



Uniting Church in Australia ASSEMBLY

Uniting Church in Australia Assembly

Submission to:

Parliamentary Joint Committee on Human Rights

Religious Discrimination Bill 2021

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Contact

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Summary

The Uniting Church in Australia commends efforts to strengthen legislative protections to prevent discrimination against people on the basis of their religious belief at the federal level. We support the primary purpose of the Bill, as stated in Part 1, Section 3, 'Objects of this Act'. However, in seeking to achieve these objects, we believe the redrafted Religious Discrimination Bill 2021 does not get the balance right and requires significant amendments. On this basis we would not support this Bill's progress into law in its current form.

We commend the Australian Government for proposing to make religious belief and activity, as well as the absence of religious belief and activity, a protected attribute in discrimination law at the federal level. However, based on our commitment to human dignity and the common good, the Uniting Church in Australia does not support provisions that would permit statements and actions that demean and unjustly diminish the rights of others on religious grounds. People should be able to enjoy their right to freedom of thought, conscience, religion and belief – however, the manifestation or expression of their religion and beliefs should not harm or demean others, nor should it be privileged over other rights.

We believe there are certain provisions in this Bill that actually increase the likelihood of discrimination against people of minority faiths and also people from more vulnerable groups within society. We believe it does this by privileging powerful religious voices at the expense of minority and vulnerable voices in society, which seems to be the exact opposite of its purpose, and by providing what we see as extraordinary and excessive religious exceptions. We are concerned such provisions could have the effect in the wider community of emboldening discrimination by providing an authorising environment for demeaning statements or actions. Rather than building harmony and tolerance it would have a corrosive effect on society.

Further, as a provider of education and community services across Australia, including hospitals and aged care services, we are concerned certain provisions within this Bill may act as a barrier to vulnerable people accessing essential services or people from minority groups seeking employment.

The Uniting Church's commitment to a diverse society means that, while we recognise there is cause for certain exceptions or exemptions for discrimination by religious organisations, these should be proportionate and limited in scope, being only as required in order to maintain the integrity and existence of the religious organisation.

Ultimately, the Uniting Church believes the right to freedom of religion is vital to a diverse society but must always be balanced and bound together with the "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society¹."

We do not believe the Bill, in its current form, achieves this balance and therefore would not support this Bill's progress into law.

(This Submission has also been made to the Legal and Constitutional Affairs Legislation Committee)

¹ United Nations Universal Declaration of Human Rights <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

The Uniting Church in Australia Assembly

The Uniting Church in Australia Assembly is the national council of the Uniting Church in Australia (UCA) and has determining responsibility within the Church for matters of doctrine, worship, government and discipline. We welcome this opportunity to contribute to the Religious Discrimination Bill 2021.

The Uniting Church is committed to following the Gospel of Christ Jesus in all areas of our lives, as individuals and in society. We are a “justice oriented” Church, with a long history of support for human rights. The Church’s engagement with human rights issues in Australia is steeped in our concern for the rights of vulnerable and marginalised groups in our society, following the life and teaching of Jesus. Our commitment comes from our belief that all people are created in the image of God and are loved and valued by God. Accordingly, we have consistently opposed discrimination in society on the basis that every person is entitled to dignity, compassion and respect, and that the community flourishes when all people are included and accorded the dignity and respect they deserve.

This submission is informed by previous submissions to earlier drafts of this Bill and consultation with the Agencies of the Uniting Church in Australia. In addition to operating schools in most states and territories, the Uniting Church is an umbrella for the largest network of non-government community service providers across Australia, offering a range of services in urban, rural and remote communities.

The UCA Assembly has worked with UnitingCare Australia to incorporate feedback from our community services into this submission, drawing on their experience as large employers and service providers, as well as their role in working directly with vulnerable and marginalised groups.

The Uniting Church is mindful of the tension which can sometimes be found between the right to practice religion, including the right to discriminate in some cases, and the right for all people to live lives of dignity and equality under the law free from discrimination.

The Uniting Church approach to religious freedoms is that such freedoms are never to be self-serving, but rather ought to be directed toward the Church’s continuing commitment to seeking human flourishing and wholeness within a healthy, diverse society. In this respect, any legislative provisions for religious freedom should be driven by an overriding focus on enabling and maintaining a society which encourages mutual respect and is free from discrimination that demeans and diminishes people’s dignity.

