



Religious Discrimination Bill Briefing for Presbyterian Churches

Key points

While the Religious Discrimination Bill is not everything that faith communities hoped for, it is worth our support.

The Bill is being examined by two parliamentary committees and it is expected to be voted on early in 2022. That is likely to be a heated political process.

The Bill will

- add to federal legislation protections against discrimination on the basis of religious belief and activity;
- clarify that statements of religious belief and non-belief are protected from complaints of discrimination, and this will override any provisions in state laws;
- allow an employee to complain about restrictions on statements of belief which an employer will have to show to be reasonable;
- allow religious organisations freedom to believe, teach and act according to their religious convictions including limiting membership and appointing staff share its views and are committed to its mission;
- ensure these employment rights operate nation-wide including explicitly overriding the recent Victorian legislation removing the employment rights of religious schools.

Media reports that the government will change the Sex Discrimination Act at the same time have been firmly denied by the Attorney-General. There will, however, probably be pressure for this.

The Presbyterian Church will make submissions to the Parliamentary Committees.

There is open online survey which we encourage you to complete —

<https://www.surveymonkey.com/r/ReligiousDiscrimination>. We have some suggested responses:

<https://www.dropbox.com/s/dv9hhhrerxaaxpv/Religious%20Discrimination%20Survey%20Guide.pdf?dl=0>

You may also consider make your own submission, and contacting your local MP to express your support for the Bill.

Background

The Federal government has finally introduced into Parliament the long-awaited Religious Discrimination Bill (RDB).

In 2017, after the changes to the Marriage Act, the then Prime Minister Malcolm Turnbull established a panel to consider religious freedom protections in Australia, especially in light of the changes to marriage. The panel's report highlighted that federal legislation does not offer protection from discrimination on the basis of religion and recommended that should be corrected. The Religious Discrimination Bill is the government's attempt to do that.

When the report was released, a great deal of media attention focussed on the recommendations that religious schools should be able to discriminate on the basis of sexual orientation, gender identity or relationship status in their selection of staff and admission of students. This was already the case under all state legislation (at the time). It has become a point of heated political debate.

Over the last few years there have been two draft versions of the Bill, and the government has received extensive feedback from religious groups and many other interested parties.

The Bill was introduced into the Parliament in later November, with considerable media attention and political turmoil. It has not been put to the vote, but has been referred to two parliamentary committees for review over the summer: The Parliamentary Joint Committee on Human Rights and the Senate Legal and Constitutional Affairs Legislation Committee.

Both Committees will report early in the new year. Parliament is due to sit for only a few days before the Federal election which is due by May, and the government will almost certainly aim to have the Bill become law during that time. It is likely to be a very heated political process.

Media reports suggest that the Labour Party has not yet settled on a position on the Bill. Kristina Keneally (Deputy Leader of the Opposition in the Senate) said this week that a school should be able to require all staff to "live out and profess" the values of the school.

The contents of the Bill

The Bill does not provide everything that faith communities had hoped for but is worth support.

The fundamental provision of the Bill is to allow people to make a complaint to the Human Rights Commission if they have been discriminated either because of their religious belief or activity or because they don't hold a religious belief. Up to now, that has not been possible under Federal law. (A complaint to a commission is the standard way anti-discrimination law operates in Australia).

Currently Federal and State laws protect people from discrimination on the basis of race, age, gender, sexuality, relationship status, disability, political views and activities; and most State include religious belief as a protected attribute. The Bill will add protections to Federal law for people of any religion and those who do not have a religious faith. The Bill is not a special protection for Christians, or even for religious believers. It will give some protection to everyone in the community from unfair treatment on the basis of their religious views and practices.

The Bill does not give any direct protection to organisations against discrimination (for instance if a venue refused to hire to a church), though the leaders of the organisation may be able to make a complaint.

The Bill addresses the right of individuals to make statements, ensuring that statements of religious belief and non-belief are protected from complaints of discrimination. (This is not to allow people to make statements which are malicious, threatening, intimidating, harassing, or vilifying nor any that encourage commission of a serious crime). This provision will apply to relevant State laws, so that statements of belief cannot be found to be discrimination under those laws.

Earlier drafts of the Bill included a provision that large employers could not discriminate against someone on the basis of a statement of belief outside of their employment. (This is the so-called Israel Folau clause, though it almost certainly would not have applied to his case). The clause is no longer in the Bill. However, there are provisions which give may give an employee the right to complain about restrictions on statements of belief. The employer would have to show that these restrictions were reasonable.

The Bill also, importantly, recognises that religious organisations should be free to believe and act according to their religious convictions and that this is not unfair discrimination. A religious organisation should be able to limit its membership to those who uphold its religious views and to employ staff who hold those views. The Bill allows religious schools, aged care facilities, hospitals, and other charities to prefer staff who share the religious commitment of the institution. This is an important provision, since staff are fundamental to a religious body providing a service consistent with its mission. Not all Christian or religious institutions require all their staff to be Christians, but these organisations should be able to determine which roles require that commitment.

