

2019

Religious Freedom Bills

SUBMISSION BY UNIONS TASMANIA
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ABOUT UNIONS TASMANIA

1. Unions Tasmania has a long and proud history of advocating for working people in Tasmania. Originally established as the Trades and Labour Council of Hobart in 1883, and now operating as Unions Tasmania, there is no other Tasmanian peak body dedicated to giving a voice to workers in this state. For over 135 years, Unions Tasmania has been advocating for the improvement of wages, conditions, safety and living standards for working Tasmanians and their families.
2. Unions Tasmania has 24 affiliate unions with approximately 50,000 members. We represent workers across industry, in the public and private sector. Unions Tasmania is also the local branch of the Australian Council of Trade Unions (ACTU).

INTRODUCTION

3. Unions Tasmania is pleased to make this submission on the Religious Freedom Bills which include the *Religious Discrimination Bill 2019 (RDA)*, *Religious Discrimination (Consequential Amendments) Bill 2019*, and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.
4. Unions Tasmania notes that religion is not a protected attribute under federal anti-discrimination law. The Bill includes a positive measure to protect against discrimination on the basis of religion and for that it should be applauded. We support, in principle, protecting an individual's right to freedom of thought, conscience or religion in all the usual areas of public life. But these Bills do so much more than that.
5. These Bills will remove existing protections for Tasmanians to live a life free from discrimination. The Bills unjustifiably privilege religious belief over all others. It is contrary to basic principles of human rights law to privilege one category of rights over another. The Religious Freedom Bills privilege the right to freedom of religion over the right to equality and non-discrimination.
6. The RDA also explicitly seeks to override the *Tasmanian Anti-Discrimination Act 1998*, specifically s17(1), despite Attorney-General Porter's promise in July this year that any new laws would not seek to override state or territory legislation. The Tasmanian Act has served Tasmanians well since its introduction in 1998. Unions Tasmania does not support any legislation that seeks to weaken or override the existing protections afforded by our anti-discrimination laws.
7. We note that the ACTU has also made a submission on these Bills. We support the arguments advanced in that submission. This submission will largely focus on the impact of overriding Tasmania's anti-discrimination laws.

8. We would also like to echo the ACTU's call for action to address other areas of Australia's anti-discrimination and human rights framework particularly reforming the *Sex Discrimination Act 1984* to ensure it is more effective in eliminating gender inequality. We note that there is currently a National Inquiry into Sexual Harassment in Australian workplaces¹ underway, and we look forward to the recommendations of the inquiry when it delivers its findings this month.

TASMANIA'S ANTI-DISCRIMINATION ACT

9. The *Anti-Discrimination Act 1998 (Tas)* ('the Act') was enacted 21 years ago by the Bacon Labor Government. It was passed a year after homosexuality was decriminalised and was seen by many Tasmanians as an attempt to put the state's divisive and discriminatory history behind us. It signalled our commitment to building an inclusive Tasmania.
10. Tasmania's legislation is often referred to as the 'gold standard' of anti-discrimination law as our state is the only state whose legislation includes a prohibition on speech that is 'offensive, insulting or humiliating'. The relevant section is section 17(1) which prohibits conduct that offends, humiliates, intimidates, insults or ridicules another person on 14 grounds including race, age, disability, sexual orientation, age, or disability. Under s41(1)(b) of the RDA, these statements would be permitted if they had their basis in religion.
11. Despite the broad conduct outlined by Section 17(1), the Act doesn't simply allow anyone who is offended to make a case. It includes an objective test for being 'offended, humiliated, intimidated, insulted or ridiculed' and it must have been anticipated 'by a reasonable person'. In Unions Tasmania's experience, employees only reluctantly bring forward formal complaints of anti-discrimination in an employment context as a last resort or when more informal attempts to resolve disputes have failed.
12. Much of the media commentary that surrounds the Act in Tasmania is reported in the context of LGBTQIA+ discrimination. There have been a handful of widely publicised cases locally including where Tasmania's laws have been effective in stopping the spread of offensive anti-gay speech.² But the laws have much wider application and are more likely to be utilised in an employment context or by a Tasmanian suffering disability discrimination. Overriding the Tasmanian Act with the provisions of RDA will close avenues to Tasmanian workers to address discrimination in the workplace and that is unacceptable to Unions Tasmania.

¹ <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces>

² <https://www.theadvocate.com.au/story/5685316/gay-hate-flyers-discriminatory-tas-court/?cs=7>

13. The Act provides protection to Tasmanian workers in a range of employment contexts that would no longer be protected under the RDA. For example, LGBTQIA+ teachers who currently work in faith-based workplaces and schools cannot be penalised in their employment for their sexual orientation, gender identity or relationship status. However, under the proposed RDA, a transgender employee could be deliberately mis-gendered or dead-named by another employee and this would no longer be discrimination if based on a religious belief.
14. Equal Opportunity Tasmania, which administers the Act, reports that discrimination in employment tops their list of categories raised from enquiries in 2017-18.³ Over half of all complaints in which discrimination were alleged or identified relate to disability discrimination. More complaints were made in relation to industrial activity (16) than for sexual orientation (9) in the same period.
15. Unions Tasmania is concerned that the proposed Bills will remove important protections for people with a disability, both in and out of the workplace context, who have a demonstrated need to rely on the laws based on Equal Opportunity Tasmania's own reports.
16. Unions Tasmania also notes that previous attempts to water down Tasmania's legislation have failed. In 2016 and 2017, there were attempts to insert a religious exemption as well as attempts to remove the words 'offended and insulted.' Both attempts failed in the Legislative Council (Tasmania's Upper House) because a majority of members supported section 17(1), noting the important protections it provides for vulnerable Tasmanians. We are disappointed that the Morrison Liberal Government has chosen to target Tasmania's laws against the wishes of the Tasmanian Parliament who has twice considered and upheld our laws in recent years.

EMPLOYER CONDUCT PROVISIONS

17. Unions Tasmania believes there should be strict limits on an employer's ability to discipline an employee for conduct occurring outside of the workplace or working hours. We have been strident critics of the Hodgman and Morrison Liberal Government attempts at a State and Federal level to dictate the behaviour of public servants outside of work. But we are unclear as to what these provisions are seeking to achieve or what it would mean in practice.
18. Workplaces should be encouraged to foster inclusion and equality. Diverse and respectful teams make for safer and healthier workplaces. But these laws will result in Tasmanian workers having less rights and less protection from discrimination if passed. It is an achievement that a faith-based organisation

³ Equal Opportunity Tasmania Annual Report 2017-18, available at <https://equalopportunity.tas.gov.au/about-us/annual-report>

like Baptcare received an award for LGBTI inclusion in 2018⁴. Unions Tasmania questions why the Government would want to threaten the good work being done to make Tasmanian workplaces more inclusive.

19. Unions Tasmania cannot support legislation that seeks to override the Tasmanian Act and remove existing protections for workers and all Tasmanians.
20. Unions Tasmania notes that Australia does not have a Human Rights Act. Instead of pursuing the Religious Freedom Bills, we suggest that a pathway to progressing human rights reform in this country would be to commence a consultation process with all states and territories on a national Human Rights Act.

⁴ <https://www.baptcare.org.au/why-baptcare/news/baptcare-receives-award-for-inclusiveness>