

**AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT  
SCHOOLS  
PRESS RELEASE 811  
RELIGIOUS DISCRIMINATION BILL:  
A DOGS BREAKFAST THAT PLEASES NO-ONE?**

The Religious Discrimination Bill Pleases no-one? But then, how could it?

The DOGS position on the Coalition's Religious Discrimination Bill is that it should be unnecessary and is in fact a danger to religious liberty.

The basic human right of conscience, or Religious Liberty is –or we should say was – covered in Section 116 of the Australian Constitution until this was read down and out by the Australian High Court in the DOGS case in 1981. A shield became a sword. The private religious schools sold their basic rights for a mess of State Aid pottage. Power over their schools with taxpayer funding unquestioned meant more than freedom of conscience.

The full story of this is found on this website at <http://www.adogs.info/high-court-case>. Unfortunately, there are dangers in taking the Queen's shilling.

Whereas public schools enrol all children and employ all qualified employees, church schools wish to exclude on the basis of religious belief or sexual preference. DOGS, who believe in separation of religion from the State, are concerned that the Commonwealth should see fit to be involved in any way with religious belief. They are concerned that this Bill will introduce reverse blasphemy laws.

In the last few years privileges enjoyed by Christian churches in this country have been substantially questioned, if not eroded. They have themselves and their hypocrisy, in part, to blame for this. But in the last year the same –sex marriage referendum woke proud men in their theological halls up with a shock and they demanded 'safeguards' against the pagans knocking at their institutional and church school gates.

The result is a Religious Discrimination Bill. The submission to the Attorney General made on this Bill by a large number of organisations indicate that it pleases no-one. Churches, rationalists or legal experts. Human rights and LGBT equality groups have also [lined up to criticise the bill](#), particularly provisions which allow medical practitioners to refuse treatment on religious grounds and exempt statements of belief from state and federal anti-discrimination laws.

### **What Does the Bill say?**

The religious discrimination bill protects expression of religious speech in good faith by stating that such speech does not constitute discrimination under commonwealth, state or territory anti-discrimination law.

The provision does not protect statements that are “malicious, would harass, vilify or incite hatred or violence against a person or group or which advocate for the commission of a serious criminal offence”.

Section 41 on Statements of Religious Belief overrides all other anti-discrimination laws, state and federal.

This is a form of reverse blasphemy, allowing religionists to say whatever they please, while squashing any defence allowed their victims.

Dogs agree with Luck Beck from Monash University who notes that Implementing this bill would lead to greater divisions based on religious identifications, with a potential return to a previous age of sectarian divides, whether formal and publicly stated, or informal and privately held.

## **1. Church Concerns**

The Churches, particularly the Catholic and Anglican churches want to have the status of ‘established churches’ namely the right to receive government subsidies but discriminate on the basis of religious tests for any and every employee of church enterprises – educational, recreational, health and aged care, and any other commercial enterprise.

[According to the Guardian on October 1, 2019 :](#)

The Anglican church diocese of Sydney submission warned that although the bill said religious bodies did not discriminate by conduct that could reasonably be regarded as in accordance with their faith, the exemption did not apply to bodies engaging “solely or primarily in commercial activities”.

That meant bodies such as Anglicare Sydney, which runs retirement villages and aged care services, and Anglican Youthworks, which provides Christian outdoor education, would not attract the exemption.

Freedom for Faith said that much of the bill was “very good including general provisions for protection of people of faith from discrimination in commonwealth law” but also warned of “unintended consequences”.

It warned that exemptions in the bill did not “cover situations where there is merely a preference to employ practising Catholics or practising Christians more generally”.

“Furthermore, even if a Catholic school or other charity did have a policy of only employing Catholic staff, it would only be lawful if this could reasonably be regarded as in accordance with the doctrines, tenets, beliefs and teachings of Catholicism,” it said.

It agreed with the Sydney Anglican submission that there would be a “bizarre and profoundly damaging outcome” if Christian publishers and youth camps were unable to advertise for Christian staff as a result of the bill.

Stead’s submission noted that although the bill exempted statements of religious belief from anti-discrimination law, the protection did not apply to statements that “vilify” others, warning the term is unclear.

