



## RELIGIOUS DISCRIMINATION BILL 2019 AND EMPLOYMENT

**The Federal Government has released its draft Religious Discrimination Bill for public comment. The Bill introduces rules preventing large private employers from restricting their employees in expressing religious views outside of work hours. These rules will privilege those with religious views to the detriment of Australians susceptible to religious condemnation, including LGBTIQ+ people, women and persons from minority faiths.**

### WHAT DOES THE RELIGIOUS DISCRIMINATION BILL 2019 DO?

The Religious Discrimination Bill 2019 will prohibit discrimination on the basis of religious belief or activity (including having no religious belief or refusing to engage in religious activity) in certain areas of public life, such as employment, education, goods, services and facilities, accommodation, sport and clubs.

So, for example, it will provide protection in certain circumstances to someone who is:

- treated unfairly at work, or turned away from a restaurant or shop, because they have or don't have a religious belief
- unreasonably prevented from wearing religious dress as part of a work or school uniform.

But the problem is that the Bill will introduce employment rules privileging those with religious views in certain workplaces. Large private employers will be limited in their ability to restrict employees expressing views outside work hours – but only when those views are religiously-based.

### THE 'NO CONSEQUENCES' CLAUSE

Section 8(3) of the Bill will limit the ability of private employers with revenues of at least \$50 million to stop an employee from making religiously-based statements outside work hours, even in some cases where those statements may be harmful or offensive, or contrary to the employer's mission.

If employers wish to stop their employees from making such statements, the only way they will be allowed to do so is to show these restrictions are necessary for the employer to avoid 'unjustifiable financial hardship'.

While these rules will cover any statement made by religious people which generally conforms with their faith, they will only cover statements made *about* religion by non-religious people. That is, while religious people will be free to express religious views on any topic, non-religious people will only be protected when expressing views about religion itself.

Statements which are not made in good faith, or which are malicious, likely to harass, vilify, incite hatred or violence, or which counsel, promote, encourage or urge serious offences, will not be protected. But it is not clear when a religiously-based statement will meet this threshold.

For example, it is not clear whether employers could stop or discipline their employees from making the following kinds of statements:

- 'homosexuality is an abomination in the eyes of God'
- 'AIDS is a punishment from God'
- 'if you take out uncovered meat and place it outside on the street, or in the garden or in the park, or in the backyard without a cover, and the cats come and eat it ... whose fault is it, the cats or the uncovered meat. The uncovered meat is the problem.'



If she was in her room, in her home, in her hijab, no problem would have occurred'<sup>1</sup>

- regarding the Black Saturday bushfires: 'God's conditional protection has been removed from the nation of Australia, in particular Victoria, for approving the slaughter of innocent children in the womb'.<sup>2</sup>

### WHAT WILL BE THE IMPACT OF THE 'NO CONSEQUENCES' CLAUSE?

The 'No Consequences' clause privileges those with religious views. Religious people will be given greater latitude to express their views outside work hours without facing consequences from their employers. But non-religious people, and people in smaller workplaces or in the public sector, will not be afforded the same protection.

The 'No Consequences' clause will restrict the ability of large private employers to set reasonable rules of conduct depending on the circumstances. For example, the 'No Consequences' clause ignores:

- the impact a statement may have on the mission of the organisation, or on other employees
- the seniority of the employee – it treats statements made by senior executive or by a graduate employee in the same way.

The 'No Consequences' clause could prevent large employers with public missions, such as large health and welfare organisations, from taking action against an employee who makes statements contrary to those missions. For example, an organisation promoting depression awareness taking issue with an employee tweeting that 'suicide is as sinful as murder'.

### THERE'S A BETTER WAY FORWARD

The 'No Consequences' clause frames the freedom of expression as only being about religion and money. It protects the religious to a greater degree than the non-religious, even where the views expressed may be damaging in non-financial ways to a large organisation or its people.

At the same time, it affords no protection to those in smaller organisations or in the public sector, and little protection to those with non-religious views.

The 'No Consequences' clause just doesn't work and should be removed. Without it, the Bill will still allow employees to challenge employer policies and standards that unreasonably limit religious expression.

### WHAT YOU CAN DO

1. Make a submission by **2 October 2019** to the consultation on the Religious Discrimination Bill 2019 by sending it to [FoRConsultation@ag.gov.au](mailto:FoRConsultation@ag.gov.au). See more information here: [www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx](http://www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx).
2. Write to your local MP voicing your concerns on the Religious Discrimination Bill 2019.

Have you been disciplined by your employer for sharing non-religious views outside work hours? Are you an employer who has had to deal with an employee expressing harmful views outside work hours?

**Write to us and tell us your story here:**  
[equalityaustralia.org.au/contact-us/](http://equalityaustralia.org.au/contact-us/)

<sup>1</sup> <https://www.theage.com.au/national/ethnic-leaders-condemn-muslim-cleric-20061026-ge3fal.html>

<sup>2</sup> <https://www.smh.com.au/national/others-didnt-have-a-prayer-20091001-ger9.html>