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Australian Government
Attorney-General's Department

COMPPS SUBMISSION - Religious Freedom Bills – second exposure draft

The Coalition of Major Professional and Participation Sports (**COMPPS**) welcomes the opportunity to comment on the exposure draft of the Religious Discrimination Bill 2019 (**Bill**). COMPPS is made up of the following member organisations:

- (a) Australian Football League;
- (b) Cricket Australia;
- (c) Football Federation Australia;
- (d) National Rugby League;
- (e) Netball Australia;
- (f) Rugby Australia; and
- (g) Tennis Australia.

Each of these sports is the governing body and custodian of a major professional sport in Australia. COMPPS members play an important role in developing, promoting and presenting sport in Australia from the grass roots through to the international level.

All COMPPS members are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports. Between them, they have over 9 million participants through 16,000 clubs. COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians both at national and community level.

One of COMPPS' roles is to facilitate a response to public inquiries on behalf of its member sports.

1 COLLECTIVE COMMITMENT TO INCLUSION AND PROTECTION FROM DISCRIMINATION OF ALL FORMS

COMPPS members recognise and publicly acknowledge the importance that sporting bodies, from local clubs through to National Sporting Organisations, reflect the diversity of the communities of which they are a part and that every person is treated with respect and dignity and protected from discrimination. Our Members support the protection of religious freedoms.



However, in our submission, the Bill goes beyond what is required to protect the rights of Australians to make statements of belief without fear of discrimination and significantly limits the efforts of COMPPS members and their associated clubs and organisations to create inclusive, diverse, accessible and safe communities within which Australians can participate in and enjoy sport.

Sport 2030, Australia's National sports plan, states as part of its vision for Australian sport, that we have a "diverse and inclusive sport and physical activity sector". Separately, this vision points to "inclusion" as one of the areas in which Australian sport should lead the world. The Bill has the potential to undermine the achievement of these important goals for Australian sport.

2 GENERAL CONCERNS

We note a significant number of submissions made in response to the first exposure draft of the Bill which highlight perceived deficiencies in the drafting of the Bill which are likely to lead to uncertainty in the interpretation of important concepts.

The definitions of fundamental concepts such as "*religious belief or activity*" and "*statement of belief*" contained in the Bill provide little assistance for COMPPS members and their associated clubs in understanding how the new law would apply in a practical setting. Indeed, the broad definition of "statement of belief" creates significant uncertainty for COMPPS Members and other sporting organisations and will lead to an increase in disputes, particularly within the sporting context where passionate statements of belief, whether of a religious belief held by a person or made by a person who does not hold a religious belief, frequently form the basis for public commentary.

In addition, the Bill does not contain sufficient guidance to assist COMPPS members to determine if a particular statement or belief is genuinely held, or is held in good faith. We are concerned that the breadth of the definition of "statement of belief" and the absence of a clear test within the Bill to assess such beliefs could lead to the protections in the Bill being used in bad faith to justify statements which are otherwise discriminatory or against the values or beliefs espoused by COMPPS members.

It is also important to highlight the complexity and lack of clarity in the way the Bill intersects with other anti-discrimination legislation.

We do not propose to reiterate individual drafting concerns in this submission and instead focus our comments below on COMPPS members' main concerns with the Bill. However, we are happy to provide further information regarding aspects of the drafting of the Bill which COMPPS members consider to be problematic, if that will be of assistance.

3 KEY CONCERNS

3.1 Employer conduct rules (clause 8(2)(d))

The requirement (in clause 8(2)(d)) to assess employee conduct rules against the impact such rules have on the ability of an employee to hold or engage in that employee's religious

belief or activity, in addition to the other tests of reasonableness contained in clause 8, is unnecessary and affords undue emphasis to the religious rights of employees, at the expense of other rights.

COMPPS subscribes to the right of all employees to demonstrate their religion via dress, appearance or behaviour however while this right is important, there may be instances in major competitive sporting organisations where it is desirable for the sport to limit or exert control over certain types of dress, appearance or behaviours.

