

**Submission on Second Exposure Draft Religious Discrimination Bill**  
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1. These are my comments on the Second Exposure Draft of a *Religious Discrimination Bill 2019* (“RDB”) and associated legislation (the *Religious Discrimination (Consequential Amendments) Bill 2019*, and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.) I will generally refer to the second draft of the RDB, released for comment on 10 December 2019, as “RDB2”.
2. I am a legal academic working in the Newcastle Law School, at the University of Newcastle. I teach, among other courses, an elective on *Law and Religion* to upper level law students, and comment online on related issues at “Law and Religion Australia” <https://lawandreligionaustralia.blog> . The views expressed there and here, of course, are my own and not expressed on behalf of my University.
3. I support, and commend to the Government for their careful consideration, the submissions on the Second Exposure Draft made by the organisations Freedom for Faith and the Institute for Civil Society.
4. I did make a submission on the First Exposure Draft, a copy of which can be seen [here](#) on my blog. A number of concerns raised in that submission have been addressed in RDB2. However, where there are remaining concerns, I have flagged that briefly below, without going into detail in this submission.

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## General comments

5. I would like to start by commending the Government for bringing the Bill forward, and the detailed work and consultation that has gone on. Protection of religious freedom in Australia is an important task and providing protection against detrimental treatment being afforded to people and organisations in the community on account of their beliefs is a key part of that task. There is more that needs to be done, including discussions that will have to take place as part of the current ALRC inquiry into “Religious Exemptions in Anti-discrimination Legislation”. But this Bill is a vital first step.
6. I have provided an overview of my views on RDB2 in a blog post linked [here](#). But here I will summarise those comments under topical headings.

## Defining Religious Belief

7. At a number of points in the Bill it becomes necessary to state which religious beliefs will qualify for protection. The formula used in RDB2 is some variation on: “a belief that a person of the same religion as the first person could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion” : see cl 5(1), definition of *statement of belief* para (a)(iii). A similar phrase is used in cl 5(1) definition of *conscientiously object* para (b) referring to a “refusal” to provide a service and in cl 11(1) and cl 32(8)(b), 33(2)(b) relating to “conduct”.
8. The use of the “reasonably consider” test in RDB2 is an improvement on the wording in RDB1, which might have been taken to require a court or decision-maker to come to their own view as to whether a belief, a refusal, or conduct generally was objectively a “reasonable” implication of the relevant religious belief. But it seems that the current wording will still require “secular” decision-makers to refer to a “reasonable” member of a religious tradition, and this is contrary to a long history of Western courts and Parliaments declining to take upon themselves the authority to become “amateur theologians”.<sup>1</sup>
9. The best approach would seem to be to follow the example of the superior courts in Australia, the UK and Canada<sup>2</sup> and simply to provide that a person’s belief, refusal or conduct must be sincerely believed to derive from their religious convictions, or based on “a genuine conviction that the belief in question is in accordance with, or in furtherance of, the doctrines, tenets or teachings of the person’s religion”.
10. Of course, there may be cases where there is an attempt to rely on a purported religious framework which is a sham or a parody. But courts all over the world have had no real problem concluding, for example, that the so-called “Church of the Flying Spaghetti Monster” is a parody invented for argument, rather than being a true religion (see *Cavanaugh v Bartelt*)<sup>3</sup>. In the UK, the Charity Commission has ruled that the “Jedi Order” (based on beliefs from the fictional Star Wars universe) is not a genuine religion.<sup>4</sup>
11. Even where there is a genuine belief that a religious ethos requires certain behaviour, that alone will not guarantee the protection of the law for that behaviour. The RDB2 itself already reflects such limits, such as that contained in cl 28. That clause provides an over-riding exception to the other provisions making discrimination unlawful, where the discrimination relates to a person who has expressed (and continues to hold) a religious belief advocating or encouraging conduct that would amount to a “serious offence”. This phrase

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<sup>1</sup> A phrase used by Redlich JA in dissent in *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* (2014) 50 VR 256 at [573], quoting Rex Adhar and Ian Leigh, *Religious Freedom in the Liberal State*, Oxford University Press (2005), 164. For a paper expanding on the reasons for the reluctance of courts to decide theological issues, and the limited circumstances in which it is appropriate for them to do so, see Neil J Foster, “Respecting the Dignity of Religious Organisations: When is it Appropriate for Courts to Decide Religious Doctrine?” (2020) 47 *University of Western Australia Law Review* 175-219.

