



**Parliamentary Joint Committee on Human Rights,
Inquiry into the Religious Discrimination Bill 2021 and related bills
Public Hearing 14 January 2022
Opening Statement**

As requested by the Committee, this is a brief written opening statement to be received by the Committee in place of an oral statement. It provides a summary of the main submission to the Committee (submission no 10) from Freedom for Faith.

Freedom for Faith is a Christian legal think tank that exists to see religious freedom protected and promoted in Australia and beyond. It is supported by, and has links with, a wide range of Christian churches and organisations around Australia.

We believe that the package made up of the Religious Discrimination Bill (RDB) and associated legislation is a significant and indeed over-due reform, which will play an important part in furthering protection of the fundamental right of freedom of religion and belief spelled out clearly in art 18 of the ICCPR and other human rights instruments. We believe that the proposals could be improved, as noted below, but that overall, the package is a good initiative and should be enacted by the Parliament as soon as possible.

A religious discrimination law alone does not fully meet the need to provide legal protection for “freedom of thought, conscience and religion”. But discrimination laws around Australia, and in particular “balancing clauses” in those laws which recognise the need to balance non-discrimination rights with religious freedom rights, have long provided one of the main ways that religious freedom is protected in this country.

For most religious people around the globe, religion is exercised not solely in private or individually, but in public and in fellowship with other believers. Any protection of religious freedom must consider the need to protect religious groups as well as individual believers, and it is encouraging to see that this is what the Bill does. Protecting the rights of parents to see their children educated in accordance with their religious and moral convictions must also be an important part of any protection of religious freedom in Australia, and this principle is reflected in several parts of the Bill.

Under international law, limits on religious freedom must themselves be carefully constrained, to those imposed by **law** (as opposed to bureaucratic discretion), and which are “**necessary** to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. The Bill does recognise the need for exceptions to protection of religious freedom to be justified, but as is noted in our submission, could be improved to reflect the UN guidelines more accurately in some areas.

The Bills fill a serious gap in current legal protections in Australia against unjust discrimination. In doing so they follow a well-established model of discrimination laws, including existing State and Territory laws dealing with religious discrimination, with suitable adjustments to take into account the particular features of religious life and communities.

Where there is some difference from the standard Australian models is in the early part of the RDB, Part 2, which starts out by describing what is **not** unlawful discrimination. This is one part of the Bill implementing the important principle long recognised at international law, that not all “differential treatment” is unlawful discrimination.

To be clear, this fundamental concept recognised by the UN is not new to Australian law. All the current Australian laws on religious discrimination **already** have clear provisions which “balance” the right to freedom from discrimination with the rights of religious groups to operate in accordance with their beliefs. But the model adopted in the RDB makes it clear that this is not a “temporary concession” to some over-riding non-discrimination principle; rather it reflects the fact that there is no unlawful discrimination where decision-making relies on relevant circumstances and draws sensible distinctions between circumstances which are different. We should not force a Hindu youth group to employ a Catholic leader.

Part 2 allows religious bodies to operate in accordance with their beliefs (under s 7), though there are some additional rules for religious hospitals, aged care facilities, accommodation providers and disability service providers. Just as a political party can “prefer” to employ members of that party in head office, or an environmental lobby group can “prefer” to employ those who share its commitments, so religious bodies should generally be able to “prefer” to employ staff of the same faith, or support causes which match its faith commitments. Inclusion of “preference” is an important principle which recognises that occasionally a religious body may need specialist skills which are not easily available in its faith community, and so in some circumstances may choose to employ someone not in that community. Doing so should not undermine its general policy of preference.

Section 11 provides (supporting the rights already given by s 7) that religious schools may prefer to employ staff who support their religious beliefs, *despite* any State or Territory laws which undermine that principle. This provision is necessary because some States and Territories have imposed very restrictive rules which interfere with the religious freedom of faith-based schools (which are a key mechanism to implement parental rights under the ICCPR.) (Our submission at n 7 notes a minor drafting error in these provisions which should be corrected during Parliamentary consideration.)

Section 12 of the RDB provides that moderate statements of religious belief do not amount to discrimination under the laws governing that topic around the country. The main provision this will impact on is s 17(1) of the *Anti-Discrimination Act 4 1998* (Tas.) That law amounts to a severe limit on free speech which goes well beyond most other Australian laws on the topic and is arguably already constitutionally invalid in some of its applications.

There is no specific clause dealing with the question whether an employee can be disciplined for a statement made outside working hours which is motivated by religious belief, where that statement is not connected with their employment duties. However, this situation may still be addressed by a claim for “indirect discrimination” under s 14, and s 15 provides some protections in this area where a “qualifying body” tries to impose a detriment for some such action.

Our submission addresses and refutes unjustified criticisms of the Bill. We note our support for the associated amending legislation dealing with charities and an aspect of the law around weddings.

We make several recommendations for improvement of the Bill: urging the approach of focussing on “sincerity” of belief as the main criterion for decision makers rather than requiring secular officials, tribunals or courts to themselves decide what a “reasonable” religious person should believe; raising the bar under s 14 indirect discrimination claims so that a condition, requirement or practice with a detrimental impact on religious believers must be shown to “**necessary** to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”, in accordance with Australia’s international law obligations. The onus of proof under s 14 ought to be brought into line with other Commonwealth discrimination laws and lie on the person seeking to justify the imposition of the condition, etc. We also support a “reasonable adjustments” obligation in the RDB, so that an employer or

other person would have a positive duty to accommodate religious belief or activity where this could be done without imposing an “unjustifiable hardship”.

While not perfect, our view is that this package ought to be supported by all parties in Parliament as a very good start. We thank the Committee for an opportunity to provide a submission and I look forward to assisting Committee members in their deliberations by answering questions in the public hearing.

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Board Member, Freedom for Faith

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