COMPPS members believe in the importance of creating safe and inclusive workplaces. Responsible employers have a duty of care to ensure all employees—regardless of their background, beliefs or seniority—are treated respectfully and free from discrimination. By favouring an employee’s right to religious expression over an employee’s right not to be discriminated against, the Bill undermines COMPPS members’ ability to strike this critical balance.

The important and unique role that sport plays in promoting inclusiveness, community cohesion and the health and wellbeing of Australians is well recognised by government and sponsors who seek to associate themselves with the brands of COMPPS members. Increasingly the sponsors who invest in supporting Australian sport do so on the basis of shared values and beliefs. One way COMPPS members promote their values and beliefs is through the implementation of codes of conduct (or similar rules) which establish expectations for professional athletes and other employees. These codes assist COMPPS members to build positive and inclusive cultures internally and externally. These rules are also essential for COMPPS members to protect the value of their brands and provide a mechanism for sports to ensure that the values and behaviours of their participants reflect community expectations and the expectations of sponsors.

Codes of conduct are not only essential as a means to promote and protect sports’ values and beliefs; they also form part of COMPPS members’ compliance with Federal Government policy. Sporting organisations are required to meet the minimum standards set out in Sport Australia’s Member Protection Policy (MPP) template 2016, the recitals to which state:

National sporting organisations (NSOs) have a responsibility to make sure that their sports are safe, fair and inclusive for everyone involved. NSOs also have legal obligations to prevent and address discrimination and harassment and to protect children from abuse.

The MPP template includes codes of behaviour through which NSOs “seek to provide a safe, fair and inclusive environment for everyone involved in our organisation and in our sport”. By proposing to introduce statutory limitations on an NSO’s ability to uphold codes of conduct designed to promote respectful and inclusive sports, the Bill is inconsistent with and undermines the objectives of the MPP.

Sponsors seeking to engage with COMPPS members will seek to align themselves with organisations with similar values and beliefs. It is an essential that COMPPS members, who rely on revenue from sponsors to grow and promote their sports for all Australians, can

establish codes of conduct which allow them to protect the reputation and value of their brand and the brands associated with them.

3.2 Relevant employers – statement of belief – clauses 8(3)

Clause 8(3) introduces an ‘unjustifiable financial hardship’ threshold to the determination of reasonableness test where the ‘relevant employer’ is an employer with revenue of at least \$50 million per year, and is not a Commonwealth, state or territory employer.

The narrowness of this provision removes the obligation of an employer to consider harm done to other people’s rights and runs counter to COMPPS members policies drafted to support the creation and maintenance of tolerant, inclusive and diverse sports where all members of the community feel welcome to participate in sport and/or spectate and follow sport in Australia. This may expose members of the sporting community who have a disability, are part of the LGBTI+ community or are a representative of a minority group, to potentially offensive and harmful comments based on religious beliefs of others.

COMPPS asserts cl 8(3) removes the ability of its members to balance the tension between groups with differing rights such as the right to equality for all or the best interests of a child. The Bill essentially gives the person who makes statements of belief a privileged position over other rights which does not accord with global human rights doctrines or the underlying intentions of sport to promote respectful relationships.

The Bill does not engage with the concept of social media, despite social media being the most likely platform for the dissemination of statements of belief or religious views by employees. The scale and reach of popular athletes’ public social media platforms presents a significant and complex challenge for COMPPS members. The absence of any clear guidance in this regard fails to recognise the complexity of issues likely to flow from the adoption of the Bill for large and small employers. It also fails to acknowledge the central role of social media in the Australian sports economy, with governing bodies, athletes, broadcasters, sponsors and fans all interacting online to drive interest in and commercial benefit from professional sports. In this environment COMPPS members must have the ability to sensibly regulate the public speech of its employees to promote inclusiveness and protect against the real risk of disrespectful online behaviour.

