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Religious Discrimination Bill – Exposure Draft

Submission Form

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Your details

Organisation Name: Redfern Legal Centre (RLC)

Organisation Type: Not for profit community legal centre

i.e. not-for-profit, religious institution, educational facility, etc.

If you are providing a submission on behalf of an organisation, please provide the name of a contact person

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In good faith

Redfern Legal Centre Submission to the Attorney-General on the Religious Discrimination Bill 2019, Religious Discrimination (Consequential Amendments) Bill 2019 and Human Rights Legislation Amendment (Freedom of Religion) Bill 2019 | 2 October 2019

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Acknowledgements

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Redfern Legal Centre

RLC is an independent, non-profit, community-based legal centre with a particular focus on human rights and social justice. Our specialist areas of legal practice include domestic violence, tenancy, credit and consumer, employment and discrimination and complaints about police and other governmental agencies. RLC runs the International Students Service NSW and is a part of the Migrant Employment Legal Service.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

Table of Contents

1 Introduction

Thank you for the invitation to make this submission in relation to the Australian Government's package of legislative reforms on religious freedom (**the reforms**).

We welcome the introduction of Federal protections against religious discrimination. However, it is our view that the reforms overwhelmingly and disproportionately favour religious bodies, health practitioners and individuals who make offensive, insulting, humiliating or intimidating public statements at the expense of protections for individuals from all types of discrimination – including the religious discrimination protections set out in the Religious Discrimination Bill 2019 (**the Bill**).

Redfern Legal Centre (**RLC**) is proud to operate within a legal system that protects vulnerable individuals. Current discrimination law mirrors community standards of an inclusive, multicultural, egalitarian society, and are in line with our international law obligations. This Bill will radically undermine those protections and goes too far.

The reforms:

- create a broad exception for religious bodies undertaking conduct that is in accordance with their religious beliefs, including in employment, education, and the provision of accommodation and provision of services, even if that conduct would otherwise be discriminatory. The effect is to privilege a 'right' of religious freedom for religious bodies over the rights of individuals to be free from religious and other forms of discrimination;

- protect individuals who make 'statements of belief' in accordance with their religious views, even if those statements offend, humiliate, intimidate, insult or ridicule others, and limit the ability of individuals at the receiving end of those statements from successfully making anti-discrimination complaints or adverse action claims;

- make it more difficult for employers, particularly large employers, to impose codes of conduct that prevent employees from making offensive, humiliating, intimidating, insulting or ridiculing statements of belief both outside work and at work. At the same time the reforms make it easier for employers to make statements of belief that offend, humiliate, intimidate, insult or ridicule their employees; and

- create an extraordinarily wide range of circumstances in which health practitioners may 'conscientiously object' to providing a health service in accordance with their religious beliefs, with the result that health practitioners may refuse to treat entire minorities such as LGBTIQ+ people – for no reason other than their membership of that group - and may refuse to provide everyday services such as antibiotics for a flu or contraception prescriptions to women.

The Government has recognised that any legislative reforms to protect freedom of religion should be undertaken carefully to avoid the risk of unintended consequences.[1] It is our view that there is a significant risk of unintended consequences arising from these reforms.

The reforms, if enacted, will fundamentally change the fabric of Australian society and create a powerful imbalance in our community that favours and amplifies the voices of individuals with religious beliefs and faith-based organisations to the serious detriment of individuals within RLC's client base, including women, LGBTIQ+ people, people in de facto relationships, divorced people, single parents, people with disability, people who do not hold religious beliefs (being one third of Australians according to the 2016 census[2]), racial minorities and children of these groups.

[1] Explanatory Notes, Religious Discrimination Bill 2019, paragraph 13.

[2] Australian Bureau of Statistics, 2016 census. This number is growing. By comparison, over one in five Australians, 22.6 percent, identify as Christian, 13.3 percent as Anglican and 0.4 per cent as Jewish. These numbers are declining. The number of people who identify as holding other religious beliefs, while increasing, is still extremely small, with the largest of these religions being Islam at 2.6 per cent and Hinduism at 1.9 per cent.

