Religious Discrimination Bill 2021 and related bills

2019-2020-2021

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Sex And Gender Education (SAGE (Australia) submission to the Parliamentary Joint Committee on Human Rights, 13 December, 2021.

SAGE campaigns for the rights and respectful dignity of sex and/or gender diverse (SGD) groups of people in Australia on the issues affecting their everyday lives, and distributes information relating to the quality of their lives. Sex and/or gender diverse people are made up from many differing groups including people who are intersex, transexed, transsexual, transgendered, androgynous, without sex and gender identity, cross-dressers and people with sex and gender culturally-specific differences.

They are people who experience variations in physical presentation and social behaviour that is other than stereotypically male or female. Each group may have its own physical, psychological, social, legal and political issues that may not necessarily relate to any of the other groups. SAGE has been in existence since 2001 and has contributed to several changes in law and policy in Australia that benefit SGD groups of people.

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of papers an articles on sex and gender diversity. In late 2021 she published a three-year research study on suicide in sex and/or gender diverse groups of people: Suicide in Intersex, Trans and Other Sex and/or Gender Diverse Groups**:** A Health Professional's Guide (2021).

Background

SAGE has made a previous submission to the Australian Federal Government on the progress of this religious discrimination bill. We now make this submission as it progresses to human rights review. As previously stated by SAGE this a bill that has not just be drafted to protect religious people or groups from discrimination but a bill that has been constructed to legally excuse them when they perpetrate discrimination against sex and/or gender diverse (SGD) groups of people.

The parliamentary bill is intended to instigate the:

- The Religious Discrimination Bill 2021;
- The Religious Discrimination (Consequential Amendments) Bill 2021;
- The Human Rights Legislation Amendment Bill 2021.

Review

The bill proposes to protect the rights of persons and groups in Australia to practise and enact religious beliefs and protect these persons and institutions against discrimination.

There are no laws in Australia that prohibit anyone from holding religious beliefs.

"Objective 3

Recognising the freedom of all people to have or adopt a religion or belief of their choice, and freedom to manifest this religion or belief either individually or in community with others, the objects of this Act are:

(a) to eliminate, so far as is possible, discrimination against persons on the ground of religious belief or activity in a range of areas of public life; and

(b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity; and

(c) to promote the recognition and acceptance within the community of the principle that people of all religious beliefs, including people

with no religious belief, have the same fundamental rights in relation to those beliefs; and

(d) to ensure that people can, consistently with Australia's obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief.

(2) In giving effect to the objects of this Act, regard is to be had to:

(a) the indivisibility and universality of human rights, and their equal status in international law; and

(b) the principle that every person is free and equal in dignity and rights."

From the very outset the language of this bill is confusing and contradictory. It states its aims are to eliminate discrimination on the grounds of religious belief or non-belief and actions. Yet in the same section it weights advantage of religious beliefs above people from sex and/or gender diverse groups.

For example, we can see that the beliefs of some Muslim extremist religious views espouse that women should be covered from head to foot so they do not tempt men. We can see in the La Chapelle-Pajol neighbourhood of Paris that those protected religious beliefs have led to women being harassed and attacked by men in the street (Clement 2017). Religious beliefs brought into and protected by France has led to the area being a 'no go' area for many women even though technically women are protected against harassment under French law.

We can see how most religions are patriarchal and oppressive to women's rights (Perales & Bouma, 2018). When they become closed orders excluded from public scrutiny and regulation, they become breeding grounds for abuse.

The Royal Commission into Institutional Response to Child Sexual Abuse (2017) clearly indicates the danger of closed order situations that can withhold information on discrimination and abuse from government authorities, when given carte blanche on the way they operate. The Commission states "The sexual and other abuse of children in institutional settings, and the reluctance of those institutions involved to address this problem, has been the subject of public and parliamentary debate for many years." The Religious Discrimination bill in its present from will install unaccountable powers and actions of religious institutions to abuse and discrimination under the disguise of religious freedom and beliefs.

