

The Religious Freedom Bills

Submission by the Australian Council of Trade Unions to the
Australian Government Attorney-General's Department

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Introduction

Since 1927, the ACTU has been the only national confederation representing Australian unions. The ACTU has played a leading role in advocating for improved wages and conditions for Australian workers and has participated in the development of almost every regulatory measure affecting the working rights of Australians during that time. The ACTU consists of 43 affiliated unions and trades and labour councils from across the country, representing approximately 2 million workers from all major industries, occupations and sectors.

The Attorney-General has invited submissions from the community on the **Religious Freedom Bills**, which consist of the following:

- *Religious Discrimination Bill 2019 (RDB)*
- *Religious Discrimination (Consequential Amendments) Bill 2019*
- *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*

While the ACTU supports reform to strengthen Australia's human rights framework, these Bills do not achieve this aim. These Bills not only fail to address concerns about the operation of Australia's anti-discrimination and human rights regime which have been raised over many years, including existing exemptions for religious schools and bodies, but they add further confusion to an already complex regime.

The ACTU is concerned about the government's approach to these important matters. The government has not engaged in timely or genuine consultation with key stakeholders in the development of these reforms, and the timeframe for submissions on the exposure draft Bills is inadequate, particularly in light of the complexity and significance of these changes.

Human rights belong to all people equally, and governments cannot pick and choose which rights to respect. No right can 'trump' any another right. Most human rights can be limited, either expressly or impliedly, as long as the limitations are prescribed by law, permitted in relation to the right concerned, and are reasonable, necessary and proportionate to pursue a legitimate objective. The right to freedom of religion and the right to equality and non-discrimination are both internationally recognised human rights, and both are subject to permissible limitations. The intersection of religious freedom and anti-discrimination laws is a point of ongoing tension, and legislatures and courts must strike an appropriate balance between these rights when they come into conflict. Unacceptably, the RDB explicitly and deliberately overrides hard fought and won human rights protections under Tasmanian and other State and Territory anti-discrimination laws. It is contrary to the basic principles of human rights law to privilege once category of rights over another: in this case, the right to freedom of religion over the right to equality and non-

discrimination, particularly for women, LGBTIQ people and other groups susceptible to condemnation or discrimination on religious grounds.

It is important to note that the government's own Religious Freedom inquiry acknowledged that Australians already enjoy a high degree of religious freedom, so the need for these reforms is questionable. The ACTU does not oppose the inclusion of a new provision protecting workers and other individuals from direct or indirect discrimination on the grounds of thought, conscience or religion in all the usual areas of public life, including work. However, such a protection could be achieved simply by adding 'religion' as a protected attribute under an existing anti-discrimination statute. The RDB goes much further than this, extending new rights to religious bodies to discriminate against workers, school students and people accessing healthcare. The Bill is complex and confusing and departs substantially from the usual framework of anti-discrimination legislation, which gives rise to a real risk of unintended, unforeseen and undesirable consequences.

Failure to address Religious Exemptions

It is crucial that the protection of religious freedom in Australia is appropriately balanced with the protection of all other rights and freedoms, and the RDB fails to achieve such a balance in its current form. The permanent exemptions in the *Sex Discrimination Act 1984 (SDA)*¹ have been the subject of significant criticism over many years.² These exemptions permit a religious organisation to discriminate against a staff member or a student on the grounds of that person's 'sex, sexual orientation, gender identity, marital or relationship status or pregnancy', as long as the discrimination is in 'good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'. The SDA also contains a general exemption for religious bodies.³ Since 2013, this general exemption does not apply to acts or practices connected with the provision of Commonwealth-funded aged care; however, it can apply to the employment of people to provide Commonwealth-funded aged care.⁴ The *Fair Work Act* also contains a similar

¹ Sections 38(1), (2) and (3)

² A number of inquiries have recommended their review and/or removal, for example: Australian Law Reform Commission, 'Equality Before the Law: Justice for Women', Report No. 69 (1994); Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the effectiveness of the Sex Discrimination Act*, 2008; Senate Standing Committee on Legal and Constitutional Affairs, Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff, November 2018.