The consistent position of the Uniting Church has been, and continues to be, that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.

Complexity of the Proposed Legislation

Whilst the Uniting Church preference is for a comprehensive Human Rights Act, we support the primary purpose of the Bill as stated in the Objects of the Bill (Part 1, Section 3). We acknowledge that the parts of the Bill which enact the Objects as stated would provide protection from religious discrimination in Australia.

The legislation in its current form would enable our Church members to continue to freely practise our religion.

Whilst the Bill is an improvement on previous versions in some areas, in other areas the bill has become worse. We would support the inclusion of religious belief in anti-discrimination on the same basis as other attributes such as gender and ethnicity without undermining other attributes. Unfortunately, the Bill fails on this key criterion.

We continue to express our concern that the proposed legislation adds to the complex patchwork of anti-discrimination laws already in place but does not achieve a balance between competing rights. We remain concerned that the Bills continue to lean too heavily in favour of religious freedom over other rights. As such, the Church maintains that the protections afforded to those most vulnerable in our society are at risk of being diminished by this proposed legislation. Provisions which permit demeaning statements of belief and provide blanket exemptions to anti-discrimination laws preclude a more nuanced balancing of rights and have a considerable potential for harm.

Given the Uniting Church's commitment to a diverse and inclusive society, we are also concerned that the complexity described above will make it more difficult and more costly for people who are vulnerable to discrimination to understand and enforce their rights. As an example, by overriding state-based laws, if a person makes a complaint and the respondent raises the statement of belief provision, state-based tribunals will not be able to hear the case. This will mean the complainant will need to pursue other avenues through higher courts which will add time and financial imposts on both the claimant and the respondent. This will have the effect of denying justice to vulnerable groups.

Additionally, people may be uncertain about whether they will experience discrimination, and this may in turn serve as a barrier to those who fear discrimination when accessing services from faith-based organisations.

Coverage of the Legislation

In previous submissions, the Uniting Church has been particularly concerned to ensure that any legislated religious freedoms are not simply the prerogative of those (generally Christian) religious organisations who are most largely represented in our society, but also that the religious freedoms of minority communities are upheld.

In this regard we support the broad approach taken in the legislation to defining religious belief, including for those who hold no religious belief (Section 5, page 6). What requires further consideration is the definition of "engaging in religious activity". In our assessment, a person employed to teach secondary school mathematics, or to advise on information technology as examples, is not primarily "engaging in religious activity". The Uniting Church is pleased to see that in the Explanatory Memorandum Part 1 Preliminary section, Note 38 indicates that Indigenous spirituality would be captured within the concept of religious belief. However, we believe further dialogue with First Peoples across Australia is required to more fully determine their concerns relating to religious discrimination, and whether the Bill accommodate these concerns.

Notwithstanding this broad approach to defining religious belief, we note certain provisions in the Bill may in fact leave some religious minorities more vulnerable to derogatory, religiously motivated statements or discrimination in employment.

Timing, Process and Due Consultation

Prior to previous submissions the Uniting Church greatly appreciated that the Federal Government consulted with different faiths and faith-based organisations including our own Church.

In developing our submissions, the Uniting Church has attempted to consult a diverse range of people from across our Church and beyond. Among some of the people with whom we have engaged there remains the sense that their voices have not been adequately sought out and reflected in the proposed legislation. We therefore continue to encourage the government to consult carefully with such groups.

Members of the LGBTIQ community in Australia who are members of the UCA remain fearful for the consequences, intended and unintended, that might arise from this legislation.

More broadly, given the nature of some religious beliefs, we see there is potential for women, people with disabilities, divorcees and single parents to be subject to discrimination under this legislation.

We believe further consultation and listening, especially with people from the LGBTIQ community and people with disabilities, is required to more fully examine these issues and ensure these different groups are not left vulnerable to further discrimination as a result of the proposed legislation.

Employment in the Uniting Church, its Schools, Agencies and Campsites

The religious exceptions provided in the Bill to religious organisations are very broad in terms of the organisations that are captured. There is no requirement that they are established for a religious purpose, but merely that they are conducted in accordance with their tenets and religious beliefs.