To ensure these employment rights operate nation-wide, the bill allows the Attorney-General to override future State or Territory legislation inconsistent with these protections for religious educational institutions. Any time the Attorney-General makes an overriding order, it can be stopped by a majority vote in the Senate.

The Government have included further provisions to explicitly over-ride the recent Victorian legislation which will not be open to a Senate veto. This would allow religious schools in Victoria to select staff who support their ethos or exclude staff who do not. This is an important element of the Bill.

Changes to the Sex Discrimination Act

The ability of religious schools to select students and staff who uphold or fit with the ethos of the school is a point of ongoing political debate. Christian schools do not exclude students or staff on the basis of their sexuality. They do select staff who support the doctrine of the school and live consistently with it, and they require students to act in ways which do not disrupt the school community and its ethos. The Bill has reasonable provisions to allow this.

The Government has referred the issue to the Australian Law Reform Commission which is to report on it 12 months after the Bill is passed by the Parliament.

Despite this process, there have been stories in the media that the Government has agreed to remove section 38.3 of the Sex Discrimination Act (SDA) which allows religious schools to

discriminate on the grounds of sexual orientation, gender identity, marital or relationship status or pregnancy. The purported reason for this amendment is to stop religious schools discriminating against gay and transgender students, though the change would also affect the ability of schools to select staff. The media reports were that the Government had agreed to these changes to get the support of some of its own members to pass the RDB.

The Attorney-General met with faith leaders this week and assured them that she and the Prime Minister has no intention of changing the SDA and are committed to the plan to have the Law Reform Commission report after the Bill has been in effect for a year.

It is possible that some members of the government and Opposition and the Greens may push for these changes in debate in 2022.

Assessment

In a pluralistic society such as Australia, it seems to have become necessary for the parliament to codify aspects of human rights. The RDB provides important protections for religious believers (and for those who wish to deny any religious belief). It is not a full protection of freedom of religion but has the same kind of protections as other anti-discrimination legislation. It will protect religious believers from unfair treatment in a cultural context in which this is becoming more common.

The Bill provides protections for statements of belief, including limiting the grounds for complaints about statements of belief under relevant state legislation.

The Bill ensures that religious organisations can continue to operate according to their beliefs, including running schools, hospitals and other institutions and services. It allows them to appoint staff who are committed to the doctrines and mission of the organisation. It will override the Victorian legislation which will make this impossible.

The removal of section 38.3 of the SDA would undermine the value of the Bill for religious schools and make it very difficult for schools to continue to pursue their mission.

Supporting the Bill

Faith leaders from a range of Christian and non-Christian groups have been consulting with the Government. Most of this group will actively support the Bill.

The Presbyterian Church of Australia and the state churches plan to make submissions in support of the Bill.

The Committee on Human Rights has set up an online survey for members of the public to express their views on the Bill: <https://www.surveymonkey.com/r/ReligiousDiscrimination>. It is likely that there will be many responses to this. Please take 10 minutes to complete the survey. It at 5pm (AEDT) on 21 December 2021). Simply answering the yes/no questions will show your views. We have some suggested responses: <https://www.dropbox.com/s/dv9hhhrerxaaxpv/Religious%20Discrimination%20Survey%20Guide.pdf?dl=0>

The Institute for Civil Society has also prepared a useful guide to completing the survey: <https://www.dropbox.com/s/slechcjl8u7evu/Responding%20to%20the%20Human%20Rights%20Committee%20Survey.docx?dl=0>

Individuals are able to make submissions to both Committees. If you make a submission to the Senate Committee, it is important to raise the concern that a peremptory change to the SDA could be very damaging for Religious schools.

Consider contacting your local MP and tell them that you hope they will support the Bill.

John McClean
Church and Nation Committee, PCA
Gospel, Society and Culture Committee, PCNSW

Chris Duke
Church and Nation Committee, PCV

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Resources

The text of the Bill, the Consequential Amendments and supporting documents:

<https://www.ag.gov.au/rights-and-protections/publications/religious-discrimination-bills-2021>

Links to the Inquires:

Committee on Human Rights

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/ReligiousDiscrimination

Senate Committee

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Religiousdiscrimination

For an extensive summary of the Bill see:

<https://lawandreligionaustralia.blog/2021/11/24/the-religious-discrimination-bill-arrives/>

The Institute for Civil Society have a short document with thoughtful responses to the most common objections to the Bill:

<http://www.i4cs.com.au/religious-discrimination-bill-5-biggest-objections-answered/>

A discussion from Family Voice and John Steenhof of the Human Rights Law Alliance about the possibility of amendments to the Sex Discrimination Bill and the threat to religious schools:

<https://www.youtube.com/watch?v=gUyJJ6HRS3U>

An Article in the Sydney Morning Herald from John Steenhof of the Human Rights Law Alliance

<https://www.smh.com.au/national/knives-are-out-for-unremarkable-religious-discrimination-bill-20211118-p59a5g.html>

Freedom for Faith is a Christian legal think tank that exists to see religious freedom protected and promoted in Australia. The Presbyterian Church supports the work of Freedom for Faith and is represented on the Board and the Board of Reference. It has a range of resources about the religious freedom and the Bill <https://www.freedomforfaith.org.au>