

Religious freedoms legislation

Key changes from first exposure draft

Religious bodies: conduct that is not discrimination

Religious bodies

- Previously:
 - Religious charities were not ‘religious bodies’ if they were solely or primarily engaged in commercial activities.
- Now:
 - Religious charities that are registered as public benevolent institutions are ‘religious bodies’, regardless of their involvement in commercial activities.
 - Other types of religious charities will also be religious bodies, unless they are solely or primarily engaged in commercial activities.
 - Hospitals, aged care facilities and accommodation providers are dealt with separately.

‘Preferencing’ by religious bodies

- Previously:
 - The Bill did not expressly allow the giving of preference to persons of the same religion as the religious body.
- Now:
 - Religious bodies are now expressly able to give preference to persons that share their religion (compared with people not of that religion).

Conduct to avoid injury to religious susceptibilities

- Previously:
 - The Bill did not provide that conduct ‘to avoid injury to religious susceptibilities’ of adherents of a faith was permitted.
 - This expression is used in other Commonwealth legislation.
- Now:
 - The Bill now expressly provides that religious bodies do not discriminate by engaging in conduct to avoid injury to the religious susceptibilities of adherents of their faith.
 - This aligns with existing provisions in the *Fair Work Act 2009*, *Age Discrimination Act 2004* and *Sex Discrimination Act 1984*.

Religious hospitals, aged care and accommodation providers

- Previously:
 - Religious hospitals, aged care facilities and accommodation providers could not make staffing decisions on the basis of faith.
- Now:
 - Religious hospitals, aged care facilities and accommodation providers can take faith into account in staffing decisions.
 - This includes giving preference to employees of the same religion as the relevant facility (when compared with people not of that religion).

- This will ensure these bodies can preserve their ethos through staffing decisions.

Religious camps and conference sites

- Previously:
 - There was no specific exception allowing religious camps and conference centres to take faith into account when hiring out their campsites.
- Now:
 - Religious camps and conference centres will now be able to take faith into account when deciding whether to provide accommodation, in accordance with a publicly available policy.
 - This includes giving preference to people or groups who are of the same faith as the camp or conference centre.
 - This reflects the unique history and status of religious camps and conference centres.

Indirect discrimination

Employer conduct rules

- Previously:
 - Employers could not restrict employees' statements of belief 'other than at a time when the employee [was] performing work on behalf of the employer'.
- Now:
 - Subclause 8(3) has been amended to use the phrase 'other than in the course of the employee's employment'.
 - This technical amendment ensures the obligation not to restrict employees' religious expression in their own time does not traverse employer obligations in work health and safety and workers' compensation law about conduct outside work hours (such as on meal breaks and at work social functions).

Qualifying body conduct rules

- Previously:
 - No special protections from rules imposed by qualifying bodies that restrict statements of belief.
- Now:
 - Qualifying bodies will not be able to impose rules (such as social media codes of conduct) that restrict people from making statements of belief in their personal capacity, unless they are an essential requirement of the relevant profession, trade or occupation.

Health practitioner conduct rules

- Previously:
 - Conscientious objection provisions applied to a broad list of professions drawn from existing law.
- Now:
 - The conscientious objection provisions now expressly make clear that they do not permit discrimination (but relate to rules that apply to health practitioners at work). An objection must be to a procedure, not a person.
 - The list of health professions has been narrowed to medicine, midwifery, nursing, pharmacy and psychology.

Other matters

Associates

- Previously:
 - No protection for associates of religious individuals.
- Now:
 - Associates of religious individuals are now protected from discrimination.
 - This protects interfaith marriages, relatives, and other associates.
 - For example, the Bill would now protect a woman from discrimination on the basis that she married a Muslim man.

Definition of 'vilify'

- Previously:
 - 'Vilify' was not defined.
- Now:
 - The term 'vilify' has now been defined to mean 'incite hatred or violence'.

Objects clause

- Previously:
 - Objects clause did not expressly state that all human rights have equal status at international law.
- Now:
 - The objects clause now expressly makes clear that all human rights have equal status under international law, consistent with the recommendation of the Religious Freedom Review.
 - Equivalent provisions will be inserted into other Commonwealth anti-discrimination laws.

Courts' role in matters of faith

- Previously:
 - Some types of conduct were not discrimination if a person could reasonably consider it to be in accordance with the doctrines, tenets, beliefs and teachings of the relevant religion.
- Now:
 - The Bill now makes clear that a court will now need to consider whether a person of the same religion as the religious body or person could reasonably consider the act to be in accordance with the doctrines, tenets, beliefs or teachings of that religion.
 - This recognises that religious bodies have a wide margin of appreciation about how they conduct themselves in accordance with their faith, which is not well-suited to judgment by a court. The objective test in this amendment means courts will not be involved in deciding what the doctrines of a particular religion require.
 - The denomination, sect, stream or tradition by which the conduct is assessed is that of the religious body.