We believe the test for allowing discrimination by these religious bodies has been set too low. They must only engage in good faith in a conduct that only one other person of the same religion as the religious body could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion. There is no additional objective test. Also problematic to us is the fact that discrimination it is not only on the basis of a particular religious belief or faith but also on tenets of belief. This makes it possible for religious bodies to discriminate against members of the same faith who differ on one particular tenet of that belief.

The Uniting Church is firmly committed to diversity and inclusion, and this commitment is manifested in our employment practices and policies which seek to foster inclusive, safe and respectful workplaces.

By and large, the Uniting Church does not seek to discriminate as an employer, asking prospective employees to be willing to abide by the ethos of the organisation rather than insisting on a particular religious affiliation.

The only instances in which we selectively employ people on religious grounds is where it is an inherent requirement of the specific position (e.g., roles connected with chaplaincy or religious worship, practice or teaching) or in certain leadership or governance roles. We support carefully circumscribed exemptions that would enable us to continue to selectively employ or appoint on religious grounds in these narrow range of roles.

Like many others, we express our concern that the Bill provides schools and other religious bodies broad rights to discriminate in the employment of staff on the basis of religious belief.

In regard to educational institutions, we have concerns for both students and teachers under the proposed Bill. With regard to students in religious education institutions, we believe the best practice approach can be found in Qld, Tas and the ACT and Vic which allow discrimination at enrolment. This allows communities and parents of faith to develop schools to form their own children. However religious discrimination on the basis of belief after enrolment is prohibited. This respects a student's ability to learn and grow and question their own faith. The Bill in its current form allows discrimination throughout the education journey, which could see punitive approaches to students for merely questioning the faith or expressing their disagreement with aspects of the school's faith.

Similarly, we are concerned for teachers and other employees of educational institutions. In the proposed legislation religious education institutions are able to give preference in good faith, to persons who hold a particular religious faith or tenets of a faith. This is irrespective of whether it has anything to do with the inherent requirements of the job or whether it is reasonable or proportionate in the circumstances. That this specifically overrides existing state and territory law is additionally problematic. We expect this will add to complexity and confusion.

The Uniting Church neither needs nor supports blanket exemptions or open-ended exceptions which would enable religious organisations to discriminate against employees or prospective employees.

Rather than blanket and open-ended exemptions or exceptions, we believe religious exemptions in anti-discrimination law should be consistent with the international human rights law principles of necessity, reasonableness, and proportionality.

This would ensure that religious bodies could only discriminate if there is a genuine and legitimate need, with any discriminatory measures proportionate and appropriately tailored to that need. In this regard we note that a number of these concerns will be met if there are changes to the Sex Discrimination Act 1984, including permission to discriminate against students. We appreciate that this is being examined by the Australian Law Reform Commission, however we would prefer to see this Religious Discrimination Bill amended to better protect students and teachers.

As a significant operator of hospitals and aged care facilities, the Uniting Church neither needs nor supports provision of blanket exemptions in terms of employment and partnership.

The broad religious exemptions would give religious bodies (broadly defined) excessively wide discretion to discriminate without justifiable reasons, such as where a person's religious beliefs have little to do with the job requirements. Given the scale of public services delivered by faith-based organisations across Australia, such exemptions would open up the possibility of widespread and unwarranted discrimination in employment, with flow-on consequences for certain groups who already face barriers and disadvantages in the labour market.

Irrespective of the employment practices of the Uniting Church, the existence of such blanket and wide-ranging exemptions may have wider implications in terms of how faith-based services are perceived, particularly by vulnerable groups or those who have disproportionately experienced marginalisation and discrimination.

Our community services often work with people who have experienced multiple layers of marginalisation and discrimination and maintaining a safe and inclusive service setting in this context is fundamental.

We are concerned the broad exemptions proposed, even if not relied on in practice, risk creating negative perceptions and mistrust toward faith-based services.

We note that under the test in Section 9 (3), an organisation must simply be “engaging, in good faith, in conduct that a person of the same religion as the religious body could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion”.

This test lacks sufficient stringency and seems to underestimate the wide diversity of beliefs and conduct within different faiths and denominations (and even within different sub-groups of the same faith or denomination).

Given what could “reasonably” be construed as constituting “doctrine”, “tenets” and “injury to religious sensitivities” is contested even within religious communities, it is difficult to see how this could be regarded as an “objective test”.

