

Buddhist Council of NSW Submission to the Senate Legal and Constitutional Affairs Committee

Religious Discrimination Bill 2021 and Related Bills



Buddhist Council of NSW

About Our Organisation

The Buddhist Council of NSW (BCNSW) is Australia's largest Buddhist representative body, with member organisations of diverse cultural and linguistic communities from all Buddhist traditions across the state. The BCNSW is also a member of the Federation of Australian Buddhist Councils.

Executive Summary

We welcome the opportunity to contribute to the committee's consultation on the Religious Discrimination Bill. In our view, this bill has the potential to:

- Negatively impact minority religions and minority groups (including LGBTQIA+ people).
- Reduce access to employment and certain services for minorities.
- Entrench religious discrimination in secular society.
- Create social disharmony through offensive and humiliating statements that target specific groups.

Recommendation

We do not support this bill as it currently stands. Whilst we welcome limited protections for religious freedom, it is our view that the bill does not strike the right balance between religious freedom and the right to equal treatment and to be free from discrimination.

We recommend the committee consider the following points:

- Religious exceptions should be limited, not create a positive right to discriminate.
- Religious bodies and schools should only discriminate on the basis of faith in employment if it is a genuine and inherent religious requirement of the job. ● Religious organisations that receive public funding should not be allowed to discriminate in employment.
- Minority religions and groups will be unfairly impacted by reduced employment opportunities under this legislation, and minority students may not have their religious needs respected.
- The statement of belief criteria has untested complexity and unknown consequences
- The limitations on statements of belief do not go far enough to protect vulnerable groups from offensive, insulting or humiliating statements.

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General Overview of Our Position

The 2021 iteration of this bill has improved on some of the deficiencies in previous versions of the legislation. However, in previous submissions, Australian Buddhists have repeatedly voiced concern that this legislation should not privilege religious freedom above other human rights.¹ Whilst the BCNSW would generally be welcoming of limited protections for religious freedom, we cannot support this if it is at the expense of other human rights being eroded, as is still the case with this bill.

We are especially concerned about the potential for this bill to have a negative impact on minority religions and other groups. The bill's allowance for religious organisations to require or preference people from the same faith in employment or provision of certain services will result in disadvantage for Buddhists and other minority religions. Our community members

may be locked out of employment opportunities in education, hospitals, aged care, disability services and charities run by religious bodies, even when these are government contracts or publicly funded and even when there is no inherent religious aspect to this work.²

Similarly, granting religious bodies a positive right to discriminate on the basis of a religious view and overriding existing anti-discrimination legislation, creates a double standard that puts the rights of religious institutions above the rights of individuals. Whilst some protections against discrimination based on faith is warranted, the allowances for religious bodies to discriminate so widely means that this legislation will act like a sword to discriminate against others, rather than a shield to protect religious freedom.

Background from the Buddhist Community

Buddhists Value Religious Freedom

Buddhists want themselves and others to be able to practice their religion freely. We do not seek to impose our religious views on others and we respect the rights of others to practise their beliefs. We also respect the right of people to be protected from the religious expression of views or beliefs that unreasonably impact them. We have not felt that our religious freedom has been under threat and did not seek this legislation.

Buddhist View on Religious Discrimination

Buddhism is a religion that emphasises loving kindness and compassion for all beings, without discrimination. The Buddha rejected prejudice based on religion, caste or race.

¹ See Further Information p8 below for previous submissions and statements by Buddhist organisations regarding this legislation.

² Bill, §§ 7–9

Buddhism affirms equality of the sexes, diverse genders and sexual orientations.

The Australian Buddhist community has previously shown strong support for human rights, including; supporting the changes to Marriage Act, supporting gender equality, opposing racism, and condemning religious intolerance. Our view is that anti-discrimination law was developed to protect people from discrimination for aspects of themselves that are innate and cannot be changed, such as race, gender, sexual orientation and disability.

Whilst we welcome some of the new protections in the bill, we do not believe that religions should have an unchecked positive right to discriminate on the basis of religion or a religious view. We believe any discriminatory capability should occur only when there is a clear and

genuine religious purpose, and that the impact on others should always be considered. Exceptions should be exercised in the narrowest way possible and not given broader expression or blanket use where there is no religious purpose.