“The argument that orthodox statements of religious belief ‘cause harm’ to certain groups is well-rehearsed, and if it is accepted that such statements amount to vilification, then the purposes of [the clause] will have been subverted,” it said.

Stead also raised the prospect that secular companies could define staff refraining from discussing religion at work as an “inherent requirement” of the job, allowing them to discriminate against religious people in hiring.

He took aim at Porter’s decision to delay the Australian Law Reform Commission inquiry into the related issues of religious institutions’ exemptions to discrimination law, calling on him to expedite the process to ensure they can “reasonably conduct their affairs in a way consistent with their religious ethos”.

Before the 2019 election Morrison [promised to prevent religious schools expelling students for being gay](#) but [deferred the issue](#) after an impasse with Labor over how to legislate the change.

Human rights and LGBT equality groups have [lined up to criticise the bill](#), particularly provisions which allow medical practitioners to refuse treatment on religious grounds and exempt statements of belief from state and federal anti-discrimination laws.

## **2. The Rationalists**

The [Rationalist society also made a submission](#) as follows:

While we are critical of many aspects of this bill, we welcome some of its provisions:

Our preliminary concerns

The RSA is not opposed to a law that acts as a shield against discrimination on the basis of religion or belief, but does not support a law that may be used as a sword to impose religious belief, to inflict harm or to punish those who abandon or change their religion.

However, without stronger protections for freedom *from* religion, this bill will end up being in effect a sword to attack the increasing number of Australians who are non-religious [Thirty per cent of Australians reported ‘no religion’ in the 2016 census, up from 19% a decade previously. According to the ABS, this is a trend that is accelerating] and those who live their lives in ways some religionists object to. It will act to give a positive right to religionists to impose their views on others but not an equal and opposite right for the non-religious to quiet enjoyment of their lives *free from* aggressive religious interference.

*Without stronger protections for freedom from religion, this bill will end up being in effect a sword to attack the increasing number of Australians who are non-religious and those who live their lives in ways some religionists object to.*

Further, we are very disturbed that the bill includes a series of provisions that go well beyond what is found in other federal anti-discrimination laws. These provisions unfairly privilege religion over other protected attributes such as race, age, disability and sex. Such provisions do not belong in discrimination law, and should be removed and referred to the Law Reform Commission or abandoned altogether.

In particular, the bill has a number of clauses that exist only because of particular events involving high profile Christians in positions of power and privilege. These provisions have come to be known as the ‘Folau clause’ (clause 8(3)) and the ‘Porteous clause’ (clause 41).

In the case of Archbishop Porteous, the system worked! A complaint was made about statements he made, but mediation worked and the complaint was withdrawn. There is no justification in this case for a law that purports to protect against something that did not happen!

In the case of Folau, huge resources are being applied to employ the best possible legal advice and the system is working its way through to a conclusion. Folau is using existing religious discrimination protections found in the federal *Fair Work Act* to argue his case. The present bill is an ill-conceived attempt to circumvent a possible outcome of the existing legal system.

Further, it's proposed to amend the *Charities Act* to positively protect expressions of support for a 'traditional view of marriage as only between a man and a woman', despite no legal decision that threatens a charity's status for saying so. This is pure overreaction.

*Good law is not written out of bad cases.*

These clauses are clearly written in response to heavy pressure by powerful religious lobbies. They should be deleted. They are a direct attack on freedom of speech -- a form of 'reverse blasphemy' law that protects statements of religious belief over and above other statements of moral belief and protects actions by religious bodies beyond the actions of other bodies.

*The 'Folau clause' and the 'Porteous clause' are a direct attack on freedom of speech -- a form of 'reverse blasphemy' law that protects statements of religious belief over and above other statements of moral belief ...*

Over recent years, the toxic culture that pervades many religious bodies and the appalling behaviour tolerated within them have finally been exposed. Survivors of child - and adult - sexual and emotional abuse at the hands of religionists should not be slapped in the face with a law that seeks somehow to imbue those same religious bodies and their leaders with a respect they have yet to earn.