<sup>2</sup> See *Syndicat Northcrest v Amselem* 2004 SCC 47; *R (on the application of Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15; *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* (the *Scientology Case*) (1983) 154 CLR 120, where the sincerity of the adherents of Scientology was an important factor which weighted with the court. See the ICS submission for more detail on these cases.

<sup>3</sup> 12 April 2016; USDC for Nebraska, 4:14-CV-3183.

<sup>4</sup> See a note of the decision at <https://www.farrer.co.uk/news-and-insights/charity-commission-decision-the-temple-of-the-jedi-order/> (8 March 2018). See also T Cheung, “Jediism: Religion at Law?” (2019) 8 *Oxford Journal of Law and Religion* 350-377 for discussion of the issues.

means an offence involving harm or financial detriment with a penalty of 2 or more years' imprisonment.

12. Clause 28 is a good provision placing a sensible limit on protection of religious freedom. Other protections that relate to harmful speech are added in cll 8(5) and 42(2)(b) excluding protection for speech that would “harass, threaten, seriously intimidate or vilify another person or group of persons”. Given those limits, there seems no good reason to define what amounts to “religious belief” too narrowly. I **recommend** that where necessary it be defined as “a belief that the person is genuinely convinced to be in accordance with, or in furtherance of, the doctrines, tenets, beliefs or teachings of that religion,” with appropriate adaptations referring to “refusal” or “conduct” as needed. It may be wise for certainty to add a further qualification: “and where the asserted religion is not merely a fiction, sham or parody”.
13. Another issue that arises in defining protected beliefs is the exclusion under the definition of **religious belief or activity** in cl 5(1)(b) and (d) of religious activity that is not “lawful”. The addition in RDB2 of cl 5(2), which clarifies that an activity is “not unlawful” merely because prohibited by a local council by-law, is a good step. But the definition still, to a large extent, leaves prevention of religious discrimination by this Commonwealth law at the mercy of any State or Territory which decides to go its own way by enacting a prohibition on some behaviour to be accompanied by even the slightest penalty. This seems inconsistent with Australia’s clear international obligations under the ICCPR art 18 (concerning protection of religious freedom) and art 26 (prohibition against discrimination on the ground of, *inter alia*, religion to protect “all persons”).
14. If some limit is to be placed on the type of genuinely religious activity which may be protected, it would seem to be an appropriately high bar to adopt the definition of “serious offence” from current cl 28(2), noted above. I **recommend** that cl 5(2) be redrafted along the following lines: “For the purposes of paras (b) and (d) of the definition of **religious belief or activity** in subsection (1), (i) an activity is not unlawful merely because a local by-law prohibits the activity, and (ii) an activity is lawful except where the activity amounts to a serious offence within the definition of that term in subsection 28(2).”

## Who is protected by the Bill?

15. Some doubt has been expressed over the question as to who is protected by the Bill. The definitions of unlawful discrimination in cll 7 and 8 refer to discrimination against a “**person**” on the ground of the person’s religious belief or activity. The substantive provisions making discrimination unlawful in various spheres of activity apply generally for the benefit of “persons”- see eg cl 14(1) and similar provisions in cll 15, 20, 21, 22, 23, 24, 26, 27 referring to “another person”. On general principles, where the word “person” appears in Commonwealth legislation, then s 2C of the *Acts Interpretation Act 1901* (Cth) provides as follows:

### References to persons

(1) In any Act, expressions used to denote persons generally (such as "person", "party", "someone", "anyone", "no-one", "one", "another" and "whoever"), include a body politic or corporate as well as an individual.

(2) Express references in an Act to companies, corporations or bodies corporate do not imply that expressions in that Act, of the kind mentioned in subsection (1), do not include companies, corporations or bodies corporate.