Religion Should Not Be Above Other Human Rights

The bill overrides all state and federal anti-discrimination laws, saying a statement of belief “in and of itself does not constitute discrimination,” in regards to existing legislation.³ Religious freedoms need to be carefully balanced against the right to be free from discrimination based on religious views and always exercised with compassionate regard for those impacted. Religious freedom should not be given a special place above other human rights and an individuals’ rights should always be prioritised over the rights of religious institutions. Religious freedom should not impinge upon the established rights of Australians or erode our current anti-discrimination protections. This position has been the clear and consistent message of peak Buddhist organisations in all our submissions for proposed federal and state religious discrimination legislation.⁴

Our Concerns About this Legislation in Detail

Negative Impact on Minority Religions

Despite the intentions of this bill to protect religious freedom, we believe it may worsen religious discrimination against people from minority faith groups, including Buddhists. The ability for religious bodies to discriminate on the basis of a religious view may detrimentally impact existing rights of employment in areas of public life, including employment in religious health, aged care and accommodation organisations.

³ Bill, § 12

⁴ See Further Information p8 below for previous submissions and statements by Buddhist organisations regarding this legislation.

The protections offered against harmful speech are untested and are not as strong as some state legislation, such as Tasmania’s anti-discrimination laws, which this bill will override.

Negative Impact on LGBTQIA+ Community

Australian Buddhists have embraced our LGBTQIA+ community members with love and compassion. We are disappointed that discrimination against LGBTQIA+ people by religious institutions will be allowed to continue under this legislation by retaining existing exceptions to discriminate against this community. We do not welcome further discrimination against LGBTQIA+ people through the over-riding of state anti-discrimination legislation in new areas. We also do not wish to see any winding back of existing LGBTQIA+ protections in

areas of employment, or services on the basis of religious views, as may be the case under this bill.

Reduced Access to Employment for Minority Religions and Groups

Sections 7–9 of the bill allows religious organisations to require or prefer employment for people of their own faith.

...it is not discrimination for a religious hospital, aged care facility, accommodation provider or disability service provider to seek to preserve a religious ethos amongst its staff by making faith-based decisions in relation to employment. Such conduct is therefore not unlawful...⁵

Section 39(1) makes it lawful for individuals:

to discriminate against another person, on the ground of the other person's religious belief or activity, in connection with employment to perform domestic duties on the premises on which the first person resides.⁶

Buddhists are a minority faith group and account for only 2.4% of the Australian population. Currently, faith-based organisations—often large, long-established and sophisticated organisations—employ, educate and provide services to many Australians, including those of different and no religious belief. Often these organisations and services are publicly funded and operate in areas which were previously provided by the public sector. Buddhists and other minority faith groups simply do not have economic resources or infrastructure to match these employers.

Many Buddhists are employed in hospitals, aged care, disability care and charities run by religious organisations. Buddhists and people from minority faiths are also employed as domestic workers in private capacity. Therefore, we are greatly concerned that minority faith members of our community will now face discrimination in employment and accessing

⁵ Bill, §§ 7–9

⁶ Bill, § 39(2)

certain services, resulting in unfair disadvantage as a direct result of this legislation.

Entrenching Religious Discrimination in a Secular Society

The bill's explanatory memorandum acknowledges the potential for encroachment on established human rights:

*...by allowing this conduct, the Bill could limit an individual's rights to equality and non-discrimination by **preventing them accessing the provision of services and education or employment opportunities** from that religious body on the basis of their religious belief or*

*activity.*⁷

The number of people professing to be religious is falling in Australian society. Over 30% of people identified as having no religion in the 2016 census, we believe that there is little community appetite from Buddhists and the broader community for giving religious groups further powers to discriminate based on religious views over other human rights, noting the poor record of some religious organisations for ethical dealing documented in the Royal Commission on Institutional Responses to Child Abuse

Buddhists value equality of access to education, health, aged care, employment and charitable services and consider social equality to be an Australian and Buddhist value. The ability for religious bodies receiving public funding to discriminate against individuals seeking employment or certain services creates an unequal power dynamic in our society that will unfairly impact minority religions and other individuals. We believe this is out of balance; the rights of individuals should be prioritised over organisations.

This legislation retains the substantial exceptions that already allow religious organisations to discriminate against people who would otherwise be protected by anti-discrimination legislation and extends this right to discriminate further, on the basis of faith or a religiously held view. The broad range of positive rights to discriminate on the basis of faith or religious view granted to religious organisations in areas of employment, education, aged care, healthcare and other essential services goes too far in licensing religious discrimination in essential areas of civic society. We believe this right to discriminate is too broad and is not in balance with the rights of people to equality and non-discrimination.

This erosion of current human rights protections by legalising actions and statements that would be considered discrimination today. This creates a double standard where religious organisations and people of faith are protected from discrimination on the ground of religious belief but allows them to discriminate against others in public life.

The bill's requirement for religious bodies to have publicly available policies about their discriminatory employment practices is welcome, in that it will at least provide some

⁷ *Explanatory Memorandum*, p10

transparency, but this does not alleviate fundamental concerns about the unfair nature of this discrimination and the impact on minority religions and minority groups, especially given that religious organisations receive public money to run essential services.

