

ACON SUBMISSION TO

Parliamentary Joint Committee on Human Rights
Religious Discrimination Bill 2021 and related bills

December 2021





About ACON

ACON is Australia's largest health organisation specialising in community health, inclusion, and HIV responses for people of diverse sexualities and genders. Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives.

We are a fiercely proud community organisation, unique in our connection to our community and in our role as an authentic and respected voice.

Members of Australia's sexuality and gender diverse communities experience health disparities when compared to health and wellbeing outcomes experienced by the total population. They may also face significant barriers to accessing traditional healthcare pathways. These health disparities are often the result of stigma and discrimination, and as a result, we are committed to protecting everyone from discrimination, equally.

We recognise that members of our communities share their sexual and gender identity with other identities and experiences and work to ensure that these are reflected in our work. These can include people who are Aboriginal and Torres Strait Islander; people from culturally, linguistically and ethnically diverse, and migrant and refugee backgrounds; people who use drugs; mature aged people; young adults; and people with disability.

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ACON acknowledges the Traditional Owners of the lands on which we work. We pay respect to Aboriginal Elders past, present and emerging.



Executive Summary

ACON opposes the Religious Discrimination Legislative Package. While we support the notion that people of faith should be able to practice their religion free from discrimination, this Legislative Package fails to protect us all equally, privileging people of faith over other protected people, such as sexuality and gender diverse people, women, and people with disability.

ACON also endorses the submissions of our partners, Equality Australia and Family Planning NSW.

This submission considers the health impacts of stigma and discrimination, providing evidence for the potential negative ramifications of this legislative package on the rights, health, and wellbeing of sexuality and gender diverse people. These Bills have similar ramifications for other marginalised groups, including women, people with disability, and people of minority faiths.

As it stands, this Bill fails in its stated aims. Discrimination legislation, and the work of the Human Rights Commission, should be to ensure that all Australians are treated equally under the law. By creating exemptions for religious bodies, and protecting statements of belief from discrimination complaints, this legislative package winds back protections for some, including some people of faith, creates hierarchies in human rights, and has significant health impacts for sexuality and gender diverse people, a group already facing significant health disparities.

Recommendations

ACON recommends the following:

1. **The Religious Discrimination Legislative Package should not proceed**, however in the event that it does, we make the following additional recommendations to reduce the negative impacts of these Bills on some of Australia's most vulnerable people and communities.
2. The Religious Discrimination Bill be redrafted to remove provisions that protect 'Statements of belief', in particular s12, s15, and s18(4).
3. The Legislative Package should be amended to make explicit that its provisions, mechanisms and redress avenues do not override, contravene or contradict other areas of federal and state anti-discrimination legislation, to ensure that people represented by other discrimination legislation continue to be protected.
4. Part 2 of the Religious Discrimination Bill, "Conduct etc. that is not discrimination" must be reviewed and the exemptions for religious bodies narrowed so that:
 - a) Religious discrimination is allowed in activities which directly relate to religious worship, observance, practice and teaching, consistent with international human rights law, and



- b) Religious discrimination is prohibited for those who are employed by such organisations, unless that discrimination is required to redress historical disadvantage, or the role is sufficiently proximal to religious worship, observance, practice and teaching to require the person be of the same faith as the organisation.
5. Hospitals, aged care service providers, accommodation providers, disability service providers and educational institutions should not be permitted to discriminate in employment.
 6. The proposed amendments s19 of the *Charities Act 2013 (Cth)* and s47C of the *Marriage Act 1961 (Cth)* are removed from the Human Rights Legislation Amendment 2021.
 7. The Inquiry process is extended to allow for meaningful consultation with those impacted by this legislative package, including vulnerable populations as well as leading gender and sexuality diverse community and legal representatives on how to minimise risks should this Bill be enshrined in law.
 8. Section 76 of the Religious Discrimination Bill, “Review of the operation of the Act” be redrafted to require that the legislation be the subject of a formal parliamentary review (including a call for submissions), as well as the review by the Religious Discrimination Commissioner, within two years of its introduction to ascertain the impacts and effects of the legislation on the Australian community.



Introduction

All human beings are born with equal and inalienable rights and fundamental freedoms.¹ These rights are indivisible and interdependent – some rights cannot be privileged over others. To that end, freedom of religion is not an absolute right that can come at the expense of the rights of others.

