

Religious Discrimination Bill 2021 and related bills

Inquiry by Parliamentary Joint Committee on Human Rights

Hearing on 14 January 2022 in Canberra

Witnesses:

- Emeritus Professor Rosalind Croucher AM, President, Australian Human Rights Commission
- Ms Lorraine Finlay, Human Rights Commissioner, Australian Human Rights Commission
- Mr Graeme Edgerton, Deputy General Counsel, Australian Human Rights Commission

Opening statement by Australian Human Rights Commission

Thank you for the opportunity to make a submission to this inquiry.

The Commission is responsible for administering the existing Commonwealth protections against religious discrimination. These include the conduct of inquiries into discrimination in employment on the basis of religion, and into acts or practices of the Commonwealth that are inconsistent with article 18 of the ICCPR. However, the current protections only allow the Commission to conduct an inquiry and make recommendations. They do not give rise to legally enforceable rights.

The Commission strongly supports the introduction of enforceable protections against religious discrimination for all people in Australia. This would ensure that people are protected against discrimination on the ground of their religious belief or activity (or lack of religious belief) in the same way that they are protected against discrimination on the grounds of race, sex, disability and age. The Commission also looks forward to continuing its advocacy role through the new office of Religious Discrimination Commissioner.

Many provisions of the Bill, particularly in Part 4, are consistent with existing discrimination law and are deserving of broad support. Further, there are two positive aspects of this Bill that should be extended to other federal anti-discrimination laws. The first is the explicit protection against discrimination for unpaid workers like volunteers and interns. The second is confirmation that people who experience retaliatory action for relying on their rights under the Bill will be able to bring a civil action for victimisation.

However, in other respects the Bill goes significantly beyond the goal of providing protection against discrimination based on the existing model of federal anti-discrimination law. Indeed, in some areas, the Bill winds back existing anti-discrimination protections. Most of these additional aspects of the Bill have been drafted in response to high profile individual cases. The Commission's view is that this is poor legislative practice and is likely to have undesirable consequences.

The most problematic aspect of the Bill is clause 12 which would permit statements of belief to be made that would otherwise contravene anti-discrimination law. No case has been made that this clause is legally necessary to protect genuine statements of belief. While the clause may provide more confidence to people that they can speak freely about their faith,

the same effect will be achieved by the introduction of prohibitions against discrimination on the basis of religious activity, including speech.

By contrast, the only legal impact of clause 12 will be to allow currently unlawful statements to be made. This has the real potential to reduce the dignity of vulnerable people who rely on the law for protection. It is also likely to result in additional time, cost and complexity if this new federal defence is raised in response to a claim under State discrimination laws.

The Commission's view is that clause 12 seeks to favour the manifestation of religious belief over protections against discrimination, and elevates the protection of religious speech over protection for other kinds of speech. It is contrary to the objects of the Bill which recognise the indivisibility and universality of human rights.

The Commission has a number of other concerns with parts of the Bill that depart from existing discrimination law. In this opening statement, we identify three further issues.

First, the Bill permits corporations to make discrimination complaints against individuals. This is contrary to the primary focus of human rights law in protecting the rights of people.

Secondly, the Bill provides broad exemptions that permit religious bodies to engage in religious discrimination. These exemptions generally favour the rights of religious organisations over the rights of the individuals who work for or interact with them. It is important to acknowledge that religious institutions, religious charities and other religious organisations have a significant role in public life in Australia. They run schools, hospitals, welfare organisations and employment agencies. They employ a very large number of people. Many receive a significant amount of public funding to support them in carrying out their activities.

It is appropriate that some exemptions are available to religious organisations to ensure that inherently religious practices can continue to be performed. This is particularly the case for conduct that is closely related to religious worship, observance, practice and teaching. However, the Commission's view is that if religious bodies are participating in areas of public life where religious discrimination is to be prohibited, they should generally be held to the same standard as everyone else.

In the case of schools, the Commission's position is that all religious exemptions should be considered by the Australian Law Reform Commission as part of its existing reference. Pending that review, the exemptions in this Bill should be narrowed to permit only preferencing of teachers and students at the point of admission based on their religious belief or activity, while prohibiting subsequent discrimination based on their religious belief or activity, whether that be through disciplinary action or dismissal.

Thirdly, the separate treatment of conduct rules imposed by 'qualifying bodies' is unnecessary. If rules are imposed by a qualifying body that unreasonably limit the religious speech of those who are seeking or who hold the relevant qualification, this can be adequately addressed by the prohibitions in the Bill against indirect discrimination.

We are happy to answer any questions that you may have.