



RELIGIOUS DISCRIMINATION BILL 2021

KEY POINTS:

- **The third version of the Bill is improved but concerns remain.**
- **Australians will lose discrimination protections at work, school and when accessing goods and services like healthcare to accommodate the religious beliefs of people who may make discriminatory statements against them.**
- **Bodies regulating professionals will find it harder to enforce standards which make their professions and industries inclusive and safe places for everyone.**
- **Employees, students and people relying on certain services provided by faith-based organisations have little protection if their beliefs differ from those of that organisation.**
- **Corporate bodies (such as Christian lobby groups) have a right to sue.**
- **These, and other unprecedented provisions, mean that the Religious Discrimination Bill fails to ensure that our laws protect all of us, equally.**

WHAT DOES THE RELIGIOUS DISCRIMINATION BILL 2021 DO?

The Religious Discrimination Bill 2021 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.

But the Bill also *takes away* rights from people who are currently protected under anti-discrimination laws. Faith-based institutions will maintain special exemptions allowing them to discriminate against staff, students and people who rely on certain services.

MAKING DISCRIMINATORY STATEMENTS LAWFUL

The Religious Discrimination Bill takes away existing anti-discrimination protections, including on the grounds of race, religion, sex, marital status, disability, sexual orientation, gender identity or intersex status.

Employees, students and people accessing goods and services may not be protected under existing anti-discrimination laws where a person makes offensive, uninformed, insulting, demeaning or damaging statements based in or about religion.¹

For example, the proposed laws may protect a boss, colleague, teacher, doctor, taxi driver or other service provider who says to a colleague, student, customer or client:

- 'menstruating women are unclean'
- 'homosexuality is a sin'
- 'disability is caused by the devil'

¹ Religious Discrimination Bill, s 12.



- ‘every child should have a mother and a father who are married’
- ‘God made only men and women’
- ‘HIV is a punishment from God’
- ‘people who don’t believe in Jesus can’t get into heaven’.

Statements which are malicious, that harass, threaten, intimidate or vilify, or which encourage serious offences, will not be protected.² But where the line will be drawn between statements made in ‘good faith’ that are allowed and those which are not is unclear. This is because the purpose of this clause is to allow people to say, write and communicate things which could be discrimination today.

These provisions will also have a chilling effect on people calling out inappropriate comments made at work, school or in the provision of goods and services, because the provisions are complex and allow discrimination complaints to be defended in expensive federal courts.

The Bill allows other laws to be overridden by regulations. For example, it would allow conversion practices legislation to be prescribed, protecting ‘statements of belief’ that may amount to LGBTQ+ conversion practices under state and territory laws.

NO CONSEQUENCES FOR MISCONDUCT

Qualifying bodies that confer professional qualifications necessary to practice medicine, law and other jobs will be prevented from responding reasonably to members who make offensive, uninformed, insulting, demeaning or damaging

statements based in or about religion outside work contexts.³

Statements which undermine public confidence in a person’s ability to do the job professionally could be left unchallenged unless:

- the body can establish its requirement is ‘essential’ to the profession, trade or occupation,⁴ or
- the statements are malicious, harassing, threatening, intimidating or vilifying, or encourage serious offences.⁵

The Bill leaves professional bodies with little flexibility to consider whether statements made outside work contexts can nonetheless cause harm to colleagues or clients, or undermine public confidence in the profession.

FAITH-BASED ORGANISATIONS

Faith-based organisations (such as schools, charities and non-commercial bodies) will maintain the ability to discriminate against people with different or no religious beliefs in employment, education and certain service delivery.⁶ Faith-based hospitals, aged care facilities, accommodation providers and disability service providers will be able to discriminate against people with different or no religious beliefs in employment.⁷

Reforms that narrow similar exemptions under state and territory anti-discrimination laws can be simply overridden by regulations made by the Commonwealth Attorney General.⁸

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

² Bill, s 12(2).

³ Bill, s 15.

⁴ Bill, s 15(2).

⁵ Bill, s 15(3).

⁶ Bill, ss 7-8, 40(2)-(6).

⁷ Bill, ss 7-9.

⁸ Bill, s 11.