It will be more difficult for people to access fundamental health services, to challenge offensive statements made by colleagues and employers inside and outside the workplace, and to gain and retain employment. It will be more difficult for employers to enforce basic standards of civility in the workplace, for students to freely express themselves and explore their beliefs at school, and for woman and minority groups to participate fully and freely in our society. The reforms risk further isolation of many groups in our community, the creation of unsafe workplaces, increased unemployment and mental and other health issues. These changes are out of step with societal values and threaten to undermine our basic human rights.

In view of the short time frame provided for public consultation on the reforms, this submission focuses on our key concerns only. Given the significance of the reforms and their potential consequences, the four-week public consultation period set aside for such significant reforms is insufficient and should be extended to allow meaningful consultation to take place, including with groups representing women, LGBTIQ+ people and people with disability. There should also be a further, extensive consultation on any amended reforms.

We note that the Australian Government has now amended the terms of reference[3] of the Australian Law Reform Commission (**ALRC**) inquiry into the protections available to religious institutions to practice and give effect to their beliefs to require the ALRC to "confine its inquiry to issues not resolved" by the Bill and to "confine any amendment recommendations to legislation other than the Religious Discrimination Bill." It is our view that the amendment to the terms of reference is premature and should be withdrawn.

Summary of recommendations

1. The reforms as currently drafted should not be passed.

2. The amended terms of reference for the ALRC inquiry should be withdrawn.

3. The ALRC inquiry should be permitted to consider any religious freedom reforms that are passed before the ALRC's report to make recommendations for its amendment.

4. The reforms as currently drafted should not be introduced to Parliament in October 2019.

5. The public consultation period on the reforms should be extended by at least 3 months to allow meaningful considerations of the reforms and consultation with those in the community who are likely to be most affected.

6. Section 10 of the Bill should only apply in respect of bodies established for religious purposes that operate places of worship, conduct religious services and ceremonies and provide religious education and instruction, but not educational institutions more broadly such as religious primary, secondary and tertiary schools. Those bodies should be required to demonstrate that conduct 'is' (rather than 'may reasonably be regarded' as) being in accordance with the doctrine, tenets, beliefs or teachings of a religion.

7. If, contrary to recommendation #6, the scope of section 10 of the Bill is not narrowed in this way, the section should be significantly narrowed, including, at a minimum to:

    a. require religious bodies to demonstrate that conduct 'is' (rather than 'may reasonably be regarded' as) being in accordance with the doctrine, tenets, beliefs or teachings of a religion; and

    b. limit the range of circumstances in which a religious body 'is not discriminating' (including specifically in relation to services and accommodation); and

[3] Amended Terms of Reference dated 29 August 2019.

c. narrow the meaning of religious body to charities which have a purpose of 'advancing religion' only; and

d. exclude religious bodies that receive Commonwealth funding to provide aged care.

8. Protection for 'statements of belief' should be removed from the Bill. If, contrary to this recommendation, 'statements of belief' are not removed from the Bill, the exception for large employers should be amended to remove the requirement to demonstrate unjustifiable financial hardship.

9. The conscientious protections provisions in the Bill should be removed. If, contrary to this recommendation, the conscientious protections provisions are not removed, the circumstances in which a health practitioner may conscientiously object to provide treatment should be significantly narrowed. This includes narrowing the definition of a health service and introducing stronger exceptions to ensure that groups including women, LGBTIQ+ people, and people living in rural, regional and remote areas (including Aboriginal and Torres Strait Islander peoples) are appropriately able to access health care.

10. The creation of the office of the Freedom of Religion Commissioner should be removed. If, contrary to this recommendation, the office is not removed, the office of the Freedom of Religion Commissioner should be fully funded by way of additional funds to the Australian Human Rights Commission so as not to undermine its other important functions.

11. The protection for charities in the Human Rights Legislation Amendment Bill 2019 should be removed.

12. The amendment to the *Marriage Act 1991* (Cth) proposed by the Human Rights Amendment Bill should be removed.

2 Religious bodies

2.1 'Religious bodies' exception

The exception for religious bodies in section 10 of the Bill is extremely broad and should be limited.

