



Reasonable Global Way College Limited, ACN 619 935 385. *Trustee for the Foundation for a Reasonable Global Way*, registered as a charity with the Australian Charities and Not-for-profits Commission, ABN 30 905 824 698.
GPO Box 2004 Melbourne VIC 3001 Australia
GlobalBeliefs@gmail.com

ForConsultation@ag.gov.au

26th January 2020

Submission on Second Exposure Draft of Religious Discrimination Bill

Summary

- A significant concern with the current draft bill is its limited definition of religious belief or activity. We offer a refinement to the draft definition.
- The draft does not define which beliefs or activities are religious and hence covered by the legislation. We offer a definition of religion that takes into account past legal decisions and actual religious practice.
- We believe there is no need for an act to protect religion, and indeed it could be divisive and harm our democracy, but we present these comments in an attempt to improve the bill in case it is passed.

Contents

1. Definitions in the Draft Bill.....	2
1.1 Religious Belief or Activity.....	2
1.2 Religious Body	3
2. Definition of a Religion.....	4
2.1 Dictionary Definition	4
2.2 Religion as our Ultimate Concerns.....	4
2.3 Religion Defined by its Structure	5
2.4 International Definitions	5
2.5 Atheistic Religions.....	6
2.6 Other Australian Court Definitions	9
2.7 Formal External or Surface Indications	9
2.8 High Court Minority Opinion.....	9
2.9 Indicia of Religion.....	10
2.10 Expansive Approach to Religion.....	10
2.11 Proposed Definition of Religion	11
3. No Need to Protect Religion	12

1. Definitions in the Draft Bill

1.1 Religious Belief or Activity

Section 1(5) – **Definitions** – of the draft Act has the proposed minimalist definition:

religious belief or activity means:

- (a) holding a religious belief; or
- (b) engaging in lawful religious activity; or
- (c) not holding a religious belief; or
- (d) not engaging in, or refusing to engage in, lawful religious activity.

This definition, similar to the Victorian *Equal Opportunity Act 1995*, properly recognises that religion is not simply a set of beliefs but also involves actions – rituals and practices. Some traditional world religions, such as for instance Hinduism and Buddhism, major subdivisions of them or millions of their adherents, could claim that their religion, in principle or practice, does not have fixed dogma that all adherents must accept. Requiring adherence to a fixed creed is more characteristic of Western religions such as Christianity and Islam, and even within these traditions there is plenty of disagreement, over time and geographically. Other religions, including some forms of Judaism, require rituals or practices rather than dogmatic beliefs. So this aspect is good.

With respect to protecting non-religious beliefs or activity the current draft only addresses omissions. It does not cover actively holding a belief or engaging in actions contrary or inconsistent with religious beliefs or activities. In the current definition, expressing a belief that there are no supernatural beings or that the Bible and Koran are should not be believed is not protected. Likewise, behaving in a lawful manner that is nevertheless contrary to a religious practice (related perhaps to wearing clothing, eating certain foods, some sexual practices, handling books, showing art works or movies, or employment practices) is not protected.

It would be unbalanced, and contrary to the stated intentions of the proposed Act, to protect BEING religious (in thought or deed) and NOT being religious, *without protecting* BEING CONTRARY to religion.

The current draft allows one to be actively religious, or passively non-religious but not actively non-religious. The current definition thus protects religious beliefs or activity, unbelief or inactivity, but not non-religious beliefs or activity. We must avoid introducing inequality based on religion in Australia.

Instead, we propose the following definition:

religious belief or activity means:

- (a) holding a religious belief; or
- (b) engaging in lawful religious activity; or
- (c) not holding a religious belief; or
- (d) **holding a belief that is contrary to or inconsistent with a religious belief;** or
- (e) not engaging in, or refusing to engage in, lawful religious activity; or
- (f) **engaging in lawful activity that is contrary to or inconsistent with a religious activity.**

This excludes protection under the act for non-religious beliefs or activities that are totally unrelated to religion or such matters, including simple factual beliefs, like *the sky is blue*, or opinions, like *the Tigers are the best team*. It also protects positive belief and action in areas that are considered religious by some.

To clarify what is covered by the above definitions we need a definition of **religious**, as follows:

religious means pertaining to *a religion*.

