

Public Hearing: Parliamentary Joint Committee on Human Rights

Inquiry into Religious Discrimination Bill 2021 and related bills

The Law Council of Australia thanks the Committee for the opportunity to provide evidence today.

The Law Council supports those parts of the Religious Discrimination Bill which make it unlawful to discriminate against a person on the ground of religious belief or activity in a range of areas of public life. Parts 3 and 4 generally accord with the approach taken in other federal discrimination laws and are standard provisions. It is, however, concerned that in Part 2 the Bill departs from a conventional approach to Australian discrimination law in several important respects and those provisions are not supported.

Clause 12 makes lawful 'statements of belief' which would otherwise be unlawful, by overriding all federal, state and territory discrimination laws. This privileges manifestation of religious belief over other human rights, including the right to equality and non-discrimination, and is contrary to international human rights law. It provides a defence for potentially harmful and humiliating statements made in public arenas, such as in education and employment, which may otherwise amount to unlawful discrimination, watering down longstanding domestic protections. It is procedurally complex, undermines the right to an effective remedy, and upsets the balance of concurrent operation between federal and state and territory laws. It should be removed from the Bill.

The Law Council is concerned that several provisions in Part 2 relating to conduct that is not discrimination are so wide that they undermine the Bill's object of eliminating discrimination against persons on the ground of religious belief or activity in public life. It considers that where exceptions to the Bill's prohibitions exist, these should be justified, proportionate and limited in scope.

In particular, it supports significantly narrowing the scope of clause 7, which provides a general carveout for religious bodies, in terms of the bodies covered and the applicable threshold tests. It is concerned by clause 9, which enables employment and partnership-related discrimination by religious hospitals, aged care facilities, accommodation and disability service providers. This clause has a wide reach, covering major employers in Australia and recipients of significant public funding. It will permit increased religious discrimination against employees in circumstances where it would not be reasonable to expect that they adhere to a particular religious belief or activity. The Law Council queries the necessity of clause 9 given the Bill's 'inherent requirements' exception at subclause 39(2). It also supports deleting clause 11, which permits certain state or territory laws to be overridden so that a religious educational body may give preference on the grounds of religion in employment. This provision has been subject to little consultation, undermines the concurrent operation of federal, state and territory laws, and pre-empts the Australian Law Reform Commission's inquiry into such matters.

While Law Council generally supports Part 3 of the Bill that defines the concept of discrimination on the ground of religious belief or activity, it does not support clause 15, concerning qualifying body conduct rules. This clause is unnecessary in light of the Bill's standard indirect discrimination provisions, and may impede the proper regulation of professions, including the legal profession. It is important that legal profession bodies continue to maintain the ability to regulate the profession effectively and reasonably, under well-established professional standards.

Opening Statement



Clause 16 should also be amended, so that protections for associates of religious individuals do not extend to body corporates. The Bill should protect natural persons, not body corporates, reflecting that human rights are held only by individuals.

We again thank you for the opportunity to appear today and are happy to respond to any questions.