It permits religious bodies – including educational institutions, registered charities (regardless of their charitable purpose) and other bodies – to discriminate where they are engaging, in good faith, in conduct that may reasonably be regarded as being in accordance with the doctrine, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted.[4]

Our first concern is that the exception will allow discrimination in a broad range of circumstances against RLC's clients, including individuals of other religious faiths, women, LGBTIQ+ people, people in de facto relationships, divorced people, single parents, people with disabilities and people who do not hold religious beliefs. We set out some examples in this submission. The effect is to privilege a 'right' of religious freedom for religious bodies over the rights of individuals to be free from religious and other forms of discrimination. Religious bodies should not be permitted to discriminate in such a broad range of circumstances.

Our second concern is that "may reasonably be regarded" sets a low threshold for the availability of the exception. Conduct that "may reasonably be regarded" as being in accordance with the doctrine, tenets, beliefs or teachings of a religion is a substantially lower threshold than conduct that "is" in accordance with or "conforms to"[5] the doctrine, tenets, beliefs or teachings of a religion. If religious bodies are to be allowed to discriminate in circumstances where their conduct would otherwise

[4] Section 10 of the Bill.

[5] See section 37 of the *Sex Discrimination Act 1984* (Cth) which states "…[an]…act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

constitute unlawful discrimination (whether on the ground of religion or any other protected attribute), the doctrine, tenets, beliefs or teaching on which they seek to rely should be clearly and precisely identified. The current threshold of "may reasonably be regarded", if left to remain, will allow religious bodies to justify discriminatory conduct in a range of areas based on views that are unfounded, uncertain, unsettled and controversial. This should not be permitted.

Our third concern is that the Bill's definition of a religious body is extremely broad. The potentially infinite number of 'religious bodies' to benefit from the exception only serves to magnify the first and second concerns we have identified above. 'Religion' is not defined in the Bill. The Explanatory Notes to the Bill make clear that this is deliberate, to reflect the broad approach taken by the High Court in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 129 (**the Scientology case**). In that case, Acting Chief Justice Mason and Justice Brennan described the criteria of a religion as being two-fold:

1. First, a belief in a Supernatural Being, Thing or Principle; and

2. Second, the acceptance of canons of conduct in order to give effect to that belief (though canons of conduct that are against ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion).[6]

Justice Murphy explained the broad nature of religion this way:

> *'There is no single acceptable criterion, no essence of religion…any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural being or beings, whether physical and visible, such as the sun or the stars, or a physical invisible god or spirit, or an abstract god or entity, is religious'.*[7]

Justices Wilson and Deane concluded that there was no single criterion which had to be present or absent before one could say with certainty that something was a religion. They identified five indicia to assist in deciding whether a particular system of beliefs and practices is a religion:

- that the collection of beliefs and/or practices involves belief in the supernatural (being something that could not be perceived by the sense);

- that the ideas relate to man's nature and place in the universe and his relation to things supernatural;

- that the ideas are accepted by adherents as requiring or encouraging them to observe particular codes of conduct or specific practices having some supernatural significance;

- the adherents form an identifiable group or groups; and

- the adherents see the collection of ideas, beliefs and practices as constituting a religion.[8]

As is clear from the above views expressed by the High Court in the Scientology case, 'religion' is an extremely broad concept. The Scientology case also makes it clear that the court's role is not to objectively assess the merits of the religious beliefs in question. The leader of a religion could be a charlatan and the religion a sham. However, a sham may still be a religion if there are people who sincerely believe in it and follow its codes of conduct.

There are many religions in Australia. The Australian Bureau of Statistics (**ABS**) has published a non-exhaustive list of religions for the purpose of data collection, available here.[9] The ABS list does not

[6] *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 129, 74.

[7] Ibid 85-86.

[8] Ibid 66.

[9] Table 3.1 to the Australian Standard Classification of Religious Groups, 2016, released by the ABS in July 2017.

include smaller religions that satisfy the broad definition of religion set out above nor religions that may emerge in future.

A search of the Australian Charities and Not-for-profits (**ACNC**) register shows that there are over 17,000 charities that are registered under the *Charities Act 2013* (Cth) as having a purpose of advancing religion. A charity does not need to have the advancement of religion as its purpose in order to fall within the definition of a religious charity[10], which means the number of charities that could benefit from the section 10 exception is potentially much higher.

