



4 January 2022

RE: Submission:

The L&CA Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions]

To whom it may concern:

The Religious Society of Friends (Quakers) in Australia are part of a global community that is culturally and theologically diverse, and places a strong value upon spiritual freedom of individuals within the group. Quaker faith and practice are based on every person having direct access to the Inner Light. Deriving from the Christian faith, Quakerism was initially seen as dissenting from the established Church of England and Quakers were persecuted and imprisoned.

Based on our faith and experiences, Quakers have sought to work for the equality all throughout our 370-year history, including first nations, enslaved people, women and LGBTI+ people.

Overview of our submission

The Religious Society of Friends (Quakers) supports legislation to protect people against discrimination on the basis of religious belief or activity (or lack thereof) in accordance with international human rights law. We further support the appointment of an LGBTI+ Discrimination Commissioner to the Australian Human Rights Commission, in addition to a Religious Discrimination Commissioner.

Quakers consider, however, that the *Religious Discrimination Bill 2021* (the Bill) is inappropriate and misguided in its current form and should not be passed. The Bill seeks not only to provide a shield against discrimination, but also to place a 'sword' of discrimination in the hands of:

- religious educational institutions and other religious organisations, and
- those making discriminatory statements under the guise of religious belief in any context, including purely secular aspects of public life.

The Bill and associated legislative amendments to the *Charities Act 2013* would in effect privilege freedom of religion above all other fundamental human rights, and privilege a particular religious view of marriage above all others.

We are utterly opposed to such measures and would be deeply concerned to have the 'sword' of

The Religious Society of Friends
(Quakers) in Australia Inc.
Incorporated in the ACT
PO Box 4035
Carlingford North NSW 2118
Australia

M: 0423 308 550
E: secretary@quakersaustralia.info
www.quakersaustralia.org.au
ABN 16 036 715 933

discrimination forced into the hands of the Religious Society of Friends (Quakers). As a religious organisation, we seek instead to be held to the highest possible standards, including in recognising the equality of all people.

Be patterns, be examples in all countries, places, islands, nations, wherever you come, that your carriage and life may preach among all sorts of people, and to them; then you will come to walk cheerfully over the world, answering that of God in every one.

—George Fox, 1656

We support legislative protection of freedom of thought, conscience and religion in accordance with international human rights law

Recommendation 1: Legislation should be passed to protect freedom of thought, conscience and religion in accordance with international human rights law.

Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR) states that:

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The aspects of 'public life' covered by Article 18 focus on the manifestation of religion or belief in worship, observance, practice and teaching. These are activities inherently linked with religious or belief. Quakers therefore welcome the protections against discrimination contained in sections 19 to 33 of the Bill to the extent they implement Australia's obligations as a State Party to the ICCPR and other international human rights conventions.

It is not clear, however, that sections 19 to 33 offer adequate protections for freedom of thought or conscience unconnected with religious belief, and therefore may fall short of fully implementing Australia's obligations as a Party to the ICCPR.

Recommendation 2: Sections 19 to 33 of the Bill should be reviewed to ensure that they fully implement Australia's obligations under Article 18 of the International Convention on Civil and Political Rights.

We oppose discrimination in the name of religion

Recommendation 3: Part 2 of the Bill privileges supposed rights of religious organisations over fundamental human rights of individuals and should be omitted.

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Freedom of thought, conscience and religion, under international law, does not extend to allowing religious educational institutions and other religious bodies to deny people's fundamental human rights when making employment decisions or providing goods or services unrelated to religious worship, observance, practice, or teaching. Article 18 of the ICCPR is expressly subject to limitations prescribed by law necessary to protect the fundamental rights and freedoms of others.

Part 2 of the Bill as drafted privileges the religious expression of bodies corporate and associations over the fundamental human rights of individuals, giving religious bodies the ability to discriminate against individuals contrary to the protections offered by other anti-discrimination legislation. This is unnecessary and incompatible with the protections of freedom of thought, conscience and religion and has significant potential to harm members of the Australian community.

Section 7 permits religious bodies, including religious educational institutions, to discriminate on the basis of religious belief or activity, including in relation to work, education, access to premises and the provision of goods, services and accommodation. This exception to anti-discrimination is too broad. The Bill does not require that the work, education, access to premises or provision of goods, services or accommodation be linked to religious worship, observance, practice or teaching.

At the very least, the exception in section 7 should require a clear link to religious worship, observance, practice or teaching, for example:

- employing people for the conduct of religious services, the provision of pastoral care, or to provide religious education,
- permitting or restricting access to premises during a religious service or activity, or
- providing goods, services or accommodation necessarily linked to religious activity, e.g. accommodation provided for religious education courses or goods required for the purposes of engaging in religious observance.

It is difficult to see any justification for the exception in section 7 to extend to:

- religious educational institutions employing teachers for the teaching of secular subjects such as English, mathematics, science or physical education,
- religious bodies providing accommodation to members of the public for purposes unrelated to religious observance or teaching, or
- religious bodies providing goods or services unrelated to religious observance.

