



RELIGIOUS DISCRIMINATION BILL 2019 - IN FOCUS: PEOPLE OF FAITH

The Religious Discrimination Bill is intended to protect people of faith against discrimination. But it also privileges faith-based organisations over individuals with different religious or no beliefs, and removes existing protections when discriminatory comments are made about people of faith, along with many others.

WHAT DOES THE RELIGIOUS DISCRIMINATION BILL DO?

The Government has released its second draft Religious Discrimination Bill which aims to protect people of faith and without faith from discrimination in certain areas of public life, such as employment, education and the provision of goods and services.

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 have or don't have a religious belief
- unreasonably prevented from wearing religious dress as part of a work or school uniform.

¹ New South Wales protects against race-based discrimination (including ethno-religious origin). Jews and Sikhs are protected under this ground, although Muslims may not be: *Miller v Wertheim* [2002] FCAFC 156; *Jones v*

But the Bill also privileges faith-based organisations over individuals with different or no religious beliefs. And people of faith, along with many others, could lose existing protections when discriminatory comments are made about them.

Importantly, national anti-discrimination protections for people of faith could be achieved without removing protections for others, including for others of faith.

MAKING DISCRIMINATORY STATEMENTS LAWFUL

People of faith currently have legal protection against discrimination in Victoria, Queensland, Tasmania, Western Australia, the Northern Territory and the Australian Capital Territory. More limited protections exist in South Australia and New South Wales.¹ National laws also protect workers who are fired on the grounds of religion.

The Religious Discrimination Bill overrides existing discrimination protections where someone makes discriminatory statements based in or about religion, founded in their own religious beliefs or lack of belief.²

For example, the proposed laws may take away discrimination protections where a teacher, boss, support worker or shop-owner makes inappropriate statements about a person's religion.

Trad (No 2) [2011] NSWADTAP 62, [37]. South Australia protects against discrimination based on religious appearance or dress in employment and education.

² Religious Discrimination Bill, s 42.



Workplaces, schools and shops are not the place for colleagues, students and customers to be told that:

- their religion prevents them assimilating into Aussie life, like eating meat pies and drinking beer
- the Virgin Mary really just got 'knocked up behind a camel shed'³
- as women, they are oppressed by their faith or that they might want to 'run that by their husband first'⁴
- their revered prophet is a paedophile⁵
- their Judaism is just an excuse for more holidays
- they are anti-social for refusing to drink alcohol
- parents shouldn't fill their children's heads with nonsense about 'a pretend man in the sky'.

Statements which are malicious, or which are likely to harass, threaten, seriously intimidate or vilify, or which encourage serious offences, will not be protected. But where the line will be drawn between statements that are allowed and those which are not is unclear.

³ Brett Lackey, [Kyle Sandilands is 'investigated by the human rights commissioner' after complaints about his Virgin Mary joke](#), Daily Mail, 19 October 2019.

⁴ Australian Human Rights Commission (2004) [Ismae – Listen: National consultation on eliminating prejudice against Arab and Muslim Australians](#), at sections 2.3.6 and 2.3.8.1.

NO CONSEQUENCES FOR CONDUCT

Separate provisions also propose to provide additional protection to employees, professionals and tradespeople who make certain statements based in or about religion outside of work contexts.⁶

These provisions only apply to people:

- employed by large private sector employers with annual revenues of at least \$50 million, and/or
- in professions, trades and occupations requiring qualifications or licences.

You can read more about how these provisions operate in our [Employment](#) factsheet.

While these provisions will provide protection to people who make certain statements outside of work, conventional anti-discrimination protections could have achieved this protection without the legal downsides in this Bill, which include:

- protecting certain statements about religion which demean people of faith
- less protection for people of faith in the public sector or smaller organisations, and for non-believers.

⁵ *ES v Austria*, European Court of Human Rights, Application no. 38450/12, 18 March 2019.

⁶ Religious Discrimination Bill, ss 8(3)-(5).



FAITH-BASED ORGANISATIONS

Faith-based schools, charities and non-commercial bodies will maintain the ability to discriminate against people with different or no religious beliefs in employment and service delivery.⁷ Faith-based hospitals and aged care facilities will be able to do so in employment.⁸

These broad exemptions *always* privilege faith-based organisations over individuals with different or no religious beliefs, even where:

- religious beliefs or activities have little relevance to the role or service
- the service is government funded (such as homelessness, disability or family violence support), or
- the organisation is large and/or a major employer or service provider in the area.

