



Clubs Australia Submission: Religious Discrimination Bill 2021

Clubs Australia welcomes the opportunity to comment on the proposed Religious Discrimination Bill 2021 (the Bill).

Clubs with a religious purpose are among Australia's most prominent licensed clubs. The membership base of these clubs exceeds 250,000 people.

Clubs Australia reiterates the concerns raised in its two earlier submissions. Those submissions state that clubs with a religious purpose have certain practices aimed at maintaining the club's religious character, and that the legislation should not outlaw these practices.

For instance, clubs with a religious purpose may:

- have a class of club membership for which only members of a certain religion are eligible. This class of membership may have certain rights or privileges unavailable to other classes, such as being able to vote on resolutions at a general meeting or stand for the governing body; or
- only allow club members of a certain religion to stand for the governing body.

Clubs Australia is concerned that, if the Bill is enacted, s 30(2) may make these practices unlawful, because it may be interpreted that the inability for a member to vote or stand for the board will subject them to disadvantage or detriment, or deny them access to a benefit.

This is because it is unclear how certain terms and phrases in s 30(2) would be interpreted in the context of club membership. For instance, club membership is not typically understood with respect to "terms and conditions", a phrase used in s 30(2)(a). Moreover, while the ability to stand for the governing body or vote may not necessarily be considered a "benefit" of membership in some corporations, they may be characterised as a benefit of club membership because these rights generally only attach to certain classes of members.

While s 42 includes an exception for clubs whose membership is restricted to members of a certain religion, this exception is unavailable to clubs who do not use religion as an eligibility condition for any membership class. It is also unclear from the text of s 42 as to whether the exception applies to clubs who restrict access to all classes of membership based on religion, or only a single class.

Clubs Australia notes that the explanatory memorandum to the Bill has been updated relative to the earlier draft explanatory materials, to provide that these practices are not unlawful (see paragraphs 327 and 463).

However, given that explanatory memoranda are secondary interpretation aides, **Clubs Australia recommends amending the Bill to clarify that these practices are not unlawful.**



Particularly, Clubs Australia recommends:

- **amending s 30 to state expressly that it is not discriminatory for a club to give members of a certain religion exclusive rights - such as voting on resolutions at a general meeting of members, or standing for election of the governing body; and**
- **amending s 42 to state that the clubs exception applies where a certain class of membership is exclusive to members of a certain religion.**

It is evidently the Government's intention that these practices, described above, remain lawful, given that the explanatory memorandum reflects this position.

Making the recommended amendments will ensure that clubs with a religious purpose do not face legal challenge or incur unnecessary costs.

As illustrated in Clubs Australia's earlier submissions, legal ambiguity can impose substantial monetary costs and other burdens for clubs.

Even where discrimination legislation ultimately would be interpreted in a club's favour in the context of a dispute, the procedure for the Australian Human Rights Commission (AHRC) to inquire into complaints means that these disputes are commonly protracted and costly.

For instance, the AHRC rarely finds complaints to be unmeritorious, instead opting to terminate most complaints on the ground that there is no reasonable prospect of the matter being settled by conciliation. Terminating a complaint in this manner gives complainants an avenue to pursue the matter in the Federal Court, a contingency which commonly compels clubs to pay a settlement. Due to these features of the AHRC's procedure, it is essential that the Government make every effort to create clarity.

Should you wish to discuss further, please contact Simon Sawday, Manager of Policy and Government on (02) 9268 3028, or by email at Ssawday@clubsaustralia.com.au