



# National Secular Lobby

Advancing Australia's Secular Agenda

7 January 2022

**Committee Chair**

**Senate Standing Committee on Legal and Constitutional Affairs**

**Re: Religious Discrimination Bill 2021 and Related Bills**

Dear Chair,

The government's summary of the Religious Discrimination Bill states that it "*prohibits discrimination on the basis of a person's religious belief or activity in a range of areas of public life, including in relation to employment, education, access to premises and the provision of goods, services and accommodation.*"<sup>1</sup>

In fact, the bill codifies into law the right of faith-based organisations to engage in discriminatory behaviour on the basis of religion in all of these areas.

In the government's own explanatory notes for the previous exposure draft, they stated:

*"All Australians, regardless of their religious belief or activity, should be able to participate fully in our society. All people are entitled not to be discriminated against on the basis of their religious belief or activities in public life, and are entitled to the equal and effective protection of the law."*<sup>2</sup>

Again, this Religious Discrimination Bill actively prevents full and equal participation in society, removes equal and effective protection against discrimination under the law, privileges religious belief over non-religious philosophical belief, and enshrines into law the ability of faith-based organisations to discriminate on the basis of religious belief.

The Religious Discrimination Bill as currently drafted is a misguided attempt at discrimination protection which will increase the amount of religious-based discrimination that takes place in Australia and will divide Australian society along religious lines.

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<sup>1</sup> [The Religious Discrimination Bill 2021](#)

<sup>2</sup> [Second Exposure Draft of the Religious Discrimination Bill 2019: Explanatory Notes](#)

## Who We Are

The National Secular Lobby provides a stronger and more active voice for the nation's secular majority.<sup>3</sup>

The NSL is pro-secular rather than anti-religious. We work towards the separation of religion and state, and the removal of undue religious privilege in legislation.

We agree that religious belief should be a right with consistent protections applied at the federal level but we do not agree that the protection of religion should infringe upon the protection of the basic rights of others.

This is in line with Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which gives protection of “freedom of thought, conscience and religion” (including not having any religious beliefs) but states that the protection of such rights should be limited by law as necessary to protect “the fundamental rights and freedoms of others”.<sup>4</sup>

## Our Concerns

It is our view that as currently drafted, the Religious Discrimination Bill is a dangerous and unworkable piece of legislation which will create a raft of new religious discrimination problems in Australia where there were previously very few, and which will ultimately prove to be extremely damaging to Australian society.

### Privileging religious belief over philosophical belief

The Religious Discrimination Bill protects not only particular beliefs but provides differing levels of protection depending on *why beliefs are held*. It will result in situations in which two people who hold and express the exact same belief will receive different levels of legal protection in that expression depending on why they hold that belief.

The Bill takes the view that holding a belief on religious grounds is inherently superior to holding it on secular philosophical grounds. This clearly and unjustly privileges religious individuals and organisations.

The ICCPR, in discussing the protection of “thought, conscience and religion,” makes no distinction between these concepts and holds them to be of equal status, and the Religious Discrimination Bill is out of step with that model.

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<sup>3</sup> [Ipsos 2016 Secularism Survey Data](#)

<sup>4</sup> [The International Covenant on Civil and Political Rights](#)

## Enshrining religious discrimination into law

Section 7 effectively enshrines religious privilege in law:

*“...a religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that a person of the same religion as the religious body could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.”*

In other words, where religious bodies act “in good faith” in ways that can be justified in any way as being in accordance with a religious belief, even a non-mainstream belief, such acts cannot be deemed to be unlawful discrimination under any Australian discrimination law.

This ability to discriminate extends not only to the non-religious but also to people of different religions, people of the same religion but different denominations, and even people of the same denomination who might disagree with the specific tenets espoused by the organisation in some way.

This places religion squarely in a position of legal privilege above and beyond any other discrimination legislation and grants religion the right to steamroll over any protections.

## Broad protection of “statements of belief”

Section 12 authorises expression that would constitute unlawful discrimination on the grounds of race, sex, orientation, marital status, gender identity and disability under current federal or state legislation.

Additionally, the weak requirement to in some way justify such expression as being grounded in a religious belief sets a very low bar of accountability and is open to misuse.

Granting such broad protection to ‘statements of belief’ will result in non-religious people, people with disabilities, women, LGBTQIA+ people and others becoming the target of demeaning and harmful comments from religious people and organisations, and the victims of these comments will have no legal recourse available.

