



*What will you do with your one wild  
and precious life?*

## **Religious Discrimination Bill 2021 and related bills**

### **Submission from: Humanists Australia**

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### **Part 1: Introduction**

Thank you for the opportunity to provide a submission on the *Religious Discrimination Bill 2021*.

Humanists Australia is a national organisation representing humanists and non-religious people in Australia. We are the only national organisation for humanism in Australia open for individual membership. Amongst other activities we advocate for policies that reduce societal inequalities, advance secularism, advance human rights, and improve quality of life, guided by the humanist values of reason and evidence. Our *Strategic Plan 2021-2024* states our four key objectives. These are:

- True separation of Church and State
- Established secular wellbeing support in defence, hospitals, schools and prisons, to ensure equal provision of services for the non-religious



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- Excellent access to community help and support for non-religious people
- Guidance and support on how to live well and mark life stages as a humanist

## **Part 2: Secularism and freedom of religion or belief – Australian context**

A good definition of a secular state is by philosopher Simon Blackburn, who states:

*“A secular State embraces freedom of religion or belief, the equal treatment of persons regardless of faith, and the separations of religious and state authorities.”*

In another explanation by Jean Baubérot, secularism is defined as,

*“Separation of religious institutions from the institutions of the state and no domination of the political sphere by religious institutions.”*

In the 21st century, Australia is broadly regarded, in Western terms, as a secular nation. Some exceptions to this include inclusion of prayers in Parliament, state funding of religious schools, and religious chaplains in state schools. But overall, Australia is regarded as a modern, democratic and secular state.

Freedom of religion is protected under section 116 of the Australian constitution, and freedom of religion or belief is protected in the majority of federal, state and territory anti-discrimination laws. The federal *Racial Discrimination Act 1975* provides protections from discrimination and vilification to religious groups. Laws such as these already protect people of faith from discrimination and ensure that everyone has the right to live free from discrimination.

Australia is also party to numerous international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR). Article 18 (1) of the ICCPR states (in part):

*“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or*



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*belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."*

However the ICCPR also contains Articles to balance absolute religious protection. These will be a key focus of this submission and discussed further in Part 3 of the submission below.

Humanists Australia strongly believes that the freedom to practise one's religion is a fundamental human right. We strongly support everyone's right to freedom of religion or belief, including a person's right to manifest their religion by means of worship, observance, and teaching practice.

However, we believe that preserving and protecting the human rights of one group of people must not result in the diminution of the human rights of another group of people. Fundamentally, everyone deserves to be protected from discrimination and everyone must be protected equally under the law. It is this position which underpins the fundamental objections to the Religious Discrimination Bill and which are set out in this submission.

### **Part 3: Problems with the Religious Discrimination Bill**

#### **Protecting discriminatory statements**

The protections for "statements of beliefs" contained within the bill creates great potential for state-sanctioned discrimination in many aspects of daily life. Clause 12 (1) of the bill carves out such statements from a large swathe of federal and state anti-discrimination legislation.

While Clause 12 (2) of the bill contains provisions which do not permit statements which are malicious, or that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group, it is very concerning where and how the line will be drawn in interpreting such a clause.



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It would affect protections in many parts of public life at work, schools, aged care, healthcare, and when accessing goods or services.

Humanists Australia has serious concerns that the statements of belief provision could easily be used to carry out harmful discrimination to undermine another person's dignity and basic rights, using the protection of the Religious Discrimination Bill.

### **Overriding federal, state and territory anti-discrimination protections**

In effect, Clause 12 (1) of the bill places the protection of religious beliefs above all other human rights protected by anti-discrimination legislation.

This includes laws such as the Tasmanian anti-discrimination law which prohibits speech that "offends, insults or humiliates" people based on other characteristics such as race, sex, disability or sexuality<sup>1</sup>.

The mere fact that this bill seeks to diminish and potentially remove current protections under federal and state anti-discrimination legislation should alarm the members of the Parliamentary Joint Committee on Human Rights.