It is likely a number of 'religious bodies', including religious schools, service providers and other charities, will receive public funding from the Government. Indeed, Government may provide funding to some of these 'religious bodies' to provide services to people facing disadvantage and minority groups such as people who are homeless and people with disabilities. Such bodies, essentially outsourced by Government to provide crucial services, often with minimal or no financial funding from the religious institution itself, should not be permitted to discriminate and impose their religious views on the members of the public receiving those services.

2.2 Potential application of the exception

The potential scope – and unintended potential consequences – of the operation of section 10 of the Bill is extremely broad. The effect is to create, and privilege, a right for religious bodies to engage in conduct, even if that conduct would otherwise be discriminatory under other existing anti-discrimination laws or this Bill, and even if the wider community considers such conduct to be abhorrent, unethical, morally repugnant and/or contrary to the accepted norms of our society.

Conduct that is likely to be lawful under section 10 of the Bill includes:

- a homeless person is refused accommodation at a hostel run by a religious charity because the homeless person practices a different religion.

- a Catholic school expels a young person who decides that they are agnostic and refuses to continue attending morning chapel.

- an LGBTIQ+ teacher in a religious school refuses to teach their class that LGBTIQ+ people are sinners is fired by the school.

- a religious charity providing assistance in the form of food and household items puts single mothers at the end of its priority list.

Those that will pay the highest price will be individuals from RLC's client base, including women, LGBTIQ+ people, people in de facto relationships, divorced people, single parents, people with disability and people who do not hold religious beliefs and people of different religious faiths.

Recommendations

- Section 10 of the Bill should only apply in respect of bodies established for religious purposes that operate places of worship, conduct religious services and ceremonies and provide religious education and instruction, but not educational institutions more broadly such as religious primary, secondary and tertiary schools. Those bodies should be required to demonstrate that conduct 'is' (rather than 'may reasonably be regarded' as) being in accordance with the doctrine, tenets, beliefs or teachings of a religion.

- If, contrary to our recommendation, the scope of section 10 is not narrowed in this way, section 10 should be significantly narrowed, including, at a minimum to:

[10] Explanatory Notes – Religious Discrimination Bill 2019, paragraph 169.

- require religious bodies to demonstrate that conduct 'is' (rather than 'may reasonably be regarded' as) being in accordance with the doctrine, tenets, beliefs or teachings of a religion; and
- limit the range of circumstances in which a religious body 'is not discriminating' (including specifically in relation to services and accommodation); and
- narrow the meaning of religious body to charities which have a purpose of 'advancing religion' only; and
- exclude religious bodies that receive Commonwealth funding to provide aged care.

3 Statements of belief

3.1 Protection of 'statements of belief'

We are concerned that the Bill will protect individuals who make 'statements of belief' in accordance with their religious views (including statements by those who do not hold religious beliefs), even if those statements offend, humiliate, intimidate, insult or ridicule others.[11] A religious person will be permitted to make any statement of their religious belief in good faith if it is reasonably regarded as being in accordance with the doctrines, tenets, beliefs or teachings of the religion. The threshold for statements of belief that are not protected by the Bill is extremely high and only applies to a statement that:

- is malicious; or
- would or is likely to harass, vilify or incite hatred or violence against another person or group of persons; or
- unless a reasonable person would conclude that it counsels, promotes, encourages or urges conduct that would constitute a serious offence, punishable by imprisonment for 2 years or more under a Commonwealth, State or Territory law.[12]

Those most likely to be affected are RLC clients, including women, LGBTIQ+ people, people in de facto relationships, divorced people, single parents, people with disability and the children of any of these groups.

Statements that may be protected by a person who holds a religious belief include:

- a woman who works with a male manager who says that her single lifestyle is sexually promiscuous and sinful.

- a small business owner tells their LGBTIQ+ employee that they believe the employee will go to hell because of the employee's lifestyle.

- an Islamic cleric says in a media interview that women who do not wear the hijab are immodest and invite male attention.

