Consolidation of Commonwealth Anti-Discrimination Laws

Submission to the Attorney-General's Department

by

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The Rationalist Society of Australia Inc. is the oldest freethought group in Australia, promoting reason since 1906. Members and supporters hold that all significant beliefs and actions should be based on reason and evidence, that the natural world is the only world there is, and that answers to the key questions of human existence are to be found only in that natural world. We seek to stimulate freedom of thought, support a secular and ethical system of education, promote the fullest possible use of science for human welfare, and encourage interest in science, criticism and philosophy as connected factors in a progressive human culture.

RSA generally welcomes the consolidation of the existing laws into a single Act to ensure the simpler and more consistent application of those laws across public life. However, there are three areas where RSA submits that the Exposure Draft (Draft) fails to meet the objectives that those laws were intended to fulfil. These are discussed below.

Workplace blasphemy laws

The combined effect of ss 17, 19 and 22 of the Draft is that a person unlawfully discriminates against another person if they "offend" or "insult" the religion of that person in the workplace. This attempt to expand the scope of discrimination is extremely concerning and appears to have no precedent in comparable democracies. In effect, it would amount to the introduction of blasphemy laws.

In raising and addressing this matter, RSA endorses the views of former Justice Jim Spigelman AO QC in his Human Rights Day address on the subject on 10 December 2012[1].

The object of the Act is to give effect to the human rights instruments set out in s 3 including, most relevantly in this context, the International Covenant on Civil and Political Rights (ICCPR). However, there is *no* specific right not to be offended or insulted under any of those instruments. Further, to expand the scope of discrimination in the way proposed would have a serious, limiting effect on freedom of expression, a human right that *is* explicitly recognised in ICCPR Article 19.

A person's religious beliefs, however genuinely and deeply held, can be entirely arbitrary as regards their subject matter. They may also be directly incompatible with Australian society's expectations of ordinary behaviour, the application of reason or well-accepted evidence. RSA supports religious pluralism. However:

- the entirely subjective, unlimited scope of what may lead to an "offence" or "insult"; and
- the effective prohibition of reasonable and constructive discussions about religious issues that happen to occur in the workplace that this would lead to,

makes the proposed expansion both entirely unreasonable and impractical.

RSA submits that the words "harassing" and "intimidating" contained in Draft section 19(2) are appropriate to capture the kind of serious and damaging conduct that merits protection in the workplace. The words "offend" and "insult" must be removed.

1 http://humanrights.gov.au/about/media/news/2012/132_12.html.

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Religious body exemptions

RSA notes the range of exemptions given to religious bodies under the Draft. Consistently with its support for pluralism, RSA is willing to accept exemptions that are strictly necessary in terms of core religious functions such as the training and appointment of priests or ministers of religion under Draft sub-s 32 (2). However, there is a strong policy case for ensuring that *all* institutions, whether religious or not, must comply with the law of the land. Thus, other than the example just referred to, RSA submits that there should be *no* statutory exceptions and that any organisation that wishes to be exempted from any aspect of the Act should be required to apply to the AHRC setting out why doing so would clearly be in the public interest.

RSA therefore strongly objects to proposed s 33 which affords religious bodies, including educational institutions operated by religious organisations, wide latitude to discriminate against others in what would otherwise be direct contravention of the human rights objectives of the Act.

There appears to have been no examination of the rationale for this exemption in the process of developing the Draft and no case for maintaining it has been given. Indeed, the introduction of the single exclusion under subsection 33(3) in relation to Commonwealth-funded aged care, while laudable, entirely begs the question of why the broader exemption should be continued in the first place.

Given the scale of operations of religious bodies across Australia, in particular, their significant roles as employers of lay people and in providing government-funded social services, this represents an appalling and unacceptable failure of public policy. The proposed exemption will continue to allow those institutions to discriminate unfairly against:

- potential employees, even where the job has nothing to do with the body's core religious functions; and
- those to whom the organisation provides social services —surely, it cannot be the Government's intention to allow religious bodies the right to decide who obtains taxpayer-funded social services and who does not?

RSA *strongly* submits that s 33 should be removed from the Bill. In the alternative, it should be a strict requirement that organisations that do not fully comply with anti-discrimination principles are ineligible to receive government funding for the carrying out of social services programs.

No equivalent protection for non-religious worldviews

Finally, RSA notes that, unlike religious beliefs, people who have *non*-religious worldviews are not afforded like protection under the Draft. This appears discriminatory on its face. It also highlights the irrationality of trying to draw a distinction between religious and non-religious worldviews for the purpose of justifying protecting only the former, in the first place.

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To illustrate this, one must examine how a "religion" is identified under Australian law. The views of the High Court in *Church of the New Faith v Commissioner for Pay-Roll Tax (Vic)*[2] *are normally relied upon where the key characteristics are described as:*

- a belief in a supernatural Being, Thing or Principle; and
- the acceptance of canons of conduct to give effect to that belief (though canons of conduct which offend against the ordinary laws are outside the areas of any immunity, privilege or right conferred on the grounds of religion).

Canons of conduct are not unique to the religious. All of us live our lives according to canons of behaviour, whether formally documented or not. Indeed, much of that behaviour we practice in common. Thus the essential criterion is a belief in a supernatural Being, Thing or Principle. But why should this criterion provide the basis for protection against discrimination under the law? Why aren't those who choose to navigate the world using an entirely natural framework that doesn't rely on such a speculative notion also afforded these rights? Either both worldviews should be protected or neither.

Should you wish to discuss any aspect of this submission, please contact Anthony Englund, RSA Committee member on

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2 (1983) 154 CLR 120.