

25th September 2015

Mr Tim Wilson
Human Rights Commissioner
Australian Human Rights Commission

By email: rights@humanrights.gov.au



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DIVERSITY
COUNCIL
AUSTRALIA

Dear Commissioner,

Please find following Diversity Council Australia's views in response to the Commission's call for submissions in the lead up to the inaugural meeting of the Religious Freedom Roundtable to be held in November this year.

As you are aware, DCA is the independent, non-profit workplace diversity advisor to nearly 300 organisations across the private and public sector – many of whom are among Australia's largest and leading diversity employers. DCA is a business council whose member organisations are estimated to employ more than one million Australians, representing around 10 per cent of the Australian workforce.

In partnership with our member organisations, our mission is to:

- Lead debate on diversity in the public arena;
- Develop and promote the latest diversity research, thinking and practice; and
- Deliver innovative diversity practice resources and services to enable our members to drive business improvement.

The issue of religious freedom and practice in the workplace is one which is of major interest to DCA and our members and we welcome the opportunity to participate in this dialogue. Managing and promoting religious freedom and tolerance in the workplace is an issue of growing importance in Australian organisations given the increasingly culturally and religiously diverse nature of the workforce and the community.

As you would be aware, the most recent census data shows increasing religious diversity in Australia. Christianity is the most commonly reported religion in Australia with 61.1% of the population reporting affiliation with a Christian religion – a decline of nearly 3% since the previous census – and 22.3% of people report that they have no religious affiliation – a 3.6% increase. In the 10 years to the 2011 census, the number of people reporting a non-Christian faith increased considerably, from around 0.9 million to 1.5 million, accounting for 7.2% of the total population in 2011 (up from 4.9% in 2001) with the most common non-Christian religions reported as Buddhism (2.5% of the population), Islam (2.2%), Hinduism (1.3%) and Judaism (0.5%).

In addition, the increasing numbers of temporary-visa holders – estimated to be up to one million long-term temporary-visa holders at any given time¹ – who come to Australia to work or study have diverse religious affiliations.

DCA members are at the forefront of leading Australian practice in workplace cultural and religious diversity, as well as recognising the benefits of pro-actively preventing workplace discrimination and harassment, and effectively managing issues and complaints when they arise. This commitment is driven by principles of fairness, inclusion and anti-discrimination, social and legal imperatives, as well as good business practice.

DCA notes that following the release of the Commission's Rights and Responsibilities Report in 2014, it was identified that the Human Rights Commissioner would prioritise a number of areas of work in

¹ Bouma, G, Cahill, D, Dellal, H and Zwart, A 2011 *Freedom of religion and belief in 21st century Australia*, Sydney: Australian Human Rights Commission.

relation to human rights over the next four years, including religious freedom. We strongly support the creation of the Religious Freedom Roundtable as a way to focus attention on the balance between religious freedom and other human rights, and we encourage the Commission to continue a body of policy work designed to increase respect for religious freedom.

Following is our feedback on the specific issues raised by the Commission.

1. Government laws and regulations that limit the right to religious freedom

The treatment of religious belief under anti-discrimination law is an area in which the Government should legislate to protect individuals from discrimination and harassment due to their religious affiliation, and thus enhance religious freedom. As you would be aware, currently no protection is offered on the grounds of religious belief under the Racial Discrimination Act (or other federal discrimination legislation) although a number of State and Territory jurisdictions offer such protection. Likewise, several States prohibit vilification of a person or people on the basis of their religion.

As a consequence, a person who is from a culturally diverse background and adheres to a particular religion - for example a Lebanese-Australian Muslim – could be offered protection under the RDA but a person who was of an Anglo-Australian background and an adherent of the Muslim faith could not. In a multi-faith society such as Australia, this is a gap in the coverage of anti-discrimination law which should be rectified.

As this attribute is already covered by the Fair Work Act, in relation to employment, DCA would not anticipate the addition of 'religious belief' to the attributes covered in federal anti-discrimination legislation imposing any significant additional burden on employers.

2. Preserving religious freedom when an organisation receives taxpayer's money to provide a public service and

3. Balancing the right to religious freedom and equality before the law

Exemptions in anti-discrimination law

As you are aware, religious exemptions are currently provided in both the federal *Sex Discrimination Act 1984* (the SDA) and the *Age Discrimination Act 2004* (Cth). DCA acknowledges that actions taken to conform with religious doctrines are important and respect the right to freedom of religion, however we are of the view that these considerations must be balanced against the need for universal human rights protections, particular the right to be protected by anti-discrimination legislation) but also rights of privacy, freedom of expression and association.

