



National Tertiary Education Union (NTEU)

Submission on the

Religious Discrimination Bill 2021 (and other related bills)

Contacts:

Introduction

The NTEU welcomes the opportunity to provide feedback in relation to Religious Discrimination Bill 2021 (RDB) and associated Bills.

The NTEU represents the professional and industrial interests of over 30,000 people working in Australian tertiary education and research sectors. Our members teach, supervise the research of, and provide academic and welfare support to hundreds of thousands of students from diverse backgrounds every year.

The NTEU supports the submission made by the Australian Council of Trade Unions (ACTU) which has correctly identified that aspects of this proposed legislation will increase discrimination against workers, reduce job security, wind back hard-fought workplace rights and protections, and undermine psychological health and safety at work. The NTEU further believes that special protections for “statements of belief” will damage academic freedom and freedom of expression in the university environment.

The NTEU notes that significant exemptions already exist which permit religious organisations to discriminate against workers and others on religious grounds, most notably in the Sex Discrimination Act. These religious exemptions limit the rights and freedoms of others in a way which is not reasonable, proportionate, justified or necessary. The pending review of these controversial exemptions needs to be resolved before new exemptions are legislated under the RDB.

The NTEU also notes that the consultation process and timeframe for submissions to this Inquiry is insufficient, particularly in light of the complexity and significance of these changes, and the interruption of the end of year holiday period.

The NTEU is supportive of the right to protection from religious discrimination on an equal basis to other forms of discrimination.

Preference of one set of rights over others

The RDB explicitly provides that “statements of belief” that would be in contravention of other legislation are exempted from state anti-discrimination legislation. NTEU supports the submission of the Human Rights Commission on this issue which states:

“Discriminatory statements of belief, of the kind described in the Bill, whether they amount to racial discrimination, sex discrimination or discrimination on any other ground prohibited by law, will no longer be unlawful. The Commission considers that this overriding of all other

Australian discrimination laws is not warranted, sets a concerning precedent, and is inconsistent with the stated objects of the Bill, which recognise the indivisibility and universality of human rights. Instead, this provision seeks to favour one right over all others.”

The RDB (section 7) also allows religious employers to discriminate against individual workers who have differing (or no) religious beliefs to their employer – even where religion is not relevant to their role – privileging the rights of religious employers over their workers. The rights to discriminate provided by the RDB extend not just to giving priority to applicants of a certain faith in recruitment practices, but to any kind of discrimination in employment on religious grounds, including refusing an existing staff member a promotion or a pay-rise, or terminating their employment. This is particularly problematic in higher education, where employers such as Australian Catholic University (who it would appear would be covered as a registered charity) are nominally religious organisations but receive the same public funding as all other public universities. The prospect of enhanced rights for a major public university to discriminate in hiring practices is deeply concerning to our members.

Strengthening this form of discrimination also raises privacy concerns – divulging personal religious views should not be a requirement of employment in a public university.

Introducing special entitlements for people of faith will erode existing anti-discrimination protections for others. While this is a matter of serious general concern, the issue is of particular and deep significance for our LGBTQI+ members.

NTEU believes that debate about how competing human rights should be balanced is the appropriate province for Australia’s legal system and its human rights experts. A political debate waged in our parliament about which human rights deserve greater protection, and which rights sit higher on the hierarchy than others is deeply problematic.

Academic Freedom

An issue which of particular concern to the NTEU, as the body representing the industrial and professional rights of university staff, is the inherent tension between enhanced religious freedom and intellectual freedom which is a defining characteristic of an Australian university. Do the rights to be afforded to faith based tertiary education providers permitting them to discriminate against their employees, where such discrimination is in accordance with the employer’s beliefs, outweigh the academic and intellectual freedom rights of their employees? Will it prevent them from exercising

their academic freedom to express an opinion that is not consistent with the religious beliefs of their employer?

We are also concerned that the Act will have the broader unintended consequence of limiting the expression of academic and intellectual freedom which, although a fundamental characteristic of universities, is not currently protected through legislation (only recognised).

For example, the enhanced protection of “statements of belief” may open avenues for interest groups or students to sue academic staff who are performing a legitimate role in encouraging debate, discussion, and critical thinking in the classroom. Academic staff may feel pressure to allow an additional platform in-classroom to students who are making discriminatory “statements of belief.” This kind of blanket protection is antithetical to the academic environment, where assumptions and beliefs should be routinely subject to free critical analysis and new modes of thinking in the spirit of intellectual inquiry. This is a particular risk given the loose definitions set out in the Bill, which only requires that the person ‘genuinely *considers* [their view] to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.’

Access to Justice

The RDB’s intent to override state anti-discrimination laws will limit access to justice for workers. While state tribunals can usually hear discrimination cases any involvement of religious speech in such cases will require them to be heard in a court. The expense of having to go to court will be prohibitively expensive to workers and their unions, meaning many cases will simply not be heard and victims of discrimination will be without recourse under this Bill.

Access to Facilities

The Human Rights Legislation Amendment Bill specifies that religious schools and universities may refuse to make facilities available, or provide goods and services, for same-sex marriages if doing so would not conform to their religious beliefs or would injure the religious feelings of adherents of their religion. There is limited justification for this in the context of public universities that serve and host diverse staff and student bodies and are primarily funded via public grants. At the same time, the RDB requires that organisation do not discriminate in usage of facilities on the basis of religion, creating an unevenness in the law and privileging religious belief above other rights.

Conclusion

The NTEU opposes this Bill. It will increase, rather than decrease, discrimination. It is not in-line with existing anti-discrimination measures in other areas but raises rights of religious expression above all other rights. It creates additional powers for organisations to discriminate against employees (and students) in cases when it is not necessary for performance of a job. Instead of imposing this complex, confusing and inconsistent system over the top of state laws, a new federal protection against discrimination for workers and other individuals on the grounds of religion could be achieved by a simple amendment to an existing discrimination act.