- a primary school teacher with children of LGBTIQ+ parents in their class posts a blog on social media sharing her views that children born from LGBTIQ+ couples are an abomination.

[11] Section 41 of the Bill

[12] Subsection 41(2) of the Bill.

- a single mother goes to a religious charity to obtain food vouchers. The person at the desk hands her the vouchers and tells her that God is punishing her for her sins.

People who hold religious beliefs will also be impacted. Statements of belief by a person who does not hold a religious belief will be protected where the statement of belief arises directly from the fact that the person does not hold a religious belief and is made in good faith and is about religion.

Statements that may be protected by a person who does not hold a religious belief include:

- the owner of a new tech start-up asks a Jewish employee to leverage his networks to invest in the new business because, unlike the owner's circles, 'your people have lots of money'.

- medium sized business owner allows their Christian employee to take a day off work to attend Church but tells the employee that they can't understand why they would want to belong to a religion that protects and supports paedophile priests.

- a well-known local identity gives a television interview in which they express concerns that the practice of Islam is eroding values in society and is incompatible with the Australian way of life.

We are concerned that such statements of belief will not constitute discrimination under "any anti-discrimination law" in Australia, thus overriding the more beneficial protections in the States and Territories and preventing States and Territories from introducing new protections in future. We are also concerned that the Bill expressly overrides protections that exist in "any anti-discrimination law" [13] and specifically overrides the protections that exist in Tasmanian anti-discrimination law from conduct that offends, humiliates, intimidates, insults or ridicules another person on the basis of a protected attribute such as sexual orientation, race, gender and disability.[14]

The application of existing Federal anti-discrimination and other laws will also be affected. For example, section 9 of the *Racial Discrimination Act 1975* (Cth) which prohibits racial discrimination, will be nullified to the extent that the conduct in question is a statement of belief. This is most likely to affect people from religious and racial minorities.

It is clear that the overall effect of section 41 will be to privilege a person's 'right' to make statements of belief consistent with their religious views, even if they are abhorrent to most Australians and even if they offend, humiliate, intimidate, insult or ridicule others.

3.2 Burden of proving a statement is not a 'statement of belief' (and therefore discriminatory)

A person who wishes to complain that a statement of belief is discriminatory would need to make a complaint to the Australian Human Rights Commission (**AHRC**). The role of the AHRC is to facilitate resolution of the complaint by conciliation. If a resolution cannot be reached by agreement, a person would need to pursue their complaint to the Federal Circuit Court of Australia or the Federal Court of Australia.

For a complaint to be made about statement of belief, the complainant would need to initiate a discrimination claim. The onus would then fall to the respondent to establish that they had made a statement protected by the operation of section 41, and that statement does not constitute discrimination. This means that in order to successfully pursue a discrimination claim, the

[13] Section 41 of the Bill. Examples of existing protections that are likely to be affected include s67A(1) of the *Discrimination Act 1991* (ACT) and s124A(1) of the *Anti-Discrimination Act 1991* (QLD).

[14] Under s17(1) of the *Anti-Discrimination Act 1998* (TAS), a person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of protected attributes such as race, age, sexual orientation, lawful sexual activity, gender, gender identity, intersex variations of sex characteristics, marital status, relationship status, pregnancy, parental status, disability and family responsibilities in circumstances where a reasonable person would anticipate that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

complainant will need to prove that the statement is malicious, would or is likely to harass, vilify or incite hatred or violence against another person or group of persons or counsels, promotes, encourages or urges conduct that would constitute a serious offence punishable by imprisonment for 2 years or more.

This is a significant evidentiary and financial burden and the person bringing the claim risks an adverse cost order if they are unsuccessful, in addition to the cost of legal representation and any expert witnesses. It is our experience that the cost risk in pursuing a claim in the federal courts is a significant deterrent for clients pursuing their claims in that jurisdiction, which is reflected in the smaller number of claims being pursued in the federal courts compared to the state based Civil and Administrative Tribunals.

In Tasmania, a person will no longer be able to successfully bring a claim in the Tasmanian Civil and Administrative Tribunal, a no cost jurisdiction, because the complainant will no longer be protected by existing Tasmanian anti-discrimination law.

