QUAKER PEACE AND LEGISLATION COMMITTEE

 SUBMISSION ON RELIGIOUS FREEDOM LEGISLATION

PART A: INTRODUCTION

1. This submission (prepared by the national peace committee of Quakers Australia) is sent in response to the invitation from the Australian Government for comments on a package of legislative reforms on religious freedom, issued in September 2019. The submission relates to the Religious Discrimination Bill, the Religious Discrimination (Consequential Amendments) Bill, and the Human Rights Legislation Amendment (Freedom of Religion) Bill.

2. We are part of a global organisation (the Religious Society of Friends) that is culturally and theologically diverse, and places a strong value upon spiritual freedom of individuals within the group. Quaker faith and practice are based on every person having direct access to the Inner Light that leads to a commitment to seek to “answer that of God in everyone” as stated by our founder, George Fox, during the 17th century in England. Deriving from the Christian faith, Quakerism was initially seen as dissenting from the established Church of England and its members were persecuted and imprisoned.

3. The basic ‘testimonies’ of Quakerism include equality, peace, integrity, simplicity, and community. In the founding of the Quaker colony of Pennsylvania in USA, religious freedom was part of the constitution. Over the years Quakers have worked for the freedom of slaves, the equality of women, the rights of LGBTIQ people and all races, the resolution of conflict by nonviolent means, the right of conscientious objection to military service, and the need for a life of simplicity that is in harmony with our environment. During our history, Quakers have been subjected to a variety of forms of discrimination and rejection because of their stand for justice and peace.

4. In recent times, Quakers have taken a lead in moves towards marriage equality, justice for Indigenous Australians, the human rights of refugees and asylum seekers, the promotion of dialogue among different faiths and nations (including at the United Nations where Quakers have an ongoing role among diplomats and NGOs), and in public events to draw attention to ways in which humans can address the emergency of climate change.

PART B: GENERAL PRINCIPLES

5. We support the principles of religious freedom embodied in the Universal Declaration of Human Rights, and international human rights conventions. We affirm especially Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which covers the right to freedom of thought, conscience and religion, and the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religious Belief. We also endorse Section 116 of the Australian Constitution that prevents the establishment or imposition of any religion, or a religious test for public office.

6. We consider that over the past decades, humanity has made progress in the protection of human rights internationally and domestically, and we seek to maintain that progress through mutual respect, dialogue and acceptance, rather than creating exemptions that could reverse that trend. We note that this is consistent with Australia’s formal approach to its role on the UN Human Rights Council to defend established human rights standards against erosion by groups and countries that wish to change norms in areas such as reproductive rights.

7. In the Australian context, we believe that a Charter of Rights consistent with international norms would be the best way to fill current gaps and underpin comprehensive protection of religious freedom along with all other human rights and freedoms. In this we are in agreement with many others, including Amnesty International and the Law Council of Australia.

8. Quakers are involved (both individually and through formal links) with other religious organisations, including the National Council of Churches in Australia (NCCA), and interfaith organisations such as Religions for Peace Australia and the Australian Partnership of Religious Organisations. We support their efforts to promote harmony and social cohesion in the Australian community. We also affirm the value of groups such as the Federation of Ethnic Community Councils of Australia (FECCA) for their contribution to a multicultural Australia. These groups are part of the fabric that builds more acceptance of diversity of belief and activity by religious organisations.

9. We welcome the draft legislation as offering a framework for national dialogue on the standards appropriate to encourage mutual respect for different beliefs. We are disappointed that this legislation is being promoted within Parliament with limited time for public discussion. We are concerned that the report (expected in 2020) by the Australian Law Reform Commission (ALRC) on its investigation into the question of religious organisations’ exemptions from discrimination law will be overshadowed (even ignored) by early decisions on the draft legislation.

10. We are concerned that the proposed legislation gives a special priority to religious freedom and is likely to conflict with existing state/territory legislation (e.g. human rights and anti-discrimination laws), and that its wording may be inconsistent with other federal legislation (e.g. in the definition of ‘vilify’ under Section 18c of the Racial Discrimination Act). In addition there seems to be a conflation between the rights of individuals and the rights of organisations to discriminate. Under established human rights regimes it is clear that only individuals can be regarded as having such rights, even where they express them through organisations. The legislation should be amended to clarify this.

PART C: SPECIFIC ISSUES IN THE LEGISLATION

*Religious Discrimination Bill*

11. We are relieved that the draft is grounded in anti-discrimination law instead of religious rights philosophy. In this respect the Bill reflects existing anti-discrimination laws in the states and territories. It also covers those people with no religious belief. However, the lack of definitions for religious belief and activity will open the way for legal challenge. In addition, the Bill grants religious bodies the power to discriminate in hiring staff, but no such provision is available to commercial organisations.

12. The provision that someone cannot be said to discriminate merely for expressing a genuinely held belief (Part 4, Division 4, clause 27)) seems designed to prevent an employer putting any restriction on an employee such as Israel Folau (even though the public service is being treated more strictly).