³ SDA, paragraph 37(d) exempts 'acts or practices of a body established for religious purposes, that conform to the doctrines, tenets or beliefs of the relevant religion or are necessary to avoid injury to the religious susceptibilities of adherents of that religion'

⁴ The Fair Work Act reflects the SDA exemptions, and most State and Territory laws also contain similar religious exemptions, however there are differences in scope.

religious exemption, although it is different to the SDA in its framing.⁵ Most State and Territory laws also contain similar religious exemptions, however there are differences in scope. For example, in Queensland the religious exception related to employment is limited to discrimination where a person ‘openly acts’ in a way that is contrary to the employer’s religious beliefs and it is a genuine occupational requirement that the person acts in a way consistent with the employer’s religious beliefs in the course of work; Tasmania only permits religious educational institutions to discriminate in employment on the grounds of religious belief, affiliation or activity (not on the grounds of sexual, gender identity etc), if religious observance or practice is a genuine occupational requirement of the position; and South Australia allows adverse employment decisions to be made by religious educational institutions on the grounds of sexual orientation, gender identity or intersex status, but only if the institution provides a written policy position to the applicants, employees, prospective employees, and any person who requests it.

Concerns have been raised by numerous parties, including the union movement, that these exemptions limit the rights and freedoms of others in a way which is not reasonable, proportionate or justified. Faith-based schools do not need to single out particular staff members or students for discriminatory treatment in order to uphold their religious freedom. These exemptions are causing harm to people and must be removed as a matter of urgency. In November 2018, Senator Penny Wong introduced the *Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018*, which if passed would have amended the SDA to remove the capacity of religious schools to directly discriminate against students on the basis of their sexual orientation, gender identity or intersex status. These reforms should be introduced without delay, and must be extended to remove the capacity to discriminate against staff members.

In 2019, the Australian Law Reform Commission (**ALRC**) was asked to conduct an inquiry into the *Framework of Religious Exemptions in Anti-discrimination Legislation*. Under the original terms of reference, the ALRC was due to report its findings on 10 April 2020 and consider what reforms to Commonwealth, state and territory law, the FW Act and ‘any other Australian laws’ should be made in order to ‘limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to conduct their affairs in a way consistent with their religious ethos’. In August 2019, the Attorney-General altered the terms of reference to require the ALRC to exclude the new Religious Discrimination

⁵ [Attorney-General’s Department, Consolidation – Religious Exemptions – Comparative Analysis, undated](#), p 2

Bill from its review, and to extend the reporting date until December 2020. The matters under consideration by the ALRC are directly relevant to the protection of religious freedom in Australia.

We note that the AHRC also has relevant inquiries currently underway, including the National Inquiry into Sexual Harassment in Australian workplaces, which is considering the effectiveness of the SDA,⁶ and the Free and Equal consultation,⁷ which is considering possible recommendations for reform to Australia's human rights framework more broadly, including a review of permanent exemptions to discrimination laws to ensure they reflect contemporary community standards.

It is unacceptable that the RDB completely fails to address longstanding concerns about existing exemptions for religious schools and bodies. All matters related to religious freedom, including the appropriateness of existing exemptions, should be addressed together.

A comprehensive approach is required

The effectiveness of the anti-discrimination and human rights regime in Australia should be considered holistically. Many important recommendations for reform to Australia's anti-discrimination laws have been made over the years and ignored. For example, in 2008-09 the Senate Committee on Legal and Constitutional Affairs recommended a number of reforms to the *Sex Discrimination Act 1984 (SDA)* to ensure it is more effective in addressing gender inequality, including removal of the complex 'comparator' test; the introduction of a shifting burden of proof (placing the onus on a respondent to prove that discrimination did not occur once a prima facie case has been made out); a new positive duty on employers to reasonably accommodate requests by working parents and carers for flexible working arrangements; better resourcing and stronger powers for the Australian Human Rights Commission (**AHRC**) to conduct inquiries into gender equality; positive duties for public sector organisations, employers and educational institutions to eliminate sexual harassment and discrimination and promote gender equality; and a review of the effectiveness of existing enforcement mechanisms.⁸ More than a decade later, despite the persistence of gender inequality in Australian workplaces and the wider community, most of these reforms have not yet been implemented. A number of other important matters have been raised by stakeholders over the years, including the need to consider new protected

⁶ <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces>

⁷ Australian Human Rights Commission, Discussion paper: 'Free and Equal: an Australian conversation on human rights', October 2019.