- religious beliefs or activities have little relevance to the role or service
- services are government funded (such as homelessness or family violence support)
- the organisation is large and/or a major employer or service provider in the area
- the individual is of the same faith as the organisation, but differs in their interpretation of some doctrine (e.g. Christians who have affirming views of LGBTQ+ people).
- it allows corporations to sue if they suffer detriment (such as a refusal of goods, services, facilities or accommodation) because of a close association with a person who holds or does not hold a religious belief¹³
- it extends liability beyond those who aid, abet, counsel or procure contraventions to anyone who is directly or indirectly 'knowingly concerned' in religious discrimination¹⁴
- it protects religious activities that contravene local government by-laws.¹⁵

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

These broad exemptions are also in addition to existing exemptions that allow faith-based organisations (including schools) to fire, expel and treat unfairly women, LGBTQ+ people, and people who are pregnant, divorced or in de facto relationships.¹²

UNUSUAL AND UNPRECEDENTED PROVISIONS

There are several other unusual provisions in the Bill, including:

⁹ Bill, s 39(2)-(6).

¹⁰ Bill, s 10.

¹¹ Bill, ss 42-43.

¹² *Sex Discrimination Act 1984* (Cth), ss 37-38.

¹³ Bill, s 16(3).

The Bill defines religious conformity fairly loosely, including:

- allowing people to make certain statements *they* consider to be religiously based (even if no one else with the same religion agrees with their interpretation)¹⁶
- allowing religious bodies to discriminate on the basis of religion without requiring that their conduct actually conform to a religious doctrine, belief or tenet¹⁷
- allowing religious schools to simply prescribe their positions on religious matters in policies and prefer people for employment on that basis, overriding protections in state and territory laws.¹⁸

WHAT ABOUT THE OTHER BILLS?

Two other Bills accompany the Religious Discrimination Bill. These:

¹⁴ Bill, s 70.

¹⁵ Bill, s 5(3).

¹⁶ Bill, s 5(1) (definition of *statement of belief*(a)(iii)).

¹⁷ E.g. Bill, ss 7(2), 9(3)(c).

¹⁸ Bill, s 11.



- deem charities promoting marriage as being only between a man and a woman as acting for 'the public benefit'¹⁹
- enable religious schools to refuse their facilities, goods or services to same-sex couples wishing to marry.²⁰

CASE STUDIES

Discrimination by faith-based organisations



Mrs Rachel Colvin, a committed Christian and married mum of three, taught for 10 years at a Christian school in Victoria. In 2018, Mrs Colvin was required, contrary to her own religious

views, to sign a statement by the school that *'marriage must be between a man and a woman'*. She offered to keep her personal views private but refused to sign the statement. This cost Rachel her job.

Under the Bill, teachers like Mrs Colvin would have no protection if they were fired for having religious views different to those of their faith-based employers, even if they could ably perform the job required of them. Reforms currently before the Victorian Parliament which narrow legal carve-outs that allow what happened to Rachel to happen to others could simply be overridden by regulations made by the Commonwealth Attorney-General.

Protecting discriminatory statements

In 2015, a psychiatrist was deregistered for conduct including telling a client that *'lesbians don't know that they are doing something wrong so we still have to love them'* and telling



another client to *'ask for God's forgiveness'* for her son who was stillborn.²¹

Under the Bill, religious statements made in 'good faith' by a service provider may be protected, removing existing discrimination protections that ensure services are provided without discriminating against women, LGBTQ+ people, people with disability and others.

No consequences for misconduct



Over 10 years, a doctor posted hundreds of statements online demeaning LGBTQ+ people, colleagues who

provided abortions and gender affirming treatment to trans people, and made 'jokes' about racial and religious groups. In 2020, the Medical Board suspended the doctor for breaching professional standards, while it investigated whether he was fit and proper to continue practicing medicine.²²

The Bill makes it harder for qualifying bodies like the Medical Board to respond to statements of belief made outside work contexts that undermine public confidence in their profession.

THERE'S A BETTER WAY FORWARD

Our laws should protect all of us, equally. People of faith and those without religious beliefs can be protected from discrimination without removing protections from others.

WHAT YOU CAN DO

Write to your local MP voicing your concerns on the Religious Discrimination Bill 2021 [here](#).

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

¹⁹ Human Rights Legislation Amendment Bill 2021 (Cth), proposed *Charities Act 2013 (Cth)*, s 19.

²⁰ Ibid, proposed *Marriage Act 1961 (Cth)*, s 47C.

²¹ *Health Care Complaints Commission v Sharah* [2015] NSWCATOD 99.

²² *Kok v Medical Board of Australia* [2020] VCAT 405.