

E L E N I E
P O U L O S

15 December 2021

Submission

Senate Legal and Constitutional Affairs Committee

Inquiry into the Religious Discrimination Bill 2021 and Related Bills

Thank you for the opportunity to make a submission to this inquiry. My doctoral and postdoctoral research examines the discourses and politics of religious freedom in Australia. My work draws on research from the fields of political science, sociology of religion, law and linguistics. I am an ordained minister in the Uniting Church in Australia.

In the absence of a national human rights bill or charter, the Religious Discrimination Bill 2021 ('the Bill') and related bills seek to address a gap in Commonwealth laws relating to the protection of religious freedom, but the Bill is flawed and should not be passed without significant amendments.

Australia's religious diversity contributes to our vibrant and robust cosmopolitan democracy. People should not be subject to discrimination because of their religion and this bill should have been an important addition to the suite of anti-discrimination laws. In privileging 'statements of belief', however, this bill unnecessarily undermines the protections against discrimination afforded by other laws.

The context for the drafting of the Bill cannot be ignored or excused. Rather than responding to the long-standing gap in religious freedom protection for its own sake, the bill is largely a response to the concerns expressed by some that marriage equality, and the rights of LGBTIQ+ people to be protected from discrimination, threaten religious freedom. While some of the more specific references to that debate in the first two exposure drafts have been removed, Clause 12 – Statements of Belief seeks to entrench in law the terms of what was an appropriate public debate but what is not appropriate or necessary in a bill to protect against discrimination on the basis of religion.

Religious freedom is a malleable concept, and [my research](#) has found that it has been framed in several different ways since the mid-1980s, when the contemporary debates on religious freedom began in Australia.

Up until about 2011, religious freedom was framed around issues related to religious diversity. In the context of Australia's increasing religious and cultural diversity, the public debates were about the need for improved protections as a result of the discrimination, harassment, vilification and even violence being experienced by people of minority religious groups.

From about 2011, the discourse of religious freedom shifted. In response to the increasing social acceptance of, and legal protections for, LGBTIQ+ people, many religious leaders (almost solely Christian) and religious organisations and groups (again, almost all Christian) began to advocate for a better 'balancing of rights'. This was often presented in terms of a 'hierarchy of rights' with freedom of religion and the associated freedom of (religious) expression at the top of the hierarchy and 'equality rights', sometimes referred to as 'lesser' or 'optional' rights, at the bottom. It is important to note here that Christianity was, and still is, the majority religion in Australia. Its privilege is woven into the fabric of Australian cultural, social and political life. It was at least partly for this reason that, until recently, the majority of Christian leaders, churches and lobby groups have *not* supported additional protections for discrimination on the basis of religion.

From 2015, with marriage equality increasingly regarded as inevitable, religious freedom was reframed as 'freedom of belief'. In this discourse, what is threatened is the right to express belief (especially about marriage) and what must be protected is 'belief'. This discourse of religious freedom is now entrenched in the public debate. It has served to obscure the voices of people from minority religious groups who experience prejudice and discrimination because they are, for example, Jewish, Muslim or Sikh. It has also turned religious freedom into a contest between freedom of religious expression (about a small number of so-called 'morality' issues) and freedom from discrimination. This is the context which has shaped this Bill.

Clause 12 upholds 'statements of belief' as a form of expression that must be protected to a greater extent than any other form of expression and it privileges the protection of religious speech above the right to be free from discrimination based on, for example, one's gender, sexual orientation, marital status and religion. Its primary function is to serve those who seek to maintain control over people's bodies and at least some influence over the moral code of Australian society.

Clause 12 sacralises the expression of religious belief in law. This is an unprecedented proposal for the law of a secular state. Religious belief is set apart by this Bill, granted immunity from laws that seek to uphold the rights and freedoms of others. This sets a dangerous precedent in a democratic state where equality before the law is a foundational principle.

In placing 'belief' at the centre of what it means to be 'religious', it represents a perception of 'belief' as the inalienable essence of a person. This is a contested (and impoverished) understanding of both religion and belief which does not capture the richness and diversity of religion in human society.

It is also important to note that the doctrines, tenets and practices of religious traditions change over time – they change in response to challenges from science, changing social and cultural practices, the experiences of history, the progress of theological and biblical scholarship and more. This bill both 'disappears' the theological diversity within religious traditions and underestimates the robustness and vibrancy of religion by assuming that a challenge to religious belief is inherently discriminatory. Throughout history the Christian church has been responsible for grave abuses of human rights. Christians have used their beliefs to justify slavery, racism and war; and, sometimes simultaneously, also on the basis of their beliefs, Christians have acted *for* social and economic justice, peace, and freedom from oppression. That religious belief should be sacralised as it is in this Bill, assumes that, for example, Australian churches and church leaders, should not be challenged to

reconsider what their religious traditions and scriptures may have to say in the context of new understandings of life.

The churches maintain significant influence in Australian political and social life. They exercise power and social influence as large employers and providers of government-funded community and education services. As the Ruddock Report found, there is little evidence that Christians are being persecuted in Australia. A small number of high-profile individuals being confronted by the potentially damaging influence of their speech, and a few high-profile cases in overseas jurisdictions very different to ours, do not justify the over-reach of this Bill.

The Bill will allow for discrimination by religious groups against LGBTIQ+ people, women, and people on the basis of their religion. It will undermine human rights protections currently in place at both Commonwealth and state and territory levels. It will entrench in law the freedom of religious expression as a more privileged form of speech than any other.

In social terms, the Bill will serve to legitimise the fallacy that the rights of LGBTIQ+ people, in particular, are incompatible with religious freedom. In setting free the expression of religious belief from the responsibility to take account of how even 'well-meaning' statements of judgment and condemnation can harm people, this bill will enable harm. Rather than encouraging Australians to be kinder and gentler with each other, and to value the wonderful gift of our richly diverse society, including our religious diversity, this bill will unnecessarily pit groups of people against each other.

Religious freedom and freedom of speech should be protected in Australian Commonwealth law under a comprehensive human rights charter that would give effect to Australia's obligations to protect people's human rights. In the absence of any political will to enact such a charter, religious freedom and the right to be free from discrimination on the basis of religion, should be protected in terms consistent with current anti-discrimination laws. This Bill should not be passed in its current form.

Yours sincerely,

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