



MUSLIMS AUSTRALIA

AUSTRALIAN FEDERATION OF ISLAMIC COUNCILS INC.

The Peak body for Australian Muslims representing State & Territory Islamic Councils and Societies

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01 October 2019

Attorney-General's Department
Human Rights Unit, Integrity Law Branch, Integrity and Security Division
3-5 National Circuit
Barton, ACT 2600

Via email: FoRConsultation@ag.gov.au

Dear Sir/Madam,

Re: *Religious Discrimination Reform Package*

The Australian Federation of Islamic Councils (AFIC) is the peak representative body of the Australian Muslim community. AFIC is comprised of 9 State and Territory Councils representing over 200 member organisations nationally.

On behalf of our State & Territory Councils, member organisations and the Muslim community we hereby attach a submission in response to the Attorney-General's call in relation to the proposed Religious Discrimination Reform Package.

We would be pleased to discuss any issues arising from our submission or provide any additional information that the Attorney-General may require.

Kind regards

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President – Australian Federation of Islamic Councils

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**EXPOSURE DRAFT OF THE
RELIGIOUS
DISCRIMINATION BILL 2019**

A SUBMISSION TO THE ATTORNEY
GENERAL'S DEPARTMENT

Human Rights Unit, Integrity Law Branch, Integrity and Security Division

OCTOBER 2019



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INTRODUCTION

1. The Australian Government released, and invited submissions on, a legislative package aimed at reforming the law in relation to Religious Freedom. This package of legislation includes:
 - Religious Discrimination Bill 2019
 - Religious Discrimination (Consequential Amendments) Bill 2019
 - Human Rights Legislation Amendment (Freedom of Religion) Bill 2019.
2. These reforms represent the Government's response in relation to the findings of the Ruddock Expert Panel published in its Report on Religious Freedom Review. That Review made 20 recommendations in relation to the area of Freedom of Religion and the Government, in its response, directly accepted 15 of those recommendations with the balance being referred for further consideration.
3. AFIC made a submission to the Religious Freedom Review. In that submission AFIC made the following recommendations:

1. *In summary we respectfully submit to the Inquiry the following matters:*

- a. *That there is no positive right to religious freedom under any Australian legislation or in the common law.*
- b. *S.116 of the Australian Constitution imposes a restriction on the rights of the Commonwealth to legislate but this has been interpreted very narrowly by the High Court and does not provide a positive protection for the exercise of religious freedoms.*
- c. *There are currently no restrictions on any State or Territory to pass laws that would impinge on a person's right to religious freedom.*
- d. *The right to religious freedom is balanced against many other rights including:*

i. Employment

ii. Access to goods and services

iii. Anti-discrimination

The balance in those areas is generally right however this is not protection in and of itself of the right to religious freedom.

- e. *In other areas however, such as freedom of speech, there is a case for reviewing the current balance that has led to considerable incitement against and vilification of particular religions. In those cases the right to freedom of religion has been missing.*

2. *We encourage the Inquiry to recommend that the Commonwealth legislate to give effect to Australia's obligations under the UN Universal Declaration of Human Rights and the ICCPR. The preferred form of that legislation should be by way of a Bill or Rights that is based on the Canadian and New Zealand Models. In the alternative, if a Bill of Rights is not possible, then we urge the Inquiry to accept the previously proposed recommendation of the AHRC for the enactment of a Religious Freedom Act.*
3. We note that the substantive recommendation in our original submission, the introduction of a general Bill of Rights as outlined above, was not taken up by the Expert Panel and as such was not formally addressed by the Government in its response.
4. However, we wish to reiterate that this continues to be our primary submission in this matter i.e. that the protection of Religious Freedom and the balancing of all Human Rights is best dealt with under a general Bill of Rights. While the proposed legislative framework subject of this consultation process is welcomed it does not, we believe, address the issues as fully as they otherwise could have been under a Bill of Rights.
5. We note that the Government has put forward a package of reforms as part of its response to the Review. It explains them as¹:
 - a. *The Religious Discrimination Bill will provide comprehensive protection against discrimination on the basis of religious belief or activity in specified areas of public life.*
 - b. *The Religious Discrimination (Consequential Amendments) Bill 2019 will make consequential amendments necessary to implement the Religious Discrimination Bill.*
 - c. *The Human Rights Legislation Amendment (Freedom of Religion) Bill 2019 will amend existing Commonwealth legislation to better protect the right to freedom of religion.*
6. The substantive reforms are in the Religious Discrimination Bill itself and this is what we propose to respond to. Any matters raised that relate to areas covered by the consequential legislation should be read as relating to those Bill's as well.

