



3 December 2021

Committee Secretary
Parliamentary Joint Committee on Human Rights

Dear Secretary

Religious Discrimination Bill 2021 and Related Bills

Thank you for the opportunity to make a submission to this inquiry. I do so in a personal capacity.

I support legal reform to provide stronger national protection from discrimination based on a person's religious beliefs. The law is currently inadequate in this regard, and discrimination on this ground should be prohibited as it is for other grounds such as race, gender and age.

However, the Religious Discrimination Bill 2021 should not be enacted in its current form. There are several reasons for this, including the failure to protect students from expulsion from school due to their sexuality. It is not appropriate to protect one set of rights without also safeguarding others.

I also have concerns about the legal complexity of the Bill. Discrimination law is already unduly complex and in urgent need of clarification and harmonisation. Unfortunately, this Bill will significantly add to this problem, including because of its problematic interactions with other federal and State anti-discrimination laws.

The legislation is also full of shades of grey, unclear terms and doubts as to its scope. An example is uncertainty about what it means to act in accordance with the beliefs of a faith, especially when this may be a point of contention within the religion itself. In the absence of Parliament providing greater clarity, fundamental issues will be left to the courts to resolve. Too often, basic questions of religious freedom will be left mired in expensive litigation.

I also have concerns about the Bill on free speech grounds. In his second reading speech to the Bill, the Prime Minister highlighted the need to protect four fundamental freedoms:

The freedom to worship is not merely the freedom to believe.
It's the freedom to think.
It is the freedom to exercise our conscience.
It is the freedom to doubt.
Indeed, it's the freedom not to believe.

These freedoms are inseparable, but the Bill fails to reflect this. Statements of belief in the Bill only encompass statements relating to a religious belief or a belief relating to the fact of not holding a religious belief. In other words, it only protects statements connected to religious belief. No protection is provided other beliefs, such as matters of conscience.

This is inconsistent with article 18 of the International Covenant on Civil and Political Rights. It does not separate out religious speech for protection, but instead provides that:

Everyone shall have the right to freedom of thought, conscience and religion.

By contrast, the Bill provides an elevated status to religious speech but fails to protect speech on matters of thought or conscience.

The consequence of this is that a person may make a statement, perhaps about another group or expressing a belief such as pacifism, but the statement will only receive protection if it has a religious basis. A person making exactly the same statement as a matter of conscience without a religious basis will receive no protection.

This Bill prioritises religious speech over other forms of speech in Australia. This is deeply problematic in a secular nation. It also finds no basis in the international human rights conventions that the Bill purports to implement.

I support stronger protection for freedom of speech in Australia and believe that this is urgently required. However, there is no justification for conferring religious speech with special legal protection over and above that provided to other forms of speech. As a matter of principle, it is wrong to use the law to prioritise one form of speech over another. A robust democracy like Australia depends on all points of view having an equal chance to be put forward.

Religious belief deserves stronger protection in Australia, but not in the way that this Bill proposes. It would be better to protect religious freedom, as well as freedom of speech, as part of a comprehensive law protecting democratic rights. Failing that, religious freedom should be safeguarded from discrimination on the same terms as the other prohibited grounds.

Yours sincerely

Professor George Williams AO