13. The definition of a ‘relevant employer’ (Part 1, section 5) specifies a turnover of $50m, apparently on the assumption that large employers set the standard for businesses generally. Recent evidence at the banking and other Inquiries casts doubt on this. The requirement that such an employer show that significant financial hardship has been caused by the actions of an employee who expresses their religious belief or activity seems over-prescriptive. Apart from $50m being an arbitrary figure and the test being hard to meet, it also ignores the reputational or other non-financial damage that may be incurred (e.g. through social media). There would be merit in the Fair Work Commission and other industrial tribunals developing such tests.

14. In Part 2, Division 8(5, 6) of the Bill, there is reference to health practitioners being able to object to offering a service on the grounds of their religious belief/activity. This section should make it clear that, alongside this right, there should be a provision that the practitioner has the obligation to refer the patient to a health care practitioner who can provide the service.

15. Part 4, section 41 of the Bill seems to place religion freedom above other rights by affirming that a statement of belief does not constitute discrimination under any existing anti-discrimination law. For example, this will almost certainly create a problem for the enforcement of laws such as the Fair Work Act and Tasmania’s Anti-Discrimination Act of 1998.

16. Part 6 of the Bill provides for the creation of a new position of Freedom of Religion Commissioner. Like the Ruddock report, we are not convinced of the need for such a position, given the powers already available to the Human Rights Commission, and the additional powers added in Part 7 of this Bill to monitor the legislation, deal with complaints, undertake research and education, and report to the Minister on the operation of the law.

*Human Rights Legislation Amendment (Freedom of Religion) Bill*

17. This Bill amends the Marriage Act 1961 (after Section 47B) to allow educational institutions established for religious purposes to refuse to make facilities available or provide goods and services in relation to the holding of a marriage service/ceremony. Section 47B allows a marriage celebrant who is a minister of religion to refuse to perform a marriage, and this is an appropriate ‘exemption’ in our view. We are concerned that the new provision is much wider and will have an adverse impact especially on LGBTIQ people who seek a marriage ceremony under the care of a group like Quakers at an educational venue with which they are linked. While the couple's faith community may support their marriage ceremony, they may find themselves prevented from celebrating it as they wish, by an overly broad exemption from anti-discrimination protections.This seems a retreat from the intention of the 2017 legislation on marriage equality, and a step back from the trend to encourage mutual acceptance of all people in our community regardless of their sexual identity.

18. Our faith prompts us to recognise the divine in all people. It is a basic Quaker principle that all people are equal in the Spirit. As part of the journey to live our faith, we have worked to support the equal treatment of all persons regardless of sex, race or religion. Quakers have long held that marriage “is the Lord’s work and we are but witnesses”. We believe that the 2017 legislation was a step forward in recognizing the equal rights of everyone, and we consider that the new legislation gives too much leeway for exemptions from according equal rights.

19. The proposed amendment to the Charities Act 2013, set out in item 4 of Schedule 1 reads:

**4 At the end of section 11**

Add:

(2) To avoid doubt, 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, is not, of itself, a ***disqualifying purpose***.

We are unconvinced of the need for the 'avoidance of doubt' amendment to section 11 of the *Charities Act 2013* set out in the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*. However, if the amendment is to proceed, we consider that it should be broadened to recognise that there are a variety of views of marriage among religious communities, people of faith, and the broader community. We would be concerned, for example, if Quakers’ advocacy of equal marriage rights for LGBTIQ people were to raise questions about the charitable status of a Quaker organisation. To avoid privileging the views of some faith communities and people over others, this provision would be better worded to say that 'To avoid doubt, the purpose of engaging in, or promoting, activities that support *a particular view of marriage* is not, of itself, a disqualifying purpose’.

(Note: We do not have any comments on the *Religious Discrimination (Consequential Amendments) Bill.*)

PART D: CONCLUSION

20. In our view, the development of the international human rights framework has largely been the result of active contributions from faith communities. As a result the world has a solid range of protections against discrimination on the grounds of belief. Australia has been involved effectively over the years in the creation of the various human rights instruments. At the same time, it has fallen short of enshrining some of those instruments in domestic legislation, and has resisted moving to create a charter of human rights that would offer comprehensive protection.

21. The proposed legislation will correct some of the gaps in the recognition of freedom of religion or belief. We consider it would benefit from more extensive public conversation/consultation, and from the input of the law reform commission’s separate investigation. We do not wish to see the freedom of religious expression given priority over the established standards of acceptance of diversity in our community. It would be regressive if anti-discrimination laws already put in place were undermined by favouring the anxieties of religious groups that are challenged by the ‘progressive’ trends in secular society and seek to maintain a more exclusive approach to human relationships.

22. There remains considerable ignorance about the different faiths and beliefs represented in the Australian community. We see merit in the proposal from Religions for Peace Australia for setting up a National Centre for Multiculturalism and Religious Diversity to educate citizens and strengthen Australia’s multicultural life and social cohesion.

1 October 2019