GENERAL

7. Overall AFIC is supportive of the measures that the Government has proposed in the reform package. Our principal submission in relation to the introduction of a Bill of Rights is still the preferred approach but until that is further considered by Government the measures outlined in the proposed legislation are by and large supported except as otherwise noted in this paper.

¹ <https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx> accessed 23.09.19

ISSUES

8. This submission will cover the following issues:
 - a. The Positive Right to Religious Freedom
 - b. Indirect Discrimination;
 - c. Commercial Activities of Religious Bodies
 - d. Expressions of Statements of Belief
 - e. Vilification

THE POSITIVE RIGHT TO RELIGIOUS FREEDOM

9. In its summaries and explanatory notes relating to the legislative package the Government has clearly stated that these reforms are aimed at preventing discrimination based on religious beliefs or activities, or the absence of such, and are not meant to create a positive right to religious freedom.²
10. We respectfully submit this falls short of what is needed in this area. To legislate against the discrimination of individuals based on their religious beliefs or activities, while admirable, is not enough. In an ever evolving political, and public narrative, around the balancing of competing rights, in the absence of a positive right to religious freedom; people of faith will always have their rights at risk of being considered subservient to other rights where such a clash occurs.
11. We support completely the appropriate balancing of rights such that no individual is prevented from living their lives in a manner that is consistent with their personal values and ethics provided they do not impinge on others or the greater good of the community as a whole. But in the balancing of such competing rights the absence of positive right to religious freedom is problematic.
12. Article 18 of The *Universal Declaration of Human Rights*, which was proclaimed by the United Nations in 1948 as ‘a common standard of achievement for all peoples and all nations’, states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
13. These rights are also recognised in the *International Covenant on Civil and Political Rights*, which was adopted by the United Nations in 1966. Australia ratified this Covenant in 1980. Therefore, the Australian Government has obligations under this covenant to respect and protect the civil and political rights of individuals. Article 18 of the Covenant states:

² <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/summary-document-religious-freedom-reforms.pdf> Accessed 23.09.19

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion that would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *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.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

14. The above declarations and covenants are broad and far-reaching and the UN itself has warned against their limitation and the discrimination of religious minorities generally.³ Given that Australia has ratified the ICCPR, the rights articulated in that Covenant should therefore be the starting point for any consideration of religious freedom in this country.

15. The right to hold religious beliefs is absolute and without limitation in the ICCPR. A person's right to hold a religious belief or ethos is unquestioned and should be without any limitation or interference. Without legislation to give effect to the subject matter of such conventions, their applicability is often a matter of dispute and conjecture.

16. It is our submission, therefore, that the Government should either place a provision in this draft Bill that enshrines this positive right to Religious Freedom, as the basis for the legislation, or revisit its position vis-à-vis the introduction of a separate Bill of Human Rights.

INDIRECT DISCRIMINATION & "RELEVANT EMPLOYERS"

17. The proposed legislative framework, in its approach to both direct and indirect discrimination, is by-and-large consistent with other anti-discrimination legislation and is generally supported. However, there are specific areas that we wish to make further comment as outlined below.

18. S.8 lays out the proposed provisions in relation to indirect discrimination with the general provisions in sub-section 1 and sub-section 2 then proposing those matters that would be considered in determining whether or not an employer rule would be considered reasonable in all

³ <https://www.humanrights.gov.au/freedom-thought-conscience-and-religion-or-belief>

the circumstances. One of those matters being the *“the extent to which the rule would limit the ability of an employee of the employer to have or engage in the employee’s religious belief or activity.”*⁴