We discuss the definition of *religion* in section 2 below.

1.2 Religious Body

Definition

Subsection 11(5) of the draft bill defines a religious body:

Religious body means:

- (a) an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or
- (b) a registered public benevolent institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion; or
- (c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion (other than a body that engages solely or primarily in commercial activities);

but does not include an institution that is a hospital or aged care facility, or that solely or primarily provides accommodation.

This definition focusses on beliefs (doctrines, tenets, beliefs or teachings) rather than activities.

It should include in each of (a), (b) and (c) above the addition phrase:

that is conducted in accordance with the doctrines, tenets, beliefs or teachings, ***and/or promotes and practices the religious activities***, of a particular religion.

Comment

A secular society is NOT one that is Atheist or has no religion, but is a society that does not favour one religion over another, and does not favour religion in general over non-religion or irreligion.

Religious educational institutions do not deserve to be specially protected, and should not be especially protected in a secular society such as Australia.

We are at risk of allowing our young to be taught bigotry. As a previous Attorney General said, it is not illegal to be a bigot, but we do not wish to encourage it at a national level, and reaffirming, as the Act does, that activities must be *lawful* does not prevent the teaching of bigotry. For instance, teaching by religious conservatives that homosexuality is evil and homosexuals shall go to hell, will be encouraged by this bill.

The reality of the proposed bill is that it enables religious bodies to discriminate in ways that otherwise would have been unlawful by providing exemptions for specified behaviours.

Nevertheless, if the bill is to proceed to become law, this definition also requires a definition of religion.

2. Definition of a Religion

Defining religion is notoriously difficult. But government agencies, officials and **administrators are required even now to determine which bodies are religious, under various state and federal Acts**, and will be required to do so even more in the future, if this bill proceeds. To date this has been determined without there being a legislated definition, so it has fallen to the courts to clarify the definition of religion.

For instance, the Australian Charities and Not-for-profit Commission (ACNC) has constructed its definition of religion that is applied to charities and not-for-profits claiming to have the subtype of 'advancing religion'. Their mash up ignores the complexities and nuances of High Court judgements and restricts freedom of religion in Australia by refusing to acknowledge that what we claim to be a religion is one.

Rather than taking the *cop out* approach once again, this bill should include a more generally applicable definition of religion that can be used to determine what beliefs and activities and which bodies are religious, under existing legislation and under this proposed bill.

The Justices of the High Court made their various attempts in the Scientology case in 1983, based essentially on the nature of the content of religious beliefs rather than the purpose or function of religion. [*Church of the New Faith v. The Commissioner of Pay-roll Tax (Victoria)*]. This judgement is nearly 40 years old, and while useful the majority showed a limited understanding of the breadth of religious traditions.

It would be informative for the Attorney-General to request a review of legislation and court judgements internationally in other liberal democracies over the last 40 years to see what has changed in this regard.

2.1 Dictionary Definition

The Macquarie Dictionary, the major Australian dictionary, defines religion **in its primary definition** without direct reference to specific religions, viz:

- i. "The quest for the values of the ideal life, involving three phases, the ideal, the practices for attaining the values of the ideal, and the theology **or world view** relating the quest to the envioning universe."
 - a. This is a definition based on the purpose or function of religion, not its beliefs.
 - b. A religious body is then one which promotes or practices such a religion.

The Macquarie's second definition is:

- ii. "A particular system in which the quest for the ideal life has been embodied: [eg] *the Christian religion*".
 - a. This definition says an institution is a religion if it embodies the quest for an ideal life. The *example* does involve revelation, faith and supernatural beliefs, but the *definition* does not require any of these, just that the institution should embody the quest for the ideal life.
 - b. Embodies means to give concrete form to, express or exemplify ideas etc, to collect into or include in a body, organise or incorporate. Any body that attempts to do those very things: to incorporate, to organise, beliefs, values and practices into a coherent whole should be recognised as a religious body.
- iii. It is only in the third definition that the Macquarie explicitly invokes the supernatural: "a controlling superhuman power". This definition, involving the supernatural, is obviously not the only possible interpretation of the word, and is NOT, in modern times, the primary definition.

