



15 December 2021

Committee Secretary  
Parliamentary Joint Committee on Human Rights

Dear Secretary

### **Submission on Religious Discrimination Bill 2021 and related bills**

I write to make a submission on this inquiry on the religious discrimination legislative package. I do so in my personal capacity.

I strongly oppose the Religious Discrimination Bill and the entirety of this package. I do so for several reasons.

First, it is unnecessary. Expressions of religious belief receive adequate protection under existing law. To the extent that they do not, these are not beliefs that are deserving of further protection.

Second, the package would afford religious statements of belief—or more specifically, speech grounded in religious belief—legal protection that other speech does not enjoy under Australian law.

Third, to elaborate on the second point: if this were to become law, religious people would enjoy freedom of expression that is greater than that enjoyed by non-religious people.<sup>1</sup> The latter is a growing segment of the Australian population and includes many millions of people.

Fourth, while superficially premised on human rights ideas, this package is inconsistent with human rights law by prioritising religious freedoms over other freedoms. For example, Article 2(1) of the ICCPR<sup>2</sup> sets out the principle of non-discrimination. This principle protects everyone and extends to protect people from discrimination on the basis of their sexual orientation<sup>3</sup> and gender identity.<sup>4</sup> This package would allow religious people to discriminate against LGBTQI+ people in various fora on the basis of their religious beliefs; in doing so, this prioritises religious freedom over the rights of LGBTQI+

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<sup>1</sup> At the same time the Commonwealth Government is contemplating reform that would undermine freedom of expression in other areas, including its proposed “Anti-Trolling” Bill and proposed amendments to the *Privacy Act 1988* (Cth). Speech that would be chilled by these other proposals will often be more deserving of protection than religious speech that would be exalted by this package. The Government’s legislative priorities are bizarre.

<sup>2</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>3</sup> *Toonen v Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

<sup>4</sup> See generally Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity - Report of the United Nations High Commissioner for Human Rights (17 November 2011) <[https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41\\_english.pdf](https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf)>.

people to not be discriminated against. The body of international law to which this package seemingly draws authority provides that freedom of religion must be balanced<sup>5</sup> against other human rights.<sup>6</sup>

Fifth, this package will lead to greater discrimination against vulnerable people, including against individuals who identify as LGBTQI+. By legitimising ‘statements of belief’ that are often hurtful and even hateful, this package will lead to real harm<sup>7</sup>—especially for young people.<sup>8</sup> That the Government would want to encourage people to be bigoted just years after the long-overdue achievement of Marriage Equality is obscene.

Sixth, the Government lacks a mandate for this package. 41.44% of electors—5,906,875 people—voted for the Government at the last election. 7,817,247 Australians said ‘yes’ to Marriage Equality in the 2017 postal survey. The Government is wielding its Westminster-style majority, gifted by a minority of Australians, to override the common-sense view of a majority of Australians: that the human rights of LGBTQI+ people are deserving of stronger protection. If this package is not scrapped outright (as it should be), it should be deferred until after the next federal election.

Yours faithfully

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<sup>5</sup> According to Zucca, this notion of ‘balance’ is misconceived. Fundamental legal rights may give rise to genuine conflicts and may be genuinely incompatible: ‘in such instances there are a number of reasonable solutions; though in each, a loss for one party remains inevitable’. If this package is reframed to purport to balance religious freedom against other human rights, the inevitable results will be the loss of human rights for certain Australians—especially LGBTQI+ people. See Lorenzo Zucca, *Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA* (Oxford University Press, 2008) 26.

<sup>6</sup> See generally Rapporteur’s Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications

<<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>>.

<sup>7</sup> See, eg, Karinna Saxby et al, ‘Structural stigma and sexual health disparities among gay, bisexual, and other men who have sex with men in Australia’ [2021] *Journal of Acquired Immune Deficiency Syndromes*.

<sup>8</sup> A related point: the statements of belief which this package may protect may occur in religious schools, which receive significant taxpayer funding. Taxpayer dollars should not be supporting bigoted statements of belief.