We do not support legislation which prioritises a legal right to engage in harmful and marginalising expression based on personal religious belief over the protection of others from such expression.

We furthermore put that it is wrong to legally privilege a personal belief or viewpoint, such as faith, over the protection afforded to people based on immutable and/or inherent characteristics, such as race, age, sex or orientation.

## The Bill is a Religious Freedom Bill, not a Religious Discrimination Bill

While much of Part 4 of the Bill (the part dealing with protection from religious discrimination) is reasonable, its protections are degraded by the large number of exemptions listed in (2), (3) and (4) of Section 18, and the broad swathes of circumstances that do not legally constitute discrimination (Part 2). This reflects an emphasis on religious freedom or religious privilege, rather than protection from discrimination.

Indeed, much of the Bill focuses on the rights of faith-based organisations to engage in discriminatory behaviour.

## Corporate bodies may have a right to sue

This represents another possible departure from our traditional antidiscrimination legislation. As the meaning of “person” is not defined in the Bill, it inherits the meaning provided by the *Acts Interpretation Act 1901*, which includes both natural and legal persons. This presumably enables religious organisations to sue individuals, resulting in corporate bodies with significant resources and public voice having the ability to act against and further reduce individual religious freedom.

Such protections would also extend to fringe groups and may serve to protect and privilege their activities, even in cases where they are ethically questionable.

## Over-riding existing state anti-discrimination legislation

The Religious Discrimination Bill departs significantly from the standard scope of federal anti-discrimination legislation in its over-riding of existing state and territory anti-discrimination laws, even in cases where such laws provide greater protection.

Section 11 overrides state human rights protections to permit religious schools to discriminate against teachers and all other staff, even in cases where the work being carried out has no direct connection with religious teaching or with the application of the institute’s tenets to its operations.

We would understand the need for key decision-makers, organisational directors or those engaged in specifically religious roles to be required to hold specific beliefs in line with the organisational ethos but placing limitations or enforcements on personal belief and lifestyle beyond that is needlessly and intrusively discriminatory.

Indeed, some faith-based organisations have stated that they neither need nor want such rights to discriminate in this way.<sup>5</sup>

## Broader rights for religious bodies to hire and fire on faith grounds represent a religious test for employment

Significant proportions of essential health and education services – hospitals, aged care facilities and schools – are now being provided by faith-based organisations, to the extent that around 40% of secondary school students are educated at faith-based schools.

The *Our Work Matters* report, released by the Australian Catholic Bishops Conference in November 2017, stated that the Catholic Church employs more than 220,000 people in Australia, making it the largest non-government employer in the country.<sup>6</sup>

As a result of this license to discriminate, not only could the 77.4% of the population who are not Catholic<sup>7</sup> (as at the 2016 Census) be excluded from employment in these 220,000 positions, those who are Catholic

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<sup>5</sup> [St Vincent de Paul Media Release: Religious Freedom Legislation](#)

<sup>6</sup> [Our Work Matters: Catholic Church employers and employees in Australia](#)

could also be excluded if they did not agree with 100% of the tenets put forward as required beliefs by each organisation.

The result of this will be widespread religious discrimination in employment in many of the largest employment sectors in the country.

The fact that such religious bodies receive significant taxpayer funding means that such discrimination is not only enabled by legislation but is also state-sponsored.

## Conclusion

The Religious Discrimination Bill as currently drafted will result in an increase in religious-based discrimination and will enshrine into law the right to discriminate on religious grounds. It privileges religion above non-religion and will force Australian society into a tiered system of varying rights and protections based on individuals' choice of faith. Employment opportunities, as well as provision of services in some cases, will be limited based on individuals' religions.

The Bill will exacerbate the effects of religious differences and will divide society and communities along religious lines. In practice, the Bill will further privilege the Christian religion (to the detriment of other religions and people who have no religion) due to its significant involvement in healthcare, education and aged care. This kind of imbalance is untenable in a multi-cultural, multifaith society.

We urge the committee to recognise the full extent of the potential effects of this legislation and to recommend against its adoption in its current form.

Sincerely,

Peter Monk (President)

Janine Gebert (Vice President)

On behalf of the National Secular Lobby.

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<sup>7</sup> [2016 Census](#)