⁸ Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the effectiveness of the Sex Discrimination Act, 2008*

attributes such as domestic or family violence, and the need to strengthen the unjustifiably weak protections for discrimination at work on the grounds of religion, medical record, nationality, trade union activity, political opinion, social origin, and criminal record under existing anti-discrimination laws.⁹

It is important to ask whether anti-discrimination laws by themselves are effectively able to address human rights issues in Australia, given their reactive, complaints-based nature. Non-discrimination is only one aspect (although a crucial one) of the protection of human rights. The achievement of equality requires more than just protection against discriminatory actions: it also requires positive, proactive steps to be taken by governments, such as the provision of paid parental leave and measures to ensure equal pay for equal work in order to achieve gender equality. Despite the recommendation of the National Human Rights Consultation Committee in 2009, Australia remains the only western democracy without a national human rights bill or charter.

In this context, it does not make sense to introduce an amended framework for the protection of religious freedom without considering all related matters, including the religious exemptions, or reviewing the adequacy and effectiveness of Australia's existing human rights and anti-discrimination law framework more broadly. The effective protection of the rights and freedoms of Australians must be considered in a coherent and comprehensive manner, in consultation with all affected parties.

Legal Framework

The human right to freedom of thought, conscience and religion or belief is recognised in Article 18 of the International Covenant on Civil and Political Rights (**ICCPR**). International law distinguishes between the freedom to manifest religion or belief (which may impact on others), and freedom of thought and conscience. No limitations are permitted on freedom of thought and conscience, or on the freedom to have or adopt a religion or belief of one's choice. However, the right to demonstrate or manifest religious or other beliefs by way of worship, observance, practice and teaching may be subject to reasonable limitations provided by law which are

⁹ Under Division 4, Part II of the *Australian Human Rights Commission Act 1986* (based on the ILO *Discrimination (Employment and Occupation) Convention, 1958*), AHRC can conciliate complaints of discrimination in work-related areas on a number of grounds, including religion. However, discrimination on the basis of these attributes is not unlawful and complaints cannot proceed to the Federal Court or the Federal Magistrates Court.

necessary to protect the public safety, order, health, or morals, or the fundamental rights and freedoms of others.

The right to equality and non-discrimination is set out Articles 2, 16 and 26 of the ICCPR, and reaffirmed in all human rights instruments. The right to equality affirms that all human beings are born free and equal, have the same rights, deserve the same level of respect and have the right to be treated equally. Non-discrimination is an integral part of the principle of equality. It protects against the impermissible less favourable treatment of people on the grounds of attributes such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The UN Human Rights Committee has recognised that sometimes it is necessary to treat people differently in order to achieve equality, which is known as positive discrimination or special measures.

The *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* requires States to take steps to prohibit any distinction, exclusion or preference on the basis of a number of protected attributes, including religion, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; except where this is justified based on the inherent requirements of the job.

Australia has five federal anti-discrimination statutes: the *Racial Discrimination Act 1975 (RDA)*; *Sex Discrimination Act 1984 (SDA)*; *Disability Discrimination Act 1992*; *Age Discrimination Act 2004*; and *Australian Human Rights Commission Act 1986*. Religion is not currently a protected attribute under federal anti-discrimination law.^{10 11} The RDA provides protection for religious groups that can also be classified as ethnic or racial groups (for example, Jewish or Sikh people), and s 18C of the RDA makes it unlawful for someone to do an act that is reasonably likely to 'offend, insult, humiliate or intimidate' someone because of their race or ethnicity.

The *Fair Work Act 2009 (FW Act)* contains a number of provisions aimed at protecting employees against discrimination at work, including s 772(1)(f) which makes it unlawful to terminate the employment of an employee on a number of grounds, including religion and sexual orientation; s 351(1) which prohibits an employer from discriminating against an employee on a number of

¹⁰ Every state and territory in Australia except NSW and South Australia has enacted laws prohibiting discrimination on the basis of religion.

¹¹ The *Human Rights and Anti-Discrimination Bill 2012* would have consolidated the five Commonwealth anti-discrimination statutes into a single Act. The Bill would have made discrimination on the basis of religion in work-related areas unlawful for the first time in Commonwealth legislation. The Bill retained the existing broad exemptions for religious bodies and educational institutions but would have required a Ministerial review of the exemptions within three years of commencement of the legislation.

grounds, including religion and sexual orientation; and s 153, which provides that a modern award must not include discriminatory terms. Sections 772(1)(f) and 351(1) exempt action which is based on the 'inherent requirements' of the particular position, or where the discrimination is in 'good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'; reflecting the exemptions in the SDA, which are discussed further below. In addition, s 351(2)(a) of the FW Act provides that action will not be discriminatory if it is not unlawful under any anti-discrimination law that applies in the place where the action is taken. This means that where action is taken in a jurisdiction which has not prohibited discrimination on the grounds of religion (such as NSW), s 351(1) arguably does not provide a right of action.