For example, a Christian school could fire a teacher who married a Muslim, and an Anglican charity could refuse to hire a social worker who is Catholic, Baptist or Mormon.

These broad exemptions are in addition to other exemptions in the Bill, including those:

- allowing religious beliefs or activities to be considered when they are an inherent requirement of the job (e.g. when employing a pastoral worker)⁹
- allowing people and organisations to meet the needs of, or reduce a

disadvantage experienced by, particular people of faith,¹⁰ and

- for religious clubs and volunteer bodies.¹¹

Many faith-based organisations (especially for those from minority faiths) could accommodate a religious ethos into their operations by simply relying on these specific exemptions, which are more commonly found in anti-discrimination laws.

PEOPLE FROM MINORITY FAITHS

The Religious Discrimination Bill fills a gap for some people from minority faiths in New South Wales and South Australia by providing additional discrimination protections (e.g. for Muslims in New South Wales, or people of faith in South Australia who do not wear religious clothing or items). However, people from minority faiths who already benefit from protections in all other states and territories (e.g. Jews, Sikhs, Muslims) will have their rights under these laws watered down by the provisions making certain discriminatory statements lawful (see above).

The Bill also does not contain protections against vilification based on religion, similar to those contained in section 18C of *Racial Discrimination Act* and other state laws.

The broad exemptions for faith-based organisations particularly in section 11, which is

⁷ Religious Discrimination Bill, s 11.

⁸ Religious Discrimination Bill, ss 32(8)-(11). Faith-based providers of camp or conference sites will also be given exemptions in accommodation: ss 33(2)-(5).

⁹ Religious Discrimination Bill, s 32(2).

¹⁰ Religious Discrimination Bill, s 12. In addition to permanent exemptions, temporary exemptions can also be granted to allow discrimination by a particular body or person: s 37.

¹¹ Religious Discrimination Bill, s 35-36.



broader than all other anti-discrimination laws, leaves people from minority faiths vulnerable to discrimination in certain settings (e.g. faith-based aged care, charities, schools etc).

So, for example, while a Jewish or Muslim school meeting the needs of their communities could seek to rely on a specific exemption, the broad exemptions applying to all faith-based schools mean Jews and Muslims can be discriminated against in Catholic schools.

Religious discrimination by law enforcement, national security and intelligence services is also permitted when 'reasonably necessary' for performing their functions.¹²

CASE STUDIES

Scenario 1: A shop assistant who wears the hijab is told by her store manager that 'she doesn't understand why Muslim women cover up for their husbands'. If she complains about the comment, her employer could deny the complaint because the Bill protects the store manager's 'statements of belief'.

Scenario 2: A Sikh man applies for a nursing role at a Commonwealth-funded Christian aged care facility. The facility will not hire him unless he removes his turban. If he complains of religious discrimination, the aged care facility could rely on exemptions in this Bill.

Scenario 3: A Jewish student enrolled at a private school identified with a Christian denomination asks to sit an exam, scheduled for Yom Kippur, a day earlier. The school refuses, relying on its exemption under the Bill.

¹² Religious Discrimination Bill, s 30(2).

THERE'S A BETTER WAY FORWARD

Discriminatory statements have no place in the workplace, in schools or in the provision of public goods and services. It doesn't matter whether these statements are made about or by people of faith.

People of faith can be protected against discrimination without removing existing anti-discrimination protections from others, including from other people of faith.

WHAT YOU CAN DO

Find out more about how the Religious Discrimination Bill will also affect women, people with disabilities, LGBTIQ+ people and others, as well as access to healthcare, on our [website](#).

Write to your local MP voicing your concerns on the Religious Discrimination Bill 2019 [here](#).

Whether LGBTIQ+, a person of faith, or both, we are working for fair and balanced laws that protect us all, equally.

Sign the Freedom from Discrimination Statement calling for fair and equal discrimination laws that unite, rather than divide, the community, [here](#).

Write to us and tell us your story [here](#).