



Religious Discrimination Bill 2021

**Submission by
Queensland Advocacy Incorporated**

**Parliamentary Joint Committee on Human
Rights**

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About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our three advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law, non-legal advocacy support with the Disability Royal Commission, the justice interface and education, and social work services); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); and the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS). Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

QAI's recommendations

1. The Bill in its current form should be rejected. While QAI supports the fundamental principle behind the Bill, that is: to prohibit discrimination on the grounds of religious belief or activity in key areas of public life, the balance between prohibiting discrimination on the grounds of religious belief whilst protecting people from hurtful, insulting, derogatory and damaging comments or practices, has not been struck. All human beings are free and equal and our laws must promote the tolerance and respect of every member of our community, regardless of who they are. All human rights are indivisible and interdependent.
2. Provisions relating to 'statements of belief' should be amended. They allow people with disability to be forcibly subjected to harmful comments that perpetuate the derision of people with disability under the guise of religion and which represent the antithesis of promoting inclusion in our community.
3. Religious institutions should only be permitted to discriminate in relation to a person's religious belief or activity when making employment-related decisions if religious belief or activity is an inherent requirement of the advertised role.
4. Enable qualifying bodies to regulate the conduct of qualified persons who express harmful and offensive statements of belief in their personal capacity when such statements insult or humiliate people with disability. Our federal discrimination laws have a responsibility to help eradicate harmful attitudes, rather than enabling them to endure.
5. Remove provisions in the Bill that override existing state/territory anti-discrimination laws. People with disability in Queensland currently enjoy broad protections from discrimination that should not be reduced.

Introduction

QAI is deeply concerned about the Religious Discrimination Bill 2021 and its potential consequences for people with a disability. The Bill's purpose is to prohibit discrimination on the grounds of religious belief or activity in key areas of public life, such as employment, education, healthcare, and disability services. However, it also makes it legal for religious organisations, or individuals motivated by religious beliefs, to discriminate against other marginalised communities, such as people with a disability, women, people from ethnic minorities and members of the LGBTIQ+ community, simply because of who they are. For example, a doctor could lawfully tell a person with disability that their impairment is 'caused by the devil'. Or a support worker could tell a client that their disability is a 'punishment from God'.

QAI is concerned that people with psychosocial disability will be especially at risk. Case studies of disciplinary actions taken against health practitioners reveal many instances where people with psychiatric conditions have suffered harm as a result of the religious beliefs of their treating clinicians. Attempts to legalize discrimination against people with disability on the grounds of religious belief are also alarming given the current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The content of this Bill undeniably casts doubt as to the sincerity of the government's commitment to implementing systemic change that will promote a more inclusive society that supports people with disability to live free from abuse.

QAI therefore considers that the Bill in its current form should be rejected. The balance between prohibiting discrimination on the grounds of religious belief whilst protecting people from hurtful, insulting, derogatory and damaging comments or practices, has not been struck. All human beings are free and equal and our laws must promote the tolerance and respect of every member of our community, regardless of who they are. People, including people with disability and other minority groups, must be free to live their daily lives without fear of ridicule by others. We must not permit one group of people to mistreat another under the guise of their religion. Human rights are recognized to be interdependent, inalienable, and indivisible. They are not competing or counterposed. The upholding of the right to be free from discrimination on the basis of religion or any other attribute must not be legislated by promoting discrimination against other attributes. Queensland's *Anti-Discrimination Act (1991)* provides a clear and long-standing example of protecting against religious discrimination alongside other relevant attributes.

QAI also notes with concern that the Bill extends allowances for discriminatory conduct to disability service providers for the first time. Neither of the previous exposure drafts or public commentary foreshadowed this change and there has not been consultation or co-design with the disability sector for this change to occur.

QAI's position on the Religious Discrimination Bill 2021

1. QAI supports the fundamental principle behind the Bill, that is: to prohibit discrimination on the grounds of religious belief or activity in key areas of public life.¹ QAI supports a federal discrimination legal framework that extends statutory protections to people on the basis of their religious belief or activity. QAI considers all human beings to be free and equal and values the role that anti-discrimination laws play in creating a society that is tolerant and respectful of diverse communities. In this regard, QAI

¹ Religious Discrimination Bill 2021, *Explanatory Memorandum*, p2

welcomes the proposed creation of a new Religious Discrimination Commissioner and their potential contribution to strengthening a culture of tolerance and acceptance within Australian society. QAI similarly supports the call for an LGBTI Commissioner for this reason.

However, QAI considers that the proposed Bill goes too far in allowing discrimination on the basis of religious belief or activity in a way that overrides existing discrimination protections that exist for other protected attributes. As a result, the proposed Bill effectively elevates the legal protections available to people on the basis of faith (or lack thereof) at the expense of the right to freedom from discrimination for other minority groups, including people with a disability, whose right to freedom from discrimination owing to the presence of an impairment, is effectively removed. Consequently, the Bill can arguably be considered **a form of indirect discrimination in and of itself**, in that it permits religious organisations or individuals motivated by religious belief, to discriminate against others in a way that disadvantages certain groups, such as people with a disability, women and LGBTIQ+ members of the community.