16. This means that the word “person” should usually include not only “individuals” (which is the usual drafting style to refer to actual human beings) but will also include reference to corporate entities such as companies or incorporated associations.
17. It seems, however, that RDB2 is not so clear. In cl 16, for example, a prohibition applies to a “qualifying body” discriminating against “a person”. Does this mean that the body itself would not be a “person”? In cl 19 a similar pattern is at work where an “educational institution” is forbidden from discriminating against “a person”.
18. Clause 9 presents an interesting issue. It operates to extend the operation of the Act to a “person” who has an “association” with an “individual” who holds a religious belief. Here the use of the word “person” in clear distinction from the word “individual” seems imply that it must be intended to provide protection to a corporate entity. But does this mean that all other provisions where the two terms are not juxtaposed are *not* intended to protect corporate bodies?
19. The confusion is unfortunate. It is exacerbated by the fact that, while the First Exposure Draft of the Bill *did* include a definition of “person” in cl 5(1), although it merely pointed the reader to s 2C of the *Acts Interpretation Act*, for some reason this definition has been omitted from RDB2.
20. The Explanatory Notes provided by the Government for the Second Exposure Draft are also unclear. Para [65] makes it clear that the Bill is intended to *bind* corporate bodies as well as individuals: “the Act prohibits all discriminatory conduct, regardless of whether that conduct was engaged in by a natural person, body corporate or body politic”. But the following paragraph [66] concerning who is *protected* is less clear:

The Act is intended primarily to protect individuals from discrimination and does not envisage that non-natural persons, such as bodies corporate, will hold or engage in religious beliefs or activities. However, the Act does not preclude bodies corporate or other non-natural persons from being ‘persons aggrieved’ for the purposes of the AHRC Act in appropriate cases.

21. The statement that the Act is “intended primarily” to protect individuals is not borne out by the current drafting, which uses the wider word “person” regularly, not the narrower word “individual”. To say that the Act “does not envisage” that bodies corporate will hold or engage in religious beliefs or activities is again perhaps a personal opinion held by the drafter of the Notes but is by no means clear in the words of the Bill. The second sentence also sits oddly with the first, as the only way that bodies corporate can access the AHRC Act mechanisms is if they are actually protected by the Bill. Under s 46P (2) of the AHRC Act a “person aggrieved” can take action, and the word “person” there not being otherwise defined, it seems clear this would usually include corporate entities.
22. In short, there seems to be some tension between the words of the Bill and the statement in the Notes. Even if the Notes (as one imagines is envisaged) were to be adopted by the Minister as an “Explanatory Memorandum” for the Bill when introduced into Parliament, the courts have regularly warned against relying too heavily on such extra-Parliamentary documents where there is a clash with the words that Parliament has enacted.

23. To avoid the confusion and expensive litigation that may result before the matter is cleared up, I **recommend** that the Bill be amended to make it clear that the usual provisions of s 2C of the *Acts Interpretation Act* 1901 will apply, and that unless there is a clear exclusion of corporate entities for some special reason, clearly spelled out in the Bill, they will enjoy the protections afforded by the legislation. Particularly in the area of religion, where it is a common feature of all religions that believers join together in corporate bodies to live out their faith, it is vital that corporate religious entities be protected just as much as individual believers.
24. The issue of how to determine the “religious beliefs” of a corporate entity is raised by the Explanatory Notes. It may be wise to eventually provide a test of some sort to facilitate this: it could, for example, be framed along the following lines: “Where it is necessary for the purposes of this Act to determine whether a body corporate holds or engages in a religious belief or activity, regard may be had to (i) any statements of corporate purpose included within the incorporation documents of the body or included by reference within those documents; (ii) other publicly available statements made by senior management on behalf of the body; (iii) whether a course of conduct over a significant period of time demonstrates a commitment to a religious belief, or engagement in a religious activity, by the body as a whole.” Other matters that may need to be considered might be the size of the body and whether or not it is publicly traded or rather is “closely held” (to use the US terminology adopted in the *Hobby Lobby* decision.)<sup>5</sup> The precise terms of any such definition may need to be the subject of further consideration. In the meantime, there would be a number of “obvious” cases where it would be appropriate to provide protection to corporate entities- a small independent church which had been incorporated as an association, for example, or a small not for profit organisation whose incorporation documents made it clear it was set up for religious purposes. The possible application of the protections of the Bill to these entities ought not to be excluded by statements made in the explanatory material which go beyond the terms of the legislation, and the original clarifying definition of “person” ought to be restored.
25. As well as providing protections to religious persons from unfair discrimination, the Bill provides in cl 11 a general **protection to religious bodies** against claims of discrimination made by others, where such protection will allow the body to operate in accordance with its religious ethos. There is also a new provision in cl 9 of RDB2 providing protection against discrimination to persons “associated” with religious individuals.
26. Clause 11 is a good feature of the legislation, recognising the important general principle that religious bodies should normally be free to act in accordance with their faith commitments. Such bodies only come into existence because religious persons join together to further their shared faith. Just as a political party should be free to employ or preference those who share their political opinions, and a “not for profit” advocacy group should be free to employ or preference those who share their policy commitments, so religious groups

