

Victorian Secular Lobby Religious Freedom Bills (Second Exposure)

Background

On 13 December 2018, the Prime Minister and the Attorney-General released the Report of the Religious Freedom Review. As part of the initial consultation, the Federal government offered a public submission process. The Victorian Secular Lobby ("the VSL"), an incorporated association in Victoria, made their submission on October 2, 2019.

The Federal Attorney-General held consultative discussions, meeting with 90 interested stakeholders, including representatives from church, legal and community groups. It is noted that an invitation was not extended to consult with the Victorian Secular Lobby.

In our submission the Victorian Secular Lobby, argued there is (a) there is no opportunity under law for such bills suggested by the Federal government, (b) that special religious freedoms will result in discrimination against others, and (c) there is no need for special religious freedoms.

This submission supplements the submission provided on October 2 and considers the changes provided in the new draft.

Reiteration

We reiterate the key points of our October 2, 2019 submission, in summary form.

Firstly, we refer again to s.116 of the Australian Constitution, which states in its title: "*Commonwealth not to legislate in respect of religion*". Whilst specific examples are given in the subsequent clauses, we argue that the general principle expressed in the title. In this principle is applied, there would be need for the bills as religious people would be protected against discrimination to exactly the same degree and manner as non-religious people.

Secondly, we noted if it is deemed that the Commonwealth does have the power to legislate in respect to religion, several provisions of the proposed bills will themselves be in contradiction with other elements of the constitution and existing legislation, in particular existing anti-discrimination legislation that exists in various states and the Commonwealth, including the Commonwealth Racial Discrimination Act.

Thirdly, we noted that there was no need for special religious freedoms. Existing Commonwealth discrimination legislation covers physical and neuro-physical attributes rather than opinions and beliefs whilst Australian states and territories already have balanced legislation protecting individuals against discrimination as vilification, origin, or appearance. Further, the right to freedom of religion and belief is protected to several international human rights treaties, including the International Covenant on Civil and Political Rights (Article 18) which Australia complies with. Religious people do not suffer any discrimination in Australia; but they are subject to the same laws as everyone else and do not have any special privileges.

The VSL argued that the bills being proposed are not necessary, and should therefore be abandoned. This submission continues to concur with that position.

Changes in the Second Draft

The VSL notes several major changes in the new draft which we address:

1. In the new draft, the definition of "religious bodies" has been extended to include religious charities, including those that engage in commercial activities. As "religious bodies" such "charities" will be able to engage in discriminatory employment practises.

The VSL rejects the suggestion that any charities, religious or otherwise, be able to weaponize belief systems against others. It is the opinion of the VSL that the Commonwealth government should remove the clause of the Charities Act which allows for "Advancing Religion" as sufficient reason for an organization to receive charitable status. Religious organizations who wish to be recognized as charities must engage in the same charitable activities as non-religious organizations (e.g., advance health, education, welfare, human rights, animal welfare etc). No special benefits or restrictions should apply to an organization because of their religious belief.

2. In the new draft, religious bodies are now expressly able to give preference to persons that are adherents of their religion.

The VSL rejects this provision of special privilege on the basis of religious belief. This is not a protections against discrimination, but an institutional empowerment of a discriminatory practise, which will inevitably undermine existing discrimination legislation, state and federal. Religious organisations should be subject to the same discrimination practises as any other organisation. It may be possible to incorporate a religious belief as a skill for some employment tasks (e.g., a religious preacher).

3. In the new draft, there is express provision that religious bodies do not discriminate by engaging in conduct to avoid injury to the religious susceptibilities of adherents of their faith.

The VSL rejects the need for such a provision, with the same reasons as per preferences to persons by religious bodies.

4. In the new draft, religious hospitals, aged care facilities and accommodation will be provided the special privilege to discriminate in employment.

The VSL rejects the need for such a provision, with the same reasons as per preferences to persons or employment by religious bodies.

