



**Submission to the Parliamentary Joint
Committee on Human Rights**

**Religious Discrimination Bill 2021
and Related Bills**

Rainbodhi LGBTQIA+ Buddhist Community

About Rainbodhi LGBTQIA+ Buddhist Community

Rainbodhi is a spiritual friendship group for LGBTQIA+ Buddhists and an advocate for more inclusion and diversity in the broader community. We welcome everyone regardless of race, gender, sexuality or ability. Rainbodhi is a non-sectarian group, open to people from all Buddhist traditions, other faiths or with no faith. Our name combines two words: *rainbow*, representing our diverse community, and *bodhi*, the Buddhist concept of enlightenment. We believe in inclusion, compassion and wisdom.

Summary

We are happy to provide a submission to the committee regarding the Religious Discrimination Bill and related legislation. We thank the committee for their consideration.

In our view, the proposed legislation:

- Places religious freedom above other human rights.
- Creates a double standard favouring religious organisations over other groups.
- Encourages discrimination against the LGBTQIA+ community in employment.
- Allows for offensive, insulting, humiliating statements based on a religious view.

Our Recommendations

We do not support this legislation and ask that it not be enacted as is. In coming to this position, we took into consideration Buddhist philosophy, the opinions of our community members, previous Buddhist community submissions on religious legislation, as well as anti discrimination and human rights provisions. We hope the committee will keep our position in mind, including that:

- Religious freedom should not be placed above any other human right.
- Religious organisations should be allowed to discriminate in employment on the basis of protected attributes *only* if it is a genuine occupational requirement.
- Religious organisations receiving public funding for provision of non-religious services should not discriminate on the basis of religion or a religious view.
- If religious organisations choose to discriminate on the basis of protected attributes, public funding should be withdrawn.
- The bill's protections against harmful speech should be strengthened to include offensive, insulting and humiliating statements.
- Young people must be protected from discrimination at religious schools by removing the exceptions in the Sex Discrimination Act that currently allow unequal treatment.

Background to Our Position

Buddhists have been living with the uncertainty of this bill and concerned about looming changes for the past three years, since the bill was first discussed. Rainbodhi was formed in 2019, directly in response to the bill, to give support and care to LGBTQIA+ members of the Buddhist community. The media release for Rainbodhi's inaugural event discusses the effect such damaging debates about legislation has had on our community:

One of the reasons for starting Rainbodhi is the negative impact of the so-called 'religious freedoms' debate currently going on in Australian politics. After enduring the painful public discussion for the marriage equality postal survey in 2017, we are genuinely concerned about our community's well-being and loss of legal protections.¹

When the first draft of the Religious Discrimination Bill 2019 was revealed, Rainbodhi spoke out against the bill in a media release, saying:

We definitely don't want to see any discrimination against LGBTQIA+ human rights in the name of religion. That would be a harmful backward step for all... Our faith should be a source of connection and wisdom in our lives, rather than division and despair. No religion should preach hate or harm others.²

The broader Australian Buddhist community has also been concerned about the provisions for discriminatory conduct under the guise of religious freedom. Peak representative Buddhist bodies have made submissions on previous drafts of this bill, including from the Buddhist Council of NSW, the Australian Sangha Association and the Federation of Australian Buddhist Councils. The authors and their communities were concerned that religious freedom should not become a positive right to discriminate in a blanket way and that religious rights should not exceed protections of other human rights, nor be at the expense of other human rights.³ The authors also saw the introduction of further religious rights to discriminate as a threat to social harmony and cohesion, with the potential to cause hardship and suffering for people of minority faiths, as well as LGBTQIA+ people.⁴

We are glad that some of the more egregiously discriminatory aspects of previous versions of the bill have been removed (such as publicly funded religious bodies providing essential services being able to discriminate against LGBTQIA+ people in service delivery, and the removal of the so-called "Israel Folau clause"). However, many problems with the bill

¹ Rainbodhi, [Media Release: Sydney's Rainbow Buddhists Unite to Support Queer and Trans* Communities, 2019](#), (accessed 15/12/21)

² Rainbodhi, [Media Release, Buddhists For Equality Protest Against Religious Discrimination](#), 2021 (accessed 15/12/21)

³ Australian Sangha Association and Federation of Buddhist Councils, [Joint Submission on 2nd Draft Federal Religion Bill](#), 2020 (accessed 15/12/21)

⁴ Australian Sangha Association, [Submission 1st Draft Federal Religion Bill](#), 2019 (accessed 15/12/21)

remain, including: the elevation of the rights of religions over other human rights by giving religious employers the ability to discriminate on the basis of the religious view even when there is no genuine religious reason, or when receiving public funds; and weak protections for discriminatory speech that still allow for offensive, insulting and humiliating statements.