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<sup>5</sup> See *Burwell v Hobby Lobby Stores Inc* 134 S Ct 2751 (2014); 573 US (2014); issues in this area are helpfully canvassed in R Ahdar, “Companies as Religious Liberty Claimants” (2016) *Oxford Journal of Law and Religion*, available at SSRN: <https://ssrn.com/abstract=2791239>.

should be free to employ or preference those who will further the shared religious aims of the group.

27. Unfortunately, as a number of other submissions have pointed out, the present form of clause 11 is unduly complex and does not properly meet these goals for a large range of religious bodies. The exclusion of bodies who engage “solely or primarily in commercial activities” will potentially rule out a number of not-for-profit organisations which need to charge some amount for their services or goods to enable them to continue to carry out their religious purposes. The “back door” inclusion of protection for hospitals, aged care facilities and accommodation providers is achieved through specifically excluding them from being regarded as “religious bodies” under cl 11, and then giving them limited protections in relating to employment decisions and the offering of accommodation in clauses 32(8)-(11) and 33(2).
28. While this complex drafting technique may be understood by those who see the need for the policy outcomes, it may be doubted whether those outcomes justify the web of interlocking definitions needed to understand it. And the exclusion of some of Australia’s most obviously religious organisations from the definition of that term in cl 11 sends a very bad symbolic message about the value of the services provided by these respected bodies, and may indeed lead to unintended consequences for the future. For example, it would be quite possible that later legislation may simply cross-reference the Religious Discrimination Act to provide a definition of “religious body”, or that administrative guidelines with some other purpose may do so. Unless the later drafters are very careful, these important *actually* religious bodies will be left out of this definition, with unpredictable consequences.
29. The policy goal, apparently of not extending protections in the area of service provision to hospitals and aged-care centres, is also misconceived. Such bodies rarely exclude persons on the basis of their religious beliefs. Where this happens, such as an orthodox Jewish hospital which needs to provide kosher meals and whose limited resources cannot extend to all potential patients, most people would regard this as entirely justified. As other submissions have noted, in any event the drafting of the exclusion at the end of cl 11(5) needs to be attended to in cases where one overall religious organisation may provide a mix of different services. Even the apparently worthwhile inclusion in the definition in cl 11(5)(b) of “religious PBI’s” is, on examination, applicable to a very small group of organisations, given that the criteria for recognition of a “PBI” requires at the moment that the group not have a primarily religious purpose.
30. I *recommend* that the cl 11(5) definition of “religious body” be amended to reflect the reality of the operation of religious bodies in Australia. It ought to include faith-based schools (current para 11(5)(b)) but also all bodies which have the declared aim of advancing religion, all registered religious charities, and any other “not-for-profit” body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion. Special provisions in cll 32 and 33 noted above would no longer be necessary.
31. If the above recommendations are accepted it is not entirely clear whether **cl 9 protecting “associates”** would be needed. If it is retained, however, the nature of the relevant “association” required should be clarified: while the Explanatory Notes suggest that corporate body would be sufficiently “associated” with a member of its governing board, the drafting of the provision as it stands (using the words “near relative”) may suggest to a court that close family connection

or something similar is intended. Other submissions have also noted that the history of judicial criticism of the operation of the analogous provision of the *Disability Discrimination Act 1992* (Cth) suggests that other provisions of the Bill may need to be amended to clarify precisely how the protection of “associates” is intended to operate. (See *Eisele v Commonwealth*<sup>6</sup> and *Robinson v Commissioner of Police, New South Wales Police Force*<sup>7</sup>.)