Unjustifiable financial hardship

The “unjustifiable financial hardship test” introduced in clause 8(3) of the Bill is underdeveloped, impractical and unfair. There is no definition for “unjustifiable” in the Bill and its meaning in the context of the damage likely to be suffered by the COMPPS members is unclear. The Bill provides no guidance as to the level of financial hardship that might be “unjustifiable” for a non-profit sporting organisation dependent on the support of sponsors and fans for survival. Further, by focusing solely on financial damage that may be caused to the business the Bill fails to recognise the significant “non-financial” consequences which may be suffered by a COMPPS member or other business if it is unable to take reasonable steps to align the behaviours of its employees with its values and those of its sponsors and other stakeholders. This damage could include but is not limited to: failure to attract new sponsors, damage to reputation, media distraction, reduced rates of participation, reduced

interest in sport and loss of confidence in the brand. Also, placing the burden of proof on the employer to prove “unjustifiable financial damage” in circumstances where that employer will also be trying to mitigate the loss to its reputation give rise to an inherent conflict and perpetuates the damage.

Further, a financial threshold disregards the necessity of employers to put measures in place to avoid workplace conflict and the need to create safe, healthy workplaces for employees. These are difficult and costly concerns for all organisations, but the potential impact is significant for professional sports which rely on sponsorship and fan sentiment for a significant portion of their revenues. This provision unjustly ties employee freedoms to commercial outcomes.

Due to the arbitrary nature of the \$50 million threshold, the imposition of employer conduct rules relating to statements of belief may not automatically be unreasonable where the employee is part of a smaller sport or club with revenues less than the threshold. This means some COMPPS member sports will have a higher burden than others and therefore differing abilities to affect behavioural standards and mitigate reputational risk. COMPPS members have a collective and common interest in enhancing communities through sport and are all reliant on the attracting sponsors, fans and participants. There is no sound basis for the Bill to create this arbitrary distinction.

The Bill does not distinguish between not-for profits and other private sector businesses and treats all “large” private sector businesses on the same terms. This unfairly impacts COMPPS members who return the revenues generated from their commercial operations to fostering and growing their sports yet would still be put to the additional expense and administrative difficulty of having to prove “unjustifiable financial hardship” to mitigate potentially significant financial and non-financial risks.

Sportspeople as community ambassadors

The Bill as currently drafted will make it more difficult for COMPPS members to impose rules to ensure that the ambassadors for their code, and their game (i.e., the players, officials and staff) uphold the values and beliefs of the sport when communicating in public. In doing so, it may also inadvertently undermine the efforts of the sports, and all employers, to create an inclusive, diverse and culturally safe workplaces.

The distinction the Bill seeks to draw between statements of belief made in public “other than in the course of an employee’s employment” is artificial and uncertain in the context of professional athletes.

Professional sportspeople have high profiles within Australian public life and COMPPS members rely on the profiles of these athletes to generate interest in their sports from fans, sponsors and participants. The profiles and the associations of those athletes with the sports in which they participate are not restricted to the time the athlete spends on the court or the field. It is difficult to reconcile traditional notions of working hours and the activity undertaken by the professional sportsperson whose role includes that they also act as an ambassador for their sport, and potentially those associated with the sport. In this respect, professional sports people differ from other employees, and COMPPS sports from other employers.

4 COMPPS RECOMMENDS:

Clause 2(d) relating to relating to employer conduct rules is removed from the Bill.

Clauses 8(3)-(4) dealing with separate treatment for employer conduct rules for private sector businesses with revenues over \$50million be removed from the Bill.

As presently drafted, COMPPS is concerned that the Bill will undermine the collective efforts of all COMPPS members to create and maintain tolerant, inclusive and diverse sports where all members of the community feel welcome to participate. The concerns raised in this submission are intended to highlight the key concerns of members and ensure COMPPS sports can continue to contribute to the development of an inclusive, and diverse society free from all forms of discrimination.

The concerns outlined in this submission highlight key concerns with the Bill of collective interest to COMPPS members. We are happy to provide any further information or detail that may assist to better understanding the potential implications of the Bill for professional sports, if that is helpful.

At the time of the submission deadline, COMPPS executive was not able to confirm Tennis Australia's position regarding the final wording of this letter due operational demands of the Australian Open.

5 CONTACT DETAILS

Should there be any questions in relation to this submission please contact Jo Setright at jsetright@compps.com.au.

Yours sincerely



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