LGBTQIA+ People are also People of Faith

A fact that is often forgotten in the debate about religious freedom and religious discrimination is that queer, trans and intersex people are also spiritual people. Our LGBTQIA+ identities and our faith cannot be separated. Frequently, however, religious leaders and politicians force our community members to choose between these aspects of ourselves. This is impossible and should never be the case.

In October, over 60 LGBTQIA+ community faith leaders and community faith groups, including Rainbodhi, signed an open letter to the Attorney General, Michaelia Cash, saying:

We are people who have experienced first hand the harm that can occur on the basis of religious views. The LGBTQIA+ community is exposed to prejudice, bullying, verbal and physical abuse, as well as the threat of rejection from our families, schools and spiritual communities. Our community has lower mental health outcomes and higher rates of depression, homelessness and suicide. We are best placed to advise you of the potential for further harm that may occur if your legislation grants religious bodies and individuals further powers to discriminate against our community.⁵

Given this unique perspective, we hope that the committee will give special consideration to the voices of queer people of faith and not allow these dual aspects to be forgotten when considering legislation that will end up inordinately impacting LGBTQIA+ people of faith in our communities.

Human Rights Should Protect Everyone Equally

All Australians should have the right to be free from discrimination for aspects of themselves that are innate, such as race, gender, sexual orientation and disability. Any new legislation to protect religious freedom should not impinge upon other established human rights protections.

Whilst we affirm some need for legislation that protects freedom of religion in limited ways, we also recognise that Australia is a secular, multicultural society. Religious freedom cannot

⁵ [Joint letter to Attorney General from LGBTQIA+ People of Faith](#), 2021 (accessed 15/12/21)

be absolute but rather, must be carefully considered with other rights and freedoms. Religious freedoms should also never be regarded as superior to other human rights. Instead, they need to be balanced against the right of freedom from discrimination based on religious views. Where there is a genuine religious necessity to discriminate on the basis of a religious view, it should be done in the narrowest way possible and not enshrine a positive right to discriminate in other areas of civic life.

By allowing religious organisations that operate schools, hospitals, disability and aged care services the right to discriminate in terms of employment, we believe this bill goes too far and gives too much precedence to religion over other human rights. This can be remedied by removing the ability for these employers to discriminate on the basis of religious view when there is no religious requirement to the role, and instead introducing very limited, specific grounds for discrimination, like those found in the Victorian government's changes to religious exceptions.⁶

More Exceptions for Religious Based Discrimination

Thirty percent of Australians reported that they had no religious belief in the 2016 census. In an increasingly secular society, we believe that Australians do not want to increase religious power or prejudice in civic life. Unfortunately, numerous exemptions already exist in the state and federal Anti Discrimination Acts, giving special privilege to religions to discriminate against minority groups including women, LGBTQIA+ people and people with disabilities.

This bill will create further exceptions, extending these into new areas, including employment in a wide range of fields run by religious organisations. These are often essential community services that receive public funding, such as hospitals, education, employment, aged care and disability care. Such industries employ many people who are from minority religions or who are LGBTQIA+. These people will be severely disadvantaged by changes in employment opportunities that allow for discrimination on the basis of a religious view.

Double Standards for Religions

Whilst purporting to be about protecting religious freedom, this bill actually gives further privileges to religions that take away rights from others. It creates a double standard where religious people and organisations will be protected from discrimination themselves, but yet

⁶ Victoria State Government, [Changing religious exceptions to anti-discrimination laws](#), 2021 (accessed 15/12/21)

will continue to have an ability to discriminate against other groups, including minority faiths and LGBTQIA+ people.

