

30 January 2020



Honourable Christian Porter MP
Attorney-General and Minister for Industrial Relations
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: Christian.Porter.MP@aph.gov.au
CC: ForConsultation@ag.gov.au

Dear Attorney,

Response to the Second Draft of the Religious Discrimination Bill 2019 — Pride in Law

We write to express significant concerns surrounding the second draft of the Religious Discrimination Bill 2019 (the Bill). Further, Pride in Law wishes to raise serious concerns that aspects of this second draft would permit religious interests over the interests of other Australians.

As previously advised through correspondence, dated 2 October 2019 (enclosed), Pride in Law is Australia's first and only LGBTIQ+ Law Association, which is '*Law Focused, Pride Inspired*'. Since launching in July 2017, Pride in Law has continued to provide visibility, education and advocacy around LGBTIQ+ issues in the legal profession. We represent and promote legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits legal professionals can provide. Pride in Law also assists the public by advising government on improvements to laws affecting Australians.

At its recent meetings, Pride in Law has again extensively discussed the persistent concerns shared by members regarding the second draft of the Religious Discrimination Bill. The following paragraphs are a summary of these discussions for your consideration. Pride in Law lends its support to the other submissions provided by Australian organisations for the Bill to be scrapped, including the Law Council of Australia, Equality Australia and the National Secular Lobby Limited. Pride in Law is grateful for their considered submissions.

Privileging religious expression over discrimination protections

Pride in Law's main concern, which precedes other issues in this space, is that the second draft of the Religious Discrimination Bill will permit freedom of religious expression ahead of other human rights.

Pride in Law supports the Law Council of Australia's submission. It is our submission that this second draft is a deeply flawed piece of legislation.

Our Association is significantly concerned that certain religious statements will trump other legal discrimination protections in federal, state and territory laws, leaving some Australians vulnerable in public life, such as in workplaces, schools and the provision of goods and services.

It will allow people who discriminate against and vilify LGBTIQ+ people on 'grounds of religious belief' so long as it is not 'violent'. It will affect people in workplaces, hospitals and medical services, schools and public life. Further, this Bill does not protect all people of faith, and so it cannot represent true religious freedom.

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In our view, clause 41 of the Bill overrides federal, state and territory discrimination protections, and Tasmanian offensive conduct provisions. Further, the second draft strengthens conscientious objection protections for religious groups and individuals, and provides a clearer definition of vilification as “incitement of hatred or violence.” Our strength as Australians is our belief in the rights and freedoms of all people in this nation. Laws should not favour one group over another.

Conscientious objections in health care

Pride in Law is highly concerned that faith based hospitals, aged-care providers and possibly other health related services will be able to discriminate in the hiring of staff based on their religious beliefs. Further, Pride in Law questions whether a hospital would need to discriminate against Australians based on a religious ethos. We submit that a hospital that receives public funding from all Australians should not be permitted to deny employment to some Australians.

Clause 8(5) of the Bill allow religious professionals in the health sector (for example) to refuse certain services to patients when those services conflict with a practitioner’s religious beliefs. It also allows them to refuse to refer patients on to an alternative service provider.

Equality Australia’s public statements that clauses 8(5) and (6) should be removed. In the rare instances where States and Territories have allowed conscientious objection, they have done so carefully to ensure patient care is not compromised. These clauses do not achieve that balance. Without these clauses, the Bill will still allow an appropriate accommodation of personal religious views without compromising patient care. The second draft Bill if enacted, will ultimately compromise patient health by making it harder for health employers and professional bodies to ensure doctors, nurses, pharmacists, and psychologists do not refuse treatment to people on religious grounds

This Bill makes it harder for health sector employers and professional bodies to ensure doctors and other medical practitioners do not refused treatment to people of religious grounds. A right to healthcare is a fundamental human right. Furthermore, non-judgemental healthcare, particularly around sexual health, transgender health services and family planning are essential tools to building a more inclusive Australia. Denying these rights to fellow Australians will create both challenges for health professionals and the wider community.

Enshrining religious privilege in law

It is our position that clause 10, effectively enshrines religious privilege in law. In other words, where religious bodies act “in good faith” in ways that can be justified as being in accordance with their beliefs, such acts cannot be deemed to be unlawful discrimination under any Australian discrimination law.

Clauses 10(1) and 10(2) allow religious bodies to discriminate based on their faith. Church-run institutions are collectively among the largest non-government employers in the nation. Hiring and firing in a considerable number of employment positions may now be based on a religious test, in accordance with the governing organisation’s faith. We concur with Equality Australia’s point that this Bill will establish double standards in the law, allowing religious organisations the ability to discriminate against others with different or no belief. It is unacceptable that this Bill creates protections for companies associated with religious individuals who are refused services, goods or facilities because of views or events that are offensive to many.