2.2 Religion as our Ultimate Concerns

Paul Tillich, the famous Christian theologian, said religion should be understood as being related to our "ultimate concerns", our search for deeper meaning and purpose, rather than related to the specific content of the beliefs (See https://en.wikipedia.org/wiki/Paul_Tillich). This is consistent with Murphy J's third definition of a religious body in the Scientology case: "*any body which claims to be religious and offers a way to find meaning and purpose in life*".

Murphy J told us (in 1983) that in the USA: “belief in God or a Supreme Being is no longer regarded as essential to any legal definition of religion ... There, it is now sufficient that a person’s beliefs, sought to be legally characterized as religious, are to him or her of ‘ultimate concern’ *United States v. Seeger*. Buddhism, Taoism, Ethical Culture and Secular Humanism have been held to be religions”.

2.3 Religion Defined by its Structure

Religions can also be characterised by the structure of their beliefs, as ‘*derived by empirical observation of accepted religions*’ (as Wilson and Deane JJ put it). Virtually all religion religions have the following components:

1. Explanations of our origins: origins of the world and humans, and the origins of suffering or sin;
 2. Explanations of how suffering or sin can be alleviated or redeemed;
 3. Explanations of morals and values, and codes of conduct to live by;
 4. Exemplary models of behaviour;
 5. Rituals and practices that express commitment to the religion;
 6. Responses to ‘spiritual’ experiences, wonder, awe, etc.
- i. This structure reflects our ultimate concerns: that is why the traditional world religions satisfy this structure. It enables us to work out how we should respond to the world – to existence itself.
 - ii. In traditional Christianity, the origins of the universe are explained in Genesis, in which God creates the world, life and the first humans (not out of nothing, for existence itself is not explained in the Bible). Genesis also explains the beginning of suffering (caused by “the Fall” - Adam and Eve eating from the Tree of Knowledge and being cast out of the Garden of Eden). In traditional Christianity we obtain redemption by accepting Jesus, whose death and resurrection has taken away our sins. The Ten Commandments and Jesus’ parables and sermons are key sources of the Christian code of conduct and Jesus is the ultimate exemplary model. Jesus himself introduced the rituals of the Eucharist (Holy Communion) and gave us the Lord’s Prayer. Christians interpret spiritual experiences as being of saints or the living Jesus - the Christ experience.

2.4 International Definitions

Professor Carolyn Evans, Dean of Melbourne University Law School, tells us:

“The UN Human Rights Committee, commented in 1993 on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981, which expanded on the *International Covenant on Civil and Political Rights* (‘ICCPR’), which followed the *Universal Declaration of Human Rights* of 1948. Their views are not binding but are generally respected as an authoritative source in assisting in interpreting the ICCPR.

General Comment 22 is the best distillation of the international law obligation to protect freedom of religion or belief. It encapsulates the approach of both the Human Rights Committee and other international bodies, such as the European Court of Human Rights, in defining the right to freedom of religion or belief under the ICCPR as:

protect[ing] theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. *The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.*

This *approach* to understanding the phrase ‘religion or belief’ is useful in that it makes clear that non-theistic and atheistic beliefs are covered by art 18 (something that is implicit but not express in the ICCPR) and also in “*recommending a broad approach to defining religious freedom that does not give improper preference to established or well-known religions.*”

(See *Legal Aspects of the Protection of Religious Freedom in Australia*, Associate Professor Carolyn Evans, Centre for Comparative Constitutional Studies, Melbourne Law School, June 2009).

[https://www.humanrights.gov.au/sites/default/files/content/frb/papers/Legal_%20Aspects.pdf]

2.5 Atheistic Religions

The High Court in the Scientology case, as a whole, accepted that religion does not *require* theism, or a belief in any kind of Supreme Being.

- Murphy J did not require a religion to involve a belief in a supernatural entity or thing, but could be “any body which claims to be religious and offers a way to find meaning and purpose in life”.
- Wilson and Deane JJ explicitly stated that their criteria, which did include a belief in the supernatural, are merely “helpful” not mandatory.
- Mason ACJ and Brennan J (the minority) accepted that of their two criterion (belief in the supernatural and canons of conduct) “Those criteria may vary in their comparative importance”.