While we recognise that the third draft of this package is improved from previous iterations, particularly regarding the removal of the conscientious objection clauses for health professionals, the Bills continue to fail to adequately and equally prevent discrimination.

The Bills propose to “to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity”.² However, the Bills place the rights of those who hold a religious belief above the rights of others. In particular, the sections relating to statements of belief, the employment protections for faith-based organisations and the protections for charities to espouse a view of marriage that is antithetical to public policy provide a licence to discriminate that will have practical implications for many protected populations in our communities, undermining their health and safety.

As a health organisation for sexuality and gender diverse communities, ACON will focus our submission on the health impacts of this Bill. LGBTQ communities experience disproportionately worse health outcomes compared to the general population in Australia³ due to a number of systemic and societal factors. These disparities are, in many cases, a result of stigmatisation, discrimination and a fundamental lack of understanding about the lives and bodies of people of diverse sexualities and genders.

As a result of living within a society that assumes all its members are heterosexual and cisgender, sexuality and gender diverse people are seen as different to the norm, and face stressors as result, known as minority stress.⁴ These stressors limit opportunities, increase mental distress,⁵ lead to poorer health outcomes, homelessness, and social exclusion.⁶

Structural stigma and discrimination is also experienced by sexuality and gender diverse people, where legislation, institutions and cultural practices continue to disadvantage these communities on a macro level.⁷ Over time, LGBTQ people have faced many barriers to fundamental human rights like healthcare, education, and equal access to employment: they have been deemed mentally ill, criminalised in Australian jurisdictions, experienced extreme levels of abuse and violence (including murder),⁸ denied access to care and services, and excluded from family, workplaces and religious congregations simply for being who they are.⁹

This Legislative Package is a further example of structural stigma and discrimination for LGBTQ people as it has the effect of limiting their access to health, employment, and other fundamental human rights.

Stigma and discrimination lead to worse health outcomes.¹⁰ This is the case for many people protected by national and state anti-discrimination laws, and some who are not, including sexuality and gender diverse people, people living with HIV, people who use drugs, sex workers, people with disability, Aboriginal and Torres Strait Islander people, people from culturally, ethnically, and linguistically diverse and migrant and refugee backgrounds, and people in mental distress.¹¹



It is important to reflect on the fact that people can, and do, experience discrimination and exclusion on multiple grounds. Anti-discrimination legislation must be able to protect people across the multi-faceted components of their identity. The complex experiences of sexuality and gender diverse people living in Greater Western Sydney's culturally, ethnically and linguistically diverse communities during the postal survey was highlighted in a recent study that argues for the importance of understanding the layered intersections of ethnicity, faith, gender, sexuality, and family support, and how these contribute to overall wellbeing.¹²

Discrimination legislation therefore must recognise similarly how components of our identities, overlap, intersect and compound, without placing them in conflict.

Recommendation 1: The Religious Discrimination Legislative Package should not proceed, however in the event that it does, we make the following additional recommendations to reduce the negative impacts of these Bills on some of Australia's most vulnerable people and communities.

The Religious Discrimination Bill 2021

Statements of belief

ACON is especially concerned with Part 2, Section 12 of the *Religious Discrimination Bill 2021 (Cth)*, regarding statements of belief. This section states that a statement of belief does not constitute discrimination under any other federal or state-based anti-discrimination legislation and overrides protections afforded by other legislation, provided it is not malicious, or a reasonable person would not "consider would threaten, intimidate, harass or vilify a person or group".¹³ In contrast to the phrase 'offend, insult, humiliate or intimidate' contained in section 18c of the *Racial Discrimination Act 1975 (Cth)*, the phrasing of this Bill suggests that statements that offend, insult or humiliate would be protected by this legislation.¹⁴

Furthermore, the Bill's definition of vilify refers only to inciting hatred or violence, which is a high bar when compared to other vilification clauses, such as that contained in the *Anti-Discrimination Act 1977 (NSW)*, which includes 'serious contempt' and 'severe ridicule' in addition to hatred.¹⁵ While these statements must be made in 'good faith', it is unclear how this acts practically.¹⁶ This clause allows for statements that today would constitute discrimination under other federal and state legislation, to be protected.