The effect is that offensive statements are likely to go unchecked because the burden is too high for an individual to bring and establish the complaint. This in turn may erode the public's faith in our complaints system and further amplify the voices of the most powerful in our society.

3.3 Statements of belief and employment

We are concerned that a statement of belief will not constitute adverse action under the *Fair Work Act.*[15] This will protect employers who make offensive statements of beliefs to their employees. The employee will have no avenue for redress, not under any anti-discrimination law, nor under the *Fair Work Act*.

We have given examples above of the types of comments by an employer that will be protected as a 'statement of belief', including a male employer who tells a female employee that her single lifestyle is sexually promiscuous and sinful, an employer who tells their LGBTIQ+ employee that they believe the employee will go to hell and an employer who tells a Jewish employee to use their connections because 'your people have lots of money'.

The Bill will allow these types of comments to go unchecked and remove any avenue of complaint or other recourse under anti-discrimination and employment laws.

We are also concerned that employers will be limited in preventing managers and employees from making statements of belief. The Bill also prevents an employer from imposing a 'conduct rule', such as a term in an employment contract or code of conduct, that prevents an employee from making a statement of belief either at or outside of work.

Employers would need to demonstrate that a conduct rule is reasonable. Whether the conduct rule is reasonable would include consideration of factors including the nature and extent of the disadvantage resulting from the rule, the feasibility of overcoming or mitigating the disadvantage whether the disadvantage is proportionate to the result sought by the employer and the extent to which the rule would limit the ability of an employee to have or engage in their religious belief or activity.

It is likely to be extremely difficult for employers to demonstrate that a conduct rule is reasonable. As a result, the efforts of employers to create inclusive, diverse and culturally safe workplaces will be significantly undermined. This will in turn create increasingly unsafe and dysfunctional workplaces with the potential to impact rates of employment for women and people in minorities and create and/or exacerbate mental health concerns.

[15] Paragraph 351(2)(a) of the Fair Work Act provides that subsection 351(1) does not apply to conduct that is not lawful any anti-discrimination law listed in subsection 351(3) in force in the place where the action is taken.

3.4 Large employers will be limited in preventing employees from making public statements outside of work that insult and humiliate

The efforts of large employers to create inclusive, diverse and culturally safe workplaces will be even further undermined.

Large employers (those with a revenue of at least $50 million[16]) will only be able to prevent employees from making public statements outside of work that offend, humiliate, intimidate, insult or ridicule others where those statements would cause the employer 'unjustifiable financial hardship'[17].

An employer will only satisfy the exception if it can demonstrate that a code of conduct to behave in a certain way, would, if not followed, cause financial hardship. This will involve demonstrating that (a) financial hardship has or would occur (b) the extent of that financial hardship and (c) that the financial hardship is 'unjustifiable'.

It is likely that an employer with a revenue of at least $50 million would need to demonstrate significant financial loss in order for that hardship to be considered unjustifiable. In our view this is impractical and likely to be very difficult for employers to satisfy.

The focus on financial hardship ignores the serious cultural impact on our workplaces where an employee is permitted to make statements that offend, humiliate, intimidate, insult or ridicule fellow colleagues.

As a result, commendable efforts by large employers to promote safe, diverse and inclusive workplaces will be significantly undermined by the Bill. The difficulty of proving that an employer satisfies the exception may also discourage employers from continuing those efforts.

Recommendations

- Protections for 'Statements of belief' should be removed from the Bill.
- If, contrary to this recommendation, 'statements of belief' are not removed from the Bill, the exception for large employers should be amended to remove the requirement to demonstrate unjustifiable financial hardship.

4 Health service practitioners

4.1 Conscientious objection to providing a health service

The circumstances in which the Bill will allow health practitioners to refuse to provide treatment is extremely broad and should be narrowed.

Under the Bill, it will be lawful for a health practitioner to conscientiously object to providing a health service because of a religious belief or activity held by the practitioner unless to do so would cause an unjustifiable adverse impact on the health service or the health of the patient.