19. Proposed section 8(3) then covers specifically employment rules that relate to the making of statements of belief by an employer outside of their work and states that for a ‘relevant employer’ such conditions would be considered unreasonable unless the relevant employer can be establish financial hardship that would arise from such actions. A “Relevant Employer” is proposed to be defined as an employer with a gross annual revenue of over \$50M.
20. What the proposed rules would lead to is a situation where the exact same employment rules would be reasonable if imposed by an employer with an annual turnover of less than \$50M but unreasonable if imposed by an employer with a turnover of more than \$50M. In the first case an employee will be restricted from making statements of belief outside the work practice but in the second case the employee will not – with the only distinguishing feature being the size of the employer in terms of their finances.
21. While the added requirement for ‘large’ employers seems admirable we do not accept that it will in practice add any significant protection for the majority of people:
 - a. According to the ABS over 93% of businesses have a turnover of less than \$2M p.a.⁵
 - b. In 2016, 97% of businesses employed less than 20 people.⁶
 - c. In 2014, approximately 70% of all workers were employed by the SME sector.⁷
22. We would suggest that in terms of employment practices and discrimination that large business are, by and large, more mature in their practise than smaller ones and are better able to adequately manoeuvre their way through these complex areas. Smaller business are less sophisticated and have less access to advice and support in these areas and are more likely, we would suggest, to have problematic practices. We are not convinced that the distinction between large and small employers, in the area of discrimination, is either a valid or appropriate one. The rules, regardless of what they ultimately are, we submit should be the same for all employers.
23. In the field of employment law there are already well established principles to determine when an employer can or cannot take action against an employee for conduct outside of work hours. It is not our intention to canvass these in detail however some important principles should be noted:
 - a. “It is only in exceptional circumstances that an employer has a right to extend any supervision over the private activities of employees.”⁸

⁴ Draft Exposure Bill Section 8(2)(d)

⁵ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0> Accessed on 23.9.19

⁶ https://www.asbfeo.gov.au/sites/default/files/Small_Business_Statistical_Report-Final.pdf Accessed on 23.9.19

⁷ https://www.asbfeo.gov.au/sites/default/files/Small_Business_Statistical_Report-Final.pdf Accessed on 23.9.19

⁸ Appellant v Respondent, Print R1221 (AIRC FB, MacBean SDP, Duncan SDP, Deegan C, 1 February 1999), [(1999) 89 IR 407 at p. 416].

- b. The out of hours conduct must have a relevant connection to the employment relationship.⁹
24. Those principles do, and should, relate to all employers equally regardless of size. The courts and tribunals are well placed to take into account any relevant circumstances arising from the size of the employer and the potential financial hardship that a business may suffer would be a factor that is relevant in determining the link between the conduct and the employment relationship. It is hard to envisage a scenario where an employer could establish financial hardship but not a connection to the work relationship.
25. In relation to the proposed legislation, we respectfully submit that the threshold test should be the ability of an employer to link the statements of religious belief to the employment relationship. Only if the employer is able to do this should the assessment of the conduct rules be made to determine whether they are reasonable or not and, in that assessment, the financial impact on the employer, regardless of size, should be considered. If the employer is unable to establish the connection with the employment relationship then such rules should be considered unreasonable regardless of any other consideration, financial or otherwise.

EXPRESSIONS OF STATEMENTS OF BELIEF

26. The treatment of statements of religious belief outside of work is further dealt with in s.8(4) which appears to remove the protection afforded to such statements in certain circumstances. The explanatory memorandum to the legislative packages notes¹⁰:
- a. *Subclause 8(4) clarifies that clause 8(3) does not apply to statements which are malicious, would harass, vilify, or incite hatred or violence against a person or group, or which advocate for the commission of a serious criminal offence. These provisions acknowledge that employers may legitimately restrict their employees' religious expression where it may cause harm to a person, group of persons or the community at large.*
27. In effect the combination of these two sub-sections would then allow an employer, regardless of their size, to have conduct rules that prevent an individual from making statements of belief outside of the workplace where such statements are 'malicious'. The additional arms of this sub-section relating to 'harass, vilify, or incite' will be dealt with later in this submission.
28. What the term 'malicious' means or how it is determined if such statements of belief are made with this intent is unclear. This same concept arises again in relation to s.41 of the proposed Bill

⁹ Rose v Telstra Corporation Limited, Print Q9292 (AIRC, Ross VP, 4 December 1998); see also Kedwell v Coal & Allied Mining Services Pty Limited T/A Mount Thorley Operations/Warkworth Mining [2016] FWC 6018 (Saunders C, 9 September 2016) at para. 104.