These protections are concerning when we consider the potential for particular religious beliefs to bring harm to marginalised communities, including sexuality and gender diverse people, but also women, people with disability, and even people of faith. As an example, many religious doctrines have tenets that argue that homosexuality is sinful or wrong. The proposed legislation seeks to protect statements such as this, while at the same time stripping the subject of these statements from their own protections.

That these Bills are a direct consequence of members of our communities overcoming structural stigma in legislation – that is, the changes to the Marriage Act to as a result of the 2017 postal survey – cannot



be ignored. Studies about the postal survey have found it led to greater psychological distress, which was especially heightened for those exposed to negative messaging.¹⁷

Statements of religious belief by prominent figures surrounding homosexuality were a prominent feature of such messaging. The psychological distress experienced by our communities as they fought to achieve equal human rights in the face of negative messaging that could now be protected by discrimination legislation should be evidence enough that protecting such statements is antithetical to human rights covenants. The legislation does not sufficiently define what statements would be protected under these clauses. The lack of clarity will inevitably lead to a chilling effect, where people are reticent to call out inappropriate remarks.¹⁸

This will allow an environment where public figures, as well as service providers, colleagues and other members of the community are galvanised to perpetuate harmful stereotypes about protected populations, such as LGBTQ people or people living with HIV, in the name of religious belief to further a particular agenda, as we saw during the postal survey.

The protection of religious statements not only privileges the views of people of faith over those whom those views might be about, but it has the effect of increasing psychological distress, and making particular environments more unsafe for marginalised people. Already, sexuality and gender diverse people report barriers to finding safe and inclusive healthcare services, social spaces and employment opportunities. 34% of LGBTI people hide who they are when accessing services, and 39% do so at work.¹⁹ Just 31% of LGBTIQ adults feel accepted in public,²⁰ and 41% of LGBTQA young people aged 14-21 report experiencing verbal harassment as a result of their gender or sexuality in the preceding 12 months.²¹ Only 11% of LGBTIQ people feel accepted in religious spaces.²²

Introducing anti-discrimination legislation should have the intended purpose of protecting the human rights of all people, equally. The unprecedented approach of privileging religious belief over other grounds for discrimination risks creating a hierarchy of human rights, placing the rights of those with religious beliefs over others, including sexuality and gender diverse people. By sanctioning statements of belief in a range of settings, including healthcare settings, the Religious Discrimination Legislative Package allows for the propagation of stigmatising views and attitudes in the name of religious belief. This has the effect of creating hostile environments that prevent equal participation in society.

Recommendation 2: The Religious Discrimination Bill be redrafted to remove provisions that protect ‘Statements of belief’, in particular s12, s15, and s18(4).

Recommendation 3: The Legislative Package should be amended to make explicit that its provisions, mechanisms and redress avenues do not override, contravene or contradict other areas of federal and state anti-discrimination legislation, to ensure that people represented by other discrimination legislation continue to be protected.



Statements of belief within healthcare settings

While we recognise and welcome that the revised Legislative Package removes the ability for health practitioners to conscientiously object to certain practices, the statements of belief section allows health professionals to, in the course of providing their service, make offensive claims so long as they form part of their religious belief.

While a healthcare practitioner may not be able to object to providing PrEP or contraception, for example, the fact that they can make their views known while doing so creates a stigmatising environment which may be unwelcoming, hostile, and unsafe, creating more barriers to safe and effective healthcare for everyone, including sexuality and gender diverse people.

This is especially concerning for young people, trans people, people in psychological distress, and the communities ACON serves in rural and regional Australia, where limited health services exist. Young people and trans people in our communities face extremely high levels of mental distress and suicidality, which could be exacerbated by offensive statements. Furthermore, if practitioners in rural and regional areas create a hostile environment, which they are protected by these laws to do so, there may be very few options for people to access services safely and get the care they need, potentially exacerbating health concerns, both mental and physical.

Perceived stigma and discrimination is also an effective barrier to healthcare, including perceptions of homophobia and transphobia by service providers. Many providers in some areas of healthcare are faith-based, not-for-profit providers, for example in the aged care, alcohol and other drugs, disability and housing sectors. Making it harder to access non-judgemental health care, such as sexual health, family planning, mental health and transgender health services, especially in areas with limited services, will only exacerbate these barriers.