Part 2 of the legislation, “Conduct etc. that is not discrimination”, gives a lengthy overview defining what is *not* discrimination in the context of the bill.⁷ However this section merely creates a fiction of what is “not discrimination”. In reality, it actively overrides state anti-discrimination legislation and *allows* discrimination by religious organisations and individuals towards people who would ordinarily be protected by equal opportunity and anti-discrimination laws.

Sections 7–9 of the bill allows religious organisations to make decisions in employment that would be unlawful in other environments:

...it is not discrimination for a religious hospital, aged care facility, accommodation provider or disability service provider to seek to preserve a religious ethos amongst its staff by making faith-based decisions in relation to employment. Such conduct is therefore not unlawful...⁸

The requirement that religious organisations that choose to discriminate will have to reveal this through publicly available policies is good (and essential), but does still not assuage our concerns about the unfair and unnecessary extension of discriminatory exceptions in new areas of public life. Increasing the legality of exceptions is a backwards step. We are very concerned that this will create a hostile employment environment for people working in many industries and has the potential for promoting intolerance and abuses of process.

There is also a double standard in that religious organisations will rightly not be allowed to discriminate in the *provision* of essential services to minority faiths or LGBTQIA+ people but yet will be legally able to prevent those people from being *employed* in religious organisations. The presence of a diverse workforce is essential in creating a safe and welcoming environment for people accessing education, healthcare and other services. It seems especially unfair that many of these services are funded using public money.

Statement of Belief or Verbal Abuse?

The LGBTQIA+ community disproportionately experiences verbal abuse and are frequently subject to intolerant views that create stigma, mental health issues and harm.

A 2011 report by the Australian Human Rights Commission stated that:

The type of abuse most commonly experienced is verbal abuse, which includes name calling, insults, threats and rumour spreading. A national study of same sex attracted young people showed 44% had been verbally abused and 16% had been physically abused. A recent

⁷ *Religious Discrimination Bill, 2021, § 7*

⁸ *Ibid, §§ 7–9*

Victorian study of people in same sex relationships showed that over 80% of participants had experienced public insult, 70% verbal abuse, 20% explicit threats and 13% physical assault.⁹

A 2014 report showed that 60% experienced homophobic verbal abuse, and 47% of trans men and 37% trans women experienced transphobic verbal abuse.¹⁰ A 2021 report by Western Sydney University academic, Dr Jacqueline Ullman, found that 93% of 2376 high school students had heard homophobic language at school, with 37% saying they heard such statements every day.¹¹

Verbal bullying and abusive comments thrive when there is a permissive culture that leaves these statements unchallenged. The presence of the limitations on statements of belief found in §12 and §15 of the bill demonstrate the dangerous potential for harm to minority groups from bigoted and hateful forms of religiously motivated speech. These provisions show that the likelihood of abuse is known and expected. Whilst malicious comments, statements that “threaten, intimidate, harass or vilify”, and statements that encourage illegal activity will be prohibited, the need for including such protections only highlights the probability that minority groups will risk being exposed to such dangerous types of speech.

In a secular society like Australia, people’s right to be free from discrimination based on a religious view should not be watered down and people must not be treated as second class citizens. The LGBTQIA+ community is acutely aware of the damage done by offensive and humiliating statements that are tacitly or explicitly endorsed by people of faith. The bill’s limitations on the types of speech that are prohibited are simply not strong enough to protect LGBTQIA+ people and minority groups from the types of statements that are already experienced regularly by these communities. Statements that allegedly express a religious view, such as, “god is punishing you for your sins”, “homos are going to hell”, or “god hates trans people”, are actually incredibly harmful and should be seen as verbal abuse. In the context of §12(2) and §15(3) of the legislation, these types of statements might be characterised as a “moderately expressed religious view that does not incite hatred or violence” and “would not constitute vilification” and are therefore legal.¹² However, such unwanted, unwelcome statements are not “moderately expressed” from the perspective of those who endure such comments in their daily life and who are deeply affected by such words.