¹⁰ Explanatory Notes – Religious Discrimination Bill par.132

which outlines types of statements of belief that do not constitute discrimination. The explanatory notes to that section state¹¹:

- a. Subclause 41(2) provides that subclause 41(1) does not apply to certain statements which are malicious, would harass, vilify or incite hatred or violence against a person or group or which advocate for the commission of a serious criminal offence. This subclause provides a safeguard to ensure that harmful religious expression is not protected by this provision.
 - b. Paragraph 41(2)(a) provides that subclause 41(1) does not apply to statements that are malicious. This is in addition to the good faith requirements contained within the definition of statement of belief in subclause 5(1). Accordingly, statements which are made with ill will or improper intention, such as to spite, hurt or harm another person, will not fall within the protection of subclause 41(1)
29. The important point to note here is the second paragraph above which seems to indicate that a statement of belief must both be held in good faith AND not be malicious. It is relatively straight forward to picture how an individual may establish that the statements are based on beliefs held in good faith by reference to religious texts and doctrines etc but how will the intention be determined? Will a statement by an orthodox Christian that homosexuals will go to hell be considered malicious? The belief may very well be held in good faith but would clearly have the potential to be offensive or upsetting to members of the gay community. Will that be enough to classify it as malicious? What if the comment was directed at an individual rather than the collective group? In being more personal would that make it malicious?
30. The stated objective to ensure that spite and ill-will are removed from public debate is admirable, and we support this stance, however we submit that a greater level of consideration should be given to this notion of 'malicious', what it means and how it will be determined before this Bill is enacted.

COMMERCIAL ACTIVITIES OF RELIGIOUS BODIES

31. The proposed Bill provides an exception to Religious Bodies for actions undertaken in good faith based on their religious beliefs or tenets. This exception however does not extend to bodies that have been established for commercial or principally commercial activities even if they are owned by a Religious Body. We agree with this general position in that purely commercial activity should be protected under the guise of a religious affiliation.
32. However there are scenarios that we submit need to be clarified and included in the exception. A Religious Body may establish what would otherwise be considered a commercial activity but

¹¹ Explanatory Notes – Religious Discrimination Bill par.425-426

which is done so purely for the benefit of its congregation and is located in such a way that it is clearly a part of the Religious Body's physical structures. It may however be accessible to the general public or have been established as an independent commercial entity for a range of reasons. This may include such things as:

- a. A child care centre that is an independent entity from a religious school but is owned by the religious school. It is located adjacent to the religious school and is principally to provide before and after school care as well as general day care for the parents of students enrolled in the school.
 - b. A café or restaurant that is located within or adjacent to a place of worship and is clearly identifiable as being a part of or affiliated to that place of worship.
 - c. A community hall that is available to be hired out by members of the public but is a part of a site that principally holds a place of worship and is considered to be a part of the general location identified with that place of worship.
33. In all of the above scenarios there may be various reasons why such a commercial activity is established as a separate legal entity to the religious body itself but is clearly a part of that body due to both its physical location, in reference to the religious body, as well as its identity and branding.
34. We submit that the definition of Religious Body, and the exception accorded to them under s.10 of the proposed Bill, should be extended to include any commercial activity that has been established by that Religious Body, is situated in such a way as to be such proximity to the Religious Body that a reasonable person would understand that it was connected to and a part of that Body and bears such name and branding that a reasonable person would understand that it forms a part of the religious body.
35. While commercial activities should not be provided with protection under the Act those activities, that may be commercial, but which a reasonable member of the public would in all the circumstances clearly understand that they are part and parcel of services provided by a religious body and that are part of a hub that includes the non-commercial activities of the religious body should be protected.

VILIFICATION

36. We firstly note that the general vilification against people based on their religious beliefs and activities is not something that is explicitly covered by the reforms. There are references within key sections that mention vilification, harassment and incitement but they do not raise an action against such behaviour.

37. As mentioned above s.8(4)(b) makes reference to this. It states:

(4) Subsection (3) does not apply in relation to a statement of belief:

(a) ...

(b) that would, or is likely to, harass, vilify or incite hatred or violence against another person or group of persons; or

(c)

38. And it is again raised in s.42. In reference to statements that would otherwise not be discrimination under s.41, it states that:

(2) Subsection (1) does not apply to a statement:

(a) ...

(b) that would, or is likely to, harass, vilify or incite hatred or violence against another person or group of persons; or

(c) ...

39. In both cases the reference to harassment and vilification is in relation to statements that would otherwise be protected not to be afforded that protection where they would harass, vilify etc. There is no positive protection in the proposed bill against harassment and vilification generally on the grounds of religion.

40. As mentioned this is not surprising given that the legislation is framed as part of the anti-discrimination regime. To, therefore, not have provisions protecting against vilification generally is understandable. However, this raises an anomaly in the overall legislative framework for the protection of religious freedom.

