



August 2019

# Religious Discrimination Bill – Exposure Draft

## Submission Form

**Date of Submission:** 2<sup>nd</sup> October 2019

### Your details

**Organisation Name:** Presbyterian Church of Australia

**Organisation Type:** Church/ religious institution

*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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## Publication of submissions

In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Attorney-General's Department will only publish submissions to this website that have been submitted electronically. The following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
- txt format.

Please limit individual file sizes to less than 5MB. The department may create PDF documents from the above formats.

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### Would you prefer this submission to remain confidential?

Yes

No

## Your Submission

*Please respond in the box provided below.*

The Presbyterian Church in Australia (PCA) welcomes the opportunity to make a submission about the draft Religious Discrimination Bill.

#### Who we are

The Presbyterian Church in Australia (PCA) consists of over 500 congregations meeting throughout all Australian States and Territories. It is a community of about 30,000 people, with congregations from at least nine different non-English speaking cultures. Beyond its congregational ministries, the PCA operates schools, aged care facilities and pre-schools, and provides social services and chaplaincy care in a wide range of communities throughout the nation. The Presbyterian Church has been part of Australian society since 1803 and formed as the PCA in 1901. It consists of six churches, in each State (with the ACT as part of the Presbyterian Church of NSW and the Northern Territory part of the Presbyterian Church of Queensland). The six state churches are united in a federal arrangement. As such, some of the State churches have made their own submission on the Bill.

#### Endorsed submissions

In making our submission, we endorse submissions by:

- The Presbyterian Church of Victoria
- The Presbyterian Church of Queensland
- Freedom for Faith
- Anglican Church Diocese of Sydney.

#### Our convictions

The Presbyterian Church is concerned that religious freedom be protected as fully as possible in our nation. Human beings are fundamentally religious and it is in their nature to seek the sense of wonder, mystery and meaning which comes from religion. Although, God has the proper claim on the worship of all people, he allows them freedom to seek and find him. Religious convictions and practices are thus an important part of culture for millions around the world and here in Australia. Allowing individuals and communities the freedom to express their religious convictions as fully as possible is an important way of treating them with dignity.

Religious believers make a major contribution to the common good of our society, and it is to the benefit of the whole society that believers are able to give wide expression of their faith in word and action (recognising that religion should offer no protection to acts of violence or abuse).

Since its formation the PCA has been committed to freedom of religion. This is expressed in the Declaratory Statement

adopted by the Church on its formation on July 24, 1901 wherein it states that the Church “disclaims ...intolerant or persecuting principles” and upholds “the liberty of conscience and the right of private judgment”. This statement is an assertion of the Church’s support of freedom of religion in Australia.

The PCA, along with other Christian churches, is a body of believers who are committed to a corporate, public and therefore institutional expression of our religious faith. The primary expression of this is in our congregations, though it extends to a range of other organisations which express the mission of the church. Freedom of religion requires churches and Christians to be able to co-operate in operating a range of institutional expressions of their faith.

As Presbyterians in the protestant tradition, we understand each individual Christian to be a member of what Martin Luther called 'the priesthood of all believers'. This understanding leads us to say that every Christian has a sacred duty to live and pursue their work from Christian convictions. The book of James, in the New Testament, teaches that faith that is not expressed in deeds is, in fact, 'dead'. Christianity is not simply a private matter that can be left at the door of the home, or of the church, but a view of the world that shapes public life. Thus, there is in Presbyterian thought no clear sacred/secular divide. Every Christian — whether a cobbler, baker, or politician — should see their work informed by their faith. This view of religion stands in contrast to that presupposed in any claim that protection of religious freedoms is only necessary for clergy or churches determining.

The PCA holds that freedom of religion must be extended to people of all religions, and that equivalent freedoms should be granted to those who hold no religious convictions.

We are concerned that attempts to protect freedom of religion by codification may prove counter-productive and urge the Government to allow maximal freedom with minimal regulation.

Our concerns

We raise the following concerns about the exposure draft.

1) It is not clear Clause 10 (1) will allow religious organisations which do not require employees to share their religious convictions to prefer employees who share those convictions.

This may inhibit the ministry of our schools, pre-schools, aged care facilities and hospitals. In many of those institutions the need to employ suitably qualified staff means that it has not been possible to have a policy in which all staff as required to have a Christian faith. Nevertheless, it is essential for the institutions to be able to prefer such staff, if they are to achieve their mission.

2) The definition of religious bodies in Clause 10(2) seems to exclude schools, pre-schools, aged care facilities and hospitals, all of which we consider to be expressions of our ministry in Christ’s name.

The Presbyterian Church runs several such institutions in various states. In order for these institutions to be sustainable, they have a commercial aspect to their work. That does not exclude them from being legitimate expressions of the mission of the church.

As argued in the submission by the Anglican Church Diocese of Sydney, there is no reason why an organisation which receives payment for goods or services cannot have a religious purpose. Such a commercial activities test should be removed from the Bill.

3) It is not clear that the legislation would protect good faith expressions of moral teaching (such as on matters of sexuality, gender and marriage) which some might claim to be “vilification”, since Clause 41(2) does not define vilification. The Bill would be improved by having this term removed. The provisions to prohibit expression which “harass or incite hatred or violence” would sufficiently cover the necessary ground without risking unintended consequences.

Both in Australia and in other jurisdictions we have seen cases of complaints made against Christians for legitimate expression of Christian moral teaching. A case in point is that of a minister Campbell Markham and pastoral worker Andrew Gee in the Presbyterian Church of Tasmania who have faced action under the Anti-Discrimination Act (1998) in relation to blog posts and public preaching. Each incident involved expressions of traditional Christian sexual morality. While the

complaint was eventually dropped, it is not clear what the outcome would have been if the complaint had been continued. It should not be necessary for people to defend legitimate expressions of religious views before tribunals, not should they have to face the significant cost of doing so. The Federal Legislation should ensure that similar complaints will not be entertained.

4) The provision in Clause 8(3) for employers to limit expression of opinion by employees on the basis of “unjustifiable financial hardship to the employer” opens the way for powerful commercial interests to censor reasonable private expressions.

The case of Israel Folau is only too well known. We are more concerned about the possible impact on employees with far less profile who may find that they are instructed to refrain from expression of religious belief in public because an employer judges this to be a risk to the business.