The bill’s test that such statements of belief should be “in good faith” and a “belief that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or

⁹ Australian Human Rights Commission, [Violence, Harassment and Bullying and the LGBTI Communities](#), (2011) p5, (accessed 14/12/2021)

¹⁰ Australian Human Rights Commission, [Face the Facts Report](#) (2014) p1 (accessed 14/12/2021)

¹¹ Ullman, J, *Free2Be... Yet?: The Second National Study of Australian High School Students Who Identify as Gender and Sexuality Diverse* (2021) Western Sydney University, p4

¹² Religious Discrimination Bill, see note 1 for both §12(2) and §15(3)

teachings of that religion”¹³ is highly subjective, difficult to define, and open to untested interpretation. This leeway gives far too much priority to the rights of the person making such statements but not enough concern for the well-being of the people that bear the brunt of such comments and their right to be free from discrimination based on that view. We are concerned that this legislation will embolden homophobic and transphobic comments which would otherwise be subject to anti-discrimination legislation.

Elevating statements of belief above anti-discrimination legislation is out of step with the values of contemporary Australian secular society. Whilst we endorse the legislation’s prohibition against malicious, threatening or vilifying speech, we believe that much stronger protections are needed to limit other types of speech that are offensive, insulting, humiliating and ridiculing. The Tasmanian anti-discrimination legislation, which incorporates these protections, is a good model that accurately sees such statements as incompatible with the fundamental human right to be free from discrimination.¹⁴

Untested Complexity and Grey Areas of Concern

Protections given to statements and activities motivated by a religious belief are untested and their effect is uncertain. The bill does not make clear how the test of a genuinely held religious belief will be measured and applied, or how these statements will interact with other anti-discrimination legislation. There is potential for confusion about when a genuinely held religious belief can be exercised and when that belief comes into conflict with other obligations.

We are further concerned about the possibility for bad-faith actors to exploit the legislation’s protections; claiming a religious belief when they do not genuinely possess one. This will be almost impossible to assess because beliefs are often private and unknown. Beliefs are also changeable and can be mistaken. In some cases, this will impose unreasonable obligations on employers and professional bodies to respond without knowing whether a statement is based in any religious belief, or is merely the expression of a political or personal view (which is not otherwise protected). This may result in organisations being unwilling to challenge bad behaviour because they are worried about running afoul of the legislation.

There is also the potential for protected statements to be invoked in arbitrary and inconsistent ways, giving rise to the potential for abuse, or that people may use this protection as a tool to start or shut down unrelated disputes, or pursue personality clashes. We are concerned these could lead to confusion about exactly what protections the law

¹³ Religious Discrimination Bill § 5 p7

¹⁴ [Tasmanian Anti Discrimination Act](#), 1998, §12, (1)

offers to both those making statements of belief and those who are impacted by them.

We do not feel that the complexity of real world implications of the bill have been appropriately considered. We believe this legislation will lead to complications in workplace discrimination complaints, plus disharmony in society generally.

Amendments to the Sex Discrimination Act (SDA)

We welcome the commitment that Scott Morrison and his government have made to ensure that young people in schools are not expelled or suspended for being LGBTQ. However, we note that Scott Morrison first made this commitment in October 2018 and, since then, nothing has been done to protect young people in our schools.¹⁵

The commitment to remove the existing religious exceptions in the SDA that currently allows this to occur needs to be honoured immediately to protect young people. This must be done without this issue being used as a political bargaining chip in backroom deals for other legislation.

Again, we note an unfair double standard, in that the necessity to protect young people from religious discrimination is recognised but yet this protection is not extended to other members of the school community, including teaching staff. The real everyday harm done to students is not that they might be expelled, but rather that they must endure an educational environment that is intolerant, discriminatory and hostile towards other people who are just like them. Generally, this is the problem with religious discrimination being placed above other human rights.

Conclusion

We thank the committee for considering our submission and hope that our concerns will be borne in mind when considering this legislation. We would welcome the opportunity to be of further assistance in your deliberations if required.

Yours faithfully,

Rainbodhi LGBTQIA+ Buddhist Community

¹⁵ Liam Elphick and Alice Taylor, [Schools can still expel LGBTQ+ kids. The Religious Discrimination Bill only makes it worse](#), 2021, ABC Online (accessed 15/12/2021)