41. With the exception of the Victorian Racial & Religious Vilification Act 2001, no legislation governing vilification in fact covers vilification on the grounds of religion as separate to race. Unless adherents to a religion can also mount an argument that such adherence amounts to a racial identity as well, such as with members of the Jewish community, they are unable to seek the protection and redress under these legislative frameworks.

42. Even if they could however, as the Victorian legislation provides, the practical application of such protection, as the historical use of the Victorian legislation would suggest, is both problematic and ineffective. It was only in 2017 that any criminal charges were laid under this regime. The *Catch the Fire Ministries* case¹² is a telling example of the difficulty of bringing any action under such laws.
43. It may be argued by some that behaviour like that complained of in the *Catch the Fire Ministries* case does not prevent someone from holding their religious beliefs or from practicing their religion. At an individual level this may be correct, there is no one physically preventing an individual from certain beliefs or practices, but this ignores the impact at a more macro or societal level.
44. It is unquestionable in our submission that Australian society has become more intolerant of minorities, and religious minorities specifically, over the last 2 decades. That intolerance we would submit has led to an increased level of discrimination, which may or may not have redress under existing laws, and incitement that has no practical redress at all. In the Muslim context there is now a growing body of evidence to support this increased intolerance towards Muslims and their beliefs and practices. Briskman¹³, in 2015 article, notes:

“In Camden, just outside Sydney, in 2007, pigs’ heads adorned with the Australian flag were placed at the site proposed for an Islamic school (Kruger 2007; Al-Natour 2010). In 2011, a campaign was run to bar a Muslim prayer group from using a community house in the Melbourne suburb of East St Kilda for one hour per week (AJDS 2011). In mid-2014, there were vocal objections in the regional Victorian city of Bendigo about the building of a mosque. Opponents said that a mosque would bring violence to Bendigo and the city would be overtaken by Sharia law. Said one protester: ‘If you’re Muslim and you want a mosque, go back to the Middle East. This is Australia’ (ABC News 2014a).

Visibly Muslim women suffer immeasurable hurt through condemnation of their religion and religious symbolism. As in Europe, debates about covering for women have reached hysterical proportions, with a recent furore in Australia centring on whether burqas should

¹² [Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc \[2006\] VSCA 284; 15 VR 207](#)

¹³ Linda Briskman: The Creeping Blight of Islamophobia in Australia, [www.crimejusticejournal.com](#) IJCJ&SD 2015 4(3): 112-121

be banned in Parliament House in Canberra. The well-researched report by the Australian Human Rights Commission (AHRC 2011) told of discrimination against wearing the hijab in employment and education settings, as well as negative reactions from the public generally. There are fears that such reactions will increase, and not just verbal insults. In October 2014 a Muslim woman was attacked in a suburban shopping centre with taunts of: 'You Muslims, go back to where you came from'. After being pushed to the ground by her assailant she suffered a broken arm. In another incident a woman wearing a hijab was pushed down the steps of a tram where she hit a metal barrier injuring her knee (Millen 2014).

Hate speech has been allowed to flourish and there is arguably a fine line between language and physical violence (Poynting and Perry 2007). Alarming, in 2013, right-wing Dutch politician Geert Wilders was permitted to visit Australia at the behest of the anti-Muslim Q Society. Wilders is a canny politician. Upon realising that his audience was on side, his anti-Muslim fervour reached a disturbing crescendo as he emphatically called for bans on Muslim immigration, cessation of mosque building and conversion of Muslims. He proudly proclaimed the superiority of 'our culture' over theirs. Attending this event I found the atmosphere chilling where in cult-like zeal reminiscent of a Nazi rally, the audience rose, applauded and cheered his call to stand together so Australia would not be swept away by the rising tide of Islamisation."