The 'health services' that a practitioner could object to include services practiced by a comprehensive range of health professions:

- Aboriginal and Torres Strait Islander practice;

[16] A "relevant employer" is not the Commonwealth, a State or a Territory or a body established for a public purpose by or under a law of the Commonwealth, a State or a Territory: section 5 of the Bill.

[17] Section 8(3) of the Bill

- Dental (not including the professions of dental therapist, dental hygienist, dental prosthetist or oral health therapist;
- Medical;
- Medical radiation practice;
- Midwifery;
- Nursing;
- Occupational therapy;
- Optometry
- Pharmacy;
- Physiotherapy;
- Podiatry; and
- Psychology.

It is difficult to fully predict the spectrum of conscientious objections on the basis of religious belief that might arise, however, it is clear that the Bill will operate broadly in favour of health practitioners.

> *Health practitioners could conscientiously object to providing a health service to:*
>
> *- an LGBTIQ+ person, whatever the health service, including treatment for the flu;*
>
> *- a woman seeking a prescription (or to fill her prescription) for birth control;*
>
> *- a man seeking a vasectomy;*
>
> *- a single woman or same sex couple seeking IVF;*
>
> *- a heterosexual couple seeking IVF;*
>
> *- a person with disability seeking stem cell treatment;*
>
> *- a woman seeking an abortion;*
>
> *- an older person wanting information about voluntary assisted dying.*

We submit that the exception is unnecessarily broad and likely to significantly disadvantage RLC clients, including women, single women, divorced people, people with disability, Aboriginal and Torres Strait Islander people, people living in rural, regional and remote areas and LGBTIQ+ people. The Bill risks creating classes of people in our society for whom access to health care services is no longer a basic human right. This will have a deep and direct impact on the health of many people in our community.

4.2 Unjustifiable adverse impact

We are concerned that the only circumstances in which a health practitioner can be forced to provide treatment is where there will be an 'unjustifiable adverse impact'[18]. It appears that this is intended to

[18] Section 8(6) of the Bill

operate narrowly and will overwhelmingly favour health practitioners. It is our view that the Bill as currently drafted will leave many people without essential health services. This will be particularly problematic in rural, regional and remote areas where people may only have one health service they can go to.

The Explanatory Notes support our concerns around the narrow operation of 'unjustifiable adverse impact'. The Notes state that 'unjustifiable adverse impact' might arise where there is a risk of death or serious injury of the person seeking the health service.[19] In the list of above examples of services that a health practitioner may conscientiously object to providing, there may be no risk of death or serious injury, or alternatively there may be a risk of injury but that injury, such as psychiatric injury, but that injury may not be considered 'serious' by a decision maker.

The Explanatory Notes give an example of a woman living in a remote area who is declined a prescription for birth control medication in circumstances where that medication is needed for non-contraceptive use such as to treat endometriosis or polycystic ovary syndrome where other health care cannot be accessed without significant travel and cost.[20] However, if that same woman living remotely seeks birth control for a contraceptive purpose, the Bill may operate to allow a health service to decline to provide that prescription.

Health services that want to require health practitioners to deliver certain health services risk a religious discrimination claim being brought by the health practitioner. If that occurs, the health service will bear the burden of proving that the requirement to deliver the health service is reasonable. There is a significant risk that health services will be unable to carry that burden and will as a result avoid imposing conduct rules. This will have a significant impact on those persons seeking medical treatment, particularly given the only protection for patients under the Bill is the willingness of the health service to impose the rule.

At the heart of the work of health practitioners is a respect for and commitment to their patients. If these same health practitioners are able to turn away people, including groups of people, such as women and LGBTIQ+ people regardless of the treatment they are seeking, the integrity of these professions and public faith in our health system will be seriously undermined. As noted above, there are also very real, practical consequences for many individuals in our community, including breaches of human rights to basic health care and deteriorating health outcomes.

Recommendations

- The conscientious protections provisions in the Bill should be removed.
- If, contrary to this recommendation, the conscientious protections provisions are not removed, the circumstances in which a health practitioner may conscientiously object to provide treatment should be significantly narrowed. This includes narrowing the definition of a health service and introducing stronger exceptions to ensure that groups including LGBTIQ+ people, women and people living in rural regional and remote areas (including Aboriginal and Torres Strait Islander peoples) are appropriately able to access health care.