The bill states: "*as far as practicable, that everyone has the same rights to equality before the law*", but it preferences the rights of religious people above those of non-religious people to discriminate against SGD groups. Therefore by its drafting it is a charter for religious people to discriminate against SGD groups who hold different views. (Australian Federal Government, 2017).

The bill states: "*to promote the recognition and acceptance within the community of the principle that people of all religious beliefs, including people with no religious belief".* However, the bill is divisive because it allows religious people to discriminate against sex and gender diverse people, protecting their right to discriminate. Yet the law is punitive when non-religious people discriminate against sex and gender diverse people on the ground of their beliefs.

> *"Part 2*
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> *(4), 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."*

This is a licence to injure children and potential child abuse. The premise of the statement is that both students and staff can be forced to abide by extremists' religious philosophes. It is a 'get out jail free' card for child abusers.

The Catholic Church decrees that sex and gender diverse children need to be corrected and their very existence is a threat to family values, which it is not (McElwee, 2019). Its advice is that such children should be corrected, in other words be subjected to reparative therapy under the guise of enforcing religious beliefs.

Reparative therapy damages children psychologically and emotionally, increasing depression anxiety, trauma and suicidation (Conine, 2021). In some states reparative therapy has been made illegal but under this clause religious indoctrination reparative therapy will be allowed for sex and gender diverse children, but known as 'religious education'.

This is also theft as it stealing from the child the right to a fact-based scientific education that teaches a well-balanced broad spectrum of knowledge around sex

and gender diversity; so the child, upon leaving school, is ill-prepared for the sex and gender realities of life.

These institutions will also allow the prohibition of teachers who are from SGD groups. Such teachers can be deselected during the interview stage simply because of an intersex medical condition or their gender presentation, which does not affect their ability to teach. It also means their contracts can be terminated if they come out as being from an SGD group.

A teacher may be of the same religion but is sex and/or gender diverse and simply deselecting them for those reasons is vilification and sex and gender discrimination. In any other school it would be illegal so to allow that in religious schools is to give privilege to religious bodies that no other sector of Australians enjoy; it is political preference.

"8 Certain conduct by religious hospitals, aged care facilities, accommodation providers and disability service providers that is not covered by section 7

Subsections 7(2) and (4) do not apply to conduct of a religious body if the conduct is in the course of:

(a) establishing, directing, controlling or administering a hospital or aged care facility; or

(b) if the religious body solely or primarily provides accommodation—the provision of accommodation; or

(c) establishing, directing, controlling or administering a camp or conference site that provides accommodation; or

(d) if the religious body solely or primarily provides services to people with disability—the provision of the services.

Note 1: However, conduct mentioned in paragraph (a), (b) or (d) does not constitute discrimination in some circumstances (see section 9).

Note 2: For the purposes of paragraph (c), it is not unlawful for a person engaging, in good faith, in conduct in the course of administering etc. religious camps or conference sites to discriminate in relation to accommodation in some circumstances (see subsections 40(2) and (5)).

9 Areas of public life in which the conduct of religious hospitals, aged care facilities, accommodation providers and disability service providers is not discrimination

What this section is about

(1) This section sets out some areas of public life (employment and partnerships) in which the conduct of religious hospitals, aged care facilities, accommodation providers and disability service providers is not discrimination under this Act. Because the conduct is not discrimination, it is therefore not unlawful under this Act in those areas and it is not necessary to consider whether the conduct comes within the relevant exception in Division 4 of Part 4.

Note: For example, it is not discrimination for a religious hospital, aged care facility, accommodation provider or disability service provider to seek to preserve a religious ethos amongst its staff by making faith-based decisions in relation to employment. Such conduct is therefore not unlawful under section 19.