45. Data from the Scanlon Foundation Mapping Social Cohesion Report in 2017 supports this phenomenon. The Report Author, Professor Andrew Markus, said "There are continuing relatively high levels of negative feeling towards Muslims, and a close examination of survey responses indicates an increase, albeit of less than ten percentage points, of those indicating strong negative views.¹⁴
46. The above is provided as context for the discussion on just how 'free' some religious minorities are to practice their religion. In the Muslim context, a public environment where there is an increasing negative rhetoric on many, if not all, aspects of Muslim beliefs and practices, impacts on the freedom of Muslims to practice their religion in public.
47. This may not be in the sense that there are laws that prevent them from doing so but there has arisen an environment where people, who would enact such laws if they could, feel empowered to make the public displays of such religiosity uncomfortable at best and physically dangerous in

¹⁴ http://scanlonfoundation.org.au/research_surveys/2017/

some cases. Referring to such people, the Islamophobia in Australia 2014-2016 report notes that “The danger of these groups is that they may subtly push the normative boundaries in the public and political discourse around the place of Islam and Muslims in Australia”¹⁵

48. The importance of safe guarding the rights of people to practice their religion becomes paramount in such an environment in our submission. We respectfully submit that it is open and available to the Government to redress this issue as part of this reform package.
49. The simplest way to address this would be to replicate the vilification provisions of the Racial Discrimination Act (Cth) 1975 in this proposed Religious Discrimination Act. The explanatory material to the reform package repeatedly highlights the need to ensure that statements of belief that are malicious, harass, or incite people to commit serious offences should not be afforded protection. This is a position that we support unreservedly.
50. If such statements are not deserving of protection under the exceptions of the proposed reforms then why, one would ask, are they not worthy of being statements that people of religion are protected from generally? S.18C of the Racial Discrimination Act 1975 states:

It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

51. Other provisions of that Act, such as s.18D, then provide defences and exemptions to the above. It is our submission that there is no barrier to enacting a similar set of provisions in the proposed reforms and in fact the Government should do so.
52. We have also had the benefit of being consulted, and having input into, the Joint Submission of Muslim organisations that deals solely with this issue of vilification. We support generally the contents of that submission.
53. In relation to the proposal outlined above, in the event that Government is not amenable to such an approach, then we support the alternative proposal outlined in the Joint Submission of Muslim organisations.
54. This issue of vilification of people of faith generally, and the protections afforded against it, is of vital importance to our social fabric. We urge Government in the strongest terms to find a workable solution to this issue that balances the competing rights of people of faith and others.

¹⁵ http://www.deakin.edu.au/_data/assets/pdf_file/0006/1075164/Islamophobia.pdf, p.16

CONCLUSION

55. As stated at the outset of this submission AFIC is generally supportive of the measures that the Government has proposed in the reform package. We have outlined matters that we believe require further clarification or specific additional reforms to properly ensure that Religions Freedom in this country is protected and that individuals are neither discriminated against for their religious beliefs or practices and additionally are subjected to harassment, vilification or incitement of hatred towards them based on their religious beliefs or practices.
56. In summary AFIC makes the following recommendations:
- a. The Government should either place a provision in this draft Bill that enshrines the positive right to Religious Freedom, as the basis for the legislation, or revisit its position vis-à-vis the introduction of a separate Bill of Human Rights.
 - b. In relation to the ability of employers to have rules governing the conduct of workers outside of work hours, we respectfully submit that the threshold test should be the ability of an employer to link the statements of religious belief to the employment relationship. Only if the employer is able to do this should the assessment of the conduct rules be made to determine whether they are reasonable or not and, in that assessment, the financial impact on the employer, regardless of size, should be considered. If the employer is unable to establish the connection with the employment relationship then such rules should be considered unreasonable regardless of any other consideration, financial or otherwise.
 - c. We submit that a greater level of consideration should be given to this notion of ‘malicious’, what it means and how it will be determined before this Bill is enacted.
 - d. We submit that the definition of Religious Body, and the exception accorded to them under s.10 of the proposed Bill, should be extended to include any commercial activity that has been established by that Religious Body, is situated in such a way as to be in such proximity to the Religious Body that a reasonable person would understand that it was connected to and a part of that Body and bears such name and branding that a reasonable person would understand that it forms a part of the religious body.
 - e. We submit that the Government should replicate the vilification provisions of the Racial Discrimination Act (Cth) 1975 in this proposed Religious Discrimination Act or in the alternative the proposal contained in the Joint Submission of Muslim organisations on vilification.

The Australian Federation of Islamic Councils

Incorporating:

The Islamic Council of the ACT

The Islamic Council of the Christmas and Cocos Islands

The United Muslim Council of New South Wales

The Islamic Council of the Northern Territory

The Islamic Council of Queensland

The Islamic Council of South Australia

The Islamic Council of Tasmania

The Islamic Council of Victoria

The Islamic Council of Western Australia

The Australian Federation of Islamic Councils is the peak body of the Muslim community of Australia representing over 200 member organisations nationally.