerned. Rather than creating exemptions, as is the case typically in other anti-discrimination laws, the Bill makes clear that it is not discrimination against others to select or prefer someone who adheres to the beliefs of the religious organisation. In this way, the Bill gives effect to the view of the UN's Human Rights Committee in Paragraph 13 of the *Human Rights Committee General Comment 18 (Non-Discrimination)*, which states that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'. Section 153(2) of the federal *Fair Work Act 2009* is to similar effect.

On employment issues, like with the provision of services, the Bill has no impact on other federal anti-discrimination laws. It does not permit discrimination on the basis of sex, marital status, pregnancy, sexual orientation or gender identity. In the Bill, the right to choose or prefer staff who adhere to the faith is given to religious bodies that are educational institutions, registered charities, and other bodies provided that they are not established solely or primarily for commercial purposes. This last category essentially covers not-for-profit organisations that are **not** registered charities.

Statement of Position

ACC strongly endorses these provisions in the Bill.

D. Statements of Belief

Comment

The RDB grants protection to ‘statements of belief’ against complaints under state and territory discrimination law. The clause has its genesis as a response to the much-publicised complaint to Equal Opportunity Tasmania against a circular to parishioners stating the Catholic view of marriage and parenting (referred to above). Opponents of this protection are concerned that it will license dreadful personal attacks under the guise of ‘statements of belief’. ACC strongly condemns any such attacks as does the author of this submission.

The drafters of the legislation have anticipated this criticism and there are suitable judicial tests built into the protection. Statements of belief must not harass, threaten, intimidate, or vilify; or amount to the urging of a serious criminal offence, all determined according to whether a ‘reasonable person would consider’ that these standards had been breached. It must also be made in good faith and not be malicious, plus be in line with ‘the teachings of their faith’. Drawing on existing understandings of equivalent provisions, it is difficult to understand how dreadful personal attacks could be tolerated under this Bill.

For example, two statements that have been reported in the press as being protected by the Bill should be addressed:

‘A support worker telling a person with a disability that their disability is caused by the devil’. There is no known religion that would support such an atrocious statement and it forms no teaching of any known religion. In addition to this, the statement could not be said to be ‘in good faith’. This statement would not be nor should be protected by the Bill.

‘A medical professional telling a person living with HIV that AIDS is a punishment from God.’ Codes of conduct governing medical professionals would never tolerate this statement. Codes of conduct relating to institutions caring for people with HIV would not tolerate this statement. Any medical professional stating this should and would be disciplined by their professional body or the institution involved and would not be protected by the Bill.

Statement of Position

ACC endorses this aspect of the RDB however there should be protections from workplace codes of conduct for religious people to make moderate, non-vilifying statements of belief (and for non-believers, statements of unbelief) both inside and outside their work context. Faith leaders (Christian, Muslim and Jewish) in the ‘roundtable discussions’ leading to the finalisation of the RDB, proposed a modest rule which allows employers to have codes of conduct but stopped overreach under those codes by employers in relation to moderate, non-vilifying statements of employees. The Bill could be slightly strengthened with this inclusion.

ACC's Position on Potential Amendment to Sex Discrimination Act 1984

Will the Religious Discrimination Bill allow religious schools to fire LGBTIQ+ Teachers and expel LGBTIQ+ students?

Comment

The RDB does not affect the federal Sex Discrimination Act 1984 or any State or Territory law protecting teachers or students from discriminatory actions on the ground of their sexual orientation or gender identity. This Bill lets religious schools preserve their religious character and ethos by ensuring they can prefer to hire and retain staff who support the beliefs of the religion. This is the same protection of freedom of association that lets political parties, MPs and Ministers prefer to hire and retain staff who have the same political beliefs. The Bill should extend this same legal freedom beyond religious schools to religious bodies like churches, mosques and temples, so they too can hire and retain staff who support the beliefs of the religion.

Under Article 18 of the *International Covenant of Civil and Political Rights*, parents have the right to 'ensure the religious and moral education of their children in conformity with their own convictions'. Many parents do this by paying fees on top of their taxes to send their children to religious schools. If the State uses anti-discrimination law to force schools to hire and retain staff who don't support the religion, that undermines the culture of religious schools and closes the option for parents to send their children to a religious school where all staff support the values of the religion. It also undermines the purpose for the existence of such schools. In 2010 more than 1.1 million students (out of a total student population of 3.4 million) attended non-government schools in Australia. More than 90% of these students were in religious schools.

The Attorney General has referred this issue to the Australian Law Reform Commission (ALRC). Under the Chair of one of the finest Jurists in this nation, Justice Sarah Derrington, there is no doubt that this Referral to the ALRC is absolutely the proper authority to be asked to examine the religion exemptions in the Sex Discrimination Act and every other piece of anti-discrimination legislation. There are nuanced balances to be implemented in each Act, which calls for proper analysis and report by an independent body such as the ALRC.

Statement of Position

ACC's position is that no amendments should be made to the Sex Discrimination Bill until after the report by the ALRC is received. The work of the ALRC is especially important to ensure that the formulation of any changes to the Sex Discrimination Act take into account the final form of the RDB as voted on by both Houses of parliament.

Religious Discrimination (Consequential Amendments) Bill 2021

Comment

The above Bill (clause 11) overrides the Victorian Religious Exceptions Act (which was passed on 3 December 2021) but only to protect the employment freedoms of religious schools to preference people with the same religious beliefs.

Statement of Position

ACC submits that this 'override' needs to be extended to protect the employment freedoms of religious bodies (churches, mosques, synagogues, religious charities and mission agencies) to preference people with the same religious beliefs.

Conclusion

ACC submits to the Committee that the existing Religious Discrimination Bill 2021 as tabled in the Parliament by the Prime Minister be passed by both Houses of Parliament, subject to the suggested amendments outlined above, and not with any other amendments which would decrease this Bill's effectiveness.

*Prepared by Pastor Mark Edwards OAM
For and on behalf of Australian Christian Churches (ACC)*