We are concerned this test is too loosely defined and risks legitimating almost any beliefs or conduct, including those which are demeaning, derogatory and harmful.

Having said this, if these exemptions and exceptions remain, the requirement that religious bodies wishing to apply lawful exceptions must be transparent in publicly available policies which set out the grounds for their use of exceptions is a positive addition to the Bill.

Statements of belief

Section 12 indicates that a statement of belief does not constitute discrimination for the purposes of any anti-discrimination law.

We note that the definition of statement of belief has been expanded to now be a statement made, in good faith, and is of a belief that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion. There is no objective comparator required. This potentially will protect extreme statements so long as the person genuinely believes it reflects their version of the faith. It doesn't matter that any other person or group within the same religion would reject that particular view.

The Bill excludes statements that are malicious or that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group. We believe this threshold for statements of belief that are not protected by the Bill remains too high. This Section will leave people without protection from a significant range of conduct that is demeaning, humiliating, insulting, ridiculing or offensive and that would otherwise constitute discrimination if not couched within a religious belief. We oppose any weakening of existing discrimination protections that would enable demeaning and harmful statements to be made against particularly vulnerable and marginalised groups. Women, LGBTIQ people, single parents, people in de facto relationships, divorced people, people with

disabilities and other groups would still be vulnerable to a range of statements that would otherwise be considered discriminatory if not framed as a religious belief.

Insulting religiously motivated statements may also leave people of faith vulnerable to demeaning and derogatory statements made by people of a different faith. By rendering such discriminatory statements lawful, the proposed legislation will license conduct that diminishes the dignity and inclusion of community members from a diverse range of backgrounds.

In our view, this is inconsistent with the Objects Section 3(2) in the Bill, which affirms “the indivisibility and universality of human rights, and their equal status in international law” and “the principle that every person is free and equal in dignity and rights”. Instead of reflecting the equal status of human rights and their indivisibility, Section 12 seeks to favour one human right at the expense of others – an approach which is unjustified.

The Explanatory Notes to the Bill – General Outline Note 10 indicates the proposed legislation is seeking to promote attitudinal change and counter negative stereotypes about people who hold certain religious beliefs.

We continue to support this intent but remain concerned that the ‘harm’ bar remains set too high, meaning this legislation would permit the expression of statements about minority and vulnerable groups that has the opposite effect. This part of the legislation would not serve to encourage better behaviour in interfaith acceptance.

While we support and encourage the expression of diverse religious beliefs in the public domain, we maintain that religious bodies and individuals must be accountable for the language they use, the context and the likely impact it might have on others, particularly vulnerable groups. From a Uniting Church perspective, the Bill continues to allow an imbalance.

Finally, in addressing Section 12, Note 159 in the Explanatory Notes states that:

“Protecting the freedom to express both religious and non-religious beliefs civilly is an essential part of maintaining a functioning democracy.”

The Uniting Church strongly agrees with the essential nature of civil public discourse. We are concerned that Section 12 will not promote such civility.

Transparency

As indicated above, we welcome the addition of the requirement that religious bodies wishing to apply lawful exceptions must be transparent in publicly available policies which set out the grounds for their use of exceptions.

However, we ultimately maintain that transparency is a necessary but not sufficient basis to justify discrimination – that is, transparency and public availability of policies is not a sufficient defence for discrimination.

Religious Discrimination Commissioner

The Uniting Church supports the appointment of a Religious Discrimination Commissioner, as outlined in Part 6 of the Bill.

Australian Human Rights Commission Funding

If the proposed legislation comes into being, the Uniting Church expects to see the Federal Government providing an appropriate increase in funding to the Australian Human Rights Commission, adequately meeting the costs associated with the appointment of an additional Commissioner and the expanded brief.

Conclusion

In conclusion, the Uniting Church is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant on Civil and Political Rights.

Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination and live with dignity.

The Uniting Church remains concerned that the Religious Discrimination Bill 2021 does not yet achieve that balance and that vulnerable people in particular are likely to be adversely impacted should it be implemented in its current form. On this basis we would not support this Bill's progress into law in its current form.

The Uniting Church would welcome being consulted further on this issue.

Second Contact:

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