5 Protections for individuals from religious discrimination

Part 3 of the Bill provides important protections at a Federal level from discrimination on the ground of religious belief or activity in the areas of work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, sport, membership of clubs, the administration of Commonwealth laws and programs.

RLC has assisted individuals who have experienced religious discrimination in a range of circumstances that would be protected under Federal legislation following

[19] Explanatory Notes to Religious Discrimination Bill 2019, paragraph 147.

[20] Explanatory Notes to Religious Discrimination Bill 2019, paragraph 148.

the enactment of the Bill. Examples of our clients' matters which would attract the protection from racial discrimination under the Bill include[21]:

- Raul after his employer insisted that he take a Saturday shift when his preferred Sunday shift had not been filled and Raul had religious commitments on the Saturday.*

- Anya after her daughter, who attends a private non-religious school in Sydney and wears a headscarf, was told by the school that she would not be allowed to continue to wear her headscarf.*

- Malik, an international student who unreasonably received a fail grade because of views his tutor held about Malik's Islamic faith.*

We support these important protections.

However, as set out earlier in this submission, we are deeply concerned that, overall, the reforms overwhelmingly favour religious bodies, health practitioners and individuals who make offensive, insulting, humiliating or intimidating public statements at the expense of protections for individuals from all types of discrimination

6 Freedom of Religion Commissioner

6.1 Creation of the office of the Freedom of Religion Commissioner

Part 6 of the Bill creates the office of the Freedom of Religion Commissioner. The Religious Discrimination (Consequential Amendment) Bill 2019 sets out related amendments to the *Fair Work Act 2009* (Cth) and *Human Rights Commission Act 1986* (Cth).

It is our view that there is insufficient evidence to demonstrate that religious discrimination is a particular problem in Australian society. Accordingly, it is our view that the creation of this office is not necessary.

However, if such an office is to be created, it should be a fully funded position by way of additional funding provided to the AHRC so as not to reduce the capacity of the AHRC to undertake its important work in other areas of discrimination on behalf of minority groups.

Recommendations

- The creation of the office of the Freedom of Religion Commissioner should be removed.
- If, contrary to this recommendation, the office is not removed, the office of the Freedom of Religion Commissioner should be fully funded by way of additional funds to the Australian Human Rights Commission so as not to undermine its other important functions.

7 Human Rights Legislation Amendment Bill 2019

7.1 Protection for charities advocating for marriage as between man and woman

The Human Rights Legislation Amendment Bill will amend the *Charities Act 2013* (Cth) to state that engaging in or promoting activities that support the view of marriage being a union of man and woman, is not of itself a disqualifying purpose.

[21] Names have been changed in these de-identified examples.

There is no evidence to suggest that charities have been or are currently disadvantaged by the absence of such a provision in the legislation. It is our view that the amendment of the *Charities Act 2013* (Cth) in this way is not necessary.

Recommendation

- The protection for charities in the Human Rights Legislation Amendment Bill 2019 should be removed.

7.2 Religious educational facilities may refuse to make a facility available or provide goods or services for the solemnisation of marriage

The Human Rights Legislation Amendment Bill will amend the *Marriage Act 1961* (Cth) to state that an educational facility that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion may refuse to make a facility available or to provide goods or services for the solemnisation of marriage if the refusal conforms to the doctrines etc or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

We are concerned that this would allow educational facilities such as religious schools and universities to refuse to allow RLC clients, including LGBTIQ+ couples or divorced couples to marry on the grounds of the educational facility and provide catering and other services. This means that educational facilities that regularly allow marriages to take place on their properties, whether or not for a fee, will be able to decline the same to LGBTIQ+ people and divorced people seeking to get remarried.

We repeat our earlier submission in relation to the broad imbalance in favour of religious bodies created by section 10 of the Bill and our recommendation that section 10 is significantly narrowed. For the same reasons, it is our view that this amendment to the Human Rights Legislation Amendment Bill is unnecessary, further entrenches discrimination and should be removed.

Recommendation

- The amendment to the *Marriage Act 1991* (Cth) proposed by the Human Rights Amendment Bill should be removed.