In addition, all faith-based service providers either receive government funding or are exempt from paying the full range of federal or state taxes. These taxpayer-funded institutions should not have the power to hire and fire based on their religious faith.

This essentially creates a form of legalised, government-sponsored “employment discrimination”, where a significant proportion of the population is barred from employment at the largest non-government employers in the country.

Pride in Law holds significant concerns that religious organisations will be allowed to discriminate against others with different beliefs or non-belief. This places religion squarely in a position of legal privilege beyond any other discrimination legislation.

Folau's law – Clause 8 (3) – (4)

Pride in Law is again concerned that the second draft of the Religious Discrimination Bill will make it harder for large employers to foster an inclusive culture or achieve their mission by imposing reasonable employee conduct rules on religious expression outside of work hours.

In our view, the second draft provides protections for people who intimidate others through their expression of religious beliefs, limiting the ability of large employers and professional bodies to enforce universal standards of appropriate conduct on members of their profession. Pride in Law supports Equality Australia's public statements that the "Folau clause" frames the freedom of expression as only being about religion and money. In addition to our concerns above, the test for 'unjustifiable financial hardship' is novel and does not appear to take into account other harms that employers should be able to legitimately consider when setting employment conduct rules, such as damage to staff morale or safety, cultures of inclusivity and achieving non-financial organisational objectives such as promoting health and well-being. Standard indirect discrimination definitions in law would already look at the reasonableness of such requirements – so it is unclear why a specific class of employers should be singled out. In our view, it does not achieve the right balance and should be removed.

Other issues

Pride in Law submits that the Religious Discrimination Bill, as currently drafted, can only be described as misguided. The second draft of the Religious Discrimination Bill goes further than any other discrimination legislation, in both power and reach and also over-rides existing law.

Further, to the issues identified above, Pride in Law has significant concerns about a number of other issues presented by the Bill, these include:

- The Religious Discrimination Bill as currently drafted does not validate Article 18(2) of the International Covenant on Civil and Political Rights (ICCPR), which gives equal rights to "freedom of thought and conscience" (including not having any religious beliefs); nor does it validate Article 20(2), "Advocacy of ... religious ... discrimination, hostility or violence shall be prohibited by law", which includes discrimination by religion.
- The Bill's reliance of using the term "statements of belief" as a way of offering protection for religious expression is also fraught with significant difficulty. Our submission is that this is not a well-understood concept and will lead to considerable confusion in the courts and community.
- The Vatican has reaffirmed that Catholic priests cannot reveal to outsiders what they learn in confession, as "this duty comes directly from God." This openly defies the mandatory reporting laws now enacted in various Australian states and territories requiring priests to report all knowledge of child sex abuse -- even if gained through confession. Granting religions legal privilege will exacerbate this problem, resulting in people of different religions following different laws in preference to Australian law, based on their beliefs and the teachings of their religious leaders.
- The Bill would allow a person to use their religious belief as a cover for launching sexist and prejudiced attacks against women, and to undermine laws granting rights to women. Its unnecessarily complex clauses provide new avenues for religious "anti-choice" conservatives to attack access to abortion, promote patriarchal agendas and advance other forms of gender bias.

- The Religious Discrimination Bill is out of step with all other existing anti-discrimination legislation in that it protects a conscious choice (the conscious and changeable choice of belief over non-belief) rather than an innate trait (such as age, race, gender, disability or orientation) – and moreover, does so by reducing these other protections
- A Religious Freedom Commissioner is unnecessary. Further, it would isolate the LGBTQI+ community who remain without their own Commissioner or equivalent.
- It encompasses protections that are not needed and privileges that are harmful, overly complicated, open to abuse, socially divisive and morally wrong.
- Regardless of the unbalanced rights it grants, the Bill is flawed in ways that make it an overly complicated in addition to being an impractical solution to a problem that barely exists.

Pride in Law respects all communities, religions, beliefs and a person’s right to live according to their faith, or, indeed, of no faith. It is through this mutual respect that life can flourish.

Our Association does not support this bill. Overall, the second draft of the Religious Discrimination Bill goes too far in prioritising religious rights over all others. In our view, the second draft of the Religious Discrimination Bill goes well beyond the general indirect discrimination provision.

The idea behind the bill is a good one: to prohibit discrimination based on religious belief or non-belief. However, in its current form, the bill provides too many broad and special protections to those of religious faith. The best guarantee for religious freedom is human freedom.

Given the unfolding national disasters, including fires, Pride in Law also submits that the deadline be extended for other community organisations and people to make submissions.