Kinds of religious bodies this section applies to

(2) This section applies to the following bodies:

*(a) a body (a **religious hospital**) that establishes, directs, controls or administers a hospital in accordance with the doctrines, tenets, beliefs or teachings of a particular religion;*

*(b) a body (a **religious aged care facility**) that establishes, directs, controls or administers an aged care facility in accordance with the doctrines, tenets, beliefs or teachings of a particular religion;*

*(c) a body (a **religious accommodation provider**) that solely or primarily provides accommodation in accordance with the doctrines, tenets, beliefs or teachings of a particular religion;*

*(d) a body (a **religious disability service provider**) that solely or primarily provides services to people with disability in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.*

Conduct by religious hospitals, aged care facilities, accommodation providers and disability service providers in the context of employment and partnerships is not discrimination

*(3) A religious hospital, religious aged care facility, religious accommodation provider or religious disability service provider does not **discriminate** against a person under this Act by engaging in conduct if:*

(a) either of the following apply to the conduct:

(i) if the body is an employer—the conduct is described in section 19 (about employment);

(ii) if the body is a partnership or a partner in a partnership—the conduct is described in section 20 (about partnerships); and

(b) the conduct is engaged in by the body in good faith; and

(c) a person of the same religion as the body could reasonably consider the conduct to be in accordance with the doctrines, tenets, beliefs or teachings of that religion; and

(d) the conduct is in accordance with a publicly available policy; and

(e) if the Minister determines requirements under subsection (7)—the policy, including in relation to its availability, complies with the requirements.

Note: Conduct that is not discrimination under this Act may still constitute direct or indirect discrimination under other anti-discrimination laws of the Commonwealth including, for example, the Sex Discrimination Act 1984.

(4) Without limiting subsection (3), conduct mentioned in that subsection includes giving preference to persons of the same religion as the body.

*(5) A religious hospital, religious aged care facility, religious accommodation provider or religious disability service provider does not **discriminate** against a person under this Act by engaging in conduct if:*

(a) either of the following apply to the conduct:

(i) if the body is an employer—the conduct is described in section 19 (about employment);

(ii) if the body is a partnership or a partner in a partnership—the conduct is described in section 20 (about partnerships); and

(b) the conduct is engaged in by the body in good faith; and

(c) the body engages, in good faith, in the conduct to avoid injury to the religious susceptibilities of adherents of the same religion as the body; and

(d) the conduct is in accordance with a publicly available policy; and

(e) if the Minister determines requirements under subsection (7)—the policy, including in relation to its availability, complies with the requirements.

Note: Conduct that is not discrimination under this Act may still constitute direct or indirect discrimination under other anti-discrimination laws of the Commonwealth including, for example, the Sex Discrimination Act 1984.

(6) Without limiting subsection (5), conduct mentioned in that subsection includes giving preference to persons of the same religion as the body.

Requirements relating to publicly available policies

(7) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (3)(e) or (5)(e).”

All Australians have a right to life, liberty, respect and health under Australia’s international commitment to human rights (Australian Federal Government, 2021). Many of the institutions covered by this religious bill receive both state and federal funding and even tax exemptions or credits. Therefore, the Australian public is being asked to fund discrimination against sex and/or gender diverse groups.

“*12 Statements of belief*

(1) A statement of belief, in and of itself, does not:

(a) constitute discrimination for the purposes of any of the following:

(i) this Act;

(ii) the Age Discrimination Act 2004;

(iii) the Disability Discrimination Act 1992;

(iv) the Racial Discrimination Act 1975;

(v) the Sex Discrimination Act 1984;

(vi) the Anti-Discrimination Act 1977 (NSW);

(vii) the Equal Opportunity Act 2010 (Vic.);

(viii) the Anti-Discrimination Act 1991 (Qld);

(ix) the Equal Opportunity Act 1984 (WA);

(x) the Equal Opportunity Act 1984 (SA);

(xi) the Anti-Discrimination Act 1998 (Tas.);

(xii) the Discrimination Act 1991 (ACT);

(xiii) the Anti-Discrimination Act (NT); or

(b) contravene subsection 17(1) of the Anti-Discrimination Act 1998 (Tas.); or

(c) contravene a provision of a law prescribed by the regulations for the purposes of this paragraph.

*Note: This section does not protect a statement that has no relationship to religious belief (see the definition of **statement of belief** in subsection 5(1)).*

(2) Subsection (1) does not apply to a statement of belief:

(a) that is malicious; or

(b) that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group; or

(c) that is covered by paragraph 35(1)(b).

