

What the Legislation does.

This legislation will not protect people of faith. Instead it will force faith organisations to defend against claims of discrimination simply for trying to employ people who uphold their faith.

Ineffective protection for religious bodies

The legislation provides exemptions for religious organisations to employ people based on their “religious belief or religious activity”. (Clause 29) However, that only applies if having that faith is a “genuine occupational requirement of the work” and the action “is reasonable and proportionate in the circumstances”. (Clauses 29, 62)

The “reasonable and proportionate” clause leaves it open for the courts to decide what is “reasonable and proportionate” in any situation, leaving faith groups without any certainty. Is it “proportionate” to stop employing someone who believes one tenet of the faith but not another? It also means that secular judges will be deciding what is “reasonable” for adherents of a faith to believe or practice: Is it “reasonable” for a church to require employees to believe in the virgin birth, or for a mosque to enforce strict fasting throughout Ramadan?

The term “genuine occupational requirement” means that a faith organisation would have to prove that a job required “participation in the teaching, observance or practice of the religion”. That could mean proving before a court that an executive, teacher, office staff, church secretary or receptionist, hospitality coordinator – or many other roles central to a faith community – has a “genuine occupational requirement” to comply with the faith. As this test would be determined by a judge, again religious organisations are left without certainty.

Sexual behaviour cannot be considered

On top of this, the exemption does not apply to “a protected attribute other than religious belief or religious activity” (Clause 29). These protected attributes include *gender identity, relationship status, sexual orientation* and even *sex work activity*.

That means that a faith organisation could not refuse to employ someone who is having an affair, in an intimate relationship not sanctioned by that faith, transitioning to a different sex, or actively working as a sex worker. This applies to churches, mosques, temples, synagogues, schools, charities and all other faith-based organisations.

- A Jewish school could refuse to employ someone if they eat pork, but not if they are moonlighting as a sex worker
- A Christian church could require employees to say they believe that sex should remain within heterosexual marriage, but cannot require them to authentically model that belief
- A Muslim women’s group could refuse to employ a woman who is not wearing a hijab, but not if they were a biological male who has ‘transitioned’.

Faith leaders are not required to live their faith

The legislation provides an exemption for “the ordination or appointment of people as priests, ministers of religion or members of a religious order or to another religious role”, and for “the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice”.

However, there is a clear difference between *ordination* for ministry, and *employment*. If a person gets ordained as a minister, and later commits adultery, it appears that their church could not remove them or otherwise impact their “work” situation without being guilty of “discrimination”.

A double standard

Other organisations do not face this level of restriction. The Bill says that employers can discriminate on any basis if it is a genuine occupational requirement. The example given is a political party requiring an employee to be a member of that party for them to work as an advisor.

However the Bill then explicitly excludes religious organisations from that exemption, and instead allows them *only* to discriminate on the basis of religious belief and religious activity and only if holding that belief is a genuine occupational requirement.

This is a double standard – allowing political parties to only employ people who agree with them, but limiting faith organisations

29 Genuine occupational requirements for religious bodies

- (1) A person may discriminate against another person on the basis of the other person's religious belief or religious activity in relation to work for a religious body if—
- (a) participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and
 - (b) the other person cannot satisfy the genuine occupational requirement because of the other person's religious belief or religious activity; and
 - (c) the discrimination is reasonable and proportionate in the circumstances.
- (2) Subsection (1) applies to discrimination in relation to a matter mentioned in section 22(1)(a), (b) or (d) or (2)(c).
- (3) To remove any doubt, it is declared that a person can not rely on subsection (1) to discriminate against another person on the basis of a protected attribute other than religious belief or religious activity.

Example for subsection (3)—

A person can not rely on subsection (1) to discriminate against another person on the basis of the other person's relationship status.

61 Roles in religious bodies

- (4) This Act does not apply in relation to—
- (d) the ordination or appointment of people as priests, ministers of religion or members of a religious order or to another religious role; or
 - (e) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order or to another religious role; or
 - (f) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.
- (5) For subsection (1)(a) and (b), another religious role is a role within a religious body that
- (g) is the same as, or similar to, the role of a priest, minister of religion or member of a religious order; or
- otherwise involves the propagation of the doctrines, tenets or beliefs of the religion concerned.