Pride in Law stands for equality, not privilege. Unfortunately, in our view, the second draft of the Religious Discrimination Bill does not offer equality. It builds on the existing privilege of some organised religion to deny equal rights to LGBTQI+ Australians and other minorities. This Bill divides Australian communities, provides different standards for different people and will permit people with extreme views to stigmatise and cause harm.

Pride in Law strongly submits that this Bill cannot be “fixed” through amendments. This Bill should be abandoned altogether. The second draft of the Religious Discrimination Bill in its current form is unworkable and should be scrapped.

Thank you in advance for considering our submission. We look forward to hearing from you and hopefully your support in building a more inclusive legal profession.

If you have any queries regarding the contents of this letter, please do not hesitate to contact me or our Pride in Law team by phone on [REDACTED] or by email to director@prideinlaw.org.

Yours sincerely,



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Enclosed:

1. Response to the Draft Religious Discrimination Bill 2019 — Pride in Law, dated 2 October 2019 (two pages).

2 October 2019



Honourable Christian Porter MP
Attorney-General and Minister for Industrial Relations
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House of Representatives
Parliament House
CANBERRA ACT 2600

By email: Christian.Porter.MP@aph.gov.au
CC: FoRConsultation@ag.gov.au

Dear Attorney

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We write to express concerns surrounding the draft Religious Discrimination Bill. Further, Pride in Law wishes to alert the Commonwealth Government to aspects of the bill that would permit religious interests over the interests of other Australians.

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At its recent meetings, Pride in Law has extensively discussed the persistent concerns shared by members regarding the draft Religious Discrimination Bill. The following paragraphs are a summary of these discussions for your consideration.

Conscientious objections in health care

Pride in Law's main concern, which precedes other issues in this space, is that the draft Religious Discrimination Bill will permit a conscientious objection in health care. Members have identified it will be harder for health employers and professional bodies to require all health workers and services to treat all Australians, despite any personal religious objections held by the health professional.

Pride in Law supports Equality Australia's public statements that sections 8(5) and (6) should be removed. In the rare instances where States and Territories have allowed conscientious objection, they have done so carefully to ensure patient care is not compromised. These clauses do not achieve that balance. Without these clauses, the Bill will still allow an appropriate accommodation of personal religious views without compromising patient care.

Privileging religious expression over discrimination protections

Our Association is significantly concerned certain religious statements will trump other legal discrimination protections in federal, state and territory laws, leaving some Australians vulnerable in public life, such as workplaces, schools and in the provision of goods and services.

In our view, which is shared by Equality Australia, section 41 of the Bill overrides federal, state and territory discrimination protections, and Tasmanian offensive conduct provisions.

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Pride in Law is concerned that the draft Religious Discrimination Bill will make it harder for large employers to foster an inclusive culture or achieve their mission by imposing reasonable employee conduct rules on religious expression outside of work hours.

Pride in Law supports Equality Australia's public statements that the "Folau clause" frames the freedom of expression as only being about religion and money. In addition to our concerns above, the test for 'unjustifiable financial hardship' is novel and does not appear to take into account other harms that employers should be able to legitimately consider when setting employment conduct rules, such as damage to staff morale or safety, cultures of inclusivity and achieving non-financial organisational objectives such as promoting health and well-being. Standard indirect discrimination definitions in law would already look at the reasonableness of such requirements – so it is unclear why a specific class of employers should be singled out. In our view, it does not achieve the right balance and should be removed.

Other issues

- Employer conduct rules imposed by other types of employers, or during work times, must comply with general indirect discrimination provisions, which require rules those otherwise disadvantage employees on religious grounds to be reasonable in all the circumstances.
- The test for 'unjustifiable financial hardship' is novel and does not appear to take into account other harms that employers should be able to legitimately consider when setting employment conduct rules, such as damage to staff morale or safety, cultures of inclusivity and achieving non-financial organisational objectives such as promoting health and well-being. Standard indirect discrimination definitions in law would already look at the reasonableness of such requirements – so it is unclear why a specific class of employers should be singled out.

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The idea behind the bill is a good one: to prohibit discrimination based on religious belief or non-belief. But, in its current form, the bill provides too many broad and special protections to those of religious faith. The best guarantee for religious freedom is human freedom.

Pride in Law stands for equality, not privilege. Unfortunately, in our view, the draft Religious Discrimination Bill does not offer equality. It builds on the existing privilege of organised religion to deny equal rights to LGBTIQ+ Australians and other minorities.

If you have any queries regarding the contents of this letter, please do not hesitate to contact me or our Pride in Law team by phone on [REDACTED] or by email to enquiries@prideinlaw.org.

Yours faithfully



Dean Clifford-Jones

President, Pride in Law

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