We note that qualifying bodies may impose consequences for such conduct carried out during the course of someone's employment. But the impetus is then on the qualifying body to protect clients from discriminatory statements that are protected by discrimination legislation, which is confusing and unnecessary given that these kinds of statements currently constitute discrimination. Relatedly, qualifying bodies cannot impose any consequences for statements made outside of the course of a person's employment.²³ This means that there is no flexibility for professional bodies to consider whether statements made, for example, on social media or other contexts outside of work, could cause harm to people accessing those services.²⁴

Statements of belief protecting conversion therapies

By sanctioning statements of belief, this legislation effectively allows for gay conversion therapies to take place in pseudo-therapeutic environments. It is important to understand that this nomenclature is misleading and often misunderstood; often these practices are also employed to encourage people to change their gender to one which aligns to the sex on an individual's birth certificate, as well as to



change a person's sexual identity or practices. Such practices violate human rights, and cause real harm and trauma to its survivors, including ongoing acute experiences of distress, feelings of guilt and shame, internalised homophobia and transphobia and self-hatred that has lasting impacts.²⁵

This practice is so damaging that it has been outlawed in three Australian jurisdictions, and there are ongoing calls for a federal ban.²⁶ It is imperative that this legislation not permit, or give protection to, health practitioners, people of faith or religious bodies to undertake these processes, regardless of a genuinely held belief.

Faith in the workplace

As a health organisation, ACON creates opportunities for people in our communities to live their healthiest lives. Our work aligns with models of social determinants of health, accordingly, we recognise that access to education, employment and income, stable housing, social inclusion and non-discrimination are all factors that can positively or negatively influence a person's health.²⁷ As part of our commitment to social inclusion, ACON runs Pride Inclusion Programs, for workplace, sporting, and health and wellbeing inclusion.

We are therefore also concerned by the ways in which these Bills limit access to employment or education, and create hostile environments for people in our communities.

The statements of belief section applies to all written or spoken statements that are a genuinely held religious belief made in 'good faith'. This could include statements made in a large variety of settings, including at work.

Employers could face a discrimination complaint for disciplining an employee that makes such a comment, creating an environment of exclusion and harm, preventing sexuality and gender diverse people's equal access to employment and other services that may impact the social determinants of health.

In addition, the Bills also allow religious bodies, including religious hospitals, aged care facilities, accommodation providers, disability service providers and educational institutions to discriminate on the basis of religious belief in their employment practices.²⁸ This legislation therefore further places sexuality and gender diverse people, and other marginalised people, at risk of employment discrimination in situations where a person's faith, or lack thereof, has no bearing on their professional capacity.

While it may be necessary to ensure a future employee's religious belief is aligned with an organisation's for particular roles, for example, a religious teacher, this should not be applied in such a blanket and overreaching way. The effect of this protection is discrimination of others, who may be refused employment simply for who they are.

The Australian Charities and Not-for-profits Commission notes that large education and health charities that are affiliated with religious organisations do not identify themselves as having a religious purpose,



which therefore contributes to a significant underestimation of the amount of charitable workers employed by a religious organisation, as defined by these Bills.²⁹

Underestimated figures suggest that over 133,000 people are employed by religious charities, making it a sector larger than the nation's Utilities sector.³⁰ One third of all Australian charities report that advancement of religion was one of their charitable purposes.³¹ These Bills, therefore, have the potential to apply to large and frequently underestimated proportion of the Australian job market.

Larger faith-based charities tend to be working in sectors that attract significant amounts of public funding, including education, health, and aged care. That organisations which attract significant government funding are able to adopt employment practices that exclude people because of their [lack of] religious belief or practice is extremely concerning. That health organisations such as hospitals or aged care facilities are able to make decisions around employment based on religious belief rather than solely on competence could jeopardise the quality of the service provided – a service that attracts public funding.

These services attract public funding because they provide a public service – all people should be able to access the hospital or aged care facility that is in their local area. Allowing a hospital to only hire people of a particular faith has the potential to create an unsafe and exclusionary environment for anyone whose identity or beliefs are in conflict with the tenets of that particular faith.