Religious Discrimination Bill

The RDB departs from the usual anti-discrimination law framework in a number of ways which are unnecessary and may have unforeseen and undesirable consequences.

Extension of human rights to corporations

Under the RDB, it is open for a body corporate to make a complaint alleging that it has been discriminated against on the basis of its religious belief or activity (or lack thereof).¹² This is because s 5 of the RDB defines a 'person' to include a 'body corporate', including a 'religious body' or 'other religious institution'. A 'religious body' is defined broadly in s 10(2) of the Bill to include an educational institution, registered charity or 'any other body' conducted in accordance with the tenets of a particular religion, other than a body whose activities are 'primarily or solely commercial' – a phrase which is unclear in its scope.

While trade unions and other representative organisations should have the right to bring representative claims under human rights laws on behalf of their members, the question of whether corporations should be able to hold and enforce human rights in the same way as natural persons is highly controversial. The extension of human rights to corporations under an Australian anti-discrimination law is undesirable and may have unintended, unforeseen and unwelcome consequences. For example, the Bill opens the possibility of an employer commencing legal action against an individual worker or a union because they have taken action in support of stronger working rights for women or LGBTIQ staff members; or a charity commencing legal action against consumers for a consumer boycott or other protest action, on the basis that the action was directly or indirectly discriminatory on the grounds of the

¹² Explanatory Memorandum, Exposure Draft of the Religious Discrimination Bill 2019, [77]

organisation's religious beliefs or activities. It also opens the possibility of AHRC being used to resolve business-on-business disputes. Such outcomes run completely contrary to the spirit and intent of Australia's anti-discrimination regime, which is to protect vulnerable people and groups from discrimination on the grounds of certain personal attributes.

New religious exemptions

Section 10(1) extends this inappropriate and unnecessary protection for corporations by giving religious bodies (broadly defined by s 10(2)) new rights to discriminate against individuals or bodies corporate on religious grounds. As discussed above, religious bodies already have exemptions from discrimination laws allowing them to discriminate against people on the grounds of sex, sexual orientation, gender identity, marital or relationship status or pregnancy, as long as the discrimination is in 'good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'. Religious bodies will now have a further right to discriminate as long as the conduct 'may reasonably be regarded' as being in accordance with the tenets of a religion – a phrase of uncertain scope which creates another significant loop-hole for religious bodies to engage in a broad range of discriminatory treatment. It also allows discrimination on other grounds to be disguised by organisations. For example, a charity may be able to terminate the employment of an LGBTIQ staff member on the grounds that the staff member's religious views did not align with the organisation's religious beliefs. Religious schools may be authorised by the Bill to require that all members of a school's teaching staff uphold certain religious views and practices in order to remain employed, including gardeners and other staff members not involved in the provision of religious education. It may also allow religious schools to discriminate against students on religious grounds.

Such outcomes impinge on people's rights and do not promote freedom of religion. Religious schools and bodies do not need to be able to discriminate against people in this way in order to uphold their ethos. The provisions are unnecessary and of uncertain effect, and should be deleted.

Changes to indirect discrimination provisions

Like the other federal discrimination acts, the RDB prohibits both direct and indirect discrimination. However, it treats indirect discrimination substantially differently to the other anti-discrimination acts. This differential treatment is unjustified and may give rise to problematic outcomes. Under all existing anti-discrimination laws, indirect discrimination occurs when a condition, requirement or practice is imposed which applies to everyone but has a less favourable impact on one group. The exception to this is where the condition, requirement or practice is *reasonable* in the circumstances. Under all the other anti-discrimination laws, it is up

to the courts to decide what is reasonable in any given case, after taking into account certain factors such as the nature and extent of the disadvantage caused by the condition, and the feasibility of overcoming the disadvantage. However, as outlined below, the RDB adds a number of extra provisions which alter the reasonableness test in a way which is confusing, complex and problematic. The extra provisions discussed below are not necessary to protect freedom of religion and should be removed.

