



30 January 2020

To whom it may concern:

Please find below a Response to the Amended Religious Discrimination Bill, submitted by The Religious Society of Friends (Quakers) in Australia.

Response to Revised Religious Discrimination Bill 2019 Summary

- 1. The core of our concern arises from the consequences of privileging religious freedom above other human rights.**
- 2. The revised legislation does not address this sufficiently for us to support it.**
- 3. The broad provisions permitting statements of belief create the potential for serious harm to vulnerable individuals and groups.**
- 4. Statements that foster discrimination on the basis of age, disability, race, gender identity, and sexual orientation should not be protected, and should be subject to existing anti-discrimination legislation.**
- 5. The 'conscientious objection' right given to health practitioners is likely to have a damaging effect on minorities, such as those seeking gender re-assignment therapy.**
- 6. Given hard-won standards of behaviour reflected in established human rights legislation and regulations, someone should not be entitled on religious grounds to act in a way that is illegal and harmful.**
- 7. Smaller faith communities, relying on access to facilities run by larger religious organisations, or programs of government, may suffer constraints on their religious freedom. We are also concerned that Quakers could be denied charitable status because of our support for marriage equality.**
- 8. The legislation is unnecessary and divisive. Changes to the Racial Discrimination Act could be made to include religious discrimination without the overlay of extra protections for religious freedom.**

Introduction

The stated aim of the revised bills is to “deliver lasting reform that provides real protections for all Australians”. Key changes include –

- Making clear that religious bodies can continue to make staffing decisions based on faith.

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- Including public benevolent institutions such as Vinnies in the definition of 'religious bodies'.
- Restricting conscientious objection to nurses, doctors, psychologists and pharmacists – and not allowing discrimination based on gender or other characteristics.
- Adding religious camps and conference centres to those religious bodies already allowed to employ staff to preserve their religious ethos.

In our submission on the earlier legislation, we made the following points:

- Humanity has made progress in protecting human rights internationally and domestically, and we seek to maintain that progress through mutual respect, dialogue and acceptance, rather than by creating exemptions that could reverse the progress.
- A comprehensive charter of rights would be the best way to fill current gaps and include religious freedom along with other rights and freedoms.
- The legislation gives special priority to religious freedom and is likely to conflict with existing human rights and anti-discrimination laws. It also conflates individuals and organisations, whereas only individuals have human rights.
- Health practitioners who object to offering a service on religious grounds should be obliged to refer a patient to a practitioner who can provide the service.
- The Human Rights Commission is resourced to deal with religious discrimination issues, and there is not the need for a special Freedom of Religion Commissioner.
- Proposed changes to the Marriage Act to allow educational institutions to deny facilities for a marriage ceremony will have an adverse impact on LGBTIQ people, and go against the progress made in 2017.
- The legislation should be amended to ensure that a faith community like Quakers cannot be denied charitable status for advocating equal marriage rights, on the same basis as the protections extended to those advocating for an exclusively heterosexual understanding of marriage.
- There is value in the proposal from Religions for Peace for a National Centre for Multiculturalism and Religious Diversity to promote greater education of citizens about different faiths/beliefs.

In our view, the changes to the drafts still do not address the main concerns we have about the legislation – in particular the giving of special priority to religious freedom above all others. In turn this leads to significant conflict with existing anti-discrimination and human rights legislation in the States and Territories. The legislation still provides for the freedom allowed on religious grounds to overrule those State and Territory provisions.

The core of our concerns relates to the unintended consequences of privileging religious freedom above other human rights, and allowing the corporate rights of organisations to overrule the rights of individuals. The privileging of religious rights will lead to greater harm to some of the most vulnerable people in our community and could, perversely, lead to a reduction in religious freedom for smaller faith communities.

Harm to the most vulnerable in our communities

The extremely broad provisions permitting statements of belief, and the narrowness of the exceptions (statements that are malicious, or harassing, threatening seriously intimidating or vilifying) are highly problematic. Statements of belief falling far short of these narrow exceptions

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can still have a significant impact. Similarly, the proposed “conscientious objection” provisions for health practitioners will potentially enable some forms of discrimination.

According to the National LGBTI Alliance “a disproportionate number of LGBTI people experience poorer mental health outcomes than their peers, with these being directly related to experiences of stigma, prejudice, discrimination and abuse on the basis of being LGBTI”. Trans people are amongst the most vulnerable. Statements of religious belief by the powerful and influential in our community, or in the lives of individual LGBTI people, that stigmatise LGBTI people must inevitably contribute to this problem.

We consider that, at the very least, any statements of belief that have the practical effect of fostering discrimination against a person or group of people on the basis of age, disability, race, sex, intersex status, gender identity and sexual orientation should fall outside the special protections proposed in Religious Discrimination Bill 2019. Such statements should be subject to and, where appropriate, assessed against, Australia’s existing anti-discrimination legislation.

In the area of health services, the distinction made in the Notes to subsections 8(6) and 8(7) between refusing to provide a particular kind of health services, and refusing to provide health services to particular people or groups of people, is unclear and insufficient to protect vulnerable persons. For example, a decision by a religious body to deny all gender re-assignment therapy, while not on its face targeting a particular group of people, will discriminate clearly against one group – transgender people. In areas with fewer health service options, this could prevent a person from receiving required medical services.

At the very least, we question whether bodies that are funded by the taxpayer should be able to practice discrimination beyond the established standards in existing legislation on human rights. Given the hard-won standards of behaviour reflected in existing protections, we object to the idea that someone is entitled because of their religious belief to make statements in public that are in most circumstances illegal under existing law and do harm to other citizens, or to deny essential services on religious grounds that would otherwise amount to discrimination.

Reducing religious freedom for members of smaller faith communities

The granting of human rights to religious bodies will enable the religious beliefs of larger religious organisations to trump the religious freedoms of individuals that belong to smaller faith communities. Larger religious communities will inevitably have greater resources to provide essential services such as health care services, aged care facilities etc. In this way, they make significant and positive contributions to the community.

However, we would be concerned to see the situation arise where members of smaller faith communities were excluded from practicing their own faiths, or persons of no religion from celebrating significant milestones in their lives, where they are reliant on the essential (and often taxpayer funded) services provided by religious bodies. For example, a LGBTI Quaker who is elderly or infirm, and unable to leave the facility in which they receive life-giving care, may be prevented from holding a Quaker ceremony to marry their partner of choice if the religious body running the facility objected on religious grounds.

Privileging a particular religious view of marriage

We are also concerned that smaller institutions such as our own may suffer more than larger

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ones, in relation to the denial of charitable status because of our advocacy for LGBTI marriage equality. The exclusion, in s 4 of the Human Rights Legislation Amendment (Freedom of Religion) Bill 2019, of advocating an exclusively heterosexual interpretation of marriage from being a “disqualifying purpose” for charitable status, privileges the religious interpretations of some faith communities over others. This is unbalanced. We continue to advocate for the removal of this provision but, if retained, it should be redrafted not to favour particular religious interpretations of marriage.

Overall, we see the legislation as unnecessary and potentially divisive. We consider that changes to the Racial Discrimination Act to include religious discrimination could be sufficient to meet most of the intentions of the government without the overlay of extra protections for religious discrimination. This would be more like the ‘shield’ the government claims it is seeking, rather than a ‘sword’ directed against some of the most vulnerable members of our community, as well as against members of smaller faith communities.

Signed:



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