

I am deeply concerned and most unimpressed by the supposed minimal changes to the current Discrimination legislation. Ironically I see the proposed changes as achieving the very opposite to the intent of the Discrimination Law. The result will be greater religious discrimination against Christians in particular and other religions which have very strong religious beliefs about what is appropriate and inappropriate sexual behaviour and relationships.

### **My key areas of concern and recommendations:**

#### **1. ADDITIONAL ATTRIBUTES – ‘SEXUAL ORIENTATION’ AND ‘GENDER IDENTITY’**

The 'protected attributes' in the proposed Bill are:

Age, breastfeeding, disability, family responsibilities, gender identity, immigrant status, industrial history, marital or relationship status, medical history, nationality or citizenship, political opinion, potential pregnancy, pregnancy, race, religion, sex, sexual orientation, social origin.

The new attributes of '**sexual orientation**' and '**gender identity**' are of particular concern, along with the attributes of '**religion**', '**political opinion**' and '**marital or relationship status**' are all able to be abused by those intent on creating trouble.

**Recommendation: I want to see the new grounds of sexual orientation and gender identity and the other attributes - religion, political opinion, and marital or relationship status - removed from the proposed Bill.**

#### **2. APPLIES TO ALL AREAS OF LIFE!**

The proposed law has a very broad definition of discrimination - the Guide to Part 2-2 (Section 18, p35) states "In broad terms, discrimination is unlawful if it occurs in any area of public life."

**Recommendation: I believe that the Bill should only apply to very limited areas (such as employment) - not to all 'public life'.**

#### **3. DEFINITION OF DISCRIMINATION - "INSULT OR OFFEND"**

The Bill describes 'discrimination' as 'unfavourable treatment' (Section 19, page 36). The proposed law prohibits any conduct that offends or insults! In particular, Section 19(2) says:

"To avoid doubt, **unfavourable** treatment of the other person includes (but is not limited to) the following:  
(a) harassing the other person;  
(b) other conduct that offends, insults or intimidates the other person.

That means that any conduct /treatment of another person that is deemed to **insult or offend them** could be claimed as 'discrimination'! For example, a person who is insulted by a comment on their religion or political opinion or their sexual orientation or relationship status could make a discrimination claim of 'unfavourable treatment'.

**Recommendation: I want to see Section 19 (2) (b) removed. That is, please remove the words "(b) other conduct that offends, insults or intimidates the other person."**

#### **4. EXCEPTIONS**

This Bill contains a range of 'exceptions' that are not worth the paper they are written on!

**Exception: 'justifiable conduct'** - Section 23, page 40.

This says that the respondent must prove why his/her conduct was justifiable. That means proving the conduct was "in good faith, for the purpose of achieving a particular aim". The respondent also has to prove "that aim is a legitimate aim".

Such exception is very vague and broad. If the law is to exist it should cover narrow grounds with clear and defined exceptions.

**Recommendation: Please remove the exception for 'justifiable conduct'.**

**Exception: 'religion'** - Section 32, page 47.

This relates to the appointment of ministers or priests, and the participation by people in "any religious observance or practice". Churches can discriminate on some (but not all) attributes, including **sexual orientation, gender identity, and marital or relationship status**. Also on the grounds of age, breastfeeding, family responsibilities, potential pregnancy, pregnancy, religion and sex.

How are churches that follow the Word of God (The Bible) able to appoint ministers based on the attributes spelt out within the Bible which are at odds with a number of these attributes? And by not allowing a church to follow what the Bible says in choosing its leaders, are you not discriminating?

Section 33 deals with religious bodies and educational institutions. Exceptions apply to the attributes of gender identity, marital or relationship status, potential pregnancy, pregnancy, religion and sexual orientation. However, if a complaint is made, the respondent must be able to prove that ...

- (b) the discrimination consists of conduct, engaged in in good faith, that:
  - (i) **conforms to the doctrines, tenets or beliefs of that religion;** or
  - (ii) **is necessary to avoid injury to the religious sensitivities of adherents of that religion;**

It is important to note that if a complaint is made, the organisation has to defend themselves! It is this sort of wording that meant **Christian Youth Camps** (Phillip Island) and **Wesley Mission** (Sydney) had to spend time, and a great deal of money, in tribunals and courts arguing on matters of doctrine and 'religious sensitivities'. In both cases, the Christian organisations lost their cases - *Wesley Mission* won on appeal, whilst the *CYC* appeal is yet to be decided.

It is a huge burden for organisations to have to justify matters of doctrine in a regular court – a court is not the place to adjudicate on what constitutes doctrines and beliefs.

**Recommendation: I recommend that religious bodies have a broad ranging exception similar to that of Section 32, where all conduct attracts an exception.**

### **Exception: 'Aged Care'**

It is proposed that if a religious organisation or church runs an aged care facility, then they will NOT be allowed to discriminate on the basis of the stated attributes – and that includes sexual orientation, gender identity and marital or relationship status - Section 33, 3 (a).

"The exception will not apply to religious bodies if "the discrimination is connected with the provision, by the first person, of Commonwealth-funded aged care."

The Attorney General noted that this was because a homosexual couple or person would be living in 'their own home' in the aged care facility. However, that totally overlooks the fact that it is the home of the people who are already residents in the facility!

How long until that is extended to other institutions run by churches - such as schools, welfare, foster care, adoption or other 'services' funded by the government?

**Recommendation: Please remove Section 33 (3). That is, remove: "(3) The exception in subsection (2) does not apply if: (a) the discrimination is connected with the provision, by the first person, of Commonwealth-funded aged care; and (b) the discrimination is not connected with the employment of persons to provide that aged care.**

## **5. PROPOSED BILL REVERSES THE ONUS OF PROOF**

Normal court procedure places the onus on the complainant to prove their case. This proposed law reverses the onus of proof.

Once the complainant establishes a 'prima facie case, the RESPONDENT will have to PROVE their case as to why their conduct was JUSTIFIED. Section 124 (page 120) deals with reversing the onus of proof.

**Recommendation: Please remove Section 124.**

Sincerely,

Andrew Batts