2.5.1 Accepted religions, such as Buddhism and some forms of Hinduism, are not theistic and do not have a supreme being, or a supernatural being or thing. There are Christian Atheists and even Catholic Atheists. Many Christian theologians describe themselves as Atheist. They are still **religious**.

- Hinduism** is characterised by extremely diverse beliefs and practices. Of the six classical Schools of Hindu philosophy, one (Sankhya) is clearly atheistic. [R.C. Zaehner](#) says "it is perfectly possible to be a good Hindu whether one's personal views incline toward monism, monotheism, polytheism, or even atheism." He goes on to say that it is a religion that neither depends on the existence or non-existence of God or Gods. (See https://en.wikipedia.org/wiki/Atheism_in_Hinduism.)
- In **Buddhism**, the Buddha was agnostic on the existence of God. Buddhism is also often said, at least in its Theradavan tradition, to be atheistic or non-theistic. Since the time of the Buddha, the refutation of the existence of a creator deity has been seen as a key point in distinguishing Buddhist from non-Buddhist views. The question of an independent creator deity was answered by Buddha in the [Brahmajala Sutta](#). The Buddha denounced the view of a creator and said this belief causes suffering when one is attached to it and states these views may lead to desire, aversion and delusion. (See https://en.wikipedia.org/wiki/God_in_Buddhism.)
- Confucianism** may also be seen to be without the concept of a person Creator God. It recognizes an abstract principle behind and beyond all things, but it does not fit the Western definition of God.
- Unitarian Universalism** is a [liberal religion](#) characterized by a "free and responsible search for truth and meaning". Unitarian Universalists do not share a creed but are unified by their shared search for spiritual growth. As such, the Unitarian Universalist Church (UU) includes many agnostics, theists, and atheists among its membership. The roots of UU are in [liberal Christianity](#), specifically [Unitarianism](#) and [Universalism](#). ... from these traditions comes a deep regard for intellectual freedom and inclusive love, so that congregations and members seek inspiration and derive insight from all major world religions. (See https://en.wikipedia.org/wiki/Unitarian_Universalism.)
- A non-theist **Friend** or an **atheist Quaker** is someone who affiliates with, identifies with, engages in and/or affirms Quaker practices and processes, but who does not accept a belief in a theistic understanding of God, a Supreme Being, the divine, the soul or the supernatural. (See https://en.wikipedia.org/wiki/Nontheist_Quakers.)
- Daoism is in some ways more like extreme environmentalism. There is no God but only the *Way*. **Taoism** (sometimes **Daoism**) is a philosophical, ethical or **religious tradition of Chinese origin** that emphasizes living in harmony with the *Tao*. The term *Tao* means "way", "path", or "principle" ... In Taoism, however, *Tao* denotes something that is both the source of, and the force behind, everything that exists. Taoism is practised as a religion in various Asian communities. Its theology is not theist (even though some communities do worship Laozi as the attributed founder), and has affinities with pantheistic traditions given its philosophical emphasis on the formlessness of the Tao. (See <https://en.wikipedia.org/wiki/Taoism>.)

- viii. Other religious bodies have been accepted in law as religious institutions even though their founding documents don't address a belief in the supernatural. Scientology originally denied it was a religion. The High Court acknowledged this history but saw it as irrelevant.
- 2.5.2 Many Christians are Atheists – many practicing Priests and Ministers in both Catholic and Protestant denominations no longer believe in God or anything supernatural. For example:

A poll of Anglican clergy ... found that as many as 16 per cent are unclear about God and two per cent think it is no more than a human construct. ... Clergy were significantly more likely to hold unorthodox beliefs the older they were and the longer they had been in the ministry. ... The YouGov survey interviewed more than 1,500 Anglican clergy from the Church of England, Church in Wales, and Scottish Episcopal Church. It was commissioned by the Westminster Faith Debates. (<http://www.independent.co.uk/news/uk/home-news/survey-finds-2-of-anglican-priests-are-not-believers-9821899.html>)

