



Australian Federation
of Islamic Councils

The Hon. Michaelia Cash
Attorney General
Parliament House
Canberra ACT 2600

25 November 2021

Dear Attorney

Re. Religious Discrimination Bill 2021

I write with some initial comments and suggestions regarding the Religious Discrimination Bill 2021, introduced into the House of Representatives on 25 November 2021.

I do appreciate that the topic is delicate and sensitive with many stakeholders.

As the leader of one of Australia's largest faith communities, I am concerned that the Bill must preserve the sanctities of the dominant Australian faiths, including mine.

RELIGIOUS SCHOOLS – ABILITY TO MAINTAIN FAITH-BASED ETHOS

Faith-based institutions might be united in the belief in God. Still, different faith institutions can fundamentally differ on the path to God and will faithfully guard their belief systems.

For this reason, there will always be specific jobs and academic placements that must be protected. If we expect that doctors, lawyers, engineers, and accountants must be groomed in a particular discipline and must adhere to the standards of the professional bodies, we must respect the right of faith institutions to insist that their workers also adhere to their professed value systems and that the children under their care can be nurtured following the dictates of their faith. These institutions must be given the right to legally protect their ethos from what they can argue to be a corrupting influence.

Therefore, we welcome sections 7(2) and 7(4) of the Religious Discrimination Bill that clarify that taking action to simply uphold one's religious ethos cannot be treated as discrimination. That includes conduct to 'avoid injury to the religious susceptibilities of adherents of the same religion as the religious body' (s7(4)).

We acknowledge the note to this section in the Bill, which says,

For example...it is not discrimination for a religious primary school to require all of its staff and students to practice that religion if such a requirement is necessary to avoid injury to the religious susceptibilities of people of that religion.



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We also welcome section 11 of the Bill concerning employment practices by religious, educational institutions, which will override specific State and Territory laws. This section enables religious, educational institutions to prefer to employ persons who hold or engage in a particular religious belief or activity, where it is done in accordance with a publicly available written policy. The institution's policy must outline its position on particular religious beliefs or activities and explain how those particular religious beliefs or activities will be enforced.

In the case of education institutions represented by AFIC, their policies can outline staff and student behaviours necessary to maintaining social norms that are part of the Islamic faith.

For example, publicly identifying as being same-sex attracted or promoting multiple genders beyond male or female is not consistent with those social norms. Our schools should be at liberty to discourage behaviour that adversely affects the general religious and moral education.

We also welcome that the Bill protects Statements of Belief. Religious schools can state their religious beliefs in their policies, including views on gender, sexuality, and marriage, without fear of legal repercussions. We acknowledge that Statements of Belief cannot be malicious or incite hatred towards specific groups under the Bill. We think that is a fair expectation that aligns with the Islamic ethos.

Parents must be able to choose religious and moral education for their children that conforms with their own convictions (International Covenant on Civil and Political Rights, Art 18 (4)). Reading the Religious Discrimination Bill and the Sex Discrimination Act 1984 (Cth) together, that freedom will be protected.

As the Prime Minister has acknowledged, different worldviews and value systems must be allowed to co-exist, provided they are lawful. Mechanisms to resolve disagreements must be proportionate so as not to impair these fundamental freedoms.

Therefore, it is a concern to read media reports suggesting further changes are being contemplated to restrict safeguards for religious, educational institutions.

We are concerned about the stakes. Today there are children who seek to groom others into a particular life choice. Children often look to satisfy their curiosity through means and ways that are unacceptable to adults. This includes sexual interest and sexual boundaries. These boundaries might differ across traditions and ideologies. The legislature can set some standards but should not interfere with the various scriptures of the differing established ideologies and should not force faith communities to lower their standards.



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There is a real danger when we empower children to openly explore curious thought meanderings about sexual practices that are anathema to their faiths. Under normal circumstances, such conversations would be tempered by appropriately trained counsellors to help impressionable children appreciate their faith guidance on such matters.