Note 1: A moderately expressed religious view that does not incite hatred or violence would not constitute vilification.

Note 2: Paragraph 35(1)(b) covers expressions of religious belief that a reasonable person, having regard to all the circumstances, would conclude counsel, promote, encourage or urge conduct that would constitute a serious offence."

This section refers to a belief as to what "a reasonable person, having regard to all the circumstances, would conclude, counsel, promote, encourage or urge conduct that would constitute a serious offence."

Australia had a plebiscite on marriage equality in 2017 and voted for marriage equality that included all people with various sexes, genders and sexualities; therefore it is safe to say that this was established by reasonable people. Derision and discrimination of sex and gender diverse people under the guise of religious freedom can clearly be seen to be unreasonable and should be classified as harassment, sexism, genderism and hate crime.

Religious rhetoric around sex and gender diversity is frequently malicious hate speech and should not be licenced by the state. Research clearly shows that SGD groups have the highest suicidal ideation rate in the world of 70% and 45% attempted suicide attempts in both adults and children (O'Keefe, 2021). This is due

a lot of the time to a high level of trauma and post-traumatic stress disorder caused by discrimination, minority stress and oppression caused by religious people and bodies. This bill will increase that minority stress and oppression of SGD groups of people.

Conclusion

Religion and religious beliefs are based on non-factual, esoteric philosophical ideas that are subjective and cannot be proven. They are beliefs of faith that can be based on ghosts, angels and mythical beings. Australia is a secular society with a large non-religious population who should not be held ransom to the discriminatory imaginings of religious people or institutions. Belief in the supernatural should not in an egalitarian society preclude respect of human rights for all.

When the Australian Constitution was written in 1901 it sought to protect the rights to believe in and practise religion. However, since the formation the Universal Declaration of Human Rights in 1948 after the second world war it has been recognised that there must be a greater protection of all in society in all circumstances without exception. This must include all children and people, in all circumstances, including SGD groups, to maintain safety of human dignity. This must be considered in Australia when forming any laws today. There should be no place where SGD groups of people can be denigrated, discriminated against or excluded in Australian society.

The bill creates a two-tier level of legal protection with religious people having an exclusive right to discriminate against people from SGD groups with non-religious people having no right to do that.

It also gives many privileges for religious people and bodies to engage in hate speech, bullying, discrimination, social exclusion and exclusion from many areas of life of sex and gender diverse people.

Australia as a country has no official religion but this bill in this form creates a religious state. This damages our secular society and international commitment to human rights.

Whilst the members of SAGE support the principle of protection of people of religious beliefs from discrimination, it does not support elevating them above the average citizen and allowing them to discriminate against sex and gender diverse

people in any circumstance. Therefore, SAGE does not support this bill because its structure is deeply flawed.

Noted points on the bill

1. This bill seeks to protect people who have unscientific and unquantifiable esoteric ideas that are not based on fact or science. It is not possible to authenticate their beliefs because they are derived from mysticism. The public is being asked to protect a right to fantasy. Many of those beliefs are anti-scientific and anti-factual.

2. Australia is committed to defending human rights for all under the United Nations Charter of Human Rights. That means that all citizens should be treated equally before the law. However, this bill will allow SGD groups of people to be treated oppressively by religious groups.

3. The bill will wipe out some human rights protection for SGD groups in some states that were fought for over generations. For instance, it damages the legal protection enjoyed by Tasmanian and Victorian SGD people as this federal bill will override state law. To say this bill does not effect other anti-discrimination bills is incorrect because as a federal bill it will override state laws and its statute will also be in contradiction of other anti-discrimination laws protecting sex and gender diverse people.

4. Human right laws need to be uniform. This bill will give rights for religious people and groups to discriminate against SGD group that are not granted to the rest of society. The bill will set religious rights above the rest of society. Australia is not a religious country, has no federal or state religion but this bill will recognise religious rights above those of ordinary people.

5. The definition of private and public life in this bill is false. It states that people have right to their discrimination in private but it is actually protecting the right for religious people and bodies to discriminate against SGD people in public. It will allow those persons and bodies to refuse service to SGD groups that it does not refuse to the general public.

