

# The Sydney Morning Herald

## What are the new religious discrimination laws about?

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The Morrison government has released a draft religious discrimination bill, which promises to be one of its key policy moves for the second half of 2019.

It comes in the wake of controversy over Rugby Australia's recent sacking of player Israel Folau for posting a message on social media declaring that "Hell awaits" homosexuals, among other people, because they are "living in sin". Rugby Australia argued this breached its guidelines on player behaviour.

What does Folau have to do with the debate in Canberra? Why are we hearing about religious freedom now? And why is the subject so contentious?

What is in the religious discrimination bill?

The draft bill, released by Attorney-General Christian Porter, makes it unlawful to discriminate against Australians on the basis of their religion. This includes both direct and indirect discrimination.

For example, it would be direct discrimination for a company to refuse to hire a Buddhist person because of their faith. It might be indirect discrimination for a company to require employees to come to a meeting on a Friday afternoon, which could disadvantage Jewish people who leave early on Fridays to observe the Sabbath.

The bill protects against discrimination on the grounds of religious belief or activity in the multiple key areas of public life, including: employment, education, access to premises, goods, services and facilities, sport and clubs. It also sets up a new Freedom of Religion Commissioner at the Australian Human Rights Commission.

The government has promoted the bill as an "orthodox" piece of legislation that simply completes Australia's anti-discrimination "architecture". That is, it will go alongside existing anti-discrimination acts for race, sex, disability and age. The bill does not create a "positive right" to freedom of religion, which some church leaders have been calling for.

How does it address the Folau situation?

The draft bill would impose additional requirements on businesses with a revenue of at least \$50 million a year when it comes to standards of dress, appearance or behaviour that limit religious expression. If a business imposes a restriction, it must prove this is necessary to "avoid unjustifiable financial hardship on the business".

Under the draft bill, Porter explained that Rugby Australia would have to prove its social media rules – and subsequent sacking of Folau – were in order to protect its brand, noting that Folau would "likely argue the opposite".

Mr Porter noted that while he could not say how a case like Folau's would ultimately end up, there was "no doubt" the rugby player would argue the condition that he could not express his religious beliefs outside of work was "unreasonable".

What else would the bill potentially allow or not allow?

The draft bill says "religious bodies" are not discriminating against a person by engaging, in good faith, in conduct that would be regarded as in accordance with its doctrines or beliefs. For example, religious schools would have discretion to employ staff of a particular faith. Health practitioners would also be able to conscientiously object to providing a health service –such as abortion – on the basis of their religious belief.

On the other hand, the bill would allow employers not to hire someone because they could not abide by workplace health and safety requirements due to their religious dress.

In its current form, the bill does not count charities that engage primarily in commercial activities, such as hospitals or aged care homes, as a "religious body". Porter said he would consult with church-run hospitals and aged care providers to understand any concerns they may have here.

How did the religious discrimination bill come about?

While the Folau case has generated significant controversy this year, the religious discrimination bill has a longer history.

The new laws have their origins in the 2017 same-sex marriage debate. Back then, some politicians, religious leaders and commentators raised concerns that allowing same-sex marriage would restrict people's ability to practise their religion. One scenario raised was whether churches would be compelled to lease facilities for same-sex weddings, for instance, or whether schools could still teach the traditional definition of marriage as between a man and woman.

In response to these concerns, then prime minister Malcolm Turnbull tasked former Liberal MP Philip Ruddock with conducting a review of religious freedom in Australia. This allowed Parliament to get on and make same-sex marriage law by the end of 2017, but did not entirely dismiss the concerns of religious groups in doing so.

Ruddock's 140-page report came out in December, finding that religious freedom was not in "imminent peril" but that the protection of belief or faith required "constant vigilance". Among its many recommendations, Ruddock's review said there should be a religious discrimination act (and the government duly agreed).

What will happen to the bill now?

Porter has already been consulting with church groups and Coalition MPs and Cabinet have looked at the draft. The Attorney-General says he will keep consulting community groups and MPs and expects to introduce the bill to Parliament in October. From here, expect a Senate inquiry and a vote before Christmas.

What does Labor say about the bill?

Labor leader Anthony Albanese has previously said, "I am certainly of the view that people should have the right to practise their faith and people's faith should be respected." But expect a range of views from within the caucus. Some Labor MPs are worried about swings against the party in seats with high levels of religious affiliation at the recent federal election.

On Thursday, shortly after the bill was released, shadow attorney-general Mark Dreyfus urged the government to allow for "proper time" to consider the proposed laws.

What do other stakeholders say about the bill?

Conservative Liberal senator Concetta Fierravanti-Wells wants a religious freedom act that would not only protect people against discrimination but give "general protections for religious believers". This position has been echoed by some Christian and Jewish leaders who want a "positive right" to religious freedom.

Meanwhile, LGBTIQ+ advocates have quickly condemned the draft bill. Equality Australia is concerned it will override existing state anti-discrimination laws (which will weaken protections for LGBTIQ+ people). It is also concerned about the "Folau" provision regarding large employers, arguing it will stop employers upholding non-discriminatory policies about LGBTIQ+ people.

The Institute of Public Affairs is also opposed to new requirements for large businesses, arguing: "The reversal of the onus of proof is an unconscionable incursion on individual legal rights and should be removed from the draft bill."

Meanwhile, the Law Council of Australia says the "best way" to protect human rights in Australia is through a legislated Charter of Rights, "which would allow competing interests to be balanced".

What other government policies are planned on religion?

Alongside the religious discrimination bill, Mr Porter also released another draft bill to pick up on other recommendations from the Ruddock review. This includes the right of charities to advocate for the traditional definition of man-woman marriage and still keep their charity status and the right of religious schools to refuse to hire out their school halls and other facilities for same-sex weddings.

There is also the unresolved issue of whether a religious school should continue to have the right to expel students or fire staff members because of their sexuality. Parliament had a contentious debate about this at the end of 2018 but was not able to agree. In April, just before the federal election, Porter asked the Australian Law Reform Commission to examine this issue. An initial discussion paper on the issue is due for release early next week.

Who is religious and how free are we to practise religion compared to other nations?

About 60 per cent of Australians said they had some religious affiliation in 2016 census. Of these, Catholics made up the the biggest group (22.6 per cent), followed by Anglicans (13.3 per cent) and "other Christians" at 16.3 per cent. About 2.6 per cent of Australians were Muslim.

In a sign of Australia's declining levels of religious affiliation, the 2011 census found 22.3 per cent of Australians said they had "no religion" but by 2016, the number was up to 30 per cent.

The Pew Research Centre publishes an annual report on religious restrictions around the world. According to its July 2019 release, Australia was rated "low" in terms of government restrictions on religion. It was rated as "moderate" in terms of social hostilities involving religion.

A 2017 report by the Washington-based Cato Institute scored Australia 9.1 out of 10 for religious freedom. The United Kingdom scored 7.6, while the United States scored 8.9.

What religious protections do we already have?

Australia is a signatory to the International Covenant on Civil and Political Rights, which states, "everyone shall have the right to freedom of thought, conscience and religion".

And Australia's Constitution has some provisions about religion – section 116 says federal Parliament can't make laws establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion.

According to the Human Rights Law Centre, a "patchwork" of anti-discrimination laws operate at state and federal levels. For example, Jewish people have some protections under the federal Racial Discrimination Act, while the federal Fair Work Act prohibits discrimination on the basis of religion (as above).

The Australian Human Rights Commission also has "limited power" to inquire into complaints of discrimination on the basis of religion in workplaces.