

Why Australia does not need a Religious Discrimination Act

Written by Luke Beck, Associate Professor of Constitutional Law, Monash University

Social Services Minister Dan Tehan called in a recent [speech](#) for a federal Religious Discrimination Act. While Liberal Senator James Paterson has [backed](#) the call, backbench Liberal MP Tim Wilson [warns](#) such a law may be a smokescreen to allow discrimination against LGBTI people.

Tehan's speech attempts to set the terms of public debate as the federal government considers its response to the Ruddock [Religious Freedom Review](#), to be released in coming months. Prime Minister Malcolm Turnbull [appo](#)
[inted](#) former Liberal minister Philip Ruddock in late 2017 to review legal protections for religious freedom in Australia. This was in response to concerns from [conservative voices](#) in the government about the impact of marriage equality.

So what is a Religious Discrimination Act? Does Australia need one? What are the risks? And are the politicians really worried about religious discrimination?

Read more: [**Christians in Australia are not persecuted, and it is insulting to argue they are**](#)

What is a Religious Discrimination Act?

A number of federal laws prohibit different types of discrimination: the Racial Discrimination Act, the Sex Discrimination Act (which covers sex, gender identity, marital status, sexuality and family responsibilities), the Age Discrimination Act and the Disability Discrimination Act. The idea is to add a Religious Discrimination Act to this collection of laws.

The basic function of these laws is to prohibit discrimination on the basis of a protected attribute

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in various contexts such as employment and the provision of goods and services.

A Religious Discrimination Act following the same basic model would prohibit things like refusing to hire a person because she is a Catholic and sacking a person because he is an atheist. It would also prohibit a café refusing to sell coffee to a customer because she is a Muslim and a bakery refusing to make a cake for a customer because he is an Anglican.

Does Australia need a Religious Discrimination Act?

Paterson told ABC Radio he was not aware of any cases of religious discrimination in Australia, but it was “a risk that we want to guard against in the future”. Such an act, he argued, would function “as a reassurance”.

The federal [Fair Work Act](#) already prohibits discrimination on the ground of religious belief or activity in employment contexts, as do laws in all states except New South Wales and South Australia.

All states except NSW and South Australia also have legal prohibitions against refusing service to people on the ground of religion.

The best argument in favour of a federal Religious Discrimination Act is the benefit of having nationally consistent rules.

The potential risks

Wilson, a former human rights commissioner, supports a national ban on religious discrimination. But he warns that a federal Religious Discrimination Act could be a “smokescreen for LGBTI discrimination”. There is reason to be concerned.

Paterson says religious liberty “doesn’t allow you to do anything that is otherwise unlawful”. Yet he [tried unsuccessfully](#) last year to introduce a law that would wind back anti-discrimination protections for LGBTI people in the name of religious liberty.

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The Paterson bill would have allowed businesses to refuse service to same-sex couples if the business owner had genuine religious objections to same-sex marriage.

Tehan says a federal Religious Discrimination Act should override state laws to ensure limits on religious freedom are “no more restrictive than required”. In other words, Tehan wants to use federal law to introduce nationwide religious “exemptions” from all anti-discrimination laws.

Religious exemptions allow religious groups, business owners and organisations like schools to discriminate against other people on the basis of protected attributes such as sex, sexuality, marital status or disability if the discrimination has a religious motivation. It is religious exemptions that allow religious schools to expel gay students and sack teachers who divorce or have extramarital affairs.

Why this debate is not really about religious discrimination

This debate isn't about people being discriminated against on the basis of their religious beliefs. As Paterson says, that doesn't really happen.

The debate is really about two other things. The first is religious exemptions from discrimination laws. More broadly, the debate is about the public status and position of religious groups.

Read more: [*The 'gay wedding cake' dilemma: when religious freedom and LGBT! rights intersect*](#)

Paterson says we need a Religious Discrimination Act because “people of faith feel like they are being crowded out of the public square”. Having to share a public platform with people holding different beliefs is not religious discrimination.

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Tehan says we need a Religious Discrimination Act because “the forces of political correctness continually marginalise and dismiss contributions to debate informed by a reasonable religious belief”. Losing a public debate is not religious discrimination.

Tehan is also concerned about the public “disrespect” directed at rugby player Israel Falou for his recent public comments describing homosexuality as a sin. Having your beliefs criticised is not religious discrimination.

People’s beliefs are changing and no longer automatically defer to traditional religious positions. Fewer people live their lives in accordance with these religious teachings. Some religious groups are struggling to adjust to and feel comfortable in their new, less influential place in a changed world.

Luke Beck made a submission to the Ruddock Religious Freedom Review and attended one of its consultation meetings.

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Read more <http://theconversation.com/why-australia-does-not-need-a-religious-discrimination-act-99666>