- 2.5.3 Many Christian theologians were well ahead of the majority of the current clergy. Some of these theologians were seen by contemporary critics as potentially apostates or heretical, but now they are seen as inspirational leaders among the religious cognoscenti. We outline a small sample:
- i. Paul Tillich, the famous Christian theologian said "God does not exist. He is Being itself, beyond essence and existence", and speaks of God as "the ground of our being" (*Systematic Theology, Vol 1*, 1951, and *The Courage to Be*, 1952, Paul Tillich). Being itself cannot be assumed to be a supernatural being or thing. (See https://en.wikipedia.org/wiki/Paul_Tillich)
 - ii. Other **liberal Christian** theologians, following [Paul Tillich](#), define a "nontheistic God" as "the ground of all being" rather than as a personal divine being. Tillich's God is like the God of [Spinoza](#) (1632-1677) and the God of [Hegel](#) (1770-1831). Both Spinoza and Hegel were denounced for their atheism by the theologians of the past because their God was not a Being or an Entity. The Atheist Albert Einstein said he believed in the God of Spinoza – because it was coextensive with the Universe, not separate from it in some supernatural way. Tillich is now recognised as one of the foremost theologians of our time. (See https://en.wikipedia.org/wiki/Christian_atheism.)
 - iii. The influential Christian theologian John Macquarrie, would, by the standard of traditional theism, "happily admit that he is an Atheist. Such a God is not ultimate enough. He denies that God is a Being" (Kee, p.61, see below).
 - iv. The Anglican Bishop of Woolwich, J.A.T Robinson, in his influential book *Honest to God* (1963, Westminster Press), suggested that we give the idea of God a rest: that Christians should move on to more sophisticated ways of expressing their faith. It aroused a storm of controversy on its original publication by SCM Press in 1963. Robinson stated that the chief contribution of his book was its successful synthesis of the work of seemingly opposed theologians [Paul Tillich](#), [Dietrich Bonhoeffer](#) and [Rudolf Bultmann](#)

Honest to God addresses the idea that having rejected the idea of 'God up there', modern secular man needs to recognize that the idea of 'God out there' is also an outdated simplification of the nature of divinity. Rather, Christians should take their cue from ... Paul **Tillich** and consider God to be 'the ground of our being'. **Bonhoeffer**'s notion of *religion-less Christianity* is also a major theme in the book. ... He claims that secular man requires a secular theology. That is, that God's continuing revelation to humanity is one brought about in culture at large, not merely within the confines of "religion" or "church." (See https://en.wikipedia.org/wiki/Honest_to_God)

Bultmann contended that only faith in the kerygma, or proclamation, of the New Testament was necessary for Christian faith, not any particular facts regarding the historical Jesus. Bultmann argued that all that matters is the "thatness", not the "whatness" of Jesus, i.e. only *that* Jesus existed, preached and died by crucifixion matters, not what happened throughout his life. Bultmann's approach relied on his concept of demythology, and interpreted the mythological elements in the New Testament existentially. https://en.wikipedia.org/wiki/Rudolf_Bultmann

Dietrich Bonhoeffer (1906 –1945) was a German Lutheran pastor, theologian, anti-Nazi dissident, and key founder of the Confessing Church. His writings on Christianity's role in the secular world became widely influential, and his book *The Cost of Discipleship* became a modern classic. In his prison letters, Bonhoeffer raised questions about the role of Christianity and the church in a "world come of age", where human beings no longer need a metaphysical God as a stop-gap to human limitations; and mused about the emergence of a "religionless Christianity", where God would be unclouded from metaphysical constructs of the previous 1900 years. (see <https://en.wikipedia.org/wiki/Christocentric>)

v Alistair Key, in 1971 was a lecturer at the Department of Theology at the University of Hull, and a "Montgomery lecturer for the Christian Education Movement", and a member of the Church of Scotland. He outlined how modern Christianity has abandoned literalist interpretations of the Bible and the Christian faith. Most Christians in Australia believe in evolution rather than the creationism of Genesis. Many Christians no longer believe in miracles, such as the Virgin Birth, walking on water, raising the dead, and perhaps even the bodily Resurrection. Kee says that as well as disposing of outmoded concepts such as heaven and hell, we can also move beyond primitive notions of God, and ultimately to denying that God exists (Kee p. 147). "A good man ... could very well be a Christian without believing in a supernatural being called God" (Kee p. 217). (*The Way of transcendence: Christian Faith without Belief in God*, Alistair Kee, 1971, Penguin Books)

