

It is my view that this exposure draft is seriously faulty. If enacted, it would lack any democratic mandate for such enactment, and it would seriously curtail and restrict current important democratic freedoms essential to the functioning of a civilised and rational society, namely freedom of speech and the freedom to practice and espouse religious belief.

In any legislation potentially affecting freedom of religious practice and expression, those freedoms need to be explicitly proclaimed and asserted, not as “exceptions” but as central legal norms. No legislation can purport to make them, or the institutions or individuals exercising these freedoms, subject to any bureaucratic, juridical or non-parliamentary “review”.

Recent international developments, and our unsatisfactory national experience with tribunals and the judiciary with regard to protection of religious freedom in public commentary indicates that prescribing trigger conditions of a highly subjective nature (such as “offense” or “insult”) is extremely dangerous. Australian courts have no expertise or role whatsoever in determining whether particular exercising of non-violent religious freedom of expression or espousal is valid or not. This would in effect require a court to make a ruling on religious truth, in a situation somewhat similar to judgements about “truth” in libel cases.

It seems to me that there is a fairly clear anti-religious and anti-religious freedom agenda running here with regard to the draft legislation’s expansion of protected attributes into gender identity and sexual orientation. It is clear that both Christian and Muslim teachings (at very least) take very strong positions with regard to God’s views on fruitful and unfruitful human sexual relationships. There is a real risk under this draft that – for example – the public reading of certain parts of the Christian scriptures and exposition of these passages could come under attack from those who might feel offended. I have in mind here for example Romans chapter 1, especially verses 26-32. This would be a direct assault on the freedom to practice and proclaim religious truth. Likewise, debates between religious belief systems inevitably will lead to charges of one side or another “offending” others – by which they really mean disagreeing. This is part and parcel of the routine exercise of religious freedom, and the state has no place inserting itself as an arbiter here.

We have no need of our religious freedoms being eroded into a parody of, for example, oppressive Pakistani laws used to persecute Christians on the flimsiest of excuses. Suppression of freedom of religious practice and expression is traditionally one of the first tools of fascists or those holding totalitarian or personally anti-religious beliefs.

If there is any shifting of the onus of proof allowed anywhere in such draft legislation, it ought to be applied equitably so as to apply (for example) to complaints seeking unlawfully to restrict freedom of religious practice and expression. You cannot pretend to hold competing freedoms in balance if one freedom (from discrimination) is clearly preferred over another (freedom of religious expression and practice).

In summary, this is an extremely ill-advised and poorly conceived piece of draft legislation, with a dangerous political agenda. It has no place in a liberal democratic Australia, which has no need of a new form of Spanish Inquisition determining what forms of non-violent religious expression and practice are “true” or “not true”, approved or not approved. Religious freedom is not like libel law! Passage of such an instrument would reveal a government careless of key democratic freedoms and in particular moving to suppress freedom of religious belief and expression.