

Parliamentary Joint Committee on Human Rights
RELIGIOUS DISCRIMINATION BILL AND OTHER RELATED BILLS
Attorney-General's Department

Hearing date: 14 January 2022
Hansard page: 71
Question type: Spoken
Question number: 22009

Senator Janet Rice asked the following question:

Senator RICE: Can I get you to provide copies of the draft EMs that you prepared, please?

Mr Walter: I'm not sure that they're particularly helpful, because obviously we amended the EM as the bill changed, and it's really the final, approved version that matters.

Senator RICE: We can decide whether they're helpful or not.

Mr Walter: And I'd like consult with the Attorney about whether she wants to make a claim in that regard.

The response to the Senator's question is as follows:

In addition to the Explanatory Memorandum that accompanies the Bill, there have been two sets of explanatory materials approved by the Government. These are attached.

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Question number: 22010

Senator Janet Rice asked the following question:

Senator RICE: I have another area in which I'd like you to provide more detail on notice. There was some discussion before about the interaction of this legislation with the Fair Work Act, and, in particular I want to get your assessment of how the implications of having clause 12 in this act interact with the Fair Work Act.

CHAIR: Mr Walter, I'll get you to take that on notice, if you would. I'm going to Senator O'Neill, who also has questions on notice. Thank you.

The response to the Senator's question is as follows:

Similar to existing anti-discrimination law, the Bill is intended to operate concurrently with the *Fair Work Act 2009*.

Section 351 of the Fair Work Act prohibits an employer from taking adverse action against an employee, or prospective employee, because of a number of personal attributes including the employee's religion. However, there is an exception for action that is not unlawful under an anti-discrimination law.

The Religious Discrimination (Consequential Amendments) Bill 2021 would amend section 351 to recognise the *Religious Discrimination Act 2022* as an anti-discrimination law for the purposes of the Fair Work Act. This would mean that conduct that is not unlawful under the Religious Discrimination Act would also not be unlawful under section 351 of the Fair Work Act.

For clause 12, this would clarify that a statement of belief made by an employer to an employee or prospective employee that meets the definition in section 12 of the Religious Discrimination Act would not be unlawful under section 351 of the Fair Work Act, in the absence of other conduct that caused a detriment to the employee or prospective employee.

This would provide consistency across federal anti-discrimination law by ensuring that employers whose actions are lawful under the Religious Discrimination Act could not be subject to action under section 351 of the Fair Work Act.

The other protections provided by the Fair Work Act would continue to apply to employees. These include protections against adverse action for exercising a workplace right, and protections against unlawful termination and unfair dismissal. Workers who experience bullying in the workplace would continue to be able to make an application to the Fair Work Commission for an order to stop the bullying.

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Hearing date: 14 January 2022
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Question type: Spoken
Question number: 22013

Senator Deborah O'Neill asked the following question:

Senator O'NEILL: To be clear: once it was introduced, did you have any conversations with the Attorney-General in terms of any further changes to the bill in the course of the last week that we were sitting?

Mr Walter: Let me go back and just double-check that we didn't. I don't recall anything after the bill was introduced. Obviously, we have ongoing discussions with the Attorney's office, as, for example, there have been a range of articles this week raising issues out of these hearings, and we have ongoing discussions with the Attorney's office, but we haven't reached that point of drafting or developing any amendments. We're obviously waiting for this committee to report.

The response to the Senator's question is as follows:

Following introduction of the Religious Discrimination Bill 2021, the department prepared a technical amendment to correct a drafting error which has been approved for introduction during debate. The department also prepared options for possible amendments to the Consequential Amendments Bill.

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Hearing date: 14 January 2022
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Question type: Spoken
Question number: 22014

Senator Deborah O'Neill asked the following question:

Senator O'NEILL: I understand that you indicated to me earlier that there are four people who are working on this. Could you provide a Gantt chart to the committee about the level of activity undertaken by the Attorney-General? It sounds, from your evidence, that you've been on this journey for pretty well the whole time, Mr Walter. If you could give us a sense of fluctuations in how much attention has been paid to this bill or what sort of staffing it has received, amongst the hundreds of people who are there.

The response to the Senator's question is as follows:

The Attorney-General's Department does not use hourly time recording so it is not possible to provide an answer at the level of detail requested. The staffing resources provided to this Bill have been consistent with those that the department routinely provides for a Bill of this size and complexity. In addition, other areas of the department have contributed expertise and assistance as necessary throughout the project.

The Human Rights Branch of the Integrity and Security Division of the Attorney-General's Department has been responsible for leading this legislative project since November 2018. The average staffing levels devoted to this project have fluctuated depending on the stage of the project and the volume of work. Since the commencement of this legislative project the number of APS and EL staff dedicated to this work has varied between 3 and 6 staff, with an average of 4 staff throughout the entire project (generally comprising one EL2, two EL1s, and an APS 5 or 6). This figure does not include oversight and management from Senior Executive Service officers in the Branch and Division. This average staffing level does not include the period from April 2020 to April 2021 when the department diverted resources to the Government's response to the COVID-19 pandemic.

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Hearing date: 14 January 2022

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Question type: Spoken

Question number: 22017

Mr Graham Perrett MP asked the following question:

Mr PERRETT: Just one, Chair. Could you take this on notice, particularly in respect of part 2: why has it been drafted in a completely different manner to all other Commonwealth antidiscrimination legislation? I know you touched on other elements, in my questions, but that one in particular—part 2.

The response to the Member's question is as follows:

Please refer to the response to Question 22018.

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Hearing date: 14 January 2022
Question date: 18 January 2022
Question type: Written
Question number: 22018

Mr Graham Perrett MP asked the following question:

Could you please provide advice as to why the Bill was drafted in a different manner to all other Commonwealth anti-discrimination laws, especially in relation to the inclusion of Part 2 which sets out what is not discrimination. Was this a result of stakeholder consultation, was the Department directed to draft the Bill in that manner by the Attorney-General or was there another reason?

The response to the Member's question is as follows:

The Government has structured the Bill with the intention of providing the greatest degree of clarity to the reader, including religious bodies and people of faith. Setting out at the start of the Bill in Part 2 the provisions that do not constitute discrimination is intended to simplify the Bill and assist understanding.

The particular nature of the protected attribute of religious belief and activity, and specifically the need to consider appropriate provisions to recognize the right of persons to manifest their religious belief or activity in community with others, often in the form of religious bodies, required careful consideration of the structure of the Bill.

Part 2 of the Bill sets out that certain conduct and statements will not be discrimination on the ground of religious belief or activity. As these provisions deal with conduct or statements that are not discrimination, it was not necessary to frame them as exceptions. The practical effect of Part 2 is that it is not necessary to first consider whether the conduct is discrimination and then whether the conduct falls within the terms of an exception.