Unfortunately, the **Change or Suppression (Conversion) Practices Prohibition Bill 2020**, awaiting Royal assent in Victoria, makes it impossible for Faith schools to appropriately address such issues without severe recriminations. We note that the Religious Discrimination Bill is silent on this Victorian law. It is wrong to introduce the proposed changes at the federal level without repealing the proposed Victorian laws. To do so would make curious children very vulnerable to exploitation.

PROTECTION FROM VILIFICATION AND HATE CAMPAIGNS

It is very ironic that at the same time that this debate is raging at a federal level, the state of NSW failed to pass laws that would protect specific faith communities from vilification and hate campaigns.

Vilification protections must be introduced in the Federal and NSW jurisdictions as part of religious discrimination legislation. The shadow of the Christchurch massacre still looms heavily upon the Australian Muslim community.

A clear standard to oppose hate campaigns directed at people because of their faith is only fair, given people of faith must not vilify others. It simply makes a limitation imposed on Statements of Belief – to not vilify - a reciprocal standard. The Prime Minister has spoken passionately about providing a shield to people of faith. No greater shield is needed now than protection from campaigns that maliciously endanger our families and places of worship.

There are different ways to achieve this outcome at law.

Although section 18C(1) (a) and (b) of the Racial Discrimination Act 1975 (Cth) (“RDA”) could be read together to include complaints from Muslims, the Australian Human Rights Commission does not currently accept section 18C complaints if the relevant ‘public act’ was directed at Muslims, as opposed to ethnicity or racial background. This AHRC seems to have followed NSW authorities that have found Muslims to not belong to the category of ‘ethno-religious’ group (see *Trad v Jones & anor* (No. 3) [2009] NSWADT 318; *Ekeremawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29). This position is at odds with the legislative intention of the RDA and must be clarified. NSW vilification law is drafted quite differently to section 18C of the RDA. The NSW Anti-Discrimination Act focuses on the act of inciting hatred towards the group, whereas section 18 focuses on the effect to a group. Thus, even though ‘ethno-religious’ category requires some connection to ethnicity, that should not block complaints from Muslims who are vilified for being Muslim under section 18C. The



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Australian Parliament should remedy it now. By amending the Human Rights Legislation Amendment Bill 2021 before Parliament, you could clarify that section 18C (1) of the RDA allows complaints from persons of faith who are targeted because of their faith, subject to them still demonstrating the criteria set in section 18C(1).

Alternatively, after section 12 of the Religious Discrimination Bill, you could insert a section 12A that prohibits vilification of persons based on their religious belief or activity.

EXEMPTIONS FOR NATIONAL SECURITY FUNCTIONS

Section 37 of the Religious Discrimination Bill relates to conduct 'in direct compliance with certain legislation etc.' It says that acts done to comply with Commonwealth and State laws cannot be found to be religious discrimination. However, it goes further to include 'performing a function or exercising a power relating to law enforcement, national security or intelligence.'

This clause effectively excises law enforcement from religious discrimination standards, a disproportionate, vast, and harmful excision. We believe this clause violates the Siracusa Principles to only impinge upon fundamental freedoms in precise, well-justified, and well-defined ways.

We, therefore, ask you to remove section 37(2). The remaining clauses concerning Commonwealth and State laws provide enough protection for law enforcement and security officials when complying with legislation.

Section 116 of the Australian constitution guarantees Freedom of religion. The present debates in both the federal and the NSW parliaments undermine this guarantee.

Kind regards,

Dr Rateb Jneid

President, AFIC

Cc – The Hon Scott Morrison, Prime Minister of Australia
The Hon Dominic Perrottet, Premier of NSW
Etc.

Australian Federation of Islamic Councils

*The peak body for Australian Muslims representing
State and Territory Islamic Councils and Societies*



Sydney (Head Office): 932 Bourke Street, Zetland, NSW 2017

Melbourne: 66-68 Jeffcott Street, West Melbourne VIC 3003

Canberra: 21/41 Liardet Street, Weston ACT 2611

Perth: 17 Mercantile Way, Malaga WA 6090

W: afic.com.au **E:** admin@afic.com.au **PH:** (02) 9319 6733