2. QAI is particularly concerned about section 12 of the Bill which permits a person to lawfully make a **'statement of belief'** that is humiliating, derogatory, insulting, or offensive to a person with disability if they claim that the statement is in accordance with the teachings of their religion and is made in good faith.² For example, a doctor could lawfully tell a person with disability that their impairment is 'caused by the devil'. Or a support worker could tell a client that their disability is a 'punishment from God'. Only statements that are malicious, or which threaten, intimidate, harass, or vilify a person or group, or which promote or encourage the commission of an offence, would be considered unlawful.³

QAI considers that the threshold for harmful statements of belief to be considered unlawful discrimination is too high, thereby promoting rather than discouraging conduct that perpetuates the ostracism of minority populations. QAI supports the observation made by the Australian Law Alliance, that the Bill is '...effectively legislating bigotry, by enabling religious statements of belief to be used as a cloak for sexism, racism, homophobia and other prejudices.'⁴ The absence of a requirement for a person expressing a 'statement of belief' to show that it is based in a religious doctrine, tenet, belief, or teaching, is also concerning. The person making the statement simply has to *believe* that it is.⁵ This means that extremist religious views can be lawfully projected onto others despite members of the same faith rejecting their legitimacy.

Whether a statement is insulting or humiliating or whether it is malicious or vilifying is also very subjective and difficult to prove. In both scenarios, a person with disability can be forcibly subjected to harmful comments that perpetuate the derision of people with disability and which represent the very antithesis of promoting inclusion in our community.

3. People with **psychosocial disability** will be especially at risk from 'statements of belief'. Case studies of disciplinary actions taken against health practitioners reveal many instances where people with psychiatric conditions have suffered harm as a result of the religious beliefs of their treating clinicians. For example, a person with dissociative identity disorder was treated by a psychologist whose therapy

² Religious Discrimination Bill 2021, s12; s5(1) *'statement of belief'* definition (a)(iii)

³ *Ibid*, s12(2)

⁴ Australian Lawyers Alliance submission, para 22, page 9

⁵ Religious Discrimination Bill 2021, s5

sessions included prayers seeking deliverance from Satan.⁶ Another person with schizophrenia was told by their dentist that spiritual healing would result in them no longer requiring medication.⁷ People with psychosocial disability deserve, and have a right to access, healthcare that is evidence-based and free from the religious convictions of their treating clinicians.

4. Harmful and insulting statements of belief about disability are likely to impact a person with disability's **willingness to access services** where such statements are openly held. This is particularly concerning given that essential disability support services are often provided by faith-based institutions, many of which are charitable organisations. A 2006 survey by *Business Review Weekly* identified 23 of the largest 25 charities in Australia as being associated with Christian churches, some of which employ hundreds of staff and who form the largest employers of qualified social workers.⁸ The Bill's failure to acknowledge the potentially harmful consequences of statements of belief therefore requires amendment. A person's right to express a religious belief must not directly interfere with a person's access to, and utilisation of, essential services such as healthcare and disability support services.
5. QAI further considers that the Bill fails to appropriately balance the rights of faith-based institutions to maintain their religious ethos against the rights of individuals not to suffer discrimination because of the presence, or absence, of a particular religious belief or attribute. Specifically, section 9 of the Bill permits religious hospitals, aged care facilities, accommodation providers and disability service providers to discriminate against people with different, or with no religious beliefs, in relation to **employment**. This would apply even if a person's religious beliefs have little relevance to the role they are applying for, so long as the institution notes their preferences in a publicly available policy.

QAI considers that this contradicts the Bill's stated purpose, which is to ensure that 'all people are able to hold and manifest their faith, or lack thereof, in public without interference or intimidation.'⁹ If large numbers of employers are able to openly discriminate against job applicants on the basis of their faith, even when faith is not an inherent requirement of the advertised role, it is difficult to see how people will be manifesting their faith, or lack thereof, without interference.

This also creates additional and unnecessary barriers for people with disability and other minority groups seeking employment. Despite the numerous benefits of a diverse workplace, people with disability continue to experience significant barriers when accessing employment. Discrimination based upon religious belief or activity would therefore constitute yet another obstacle to the equal enjoyment of the right to work. Accordingly, QAI considers that religious institutions should only be permitted to discriminate in relation to a job applicant's religious belief or activity, when religious belief or activity is an inherent requirement of the role. For example, when advertising for the role of school chaplain. In Queensland, there is a clear precedent for determining the inherent requirement of the role found in *Walsh v St Vincent de Paul Society Queensland (No. 2) [2008] QADT 32*.