That schools are similarly able to discriminate is concerning, and while we note that religious exemptions to the *Sex Discrimination Act 1984 (Cth)* are outside the terms of reference of this Inquiry, we're concerned that the promotion of legislation that continues discriminatory employment practices at the expense of the review of these exemptions establishes a precedent that will continue to mean young LGBTQ people do not feel safe in educational settings. Already, 60% of secondary school LGBTQA students feel unsafe or uncomfortable in their educational setting because of their sexuality or gender.³²

Recommendation 4: Part 2 of the Religious Discrimination Bill, "Conduct etc. that is not discrimination" must be reviewed and the exemptions for religious bodies narrowed so that:

- a) Religious discrimination is allowed in activities which directly relate to religious worship, observance, practice and teaching, consistent with international human rights law, and**
- b) Religious discrimination is prohibited for those who are employed by such organisations, unless that discrimination is required to redress historical disadvantage, or the role is sufficiently proximal to religious worship, observance, practice and teaching to require the person be of the same faith as the organisation.**

Recommendation 5: Hospitals, aged care service providers, accommodation providers, disability service providers and educational institutions should not be permitted to discriminate in employment.



The Human Rights Legislation Amendment Bill 2021

ACON opposes the proposed amendments to the *Charities Act 2013 (Cth)* and the *Marriage Act 1961 (Cth)*. The amendment to the *Charities Act 2013 (Cth)* allows for a charity that “engages in or promotes activities advancing, expressing or supporting a view of marriage as a union of a man and woman to the exclusion of all others, voluntarily entered into for life” to be “presumed, conclusively” to be acting for the public benefit, and not contrary to public policy.³³

This amendment undermines the place of sexuality and gender diverse people in our secular society. The *Charities Act* already contains relevant sections that ensure there is no risk of a charity being disqualified for promoting such a view.³⁴

The amendment to the *Marriage Act 1961 (Cth)* allows religious educational institutions to refuse to make facilities available or provide goods or services for the purposes of the solemnisation of a marriage.³⁵ This amendment is wholly unnecessary given existing exemptions in both the *Marriage Act 1961 (Cth)* and the *Sex Discrimination Act 1984 (Cth)*.

All these amendments seek to do are continue to promote the harmful myth that marriage equality, and by extension, the existence of LGBTQ people in legally recognised relationships, pose a threat to religious freedom.

This myth continues to propagate the harm caused by negative messaging during the Australian Marriage Law Postal Survey,³⁶ harms that especially impact LGBTQ people from culturally, ethnically and linguistically diverse backgrounds, and LGBTQ people of faith.³⁷ Two thirds of people in Australia voted in favour for legislating marriage equality; these unnecessary and unusual clauses are out of step with the majority of the country.

Recommendation 6: The proposed amendments s19 of the *Charities Act 2013 (Cth)* and s47C of the *Marriage Act 1961 (Cth)* are removed from the Human Rights Legislation Amendment 2021.

Consultation Period

We are grateful for the opportunity to provide feedback on this important piece of proposed legislation.

The legislation contained in this package is extremely complex, and has ramifications across many aspects of public life, including ramifications for many other pieces of legislation.

It is because of this and the significance of this Bill, the time period available for consultation has been too limited. By attempting to rush this legislation through the parliament before the next federal election, it’s clear that the adequate consideration will not be given to this Inquiry process, or the Senate Inquiry process happening concurrently.



By providing just three weeks to receive submissions, and only three public hearing dates over the holiday period, there has not been sufficient time for meaningful consultation with the people affected by these Bills, or adequate consideration of this complex legislation and its impacts.

The period of consultation for these Bills should be extended to ensure that the voices all vulnerable populations affected by this Legislative Package, as well as relevant community and legal representatives can be heard before government debate, in order to minimise the risks of these Bills.

A further mechanism to minimise the risk of these Bills would be to ensure that as well as a Commissioner review within two years of the Bills becoming law, these Bills should also be the subject of a full parliamentary review, including a call for submissions, to ascertain the impact of the Bills on members of the community.

Recommendation 7: The Inquiry process is extended to allow for meaningful consultation with those impacted by this legislative package, including vulnerable populations as well as leading gender and sexuality diverse community and legal representatives on how to minimise risks should this Bill be enshrined in law.

Recommendation 8: Section 76 of the Religious Discrimination Bill, “Review of the operation of the Act” be redrafted to require that the legislation be the subject of a formal parliamentary review (including a call for submissions), as well as the review by the Religious Discrimination Commissioner, within two years of its introduction to ascertain the impacts and effects of the legislation on the Australian community.



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