While we are critical of many aspects of this bill, we welcome some of its provisions:

- The addition to all federal anti-discrimination laws of the positive recognition of the indivisibility and universality of all human rights, and the principle that every person is free and equal in dignity and rights
- The parts of the bill that are a regular anti-discrimination statute
- The inclusion of the absence of religious belief as part of the protected attribute
- Recognition that people have the right to expect the provision of goods and services free from religious discrimination.

As made very clear by the UN Human Rights Committee's General Comment 22 -- the official interpretation of Article 18 of the International Convention on Civil and Political Rights (ICCPR) -- the right to 'freedom of religion' is not meant to accord religion a privileged place in international human rights law. Rather, while commonly abbreviated in discussion to 'freedom of religion', Article 18 of the ICCPR is meant to cover theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief [General Comment 22 on Article 18 of the ICCPR, point 2].

Further, General Comment 22 clarifies that the freedom to have or adopt a religion or belief depends on the freedom to *choose* a religion or belief. This means children should be provided education about a *range* of religions and beliefs, not indoctrinated into one religion only.

General Comment 22 also clarifies that some restrictions on the right to manifest religion or belief are acceptable, particularly where they protect rights to equality and non-discrimination: ‘Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.’

Their preliminary concerns were:

The RSA is not opposed to a law that acts as a shield against discrimination on the basis of religion or belief, but does not support a law that may be used as a sword to impose religious belief, to inflict harm or to punish those who abandon or change their religion.

However, without stronger protections for freedom *from* religion, this bill will end up being in effect a sword to attack the increasing number of Australians who are non-religious [Thirty per cent of Australians reported ‘no religion’ in the 2016 census, up from 19% a decade previously. According to the ABS, this is a trend that is accelerating] and those who live their lives in ways some religionists object to. It will act to give a positive right to religionists to impose their views on others but not an equal and opposite right for the non-religious to quiet enjoyment of their lives *free from* aggressive religion

### **3. The Law Council of Australia**

[President of the Law Council of Australia, Arthur Moses, spoke about the religious discrimination bill at the National Press Club in Canberra on Wednesday, 2 October 2019](#) and warned against a ‘shifting sands’ approach to protecting speech

Moses noted the bill “doesn’t carry the same type of protection as section 18C of the Racial Discrimination Act in relation to offensive behaviour”. Section 18C prohibits speech that “offends, insults or humiliates” a person based on their race.

“The exclusion provision – in terms of being able to say what you want based on religious belief – is narrower in relation to what will fall foul of the legislation and not be protected by the provisions of the Act,” he said.

“We are troubled by the shifting sands approach when it comes to religion, as opposed to race, and I don’t think the government has thought through consistency in this legislation because it’s a bad idea when you’re adopting a shifting sands approach.”

Moses noted the effect was that section 18C protections do not apply to religious beliefs unless they are likely to harass or vilify a person based on race.

“The concept of offend and insult in section 18C is not to be found in this legislation – so the test is much more difficult to establish in relation to provisions of the religious freedom bill than what is currently contained in the Racial Discrimination Act,” he said.

“This is an area where we have said you need to be very careful because some comments that are made do have an impact on the most vulnerable members of our community.”

Moses noted the bill still allowed employers to adopt a conduct rule that indirectly discriminates based on religion and prohibits religious speech, if they would otherwise suffer “unjustifiable financial hardship”.

“That’s an interesting concept ... there is a mirage of freedom of speech but it’s confined by the employer’s bottom line,” he said. “I think that’s silly, with all due respect.”

Moses noted its interpretation would depend on “who complains the most” and what evidence of hardship could be produced.

He said religious expression was not defined in the bill, accusing the government of “legislation done on the run” to deal with the case of [Israel Folau](#), who was sacked by Rugby Australia for social media posts stating that he believes homosexuals, among others, are going to hell.

Moses also noted that the bill [could also expressly protect medical practitioners](#) who refused to perform abortions on the grounds of conscience.

### **The Political Situation**

Meanwhile, Jacqui Lambie says she sees no case for religious discrimination bill.

DOGS are inclined to agree. A secular State should have no dealings whatever with religion and religious organisations that take the Queen’s shilling do so at their peril. Our forefathers understood this when Section 116 was placed in the Australian Constitution.

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