We are strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels, diminish the appropriate coverage of universal anti-discrimination protections. DCA believes that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

The area in which this has historically proved particularly problematic is in relation to protection from discrimination for LGBTI people, although other individuals may also experience discrimination on the basis of sex, marital or relationship status, pregnancy or age. While the introduction of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* was an important step forward in extending anti-discrimination protection coverage across the Australian community, the continued general exemptions for religious organisations limit equality under the law with respect to anti-discrimination protection.

This is a particularly critical issue in the context of growing outsourcing of government functions – especially in the areas of education (primary, secondary and tertiary), health, aged care, recreational services and community services – to the private sector where employers are increasingly religious organisations. While s37(2) of the SDA now specifically removes Commonwealth funded aged care from the exemption, religious organisations are major employers in Australia and DCA is of the view that, as a general principle, religious organisations should be required to adhere to degree of accountability that reflects their level of participation in employment, which is an area of public life clearly covered by anti-discrimination law. We also consider that religious exceptions need to be

constructed in a manner that appropriately recognises the religious/secular divide and balances the right to equality with rights to freedom of thought, religion and belief.

DCA is of the view that limiting religious exemptions to those circumstances where there is a specific religious element to employment, strikes an appropriate balance between religious rights and freedoms. For example, we support continued exceptions where a religious body employs a person as a priest, minister of religion etc. Similarly, if a religious school employs a teacher of religion it would appear reasonable for that person to be required to adhere to the relevant religion and its tenets.

However, DCA does not support general exemptions for religious bodies for any acts and practices. For example, it should be unlawful to discriminate against a school bus driver hired by a religious organisation on the grounds of his or her sexual orientation. We would encourage the Government to narrow the focus of current religious exemptions to bring them into line with the approach to exemptions taken for all other employers.

4. Developing mechanisms to support religious inclusion and social cohesion

DCA strongly supports a focus on the workplace as a key site for promoting religious tolerance, supporting religious inclusion and increasing social cohesion. The development of targeted workplace resources is one way that could be pursued to improve awareness and understanding of legal responsibilities in relation to accommodating religious freedom in the workplace, resolution options available to individuals with complaints, and increasing religious tolerance.

A recent increase in queries from DCA members suggests that the area of religious practice in the workplace is of considerable and growing interest to Australian employers. Queries have included areas such as:

- how best to accommodate various religious holidays and other types of spiritual/cultural/ceremonial activities (including for Aboriginal people and Torres Strait Islanders);
- provision of faith-based spaces in the workplace;
- guidance on managing religious practices such as taboos on physical contact between men and women in the workplace;
- how best to meet requirements for religious practices at work;
- accommodating religious dress and other attire; and
- conflicting expectations about appropriately modest workplace dress.

While work in this area has to date been limited in Australia, there have been a number of initiatives in this area – for example, the SA Equal Opportunity Commission has developed a fact sheet on [religious attire and dress codes](#) and the Victorian EOHRC has developed a fact sheet on [working with Muslim employees](#).

Over the last few years, the Victorian Health Promotion Foundation (VicHealth) has developed a [strong evidence base](#) for taking a primary prevention approach to addressing the underlying causes and factors that contribute to workplace and community based discrimination and bullying against people on the basis of race and religion. The focus has been on increasing individual, organisational and community capacity to take an active role in changing the attitudes, behaviours, practices and cultures that allow race and gender-based discrimination to go unchallenged. The research highlighted the key role that organisations can take in reducing discrimination by:

- implementing organisational accountability;
- diversity training;
- resource development and provision;
- role-modelling; and
- serving as sites for intergroup contact.

VicHealth's work in this area offers considerable learnings in terms of leading practice, evidence based initiatives to promote religious freedom and increase religious tolerance in the workplace and community.

Internationally, work specifically in the area of religious tolerance is significantly more developed, particularly in the US where the [Tanenbaum Center for Interreligious Understanding](#) has been doing some outstanding work in this area in recent years, resourcing and supporting workplaces and other civil institutions to increase religious tolerance and inclusion. DCA would strongly support the Commission taking similar a role in developing guidance for Australian employers on accommodating religious diversity along the lines of the [resources](#) produced by the UK Government or the Tanenbaum [accommodation resources](#) and would be happy to offer our assistance in this respect.

Thank you again for the opportunity to provide this input and please feel free to contact myself or DCA's Policy and Research Manager Jo Tilly on 0432 561 232 should you require any further information about this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'L. Annese', with a long horizontal flourish extending to the right.

Lisa Annese

Chief Executive Officer