5. The new draft establishes that religious camps and conference centres, like other religious commercial entities, will be able to "take faith into account" when deciding whether they provide accommodation to people and religious hospitals and aged-care facilities can do the same when it comes to employment.

The VSL rejects this weaponized belief, which uses religious belief as means to discrimination in health care, which will cause harm. For camps, conferences, hospitals, aged-care facilities etc., religious organisations should be subject to the same laws relating to discriminatory practises as non-religious organisations. There is no justification for allowing special privileges on the account of belief.

6. The new draft maintains the provision that employers may not restrict an employees statement of religious belief other than during when the employee is working on behalf of an employer, but extends it to ensure it does not traverse employer obligations in work health and safety and workers' compensation law about conduct outside work hours (such as on meal breaks and at work social functions).

The VSL supports the freedom of expression for all workers under the caveats stated by the new draft, but opposes the limitation to statements of religious belief. As it is presented, this is a statement of special privilege, rather than a democratically equal right.

7. The new draft prevents qualifying bodies from imposing rules (such as social media codes of conduct) that restrict people from making statements of belief in a personal capacity, unless they are an essential requirement of the relevant profession, trade or occupation.

The VSL supports the freedom of expression for all workers under the caveats stated by the new draft, but opposes the limitation to statements of religious belief. As it is presented, this is a statement of special privilege, rather than a democratically equal right.

8. In the new draft, "conscientious objection" has been altered so that health workers do not acquire the right to discriminate against patients based characteristics, but rather "an objection must be to a procedure, not a person".

The new draft seems to overlook that there are a number of medical procedures, especially those related to reproductive health, which are differentiated by sex. The drafts claims that whilst a health worker may not discriminate against women, *per se*, it can discriminate against the provision of birth control pills, termination of pregnancy etc. In other contexts this would certainly constitute a form of indirect gendered discrimination. It is pointed out that this "conscientious objection" provision may result in the loss of life. For example, see the duty of care requirements in emergency situations in the Abortion Law Reform Act 2008 (Victoria).

9. The new draft includes a protection for "associates of religious individuals" based on the religion of their friends or relatives.

The VSL opposes the special protective privileges of associates of religious individuals. All people should be accorded the same protections regardless of whether or not they are an associate of an religious person or not.

10. The new draft provides a definition of "vilify". In the first version, whilst this was present, it did not provide a definition. Similar to Victoria's Racial and Religious Vilification Act (2001), it defines vilification as acts that "incite hatred or violence".

The VSL supports legal sanction against those who engage in incitement to hatred or violence to any and all groups, and do not believe that this legal protection should especially apply to people of religious belief. The VSL notes that, unlike the Victorian legislation, the definition of vilification does not extend to include serious contempt, revulsion, or several ridicule, for which veracity should be an absolute defence; there are certainly some religious beliefs which are certainly deserving of contempt, revulsion, and ridicule.

10. The new draft includes an objects clause that makes it clear that all human rights have equal status under international law.

The VSL agrees that all human rights have equal status under international law, but emphasizes that many religious beliefs and desired actions are demonstrably harmful, speculative, or false and thus cannot be claimed to be as a universal human right. For example, people are entitled to their own opinions, that is a universal right (within the constraints of incitement to violence etc.). They are not, however, entitled to their own facts. Truth must have priority over belief.

11. The new draft makes clear that a court will now need to consider whether a person of the same religion as the religious body or person could reasonably consider the act to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.

The VSL rejects the need of such a clause. Courts should make evaluations on secular law alone, rather than the internal beliefs of a religion. Such a requirement of the courts is wasteful, demanding expertise in the legal system that is time better spent on universal legal principles, rather than sectional beliefs.

Conclusion

The second draft of the proposed legislation is worse than the first. The proposed bills are divisive, will cause harm, and do not represent the wishes of Australians who want to see all people treated equally.

As such the VSL believes that the entire project ought to be abandoned.