Employer conduct provisions

Section 8(3) of the Bill provides that a private sector employer (with revenue of over \$50m for the current or previous financial year) cannot impose a rule about the dress, behaviour or appearance of employees which would restrict or prevent an employee from making a 'statement of belief' when they are not performing work for the employer. The exception is where it would impose 'unjustifiable financial hardship' on an employer not to make the rule. In addition, courts considering the lawfulness of workplace policies and clauses addressed at preventing discrimination and harassment *during* working hours will have to consider an additional 'reasonableness' requirement, namely the extent to which the policy or clause 'would limit the ability of an employee to have or engage in the employee's religious belief or activity' (s 8(d)).

A 'statement of belief' is defined broadly in s 5 of the Bill, and includes any statement that 'may reasonably be regarded' as being in accordance with the tenets of a religion. This would seem to cover statements which are not *actually* in accordance with the tenets of a religion, but which may be regarded as being so. Statements by persons who do not hold religious beliefs are also protected, but only if they arise 'directly' from the fact that the person does not hold a religious belief, and are 'about' religion.

Clearly there must be firm limitations on an employer's ability to discipline an employee for out-of-work hours conduct or interfere in an employee's private life. However, it is difficult to understand what policy problem this Bill is trying to address, or what the Bill's effect will be in practice. It would be deeply concerning and counterproductive if organisations were discouraged by these laws from developing policies promoting non-discrimination and equality at work. Many large and small employers have developed and implemented policies in order to comply with existing anti-discrimination laws and promote inclusive, safe and healthy workplaces. Such policies generally extend to protect employees from discrimination and harassment in work-related spaces where they may or may not be 'performing work' for the employer, but where there is a clear connection with work, such as Christmas parties or other work-related social events. They may also address the responsible usage of social media and other technologies. The Bill provides that the only factor a court must consider in assessing the reasonableness of

such policies is the financial implications, which would presumably exclude consideration of matters such as the safety, health and well-being of employees. Such policies protect employees and assist employers to meet important obligations under workplace, anti-discrimination, and health and safety laws, and should not be subject to legal challenge on religious grounds.

The ordinary indirect discrimination test would provide sufficient protection for an employee wishing to express religious views outside work. The additional 'employer conduct provisions' are not necessary to protect religious freedom, and may have the extremely undesirable effect of undermining policies aimed at creating healthy, safe and inclusive workplace for all employees. They should be deleted.

Health practitioner provisions

Sections 8(5) and (6) of the RDB provide broad new rights for a wide range of health practitioners (including doctors, dentists, nurses, occupational therapists, pharmacists and psychologists) to refuse to provide any kind of health service on religious grounds. The new provisions may expose people seeking to access health services which do not conform with religious views (such as reproductive or sexual health services or blood transfusions) to sub-standard care. It is unclear how these laws will interact with existing anti-discrimination laws, which require the provision of services without discrimination on grounds such as sex, sexual orientation, pregnancy or relationship status. Groups such as unmarried/single mothers and LGBTIQ people already face barriers to accessing health services, in part because they fear judgement. These provisions will only exacerbate this problem.

The Bill provides that it is not reasonable for a person to impose rules restricting or preventing a health practitioner from conscientiously objecting to providing a health service, whether the law of the State or Territory in which the health practitioner operates allows conscientious objection or not. The exception is where there would otherwise be an 'unjustifiable adverse impact' on the health of a person or the ability of the health service to provide a health service. This is a new concept in discrimination law and is of uncertain effect. It is not clear what an 'unjustifiable adverse impact' would be in the health context.

State and Territory laws in relation to conscientious objection are usually limited to 'life and death' procedures and include careful checks and balances to ensure consistent, quality healthcare is prioritised at all times. These new laws override these rules and are likely to cause significant confusion for workers and others in the healthcare sector. The new laws will make it difficult for healthcare providers to set clear rules regarding referrals and notification in cases of conscientious objection, for example. These important processes should not be subject to legal challenge on religious grounds.

These additional provisions impede access to healthcare and limit the rights of patients in a way which is not proportionate, justified or reasonable. They are not necessary to protect religious freedom and should be removed.

Override of State and Territory laws

It is of significant concern to the ACTU that s 41 of the RDB explicitly provides that a statement of belief will not constitute discrimination under the FW Act, or s 17(1) of Tasmania's Anti-Discrimination Act, which prohibits conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of various attributes, including sexual orientation, lawful sexual activity, gender, gender identity and intersex variations of sex characteristics.