- vi. **Christian atheism** is a theological position in which the belief in the transcendent or interventionist God is rejected or absent in favour of finding God totally in the world ([Thomas J. J. Altizer](#)) or following Jesus in a Godless world ([William Hamilton](#)).
- Christian atheists look to Jesus as an example of what a Christian should be, but they do not see him as God. Hamilton wrote that following Jesus means being "alongside the neighbour, being for him". To follow Jesus means to be human, to help other humans, and to further humankind.
 - In the Netherlands, 42% of the members of the Protestant Church in the Netherlands (PKN) are non-theists. Non-belief among clergymen is not perceived as a problem. Of 860 pastors in seven Dutch Protestant denominations, 1 in 6 clergy are either agnostic or atheist.
 - Some follow the tradition of "Christian non-realism," most famously expounded in the UK by Don Cupitt in the 1980s, which holds that God is a symbol or metaphor and that religious language is not matched by a transcendent reality. A minister of the PKN (the Protestant Church of the Netherlands), Klaas Hendrikse described God as "a word for experience, or human experience". Hendrikse writes 'God is for me not a being but a word for what can happen between people. Someone says to you, for example, 'I will not abandon you', and then makes those words come true. It would be perfectly alright to call that [relationship] God.' A General Synod found Hendrikse's views were widely shared among both clergy and church members and he continued working as a pastor. The ideas of Hendrikse are theologically not new, and are in keeping with the liberal tradition that is an integral part of our church".
 - **Catholic atheism** is a belief in which the culture, traditions, rituals, and norms of Catholicism are accepted, but the existence of God is rejected. In 2007, only 27% of Catholics in the Netherlands considered themselves theist, while 17% were [agnostic](#) or [atheist](#) and 55% were [agnostic deist](#) or [ietsist](#) ("somethingism", a Dutch term for an unspecified belief in an undetermined transcendent force). (See https://en.wikipedia.org/wiki/Christian_atheism.)

Conclusion: The existence of Christian Atheists, working as theologians, priests and pastors emphasises that a definition of religion should not require belief in supernatural beings or things, because these people are indubitably accepted as religious in Australian society. Similarly in a multicultural society, we must also accommodate the (possibly Atheistic) beliefs of the Hindus, Buddhists, Daoists and Confucians of a growing percentage of Australians.

2.6 Other Australian Court Definitions

Other Australian Courts have also taken a more generous approach to religion than a simple requirement that it involve belief in the supernatural and codes of conduct (See Evans, cited above).

- i. The High Court has interpreted section 116 of the Australian Constitution (which prohibits the Commonwealth Parliament from enacting legislation that would prohibit the free exercise of religion or establish a religion) to extend to Atheism and Agnosticism
- ii. In an early Australian case, *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* ('the *Jehovah's Witnesses Case*'), Latham CJ referred to the problems of defining religion when he noted that: 'It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world.' His Honour also noted that s 116 'proclaims not only the principle of toleration of all religions, but also the principle of toleration of absence of religion.'

2.7 Formal External or Surface Indications

The appellants in the Scientology case raised an American case, *Malnak v. Yogi* in which "three criteria were provided for the definition of religion:

- a. first, the nature of the ideas in question: they must be 'ultimate' ideas dealing with matters such as the meaning of life and death, man's role in the universe, the proper moral code of right and wrong and the like;
- b. second, the group must lay claim to an ultimate and comprehensive truth;
- c. third, formal external or surface indications such as services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation etc."

However, in the Scientology case, Mason ACJ and Brennan J discounted this definition:

"We are thus unable to accept the [Scientology] corporation's submission that this Court should apply the indicia which found favour with Judge Adams in *Malnak v. Yogi*. **The second and third indicia are not the criteria of a religion, though they may frequently be found in a religion.**"

This opinion supports the view that a religious body doesn't need to provide evidence of "formal external or surface indications such as services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation etc" so these should not be included in the proposed bill's definition of religion.

2.8 High Court Minority Opinion

Mason ACJ and Brennan J set out a **two**-part test: a religion (for these 2 judges) must consist of '*first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief*'.

