The Rationalist Society (RSA) is Australia’s oldest free-thought organisation, established in 1906. Over the past 100 years or so, the RSA has promoted reason and evidence-based decision-making in public policy, independent of theological creeds and dogma. One of the major aims of the RSA is to raise awareness among the public of the value of Reason and the benefits of a rationalist approach to life and living.

**What the RSA welcomes in the bill**

While we are critical of many aspects of this bill, we welcome some of its provisions:

- The addition to all federal anti-discrimination laws of the positive recognition of the indivisibility and universality of all human rights, and the principle that every person is free and equal in dignity and rights
- The parts of the bill that are a regular anti-discrimination statute
- The inclusion of the absence of religious belief as part of the protected attribute
- Recognition that people have the right to expect the provision of goods and services free from religious discrimination.

As made very clear by the UN Human Rights Committee’s General Comment 22 -- the official interpretation of Article 18 of the International Convention on Civil and Political Rights (ICCPR) -- the right to ‘freedom of religion’ is not meant to accord religion a privileged place in international human rights law. Rather, while commonly abbreviated in discussion to ‘freedom of religion’, Article 18 of the ICCPR is meant to cover theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. [General Comment 22 on Article 18 of the ICCPR, point 2]

Further, General Comment 22 clarifies that the freedom to have or adopt a religion or belief depends on the freedom to choose a religion or belief. This means children should be provided education about a range of religions and beliefs, not indoctrinated into one religion only.

General Comment 22 also clarifies that some restrictions on the right to manifest religion or belief are acceptable, particularly where they protect rights to equality and non-discrimination: ‘Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.’

**Our preliminary concerns**

The RSA is not opposed to a law that acts as a shield against discrimination on the basis of religion or belief, but does not support a law that may be used as a sword to impose religious belief, to inflict harm or to punish those who abandon or change their religion.

However, without stronger protections for freedom from religion, this bill will end up being in effect a sword to attack the increasing number of Australians. [Thirty per cent of Australians reported ‘no religion’ in the 2016 census, up from 19% a decade previously. According to the ABS, this is a trend that is accelerating.] who are non-religious and those who live their lives in ways some religionists object to. It will act to give a positive right to religionists to impose their views on others but not an equal and opposite right for the non-religious to quiet enjoyment of their lives free from aggressive religious interference.

Further, we are very disturbed that the bill includes a series of provisions that go well beyond what is found in other federal anti-discrimination laws. These provisions unfairly privilege religion over other protected attributes such as race, age, disability and sex. Such provisions do not belong in discrimination law, and should be removed and referred to the Law Reform Commission or abandoned altogether.

In particular, the bill has a number of clauses that exist only because of particular events involving high profile Christians in positions of power and privilege. These provisions have come to be known as the ‘Folau clause’ (clause 8(3)) and the ‘Porteous clause’ (clause 41).

In the case of Archbishop Porteous, the system worked! A complaint was made about statements he made, but mediation worked and the complaint was withdrawn. There is no justification in this case for a law that purports to protect against something that did not happen!
In the case of Folau, huge resources are being applied to employ the best possible legal advice and the system is working its way through to a conclusion. Folau is using existing religious discrimination protections found in the federal Fair Work Act to argue his case. The present bill is an ill-conceived attempt to circumvent a possible outcome of the existing legal system.

Further, it’s proposed to amend the Charities Act to positively protect expressions of support for a ‘traditional view of marriage as only between a man and a woman’, despite no legal decision that threatens a charity’s status for saying so. This is pure overreaction.

Good law is not written out of bad cases.

These clauses are clearly written in response to heavy pressure by powerful religious lobbies. They should be deleted. They are a direct attack on freedom of speech -- a form of ‘reverse blasphemy’ law that protects statements of religious belief over and above other statements of moral belief and protects actions by religious bodies beyond the actions of other bodies.

Over recent years, the toxic culture that pervades many religious bodies and the appalling behaviour tolerated within them have finally been exposed. Survivors of child- and adult- sexual and emotional abuse at the hands of religionists should not be slapped in the face with a law that seeks somehow to imbue those same religious bodies and their leaders with a respect they have yet to earn.

Consultation period too short
All discrimination law is complex and sensitive. It is both unfair and unreasonable to expect well-considered analysis and evaluation of this bill in such a short period of time -- particularly when the government’s own response to the Ruddock Report, leading to the present bill, was so delayed.

Recommendation
We recommend the consultation period be extended for three months.

The right to make statements of belief (clause 41)
Clause 41 overrides all other federal, state and territory discrimination laws to permit a ‘statement of belief’ to be made without being considered discriminatory. This clause places religious statements beyond the reach of the Sex Discrimination Act, the Racial Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act and beyond the reach of state and territory anti-discrimination statutes. It overturns standard practice, whereby federal anti-discrimination laws work concurrently with other laws.

For religionists, a protected statement of belief can be on any topic provided it can be seen to arise out of a person’s religious beliefs. By contrast, for non-religious people, a protected statement of belief can only be on a topic concerning religion and then only provided it can be seen to arise directly out of a person’s lack of religious beliefs. Why should religionists get a broader right to protection of their expressed beliefs than the expression of the beliefs of non-religious people?

Recommendation
We recommend clause 41 be deleted entirely.