6. QAI is concerned about the proposed interaction between the Bill and existing State and Territory anti-discrimination laws. The Bill's overt stated intention to **override certain State and Territory laws** is

⁶ Equality Australia (2019) *When religious views are allowed to interfere with patient healthcare: Case studies from disciplinary decisions against health practitioners*; <https://equalityaustralia.org.au/resources/religious-interference/>

⁷ Ibid

⁸ Crisp, 2014, 1.

⁹ Religious Discrimination Bill 2021, *Explanatory Memorandum*, p2

unusual for a piece of federal discrimination law and creates complex legal jurisdictional issues in the process. This will have two effects. Firstly, it will remove existing and long-standing protections that people with disability in Queensland have relied upon for over two decades. This will remove the ability to commence litigation in some instances, such as where there is a clear policy of a disability service provider or school allowing discriminatory practices.

Secondly, this Bill will make litigation more complicated, expensive, and protracted for victims of discrimination where complaints are accepted and an exemption must be proved. For example, a support worker with a disability service provider who tells a client that their disability is a punishment for the sins they have committed may choose to argue their faith as an excuse for this discriminatory attitude, even if their employer does not share the same view. The matter would not be able to be resolved through the Queensland Civil and Administrative Tribunal and may be stayed while the Federal issues were referred to the Supreme Court for determination. This is particularly concerning for Queenslanders with disability who currently enjoy strong anti-discrimination legal protections under the *Anti-Discrimination Act 1991* (Qld) compared to citizens in other Australian jurisdictions.

7. QAI considers that the Bill's restrictions on the ability of **qualifying bodies** to regulate the conduct of qualified persons who make discriminatory statements of belief in their personal capacity, are too narrow.¹⁰ The Bill currently only permits qualified bodies to take action if *not* making harmful statements of belief is an essential requirement of a person's job, or if the statements are malicious, or threaten, intimidate, harass or vilify a person or group.¹¹ This fails to permit qualifying bodies from setting important standards and taking action against conduct that is otherwise harmful to service users, such as people with disability. People with disability continue to encounter paternalistic attitudes that view disability as something which deviates from 'the norm' and needs to be 'cured'. Many of these harmful attitudes reflect the medical model of disability and have origins in charitable religious teachings. The Disability Royal Commission has heard a plethora of evidence as to the harmful impact of these attitudes which continue to represent a significant barrier to the full inclusion of people with disability in our community. We know that changing community attitudes is an essential component of improving the lives of people with disability, with one of seven outcome areas in Australia's Disability Strategy specifically dedicated to this endeavor.

Our federal discrimination laws therefore have a responsibility to help eradicate harmful attitudes, rather than enable them to endure. QAI therefore considers that the Bill should enable qualifying bodies to contribute to this objective and regulate the conduct of qualified persons when the expression of a statement of belief has the effect of insulting or humiliating people with disability because of a religious belief.

8. QAI also questions the extent to which the Bill successfully **achieves its stated objectives**. The explanatory memorandum states that the Bill aims to promote 'attitudinal change, to ensure that people are judged on their capacity and ability, rather than on generally unfounded negative stereotypes that some may have about people who hold certain religious beliefs', yet the Bill expressly permits certain organisations to judge and discriminate against employees solely in relation to their

¹⁰ Religious Discrimination Bill 2021, section 15

¹¹ *Ibid*, s15(3)

religious beliefs, rather than judging them on their capacity and ability to perform the role. People with disability do not need any further attitudinal barriers to employment.

9. QAI further notes **the complexity of the drafted legislation** and in particular, the convoluted provisions in Part 2 of the Bill which begin by permitting certain acts of discrimination (section 7), before prohibiting certain organisations from so acting (section 8) but then allowing these stated organisations to commit other acts which are *not* considered to be discrimination for the purposes of the Bill (section 9). Provisions regarding employment-related discrimination are also complicated and difficult to follow, with specific faith-based institutions covered by certain sections (section 9) while educational institutions are subjected to others (section 11). QAI cautions against legislation that is unclear and inaccessible, as legislation that is difficult to understand is less likely to be followed and correctly applied in everyday life.
10. QAI is also concerned that people with disability who identify as members of other marginalised groups, such as the LGBTIQ+ community and people of non-majority faiths, will be at an increased risk of experiencing religious discrimination as a result of this Bill. **Intersectional disadvantage** means that negative community attitudes and behaviours are compounded for people who identify with multiple attributes. People with disability who are female, from the LGBTIQ+ community or who identify with other marginalised populations will therefore be more susceptible to harmful and divisive religious teachings, the effects of which will further entrench their segregation within the broader Australian community.

Conclusion

QAI thanks the Parliamentary Joint Committee on Human Rights for the opportunity to contribute to this inquiry. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.