## Who is bound by the Bill?

32. The Bill is clearly intended to bind both individuals and corporate employers and other corporate bodies. This will be made all the more certain if my recommendation above to re-instate the cross-reference to the *Act Interpretation Act 1901* is adopted. This is a good policy.
33. The only area where there is a more limited coverage of duty-holders comes in cl 8(3), the so-called “Folau clause”, through its application only to a “relevant employer”. This phrase is defined in cl 5(1) to be limited to employers with annual revenue of \$50 million or above which is not a government body or a body “established for a public purpose” under a law.
34. The operation of cl 8(3) is complex. It is not intended to operate as a “stand alone” principle that discrimination is allowed whenever the conditions of cl 8(3) are met. In fact, cl 8(3), as the Government explains its intention in Explanatory Notes, is designed to make it *harder*, not easier, for large employers to get away with draconian conduct codes imposing limits on employee speech which is motivated by religion. An employee who works for other employers can still rely on the analysis conducted under cl 8(2) in all cases of indirect discrimination to argue that the limits are not “reasonable”. Still, I join with other commentators who have expressed concern that this additional obligation is not imposed on large Government bodies as well. While a public authority may be able to demonstrate in many cases that it is “reasonable” for them to impose limits on public service speech, where such speech is directly connected with an employee’s obligations to members of the public, there will be other cases where a “blanket” rule restricting free speech will not be reasonable. Government bodies should be “model employers” in upholding free speech and religious freedom, and it seems fair that they should be held to a higher standard than small businesses.
35. I **recommend** in light of the above that the definition of “relevant employer” in cl 5(1) be amended to specifically include (rather than exclude) Governments and public bodies established by legislation (and for such bodies no threshold of turnover be prescribed); and that cl 8(3) be amended so that, while maintaining the current test for private employers, where a Government body is involved, an employer conduct rule will not be reasonable unless compliance with the rule by employees is necessary to avoid causing serious detriment to the ability of the Government body to provide services to members of the public.

## The limits of protection

36. I have already referred to the “reasonableness” analysis laid down in cl 8(2) for cases of “indirect discrimination”. The result of finding that the behaviour of a person in laying down a “condition, requirement or practice” was “reasonable”

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<sup>6</sup> [2018] FCA 15.

<sup>7</sup> [2014] FCA 407.

will be that the free exercise of religion of the person on whom the condition etc was imposed will be restricted in the interests of some other person or some other values. But art 18(3) of the ICCPR lays down a very strict and narrow set of criteria under which religious free exercise can be impaired:

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

37. A finding that a condition etc is “reasonable” is not as strict as a finding that the relevant condition is “necessary” to protect one of those limited set of other values. I **recommend** that the test under cl 8(1)(c) be reframed to say that there will be discrimination if the condition etc “is not necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. Under cl 8(2) the decision-maker should be instructed that in coming to a view on this issue, the factors listed there “may be taken into account” but that the “necessary” test remains the final criterion.

## Protecting religious free speech

38. Clause 42 establishes a good general principle that mere statements of belief do not, on their own, amount to “discrimination” under Commonwealth, State and Territory laws. In particular I commend the Government for the specific clarification that s 17(1) of the Tasmanian *Anti-Discrimination Act* 1998 will not be read to allow a simple statement of belief to be declared to be unlawful on the grounds that it may “offend” those who hear it.
39. At the moment no other State and Territory laws amount to such a direct attack on religiously motivated free speech as the Tasmanian s 17. But the potential for other “anti-vilification” laws to be interpreted broadly to undermine the ability to discuss religious views remains. In Tasmania, for example, another provision of the ADA 1998, s 19 (which is framed in terms similar to those used by other State and Territory vilification laws) was held in *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48 to make dissemination of views about sexual activity using language taken from the Bible, unlawful. It is of some significance that the “defence” provision in s 55 of the Tasmanian legislation, unlike similar legislation elsewhere in Australia, does not contain a defence relating to speech made in a religious context.
40. Clause 42 already sets out a Federal standard for speech which will not be protected, in sub-cl 42(2). This includes speech which would “vilify”, carefully defined in cl 5(1) of RDB2 to mean “incite hatred or violence”. In light of this protection, there is no need to continue to allow “vilification” laws in the States and Territories, subject to differing wording and possibly idiosyncratic interpretation in different jurisdictions, to interfere with religious freedom. I **recommend** that cl 42(1)(a) provide that statements of belief *per se* do not “constitute discrimination or vilification for the purposes of any anti-discrimination law (within the meaning of the *Fair Work Act* 2009) or any other law relating to vilification.” The additional clause is intended to pick up laws such as the Victorian *Racial and Religious Tolerance Act* 2001, which is a “stand-alone” vilification law.

