



Tuesday, 21
December 2021

PARLIAMENTARY JOINT COMMITTEE
ON HUMAN RIGHTS

**RELIGIOUS DISCRIMINATION BILL
2021 AND RELATED BILLS**

SUBMISSION MADE BY THE ISLAMIC
COUNCIL OF VICTORIA

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Introduction

1. The Islamic Council of Victoria ('ICV') represents the wider Victorian Muslim community and has more than seventy-five member organisations located throughout metropolitan Melbourne and regional Victoria. The ICV's vision is to build a better community for all Australians through the empowerment of Muslims in Victoria. We aim to fulfil this vision through the provision of advocacy and social welfare services, and in consultation and cooperation with governments, multi faith communities, service providers and wider society. The organisation is firmly committed to providing support for, and protecting the rights of, Victorian Muslims.
2. The ICV welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights regarding the Religious Discrimination Legislative Package.
3. The ICV supports the Religious Discrimination Bill 2021 ('The Bill') as a means of providing comprehensive federal protections for religious belief and activity. The Bill closes the gap in Australia's anti-discrimination legislation, highlighting the equal status in international law of all human rights.

Freedom of Religion as a Fundamental Human Right

4. Foremost, the Religious Discrimination Bill is an important step in securing the freedom of religion for all Australians, and upholding Australia's international commitments pursuant to international human rights treaties.
5. Article 18 of International Covenant on Civil and Political Rights ('ICCPR') is the main international provision which targets freedom of religion or belief. The ICCPR obliges signatories to both 'respect' the right secured, as well as 'ensure' that individuals are afforded these rights in a non-discriminatory manner. Despite being a signatory to the treaty, Australia currently has no law which expressly affords the freedom of religion, and the safety of freedom from discrimination based on religion.
6. The central federal anti-discrimination legislation, the Racial Discrimination Act ('RDA'), does not make unlawful discrimination on the basis of religion. The closest provision in the Act to such a prohibition is found in Section 18C, which protects ethnic and, by extension, ethno-religious groups, from discriminative conduct. However, many religious groups, such as the Muslim community whom the ICV represents, are not caught within the scope of the RDA.

Efficacy of the Religious Discrimination Bill

7. The ICV supports the Federal Parliament's commitment to The Bill's comprehensiveness and efficacy in practice.
8. Currently, there exists enacted legislation to target discrimination on the basis of sex, age, race, and disability, but no legislation in relation to religion or religious belief. Importantly, The Religious Discrimination Bill will complete Australia's statutory anti-discrimination framework and ensure the protections of religious belief and activity are no longer 'piecemeal' in approach. The ICV endorses the Commonwealth Parliament's efforts to ensure consistency between The Bill and other anti-discrimination legislation, as emphasised in The Bill's Explanatory Memorandum.

Override of State and Territory Laws

9. Crucial to The Bill's practical efficacy is its override of State and Territory laws. The ICV endorses the Bill's stance and override of State and Territory laws in relation to, inter alia, employment preferencing decisions of religious schools. The Expert Panel in the 2018 *Religious Freedom Review* heard from various religious schools who communicated that "spiritual education is not just about teaching content in classes, but also the formation of a community or environment that supports the teachings of their faith"¹. Employing teachers and staff who model the moral codes of the faith is the key to a school being able to live and implement its ethos. The liberty of parents and guardians to facilitate the religious education of their children is also protected under article 18(4) of the ICCPR²,

¹ Religious Freedom Review Report of the Expert Panel, Chapter 4, 56 [1.210]

² Article 18(4) of the ICCPR states that "*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.*"

article 13(3) of the International Covenant on Economic, Social and Cultural Rights ('ICESCR')³ and article 14(2) of the Convention on the Rights of the Child ('CROC').⁴

10. The ICV therefore supports the Bill's override of State and Territory laws that may threaten to undermine these fundamental rights. Victoria's Equal Opportunity (Religious Exceptions) Amendment Bill 2021 was recently passed, prohibiting religious schools and organisations from making employment preference decisions unless the employee's religious beliefs are an 'inherent requirement' of the role, and even then, the action must be deemed to be 'reasonable and proportionate'. The creation of these new thresholds not only compromises the proper and free practice of faith at religious schools, but also creates inconsistency between the States and Territories. This new law also disconnects religious belief from behaviour and conduct in accordance with such belief, a gross misunderstanding of the lived reality for people of faith. The ICV strongly supports the Religious Discrimination Bill, which preserves schools' preferential hiring rights. Such measures are critical in allowing faith schools to create and nurture a community that accords with their moral and religious values.

