

Submission on the Religious Discrimination Bill

Council of Australian Humanist Societies
(Humanists Australia)

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Protection from Discrimination

Humanists Australia believes that all people deserve protection from discrimination. But is adding another anti-discrimination bill the best way to achieve it?

The proposed Religious Discrimination Bill would add a fifth category to the existing categories of age, disability, race and sex. If we are to legislate against discrimination purely on a category by category basis, to try to control discrimination as a whole we would need to add acts opposing discrimination on a range of other grounds, such as mental health condition, employment category (eg discrimination against sex workers), body type ('fat shaming'), etc. Amongst the long list of such categories that may require protection from discrimination, many could be argued just as worthy of consideration as that of religious belief.

Rather than continuing the current piecemeal approach, we should assert human rights (and freedom from arbitrary discrimination) for all people regardless of their status under any particular classification. Wherever practicable, humans should be treated as individuals, not as members of any specific category.

Though it is reasonable to canvass options aimed at suitable protections around individuals' freedom of belief or conscience, we must be careful to not unfairly advantage religious groups over other sections of the community (such as by allowing discrimination against certain individuals by others on the basis of religious beliefs).

Religious Discrimination vs Discrimination against Conscience or Belief

The proposed legislation is careful to assert protection against discrimination on the basis of non-belief as well as on the basis of religion. Humanism is neither - it is a positive belief asserting that policies and decisions should be made on the basis of compassion for humans and other animals, combined with evidence and rational thought.

The bill would provide more equitable protection if it were framed as protection against discrimination on the basis of thought, conscience and religion (see Article 18 of the International Covenant on Civil and Political Rights, for example).

Statements of Belief

In Clause 8 "Discrimination on the ground of religious belief or activity", section (3) states that a code of conduct rule imposed by an employer is not reasonable if it prevents the employee "from making a statement of belief at a time other than when the employee is performing work on behalf of the employer" (unless it is necessary to avoid financial hardship). The code of conduct for Public Servants does exactly this with regard to political beliefs rather than religious beliefs. If (as implied

by the heading of the clause) this section is intended to cover *religious* beliefs only, it offers a privilege to the religious that is not afforded to non-religious Australians, so is in contradiction of its stated principle that every person is free and equal in dignity and rights.

Evangelism

Clause 10 allows religious bodies to act in a way that may “reasonably be regarded” as in accordance with their faith. This is a weaker requirement than the current anti-discrimination legislation. Evangelism is one example of behaviour that may reasonably be regarded as in accordance with many religions. This clause therefore gives express permission for aggressive evangelising. Regard should be given to the right of the public to freedom *from* religion; the right to enjoy public spaces without being subject to harassment by evangelists.

Existing anti-discrimination law overridden

Section 41(1) of the proposed legislation states “A statement of belief does not constitute discrimination for the purposes of any anti-discrimination law”. This allows discriminatory religious beliefs to override all existing anti-discrimination laws, strongly privileging the rights of the religious over the rights of the non-religious.

It also expressly states that a ‘statement of belief’ does not contravene [subsection 17\(1\) of the Tasmanian Anti-Discrimination Act 1998](#). That section states that a person must not engage in conduct “which offends, humiliates, intimidates, insults or ridicules another person” on the basis of their sexual orientation, gender identity, race, age, and other specified characteristics. Consequently this bill will allow people to make statements of belief that intimidate or humiliate others on the basis of their sexual preference for example, and *it overrides State Law to do so*.

Note though, that section 41(2) states that 41(1) does not apply to a statement that is likely to “harass, vilify or incite hatred”. The proposed legislation could lead to some very difficult cases trying to draw the line between humiliation, intimidation and insult as opposed to harassment and vilification.

Humanists Australia supports the right of Australian States and Territories to legislate as their elected representatives think proper to protect the rights of their citizens, without being overridden by further Federal law not as supportive of those targeted human rights.

For the two reasons above, Humanists Australia recommends that Section 41 be modified or removed.

Health practitioners

Clauses 8(5) and (6) elevate religious beliefs above the duty of professionals to provide lawful health services. Consider the case of a GP employed by a medical practice, where the GP refuses to prescribe the contraceptive pill on the grounds that their Catholicism prohibits contraceptives. If female patients complain to the practice, who terminate the employment of the GP, then presumably under the proposed legislation, the GP can sue the practice on the grounds of religious discrimination. Ideally, any eventual legislation would include safeguards for such businesses - like

medical practices trying to provide suitable health care for their patients - and their clients, or at least guidelines around conscientious objection under the Bill.

Is This Bill Necessary?

In the absence of a charter or bill of human rights, this bill does provide some important protection. Humanist care workers providing social support of the kind that religious chaplains provide, experience discrimination regularly on the basis of their non-religion, despite the fact that many of the people needing care are also non-religious. We hope that the eventual application of the bill will be in a manner that offers suitable protection from discrimination for Humanist care workers.

Given the amount of special treatment already offered to religious organisations, many would argue that this bill is not necessary; especially with considerable power currently in the hands of certain mainstream religious groups. We must bear in mind that some religious groups are more marginalised. While the anti-discrimination protection at law currently seems sufficient, there is a case to be made for providing more resources for enforcement of the protection of minority religious groups against vilification, harassment and discrimination in employment.

However, if such a bill is pursued, it should not support or extend any powers of discrimination granted to religious organisations. Specific exemption to the Bill should not be given to 'Conduct by religious bodies' - all bodies should have to abide by the proposed principles of freedom of belief.

Australian Humanists believe that protection would be better provided in the form of a Charter or Bill of Rights that protects freedom of belief, thought and conscience for all Australians (religious and non-religious) equally.