- a) However, this was the opinion of only two of the five justices, and does not reflect the complexity of the issues. Mason ACJ and Brennan J have completely ignored the abundance of evidence, some of which is outlined above, that many religions and adherents, even Christians, are in principle essentially Atheistic and emphasise practices rather than the supernatural.
- b) In contrast, for Wilson, Dean and Murphy JJ, the majority of the High Court, supernatural beliefs are **indications** of a religion but not in any way obligatory requirements.
- c) And even Mason ACJ and Brennan J themselves say, of their two criteria: "*Those criteria may vary in their comparative importance, and there may be a different intensity of belief or of acceptance of canons of conduct among religions or among the adherents to a religion.*"
- d) Mason and Brennan raised as a critical issue '**the purpose for which the corporation was formed and is maintained and the activities of the corporation**'.

2.9 Indicia of Religion

Wilson and Deane JJ adopted the approach of defining a religion by reference to **indicia** or guidelines '*derived by empirical observation of accepted religions.*' Such indicia will, according to their Honours (in 1983), **change over time** and the relative importance of each **criterion may differ depending on the particular case**. These judges *doubted* whether something can be a religion without the supernatural, but *did not definitively declare it necessary*. In fact the indicia derived by observation of accepted religions include, as noted above, that religions and **leading religious practitioners often do not emphasise or even believe in the supernatural**.

Wilson and Deane JJ set out their 5 indicia, but prefaced their comments with a highly significant qualification: '*No single characteristic can be laid down as constituting a formularized legal criterion of whether a particular system of ideas and practices constitutes a religion, but the following criteria are helpful:*

That the particular collection of ideas and/or practices involves belief in the supernatural, i.e. a belief that reality extends beyond that which is capable of perception by the senses; that the ideas relate to man's nature and place in the universe and his relation to things supernatural; that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance; that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or groups; and that the adherents themselves see the collection of ideas and/or practices as constituting a religion.'

This contradicts Mason ACJ and Brennan J who did present a single (two part) characterisation. Wilson and Deane JJ explicitly stated that their 5 criteria "are helpful". "Helpful" is a long way from definitive or mandatory, as a simple presentation of this list of criteria would suggest.

2.10 Expansive Approach to Religion

Murphy J took an expansive approach to defining religion, *consistent with the approach taken by our current Government in drafting the proposed bill*. His Honour rejected the notion that there is a single criterion to determine a religion or a closed set of categories of religions. He said that it is better 'to state what is sufficient, even if not necessary, to bring a body which claims to be religious within the category.

"The categories of religion are not closed, but the following bodies are religious:

- any body which claims to be religious and whose beliefs or practices *are a revival of, or resemble, earlier cults;*
- *any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible, a physical invisible God or spirit, or an abstract God or entity;*
- ***any body which claims to be religious and offers a way to find meaning and purpose in life."***

a) Murphy J denied

- that a religion must involve belief in a god,
- that it must claim exclusive access to religious truth,
- that it must have consistently claimed religious status over time,
- that it must be involved with propitiation and propagation or
- that it must be accepted by the public.

Murphy's definition, notes Evans [op cit], is in some ways the most consistent with the very broad approach adopted in international law.

b) Murphy J warns against legislators, administrators or the judiciary determining what are acceptable contents of religious belief or practices:

"Whenever the legislature prescribes what religion is, or permits or requires the executive or the judiciary to determine what religion is, this poses a threat to religious freedom. Religious discrimination by officials or by courts is unacceptable in a free society. The truth or falsity of religions is not the business of officials or the courts. If each purported religion had to show that its doctrines were true, then all might fail. ... Administrators and judges must resist the temptation to hold that groups or institutions are not religious because claimed religious beliefs or practices seem absurd, fraudulent, evil or novel; or because the group or institution is new, the number of adherents small, the leaders hypocrites, or because they seek to obtain the financial and other privileges which come with religious status. In the eyes of the law, religions are equal. There is no religious club with a monopoly of State privileges for its members. The policy of the law is 'one in, all in'.

But this does not prevent Parliament from defining religion according to its ***purpose or function rather than its content, as the other Justices tried to do***. Despite the difficulties, we do need to define what a religion is, so that officials and courts can refrain from religious discrimination.