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11. The ICV also recommends that the limited override of State and Territory laws be expanded to ensure other religious institutions, not just schools, are afforded the same rights as religious schools when making employment decisions. Article 18(1) of The ICCPR emphasises the right to religious freedom "in community with others... to manifest his religion or belief in worship, observance, practice and teaching". Just like any community, the nurturing of a faith community is not limited to the schooling environment. Rather, it is supported by institutions such as places of worship, charitable organisations, and religious community centres. Including these organisations in the package of rights being created by The Bill will ensure a more comprehensive practical recognition of the freedom of religion.

³ Article 13(3) of the ICESCR states that "*The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*"

⁴ Article 14(2) of the CROC states that "*States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*"

Statements of Belief Clauses

12. The ICV supports the ‘Statement of Belief’ clauses in the Religious Discrimination Bill. They are provisions vital to securing the right to religious freedoms for all Australians. The freedom to express religious beliefs without fear is a hallmark of a free democracy affording equality to all. Muslims, as a religious group, overwhelmingly support and wish to see enacted legislation which confers unto them the right to express their religious views, a core component of our faith, without fear of discrimination.
13. The ICV also views the limitations to the Statement of Belief freedom enlivened by Section 12 to be fair and balanced. The three limitations, namely the ‘good faith’ and ‘genuine belief’ requirements found in s 5 (1)(a), and the harm exceptions found in s 12 (2), cumulatively ensure that the interest of religious expression is soundly balanced with the interest of freedom from discrimination.
14. As the Committee is no doubt aware, the Statement of Belief clauses are therefore far from offering blanket freedoms to express hateful, violent, or threatening views in the name of religious expression. Any statement of religious belief that, for example, a reasonable person would find “threatens, intimidates, harasses or vilifies” a minority group or a person of no religious belief would not be made lawful by the Bill. In that sense, the concerns of groups who have criticised the Statement of Belief clauses seem duly addressed.
15. The ICV recommends that the Religious Discrimination Bill include the Statement of Belief clause in its current form, as it fairly balances the tensions between the right to freedom of religious expression and the potential confrontations this right may have with other rights, such as the right to freedom from discrimination.

Section 37 Exceptions

16. The ICV is concerned that Section 37 (2) exempts law enforcement and national security and intelligence agencies from the discrimination prohibitions. Muslims have long been subjected to racial profiling and targeting under the guise of national security, and the introduction of s 37 will only make it clear that the Commonwealth Government believes that religion is a legitimate basis for discriminating against individuals and religious groups.

17. The ICV has long advocated for legal reform in the spaces of counter-terrorism laws and law enforcement procedures where Muslims are particularly adversely affected. Further, there is no correlation between any religious belief or activity and conduct which may be unlawful. Section 37 will operate to enable law enforcement and security agencies to allow biases, stereotypes, and unfair procedures to govern their functions and powers.
18. The ICV recommends that the exception to the Religious Discrimination Bill found in Section 37 (2) be removed.
19. In summary, the ICV commends the government on tabling this essential piece of legislation which addresses a glaring gap in Australia's anti-discrimination legal framework. It is hoped that the current committee reviews - Joint Committee on Human Rights and Legal and Constitutional Affairs Legislation Committee - will lead to a strengthening of the current protections for religious freedom contained within the Bill.
20. If the Parliamentary Joint Committee requires further information or has any questions, we would be pleased to address any request. Inquiries can be directed to Zakaria Wahid at zakaria.wahid@icv.org.au