

Senate Legal and Constitutional Affairs Legislation Committee

Religious Discrimination Bill 2021 [Provisions]

Attorney-General's Department

Hearing date: 21 January 2022

Question date: 21 January 2022

Senator Andrew Bragg asked the following question:

If the Religious Discrimination bill was enacted with its orthodox anti discrimination provisions and without the statement of belief provisions, could people bring a complaint to a federal tribunal? If so, which tribunal and how would that operate?

The response to the question is as follows:

Under existing federal anti-discrimination law, a person may make a complaint to the Australian Human Rights Commission about unlawful sex, race, disability or age discrimination. If the Religious Discrimination Bill 2021 is enacted, it will also be possible to make complaints to the Commission about direct discrimination (under clause 13) or indirect discrimination (under clause 14) on the ground of religious belief or activity.

Further information on how complaints are handled by the Commission is included on page 6 of the Department's submission to the Committee. In some cases, such as where a complaint cannot be resolved by conciliation through the Commission, a complainant may be able to take the complaint to the Federal Court of Australia. The court is then able to decide whether the subject of the complaint amounts to unlawful discrimination.

Federal anti-discrimination legislation does not generally displace or limit the concurrent operation of State and Territory laws, unless expressly limited, such as by clause 12. However, a person is not permitted to bring a complaint under a federal anti-discrimination law where that person has already made a complaint under an analogous State or Territory anti-discrimination law. This means that if a person has experienced discrimination that is unlawful under both a federal law and a state law, then they must choose whether they lodge a complaint under either the federal system (as outlined above) or the relevant state system. The individual cannot make a complaint under both systems about the same issue.

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Senator Andrew Bragg asked the following question:

How many states maintain an anti discrimination law which includes religion as an attribute? Which states and how do these provisions operate?

The response to the question is as follows:

Discrimination relating to one or more of the attributes of religion, religious conviction, religious belief or religious activity can be unlawful under the laws of the Australian Capital Territory, Northern Territory, Queensland, Tasmania, Victoria and Western Australia. These attributes are not protected in New South Wales and South Australia.

The relevant legislation and protected attributes are outlined in the table below:

Jurisdiction	Legislation and protected attribute
ACT	Discrimination Act 1991 (ACT) Religious conviction includes <ul style="list-style-type: none">• having a religious conviction, belief, opinion or affiliation; and• engaging in religious activity; and• the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people; and• engaging in the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander peoples; and• not having a religious conviction, belief, opinion or affiliation; and• not engaging in religious activity.
NSW	Anti-Discrimination Act 1977 (NSW) Race includes ethno-religious origin <i>*Note religion is not, of itself, a ground of unlawful discrimination under the Act*</i>
NT	Anti-discrimination Act (NT) Religious belief or activity includes Aboriginal spiritual belief or activity [but the terms are otherwise undefined]
Qld	Anti-Discrimination Act 1991 (Qld) Religious activity means engaging in, not engaging in or refusing to engage in a lawful religious activity. Religious belief means holding or not holding a religious belief.

SA	<p>Equal Opportunity Act 1984 (SA)</p> <p>Religious appearance or dress</p> <p><i>*Note solely protects religious appearance or dress, and not religious belief or activity generally. Terms not further defined in legislation*</i></p>
Tas	<p>Anti-Discrimination Act 1998 (Tas)</p> <p>Religious belief or affiliation means holding or not holding a religious belief or view</p> <p>Religious activity means engaging in, not engaging in, or refusing to engage in, religious activity</p>
Vic	<p>Equal Opportunity Act 2010 (Vic)</p> <p>Religious belief or activity means:</p> <ul style="list-style-type: none"> • holding or not holding a lawful religious belief or view; • engaging in, not engaging in or refusing to engage in a lawful religious activity
WA	<p>Equal Opportunity Act 1984 (WA)</p> <p>Religious conviction includes a lack or absence of religious conviction [but is otherwise undefined]</p>

Questions about this legislation and the operation of relevant provisions should be directed to State and Territory Governments, as this legislation is not administered by the Attorney-General's Department.