## Conscientious objection by health practitioners

41. The provisions in subclauses 8(6) & (7) are designed to operate in the context of an indirect religious discrimination claim by a health practitioner who has a religious conscientious objection to the provision of a health service. Subclause 8(6) operates where there is a State or Territory law allowing conscientious objection, and is apparently aimed at the situation where, despite that law, an employer or other person engaging the health practitioner requires them to provide a “particular kind of health service” against their belief. The effect of the subclause is to ensure that, in a claim of indirect discrimination, such a condition etc would not be reasonable.
42. There are a number of unanswered questions here. Why, for example, would it be likely that where a law of the relevant State or Territory allows a conscientious objection, someone in that jurisdiction would nevertheless be seeking to impose an objectional condition contrary to that law? But the main problem with the provision (and this is brought out in the “Notes” to the clause) is that it fails to take into account the full range of circumstances where a health practitioner may have a religiously based objection to providing a health service. The most obvious examples where problems may arise are euthanasia, abortion, contraception and “gender transition” procedures. In some of those cases the “kind of service” will be the same, whoever asks for it- such as euthanasia. But in others religious beliefs may say that a type of procedure is only morally acceptable depending on the characteristics of the recipient. A religious health practitioner may find it unacceptable to offer contraception services to an unmarried patient, whereas they would offer such services to a heterosexual married couple.
43. This then raises issues under the *Sex Discrimination Act* 1984. As RDB2 currently stands it seems that a practitioner could not mount a claim for indirect discrimination where their decision would be unlawful under another Commonwealth Act, due to the cl 5(1) definition of “religious activity” applying only to “lawful” activity. This issue is one that should be considered by the ALRC in its analysis in 2020 of the religious protection provisions applying under the SDA and other discrimination laws.
44. Under subclause 8(7) it is assumed that the relevant State or Territory law does not provide for religious conscientious objection. In that case the operation of this provision will allow a claim for indirect discrimination if a religious practitioner were required to carry out procedures they object to, unless the rule is “necessary to avoid an unjustifiable adverse impact” on two questions. The second question is of course clearly correct- the impact on the health of the prospective patient must be evaluated. But the first paragraph, cl 8(7)(a), seems odd. It requires the over-riding of the practitioner’s conscience if it would affect the ability of the imposer of the condition etc “to provide the health service”. Even in a situation where alternative service providers were easily accessed by the patient, this paragraph will require an over-ride of a conscientious objection. This seems to weigh too heavily against the freedom of conscience of the practitioner simply to apparently preserve “market share” of the provider.

## The Religious Freedom Commissioner

45. Part 6 of the Bill sets up a Freedom of Religion Commissioner. This seems a positive initiative. While such a person need not come from any specific

religious tradition, it would seem to be wise to add to the requirements set out in cl 46(4) that the person be able to demonstrate a genuine understanding of the issues affecting religious groups generally and religious freedom in particular.

### A note on charities

46. Other submissions have raised the question of the protection provided to charities under the cognate *Human Rights Legislation Amendment (Freedom of Religion) Bill*. Schedule 1, item [4] amends the *Charities Act 2013* to clarify that a charity will not be found to be acting for a “disqualifying purpose” simply because it has the “purpose of engaging in, or promoting, activities that support a view of marriage as a union of a man and woman to the exclusion of all others, voluntarily entered into for life.”
47. While this is a good amendment, in light of the recent New Zealand decision in *Family First New Zealand* [2018] NZHC 2273 holding that advocacy for the “traditional” family model could not be said to provide a “public benefit”, and that “public benefit” is a separate test under the Australian 2013 Act, it should be provided that advocacy of this sort will be presumed to be of public benefit. Such a provision could be added to s 7 of the Act, which presumes other activities to be for the public benefit.
48. I am grateful for the opportunity to provide comments on the Bill and would be happy to expand further on any of these points if that were thought helpful.

Neil Foster  
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