If the Religious Discrimination Bill becomes law, people will lose their protections under these anti-discrimination laws and discriminatory statements will immediately become lawful. These include protections on the grounds of race, sex, religion, marital status, sexual orientation, gender identity or disability.

Current federal and state anti-discrimination laws underpin the ability of many groups in our community to access employment and essential services including healthcare, work, schools and aged care. It is critical that such protections are not removed.

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<sup>1</sup> Section 17 (1) Anti-Discrimination Act 1998 (Tas)



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### **Limitations to freedom to manifest one's religion or beliefs**

International human rights conventions such as the ICCPR which Australia is party to, describe where it is necessary to restrict certain freedoms if it compromises the fundamental human rights of others to live their lives with dignity and free from discrimination.

Article 18 (3) of the ICCPR states:

*"The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."*

Article 26 of the ICCPR states:

*"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

These Articles have been explicitly included to balance absolute religious freedom and ensure the rights and freedoms of other groups of people are protected.

If the Religious Discrimination Bill were to become law, Humanists Australia believes that the balance would tip more in favour of absolute religious freedom – at the expense of other people's human rights.

This is because the Bill allows for an unjustified exemption from anti-discrimination laws with no consequences for misconduct. This is a dangerous precedent to set anywhere; implementing laws that protect one group of people



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to engage in harmful speech, while removing the rights of others to live their own lives free from discrimination.

Furthermore, it will risk our reputation as a secular nation. The earlier Blackburn definition of secularism explains that a secular country is defined as “ensuing equal treatment under the law to all persons regardless of faith.” Australia would fail this definition under this Bill as our laws would not treat us all equally.

### **Examples – impact on LGBTQIA+ people and other minorities**

Minorities, including LGBTQIA+ people, women, people with disabilities and even people of faith will be most targeted by this legislation. Religious texts of various persuasions contain a swathe of harmful and demeaning views on LGBT people, women, people with disabilities and other minorities.

Equality Australia has listed several examples of discriminatory statements which may be protected under this bill. These include;

- A boss, employee, teacher, doctor, taxi driver or another service provider who says to a colleague, students, customer or client, that ‘homosexuality is a sin’;
- A disability support worker telling a girl that her ‘disability is caused by the devil’;
- A nurse saying to their patient that HIV is a punishment from God; and
- A waiter saying to a queer person of faith that their relationship is an abomination before God<sup>2</sup>.

Equality Australia also submit a 2015 case where a psychiatrist was deregistered for conduct including telling a client that ‘lesbians don’t know that they are doing

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<sup>2</sup> Equality Australia, RDB Bill factsheet <https://equalityaustralia.org.au/resources/rdbfactsheet/>



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something wrong so we still have to love them' and telling another client to 'ask for God's forgiveness for her son who was stillborn.'<sup>3</sup>

Under these proposed laws, statements like these made by a service provider or individual would be protected, removing people's rights under current anti-discrimination laws.

#### **Part 4: Summary – Secular Australia no more?**

It is not unreasonable to expect that in 21st-century Australia our laws should protect all Australians equally. But the passing of this Bill would place the protection of religious belief above all other human rights protected by anti-discrimination legislation. This is a dangerous and worrying precedent to set.

Humanists Australia is deeply concerned that prejudicial and discriminatory acts or activities will be weaponised under the Religious Discrimination Bill and could be used to diminish or undermine the human rights of others. The human dignity, respect and basic rights of Australians, especially minorities, will be eroded. The Bill would allow hateful speech to flourish and remove current protections available to people under anti-discrimination laws.

To protect Australia as a secular nation and ensure we continue to uphold our human rights obligations, this bill should be rejected. Our laws can, and must, fairly balance the rights of individuals to express or manifest a religion or belief, with the rights of others to live their own lives free from discrimination. We must uphold human rights and dignity for all Australians and ensure equality in the law for all.

*Written by Casey-Ann Seaniger and Heidi Nicholl*

*For Humanists Australia 16<sup>th</sup> December 2021*

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<sup>3</sup>Equality Australia, RDB Bill factsheet <https://equalityaustralia.org.au/resources/rdbfactsheet/>