Employer codes of conduct (clause 8(3))
Clause 8(3) of the bill proposes that codes of conduct by employers must not prohibit statements of belief outside of work (the ‘Folau provision’). This elevates statements of religious belief above any other statement of belief, providing positive religious privilege -- a sword, not a shield -- that is unavailable to other statements of, say, political or moral belief. Why, for example, should statements of religious belief be protected but statements about diggers on Anzac Day not be similarly protected? [SBS sacked journalist Scott McIntyre for ‘inappropriate’ Anzac Day tweets, claiming he breached SBS’s code of conduct]. This provision appears to apply only to large organisations but it is very unclear whether it applies to small-to-medium sized enterprises. This needs to be clarified. There is no equivalent provision in any other federal anti-discrimination laws.
**Recommendation**

We recommend clause 8(3) be deleted from the bill. Instead, following proper consultation, the Fair Work Act could be amended to include a more general ban on employer codes of conduct that regulate outside-of-work speech.

**Conscientious objection (clause 8(6))**

Clause 8(6) is particularly concerning because it has the clear potential to reduce access to healthcare, especially for women and LGBTI people. Again, there are no equivalent provisions in other federal anti-discrimination laws.

If schools and hospitals, or professionals working in them, are to be given the opportunity to refuse lawful health services on the ground of religious belief, then for the sake of transparency, they should be required to advertise this fact clearly so that prospective clients are not taken by surprise or worse, put off entirely from accessing lawful health services. So, for example, a doctor or a hospital that refuses to provide termination services or contraception advice and services or voluntary assisted dying should be required to advertise this fact so that prospective clients know to go elsewhere for such information and services. Utilisation of this provision should be available if and only if there is such transparency.

**Recommendation**

We recommend clause 8(6) be deleted entirely. Alternatively, for the sake of transparency, institutions that provide services to the public like schools, universities and hospitals should be required to publish their policies on employment and service-provision as they relate to religious belief, so that prospective clients are fully informed before seeking to use their services.

**Recommendation**

We recommend that individual health professionals who seek to take advantage of the blanket conscientious objection provisions should be required to make their views publicly known so that prospective clients are not misled about the scope of services such professionals will provide.

For the purposes of this clause, ‘health service’ is broadly defined. Why on earth would a podiatrist, or an optometrist, or a dentist need to invoke ‘conscientious objection’? Other, perhaps, than pure bigotry against some patients they judge to be ‘sinners’. This is outrageous over-reach and should be deleted.

**Recommendation**

In the section 5 on Definitions, the following services should be removed from the list of ‘health services’:
Aboriginal and Torres Strait Islander health practice; dental; medical radiation practice; nursing; occupational therapy; optometry; pharmacy; physiotherapy; podiatry; psychology.

**Religious Freedom Commissioner (Part 6)**

This bill places undue emphasis on religion, whereas international law (ICCPR and its associated General Comment 22) makes it clear that what is to be protected is not just religion but ‘thought, conscience, religion or belief’. The proposed Religious Freedom Commissioner should be renamed the Commissioner for Freedom of Thought, Conscience, Religion or Belief - or if that is a bit long, then the usual international protocol is to refer to Freedom of Religion or Belief (FORB).

Further, the bill fails to include a provision, which is clearly part of international law, protecting the rights of people to change their religion or abandon their religion altogether.

**Recommendation**

To signal the intention that these provisions treat religious and non-religious citizens equal in dignity and rights, we recommend the Religious Freedom Commissioner role be renamed the ‘Commissioner for Freedom of Religion or Belief’ (commonly known as FORB) or better, the ‘Commissioner for Freedom of Thought, Conscience, Religion or Belief’.
**Recommendation**
We also recommend that the duties of the Commissioner for Religion or Belief relate not only to religion but to all thought, conscience, religion or belief, which must include ensuring religious beliefs are not privileged above other systems of belief.

**Recommendation**
Clause 3(2) on Objects should include an additional principle that explicitly recognises the freedom to ‘replace one’s current religion or belief with another or to adopt atheistic views’ and to make unlawful any coercion that compels adherence to religious views or activities.

**Religious bodies may act in accordance with their faith (clause 10)**
Clause 10 of the bill gives religious bodies practically free rein to do as they please, as long as their actions can ‘reasonably be regarded’ as being in accordance with the teachings of their faith. This is a much lower standard than in other anti-discrimination legislation, which require ‘conformity’ with the beliefs of the religion ‘necessary’ to avoid injury to religious sensibilities.

Aggressive evangelising would be given legal protection under this clause. There is an increasing number of Australians calling for freedom from religion, not more ‘religious-freedom-as-religious-privilege’. There should be reasonable limits placed on the actions of religionists in the public square or in public institutions. The UK Public Order Act does this in its clause 29J: Protection of Freedom of Expression where it says, ‘The protection of evangelising as lawful activity should be limited by law to protect public order.’

**Recommendation**
To ensure ordinary people’s rights to quiet enjoyment of their surroundings, we recommend there be limits on evangelising that disturbs public order.

**Failure to implement all Ruddock recommendations**
The Ruddock Report recommended that the crime of blasphemy be abolished throughout Australia. The federal parliament has previously used its powers to abolish criminal offences, most notably by abolishing the criminalisation of consensual sexual relations between persons of the same sex. The government should use this package of bills as an opportunity to abolish, once and for all, the crime of blasphemy throughout Australia.

**Recommendation**
A provision abolishing the crime of blasphemy should be included in the bill.

**Complexity of language**
We foresee that the implementation of this bill will inevitably lead to greater divisions based on religious identifications, with a potential return to a previous age of sectarian divides, whether formal and publicly stated, or informal and privately held.

This bill is complex and ambiguities abound. The bill contains many double, triple and quadruple negatives, making clear understanding difficult. We can foresee a Pandora’s Box, leading to a large number of legal contests as definitions of what constitutes a religion, a religious body or statements of belief are challenged. In the light of the Ruddock Inquiry’s conclusion that there is little problem with freedom of religion in this country, we seriously question the need for this bill, but if it is to be instituted, it should be redrafted in less complicated language.

**Recommendation**
The bill should be redrafted in plain English.