6. Women's rights will be adversely damaged by this bill. Many religions are misogynistic including Catholicism, Anglican, Pentecostal and the Muslim faith. They typically grant fewer rights to women than they do to men. This

bill will allow those religions to continue to do that under the guise of religious beliefs but not have to be publicly accountable.

7. Women's reproductive rights will be damaged under this bill. Religions will be able to expel and exclude women of faith and non-faith from all sorts of situations if they use reproductive technology such as birth control, IVF and abortion.

8. Disabled people's rights will be damaged by this bill. People with a disability who come from SGD groups could be refused essential services provided to the public under the pretence that they are not worthy because of their sex and gender status.

9. In part the bill allows religions to behave as closed orders without scrutiny of the state in the name of religious philosophy. We can see that child abuse has been covered up by the Catholics, Methodists, Hillsong, Salvation Army, Brotherhood of the Cross and many more religious groups – all in the name of religious philosophy. For religious persons and bodies to demean, coerce and exclude children because of their sex and gender differences in the name of religion is child abuse and will be covered up by those institutions.

10. This bill will allow discrimination against SGD groups about what bathrooms and changing facilities they may use at schools, universities and other places, putting those people at risk of danger by having to use inappropriate facilities.

11. In schools or higher education children and people are entitled to access to factual, scientific-based education. This bill will allow religious-based education institutions to withhold scientific data on sex, gender and sexuality diversity.

12. If the bill gives rights to some SGD groups of people, such as protecting sex and gender diverse children but not protecting adults it will be inequitable and discriminatory.

13. Intersex and physiologically sex-diverse children and people who are not physically stereotypical can be discriminated against by religious persons or bodies under this bill. People who have medical manifestations such as Androgyne Insensitivity Syndrome, Klinefelter's Syndrome, Congenital

Adrenal Hyperplasia and many other conditions can be discriminated against by religious people and bodies.

14. By default, this bill will allow the dangerous practice of conversion therapy for children at religious schools under the guise of religious instruction.

15. This bill will allow religion-influenced educational establishments to exclude or discriminate against people from SGD groups in the name of religious philosophy.

16. People from SGD groups can be excluded from religions on the grounds of their sex and gender difference.

17. Loopholes in the bill will allowed hate speech against people from SGD groups under the guise of religious beliefs.

18. Institutions that receive government funding, grants and tax exemptions under the bill will be able to legally discriminate against sex and/or gender diverse groups of people. Therefore, the government would be funding discrimination.

19. Permitting discrimination against SGD groups for religious people and bodies under the guise of religious philosophy will elevate social unrest, discrimination in the workplace, hospitals, medical care, hospice care, aged care homes, disability accommodation, emergency accommodation, denial of social and charitable benefits, create social exclusion and increase threats of violence and actual violence against people from SGD groups.

20. This bill, because it permits religious people to discriminate against SGD groups, will render safe workplace practices unworkable. SGD people will be left vulnerable in the workplace as religious people are able to proffer their discriminatory beliefs and that discrimination to be protected by law.

21. The bill provides inequitable rights to employment and representation in the workplace and is unworkable. A business that promotes human rights will be forced to employ a person who publicly discriminates against SGD groups because of their religious beliefs. The business will be forced to not limit that employee representing the business in talking about their rights to discrimination against SGD groups so the bill forces the business to yield to having their values misrepresented and damaging the business. Therefore the

bill states that religious bodies can act in accordance with their faith but businesses may not act accordance with their values which is inequitable and of itself discrimination.

22. The bill which legalises rights for religious people and groups to discriminate against SGD groups will increase mental distress, anxiety, depression, trauma and suicide in SGD groups. Those groups have already encountered years of traumatic treatment from religious persons and bodies and this will increase minority stress.

23. The Federal Government has recently held the Mental Health and Suicide Enquiry that recommended more mental health support for people for SGD groups. This bill will undermine those efforts.

24. Any protection of the rights of religious people and bodies must also include the correction of the Sex Discrimination Act and removal of clauses that permit discrimination by religious people and bodies against people from SGD groups.

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