The express override of laws intended to protect vulnerable groups from bullying and harassment at work and other areas of public life is completely unwarranted and unacceptable. For example, the Bill could allow the CEO of a large religious charity to publicly oppose leadership roles for women in the organisation, or the principal of a religious school in receipt of government funding to publicly make adverse or derogatory comments about LGBTIQ students or single/unmarried mothers. Due to the broad nature of the provisions, statements of belief which discriminate on *any* ground, including race or disability, will be permitted, so long as such comments 'may reasonably be regarded' as being in accordance with the tenets of a religion.

It is not clear whether or not a discriminatory statement of belief permitted by these new laws could still be used as evidence in support of a discrimination claim under another anti-discrimination law. For example, it is not clear whether a woman arguing that she was not promoted because of her sex, could use the statement made by the CEO in the hypothetical example above as evidence in support of a complaint under the Sex Discrimination Act.

These provisions also mean that employers may be able to defeat discrimination claims by employees brought under other federal and state anti-discrimination laws on religious grounds. Procedurally, the availability of this defence means that employees may be dragged into federal tribunals and courts, which are generally much more expensive than state tribunals and courts, in order to resolve discrimination complaints. Many stakeholders, including the ACTU, have noted the unfairness of complaints processes in existing anti-discrimination laws, which are already considered onerous, legalistic and costly. As in most employment disputes, a significant power imbalance exists. The playing field is not level. Employees wanting to pursue discrimination complaints are already required to navigate a complex and technical area of law and compete with well-resourced, well-informed and experienced corporate respondents. The availability of this new defence will only exacerbate this imbalance.

Australians are already free to express their religious beliefs, unless this impinges on the rights of others to be free from discrimination. Exemptions for statements made in good faith in the public interest already apply. There is no need to protect statements that impact negatively on the rights and freedoms of others and would otherwise be discriminatory. This provision should be deleted.

Religious Freedom Commissioner

The Bill creates a new Religious Freedom Commissioner in the Australian Human Rights Commission, which the government claims addresses recommendation 19 of the Religious Freedom Review. We note that the Review in fact found that a separate Commissioner was *not* necessarily required. It is also not clear why a new Commissioner would not be named the Religious *Discrimination* Commissioner, consistent with the title and stated intent of the Religious Discrimination Bill, and the titles of the other Commissioners.

The ACTU strongly supports adequate resourcing and powers for AHRC to ensure that it can effectively fulfil its mandate. However, given that Australians already enjoy a high degree of religious freedom, the evidence does not suggest that a new Religious Freedom Commissioner is the most pressing need in terms of AHRC resources at this time.

Human Rights Legislation Amendment (Freedom of Religion) Bill

The ACTU does not support the amendment of the Marriage Act to provide that a ‘religious educational institution’ can refuse to provide goods or services for “non-traditional” marriages. In the context of existing exemptions for religious schools to discriminate against staff and students on a range of grounds, as well as new exemptions under the RDB which will give religious schools additional rights to discriminate against staff, students and others on the grounds of religion, the ACTU considers these further rights to discriminate to be disproportionate, unreasonable, unfair and unjustified.

The ACTU supports amending the objects clauses in the federal anti-discrimination acts to recognise the universality and indivisibility of human rights. As outlined in this submission, it is contrary to these principles for States to elevate one human right over another, or to pick and chose which ones to protect and promote.

Conclusion

Everyone has the right to a safe, healthy and respectful workplace. This Bill privileges the rights of religious organisations over workers’ rights to be treated fairly and equally. Religious schools

already have extensive rights to discriminate against workers and students on the grounds of sex, sexual orientation, gender identity, marital or relationship status and pregnancy. This Bill not only retains these exemptions, but gives corporations new rights to discriminate against workers and others on religious grounds.

There is no need for these complex and confusing new laws. New federal protection against discrimination for workers and other individuals on the grounds of religion could be achieved by a simple amendment to an existing discrimination act. The RDB goes too far, allowing corporations to override the rights of others. Unacceptably, the RDB explicitly and deliberately overrides hard fought and won human rights protections under Tasmanian and other State and Territory anti-discrimination laws.

The government should withdraw these bills and commence a proper process to consider the effectiveness of Australia's human rights and anti-discrimination law regime as a whole, including the appropriateness of existing religious exemptions, in consultation with those most affected.

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