2.11 Proposed Definition of Religion

Acknowledging all the above constraints and caveats, we propose the following definition of ***religion*** to be included in the bill, to ensure that Parliament provides guidance to the Courts in their determinations which will inevitably be required if this Act were to become law.

a religion is a sincere attempt by a body or group of individuals to address humanity's *ultimate concerns*, or *life's meaning and purpose*, or *ultimately how we should live*, which generally includes

- a) a worldview, namely a set of beliefs about the nature of reality (which may or may not invoke supernatural beings, things or principles);
- b) an associated set of moral values or ideals; and
- c) a consequential code of conduct;

(however clear, obscure, absurd, ambiguous, novel, rational or inconsistent each of these may be), that requires of its adherents a *degree of commitment or faith* (however minimal) and it is sufficient to establish most of these criteria but in some cases that may not be necessary.

- This definition is consistent with the primary definition from the Macquarie dictionary.
- It provides more current and informed guidance to administrators and judges than the Scientology case.
- It is sufficient to include Atheistic religions, such as various Hindu, Buddhist, Jewish and Christian branches or adherents.
- It includes traditional world religions and indigenous religions.
- It excludes a relatively simple set of scientific beliefs as well as academic philosophical speculations about ethics or the nature of the good.
- It avoids the superficial trappings of religion which the High Court rejected as signs of religion.
- It avoids telling the religious what the contents of their religious beliefs must be like.
- It is flexible enough to cover emerging religions by addressing the purpose or function of religion rather than attempting to specify the contents of an emerging religion.

We recommend this definition be included in the proposed Act.

3. No Need to Protect Religion

As a whole, we suggest there is no need for a bill to further protect religious belief or activity in Australia.

- Homophobia, sexual repression, subjugation of women, harsh and unusual punishments, social isolation, inequality, oppression of diversity, and rejection of liberal democratic values are all integral to the sacred texts, stories, commandments, rituals and practices of many of the world's traditional religions, including Christianity and indigenous religions. Many adherents to the traditional world religions take their sacred texts and stories as literally true. There is no need to protect extreme behaviour under the guise of religious freedom. While the draft Act does proscribe unlawful behaviour, less extreme versions of homophobia, sexual repression, female subjugation, social isolation, inequality and oppression does occur in some religious families and communities. This Act, despite its good intentions, will be used in those families and communities to justify their right to act badly. Any exclusions from the various Human Right and Anti-Discrimination Acts will only support these perceptions and overall they will increase the amount of harm caused by religious extremism.
- The vast majority of Australians supported marriage equality. We can conclude the vast majority does not support homophobia, sexual repression, subjugation of women, harsh and unusual punishments, social isolation, inequality, oppression of diversity, and rejection of liberal democratic values. Our leaders, in governments, parliaments, business and religious bodies should be taking a stand against such behaviours, not be seen as protecting or even encouraging them, even in mild forms, under the proposed Act. We do not want schools and workplaces to exclude students or workers or customers on the grounds of their religion, sexual behaviour, dress codes, or the like.
- Religious bodies and religious people can already express their opinions freely in Australia, so long as they do not promote harm or vilify other people. The proposed Act will not protect anyone from trolls and the "woke" on the internet, especially from perpetrators who live and post overseas. The much maligned "political correctness" has no standing in law and does not prevent conservative, religious or contrarian views from being expressed in Australia, despite protestations to the contrary.
- A 2012 poll by Win-Gallup International found that 48% of Australians claimed no religion and 37% (only about a third) were religious. A large proportion of Australians do not believe in supernatural beings or things. Yet many, if not most, adherents to traditional world religions do believe in supernatural beings or things. Why should a pluralist society provide extra protections to people whose beliefs and activities many Australians believe are based on fantasy. Should we protect behaviour that is not evidence based, or contrary to the evidence, according to the majority. While we must support freedom of religion (and from religion) and must support an expansive reading of section 116 of our constitution (as American courts have done) it is retrograde, and contrary to our liberal pluralist ideals, to provide unnecessary protection to what in the long term appear to be increasingly minority views.

Trevor James Rogers

Principal

Reasonable Global Way College Limited

Email: globalbeliefs@gmail.com