Whilst the protections against discrimination in service delivery by religious organisations are welcome, it seems a bizarre double standard that people of other faiths or minority groups will have a right to access these essential services, yet these very same people will not have a right to be employed in the organisations that provide them.

There is also a future potential that by preferencing the employment of people of the same religion, or on the basis of a religious view, religious hospitals, aged care homes, disability services and other places may become unwelcoming or intolerant of different religions, or of other minority groups. Excluding people in employment will have a negative flow-on effect in the culture of these spaces, where everyone should be safe and welcome.

Creating Social Disharmony through Harmful Speech Section 15(3) of the legislation rightly contains limitations on the ability for individuals to make statements of belief that are malicious, or which “threaten, intimidate, harass or vilify”. Statements that encourage illegal activity are also prohibited.⁸ These protections recognise the danger to vulnerable members of our community and the potential for harm that may come from intolerant and unrestrained statements of religious belief.

However, the legislation's limitations do not go far enough to be real protections because they still do not prohibit offensive, insulting, humiliating or derogatory statements based on a religious view. Such statements were used in the past to stigmatise groups, such as single mothers, and are already widely known to do harm to minority religions and LGBTQIA+ people in particular. This will only worsen under the new legislation. Statements made in “good faith” can still have a harmful effect, and what constitutes good faith may prove difficult to define. This has the potential to give licence to harmful speech under the guise of a religious view, with bad faith actors targeting minority religions and LGBTQIA+ individuals. This is certain to cause further harm to these groups. People’s right to be free from discrimination based on a religious view should also include the freedom to not be subjected to offensive, insulting, humiliating and ridiculing statements.

A further concern is that when individuals make a statement of belief, they do not need to have a high degree of certainty that their view is “in accordance with the doctrines, tenets, beliefs or teachings of that religion”, rather, it only needs to be something they “genuinely consider” to be so.⁹ This is a low bar, considering it will allow people to make statements that might otherwise constitute discrimination, and will override existing state

⁸ Bill § 12

⁹ Bill § 5 p7

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anti-discrimination protections. Rather than a mere personally held feeling, there should be a higher test for such statements, requiring doctrinal validation. It is noteworthy that there is a much higher threshold for religious bodies engaging in discriminatory practices, requiring that “a person of the same religion as the body could reasonably consider the conduct to be in accordance with the doctrines, tenets, beliefs or teachings of that religion”.¹⁰ Whilst this still has weaknesses, it at least provides an additional layer of religious validation, rather

than merely leaving it entirely up to an individual's view of doctrine alone, which will allow untested, idiosyncratic statements to be made as a religious view, and will be protected even when it is discriminatory or harms others.

Buddhist Organisations Endorsing this Submission

Our submission has been endorsed by the following national peak Buddhist bodies and BCNSW members:

- Australian Sangha Association
- Australian Association of Buddhist Counsellors and Psychotherapists
- Federation of Australian Buddhist Councils
- Amitabha Foundation
- Buddhist Library
- Rainbodhi LGBTQIA+ Buddhist Community
- Santi Forest Monastery

Buddhists value harmony, equality and fairness. We do not welcome the prospect of religious organisations and individuals using this bill to disadvantage minority groups or create more discrimination and disharmony in our community. Thank you for considering our submission.

Yours sincerely,

Akālika Bhikkhu

Board Director, Buddhist Council of NSW

Gawaine Powell-Davies

Chairman of the Board, Buddhist Council of NSW

¹⁰ Bill §§ 7–9

Further Information

Previous Buddhist Statements on this Bill.

- Australian Sangha Association, [Submission: 1st Draft Religious Discrimination Bill, Oct 2019](#) ●
- Federation of Australian Buddhist Councils, [Submission 1st Draft Religious Discrimination Bill](#)

2019

- Australian Sangha Association and Federation of Australian Buddhist Councils, [Submission: 2nd Draft Religious Discrimination Bill, Jan 2020](#)
- Rainbodhi LGBTQIA+ Buddhist Community, [Media Release: Buddhists For Equality](#)
- [Joint letter to Attorney General from Queer Faith Leaders](#)
- [Open letter to the Prime Minister](#) signed by 250 organisations including several Buddhist organisations.



The Chair,
Senate and Legal and Constitutional Affairs Committee
Parliament House,
Canberra

On behalf of the Federation of Australian Buddhist Councils, I support the submission from the Buddhist Council of NSW as representing a clear Buddhist position on this proposed legislation. Can you please record this with the submissions?

Yours sincerely,

Gawaine Powell Davies,
Acting President, Federation of Australian Buddhist Councils
19/12/21