Permitting religious discrimination in these circumstances risks substantially undermining all other Commonwealth, State and Territory anti-discrimination legislation: religious bodies could simply require people employed in substantially secular roles to hold and express beliefs contrary to their own fundamental human rights. For example, requiring a maths teacher to believe that 'marriage is between a man and a woman only' could, in effect, permit discrimination against an LGBTI+ person from being employed to teach maths on a basis completely unrelated to their competence or ability. We query how this would protect freedom of thought, conscience and religion.

Similarly, it is difficult to see how section 9—permitting religious hospitals, aged care facilities, accommodation providers and disability service providers to discriminate in matters of employment—protects freedom of thought, conscience and religion. It extends to roles unrelated to religious observance or teaching and therefore appears to do the opposite. We cannot see how freedom of thought, conscience and religion is protected by requiring medical practitioners, nurses, administrators, cooks, cleaners, gardeners and other service providers to modify or suppress their own religious beliefs to gain employment in non-religious roles. In smaller communities, there may be limited opportunities for alternative employment in these fields than with a religious hospital, aged care provider etc.

We oppose protections for expressions of religious intolerance

Recommendation 4: Section 12 of the Bill risks protecting expressions of religious intolerance in secular contexts and should be omitted.

Freedom of thought, conscience and religion, under international law, does not appear to extend to protection of expressions of intolerance on the grounds of religious belief. On the contrary, Article 4 of the United Nations *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* calls on all States to 'take all appropriate measures to combat intolerance on the grounds of religion or belief'.

Section 12 of the Bill would protect any statement of religious belief from being found to be discriminatory, even in substantially secular aspects of public life such as in workplaces. The limitations placed on this exception are far too narrow: a genuinely held statement of belief must 'threaten, intimidate, harass or vilify a person or group' or 'advocate for the commission of a serious criminal offence' before losing this protection.

As noted above, the protection of freedom of thought, conscience or religion under international human rights law does not extend to protection of religious intolerance. There is significant scope for religious intolerance that falls far short of threats, intimidation, harassment or vilification. For example, the Bill would seem to offer protections to 'moderately expressed' religious beliefs such as:

- condemning people of other religious beliefs or no religious belief, LGBTI+ people, unmarried people who have children, etc.
- denying the equality of women or persons with a disability, etc.

If such views were expressed in a secular context such as a workplace or in the provision of essential services such as medical care, the Bill as currently drafted appears to prevent any action being taken under Commonwealth, State or Territory anti-discrimination legislation.

We support a legislative opt-out for religious bodies and other religious organisations

Recommendation 5: Religious bodies and organisations should be given a legislative right to opt out of the exemptions in Part 2 of the Bill, to allow them to remain subject to all Commonwealth, State and Territory anti-discrimination laws.

Quakers have sought to bear witness to the equality of people throughout our 370-year history. We have not always succeeded and we recognise that equality is a journey, not a destination. As such, Quaker organisations seek to treat all people equally and celebrate the gifts that diversity in age, race, ability, sex, gender and sexual orientation bring to us all. We have no desire to take up the 'sword' of discrimination against our fellow human beings.

It would be a cause of great concern if the right to discriminate on religious grounds were extended to Quaker organisations against the fundamental principles of our faith and practice. Similarly, we would be distressed if any person purported to rely on Quaker beliefs to justify discrimination under the Bill.

Support for appointing Religious Discrimination Commissioner and an LGBTI+ Discrimination Commissioner

Recommendation 6: An LGBTI+ Discrimination Commissioner should be appointed in addition to a Religious Discrimination Commissioner.

Quakers support the appointment of a Religious Discrimination Commissioner to the Australian Human Rights Commission. We consider however that there is also value in appointing an LGBTI+ Discrimination Commissioner to advance the rights of LGBTI+ people. While the introduction of marriage equality in 2017 was a significant and welcome development, lesbian, gay, bisexual, transgender and intersex people continue to face different and distinct forms of discrimination in Australia. The journey to full equality is not yet complete.

We oppose entrenching one particular religious view in legislation to the exclusion of others

Recommendation 7: The proposal in the *Human Rights Legislation Amendment Bill 2021* to amend the *Charities Act 2013* privileges one particular religious interpretation above all others and should be omitted.

The *Human Rights Legislation Amendment Bill 2021* proposes to amend the *Charities Act 2013* to state that advancing, expressing or supporting a 'traditional view of marriage' is conclusively presumed to be for the public benefit and not contrary to public policy.

As a religious community that has supported equal legal recognition of LGBTI+ relationships since the 1970s, and which has practised full marriage equality in Australia for 15 years, it is unclear to us why the Australian Parliament needs to extend protections to one particular religious view of marriage. This entrenches a narrow religious interpretation in Australian legislation and we consider that the Australian Parliament should avoid privileging particular religious positions.

If such a provision is retained, it should be made religiously neutral and extend to any advancement, expression or support for a particular interpretation of marriage, whether it be the so-called 'traditional' view, support for marriage equality, or any other view. This would more adequately recognise the diversity of religious views on marriage.

Regards,



Ann Zubrick
Presiding Clerk
The Religious Society of Friends (Quakers) in Australia

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(Quakers) in Australia Inc.
Incorporated in the ACT
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