



August 2019

Religious Discrimination Bill – Exposure Draft

Submission Form

Date of Submission: October 2nd, 2019

Your details

Organisation Name: Victorian Secular Lobby, Inc.

Organisation Type: Non-profit Incorporated Association

i.e. not-for-profit, religious institution, educational facility, etc.

If you are providing a submission on behalf of an organisation, please provide the name of a contact person

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Your Submission

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Background

On 13 December 2018, the Prime Minister and the Attorney-General released the Report of the Religious Freedom Review. The Review made several recommendations and concluded that there is an opportunity to further protect and better promote freedom of religion under Australian law and in the community.

The Victorian Secular Lobby, Inc. ("The VSL") rejects all these claims. The VSL claims that there is (a) there is no opportunity under law for such bills, (b) that special religious freedoms will result in discrimination against others, and (c) there is no need for special religious freedoms.

No Opportunity Under Law

Firstly, we reject the claim that the opportunity exists for the Commonwealth to promote freedom of religion under Australian law. We refer to s116 of the Australian constitution, which states in its title:

"Commonwealth not to legislate in respect of religion"

Nothing could be more explicit. The Commonwealth does not have the right to legislate in respect to religion.

It is acknowledged that this is the title of the section, of which the subsection includes:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".

In the past, the Australian High Court has consistently adopted a narrow interpretation of the clause, limiting itself to define what constitutes a religion (an issue raised in *Church of the New Faith (i.e., Scientology) v Commissioner for Pay-Roll Tax (Vic)*, 1983, the establishing of religion, in the *Attorney-General (Vic) (Ex rel Black) v Commonwealth (the DOGS case)*, 1981, and the free exercise of religion, in *Krygger v Williams*, 1912.

However, all of these cases in reference to particular propositions within the clause itself, rather than the title of the clause. The propositions represent particular examples, rather than limits, of the general principle expressed in the title.

If the title of the s116 of the Constitution is applied, which the VSL believes is required for compliance, there should be no need for a special Religious Discrimination Bill 2019, Religious Discrimination (Consequential Amendments) Bill 2019, or a Human Rights Legislation Amendment (Freedom of Religion) Bill 2019, because the Commonwealth would not legislate with regard to religion.

Religious people would be protected against discrimination to exactly the same degree as non-religious people. There would be no special exemptions by religious organisations from Commonwealth anti-discrimination legislation themselves, as such organisations would be subject to exactly the same requirements as any other organisation, because the Commonwealth would not legislate in respect to religion.

The VSL holds that the bills being proposed by the Government are **ultra vires**, and are therefore invalid.

Special Religious Freedoms Will Result in Discrimination

Even if it is deemed that the Commonwealth does have the power to legislate in respect to religion, it is noted that several provisions of the proposed bills will themselves be in contradiction with other elements of the constitution and existing legislation.

Firstly, we note that the proposals are unconstitutional because they will allow medical practitioners to refuse treatment if the refusal is motivated by the practitioner's religious beliefs. This will allow for medical practitioners to refuse treatment or even medical advice towards others, including those of different religious beliefs. Needless to say, there is almost complete certainty that this will most adversely affect women (with regard to reproductive rights), and LGBTI people, as they constitute the bulk of religious-motivated discrimination.

Not only would allowing this be incompatible with international law (as argued by Monash University's Luke Beck) it will also directly contradict existing anti-discrimination legislation that exists in various states such as Tasmania's anti-discrimination act (c.f., Rodney Croome, Equality Australia). Others (e.g., Fairness in Religion in Schools) have noted that clauses within the proposed bills would override the NSW Department of Education's Values in NSW Public Schools Policy, and force public schools to rent out their facilities to extremist groups, as long as they fall under a protected religious activity or belief. This concern has also been raised by religious groups for their own services (c.f., Freedom for Faith submission).

The summary of the Bills state that a person may make a complaint to the Commission if they have been subject to discrimination on the basis of lawful religious belief or activity. However, as neither religious belief nor religious activity is defined. It is plausible then that any belief or activity can be defined as a religious belief or activity. As the Australian Human Rights Commission argues:

"The scope of the Bill is overly broad in defining who may be a victim of religious discrimination and, arguably, too narrow in defining who may be found to have engaged in religious discrimination."

This would result in various discriminatory actions and group defamation actions being protected under the guise of "religious freedom", i.e., the freedom to discriminate against and defame others. In this regard to proposals do not act like a shield to protect religious people from discrimination, but they weaponise beliefs to attack and harm others. In particular, it has been noted by Law Council president, Arthur Mose, at the National Press Club, that the Commonwealth Racial Discrimination Act would be undermined by this legislation.

The VSL holds that the bills being proposed enable discrimination and harm, and should therefore be rejected.

No need for special religious freedoms

It is true, as advocates of the legislation argue, that Australia does not have "a law" to protect religious belief or activity or a religious anti-discrimination law such as the laws that protect sex, age, race, disability, sexual orientation, gender identity etc. However, these categories represent physical and neuro-physical attributes rather than opinions and activities motivated by opinion.

Australia already includes in most states and territories (NSW and SA excepted) legislation that specifically prohibits discrimination on the basis of religious belief. In NSW and SA, the exception is motivated by a secular, rather than anti-religious, motivation. NSW prohibits discrimination on the basis of race, including "ethno-religious origin", while South Australia prohibits discrimination based on "religious appearance or dress".

In addition section 351 of the Fair Work Act 2009, prohibits an employer from taking "adverse action" against an employee or prospective employee on the basis of religion. They can, of course, take action against an employee who harms the organisation due to expressions or actions which they consider to be a religious expression, but not their religion itself (the same would apply if a non-religious person engaged in similar actions).

Further, the right to freedom of religion and belief is protected to several interantional human rights treaties, including the International Covenant on Civil and Political Rights, which states in Article 18:

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

It is ludicrous and offensive to suggest that religious people are discriminated against in Australia. Religious people have the freedom to worship, to advocate their faith in public, and even to dominate parliament far in excess of their representation among the public. Religious people are not prevented from owning property or managing institutions. They are not subject to being jailed or worse.

The extent that some religious people may feel that they have been discriminated against is that they are subject to secular laws that are based on universal human rights that transcend their assumed special privileges. This simply means that they are subject to same laws as everyone else.

The VSL holds that the bills being proposed are not necessary, and should therefore be abandoned.

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