

Submission to: *Religious
Discrimination Bill 2019*

AUSTRALIAN CHRISTIAN LOBBY



Wednesday 2 October 2019

The Hon. Christian Porter MP
Attorney-General of Australia
Parliament House
CANBERRA ACT 2600

RE: Religious Discrimination Bill 2019

Dear Attorney-General,

Thank you for the opportunity to make a submission in relation to the Religious Discrimination Bill 2019.

The Australian Christian Lobby's first concern is that a non-discrimination approach is not the best way to deal with the religious freedom issues we encounter regularly in the community.

That said, we are cognisant of the political realities of this reform process, so we would nonetheless endorse this bill as a genuinely constructive and helpful reform, with some modest changes which will be outlined in the attached submission.

Thank you for the opportunity to consult on this important matter. There is heightened interest in the outcome among our more than 170,000 supporters.

If I can provide anything further, I am happy to do so.

Yours sincerely,

Martyn Iles
Managing Director

Introduction

The Australian Christian Lobby is unable to support the *Religious Discrimination Bill 2019* in its current form.

Our first concern is that a non-discrimination approach is not the best way to deal with the religious freedom issues we encounter regularly in the community.

That said, we are cognisant of the political realities of this reform process, so we would nonetheless endorse this bill as a genuinely constructive and helpful reform, with some modest changes which will be outlined listed below in order of priority:

1. "Lawful religious activity" must be adequately defined;
2. "Unjustifiable financial hardship" should be no defence;
3. "Relevant employer" should include a government employer;
4. The word "vilify" is not sufficiently clear;
5. Religious bodies undertaking "commercial activities" should not be excluded;
6. The "reasonable" qualifier to indirect discrimination should be replaced with "necessary";
7. The objects clause should note the equal status of all human rights.

1. "Lawful religious activity" [section 5]

"Religious activity" lends itself to an artificially narrow interpretation. The cases we contend with on a weekly basis seldom relate to activities which are considered primarily "religious."

Prayer, reading scripture, or attending a place of worship is one thing, but questions arise concerning activities more subtly entwined with one's religion, for example:

- An academic lecture about a non-religious subject which advances a religious viewpoint;
- Social media posts;
- Manifestations of religious moral or ethical views;
- Attending political events or conferences with a religious motivation;

The definition should make it clear that "religious activity" includes any activity which is consistent with a religious belief.

Further, "lawful religious activity" makes the bill's protections useless in the face of state law or council by-laws. For example, it would not protect:

- A religious school from a state government-imposed limitation in its funding contract;
- A faith-based aged care facility from being required to permit euthanasia;
- A council by-law denying council facilities to groups with religious views on sexuality.

Religious activity should only be limited by the general criminal law.

2. "Unjustifiable financial hardship" [section 8(3)]

"Unjustifiable financial hardship" should not enable restrictions on statements of belief by relevant employers.

First, it lends significantly more power to activist conduct like boycotts and social media/publicity campaigns, whether from sponsors, suppliers, or customers.

Second, an average employee is unlikely to resource a legal challenge against a large company which imposes limitations on their speech under the excuse of avoiding financial loss.

The permission structure granted by the “unjustifiable financial hardship” exception must be removed.

3. “Relevant employer” [section 5]

Our recent cases show that government employers are among the worst offenders when it comes to discriminating against employees based on their statements of belief.

It is very hard to justify the permission structure this Bill grants to governments and smaller companies, to restrict their employees’ statements of belief.

The definition of relevant employer should at least include government employers, if not smaller corporations also.

4. “Harass, vilify” [sections 8(4)(b) and 41(2)(b)]

The meaning of “vilify” is legally unclear. It does not adequately resolve the ambiguity of section 17(1) of the *Tasmanian Anti-Discrimination Act 1998*, nor does it provide a clear threshold for limiting statements of belief.

Additionally, “harass” sets a very low threshold and is at risk of overzealous application, especially by employers in relation to enforcing conduct rules restricting statements of belief.

The words “vilify” and “harass” should be replaced with words that are clear, and which set a reasonably high threshold.

5. “Commercial activities” [section 10(2)(b)]

After broad consultation with major church movements in recent weeks, this concern has been raised almost universally.

It is a fact that many religious bodies, including churches and charities, structure their activities so that some entities earn the money and others apply it to good causes.

Restructuring is not feasible in many cases due to the unique regulatory environment around some activities, such as childcare, food handling, medical services, and media, to name a few.

This limitation is unprecedented and makes little sense, both considering these realities, and the misnomer that faith suspends when the cash-register is open.

Religious charities should be able to act in accordance with their beliefs regardless of commercial activity.

6. “Reasonable” [section 8(1)(c)]

Limiting indirect discrimination to conditions, requirements or practices that are not reasonable is not consistent with the relevant international human rights law.

The relevant limitation is “necessary” – for example:

“necessary to ensure public safety, order, health or morals, or the fundamental rights of others.” (ICCPR Article 18)

This is a significant legal difference.

This section should be framed in terms of conditions that are “not necessary.”

7. The objects clause should note the equal status of all human rights [section 3]

This relates to a recommendation of the Ruddock Review to the effect that the government should amend Commonwealth anti-discrimination laws to reflect the equal status of all human rights in international law, including freedom of religion.

The Bill should implement the Ruddock Review recommendation to grant all human rights equal status in the objects clause.

About Australian Christian Lobby

Australian Christian Lobby’s vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 170,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

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