



Australian Council of Social Service

1 October 2019

Freedom of Religion Consultation
Attorney General's Department
4 National Circuit
BARTON ACT 2600

Email: FoRConsultation@ag.gov.au

To whom it may concern,

Submission: Religious Freedom Bills

The Australian Council of Social Service (ACOSS) is a national advocate for action to reduce poverty and inequality and the peak body for the community services sector in Australia. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life. ACOSS welcomes the opportunity to contribute to the work of the Department in this important area.

ACOSS supports enshrining the right to freedom from religious discrimination in legislation, preferably in a Human Rights Act. ACOSS also strongly supports the right of all people to live their lives free from discrimination on the basis of their sexual orientation, gender identity or intersex status. This draft bill goes too far, privileging religious interests over the rights and interests of other people. ACOSS endorses the submission of the National LGBTI Health Alliance, and wishes to highlight a number of specific concerns with the draft bill, outlined below.

Conscientious objection to providing health care

Everyone should be able to access quality health services, regardless of who they are, or what their financial situation is. ACOSS is concerned that the provisions permitting a conscientious objection to providing health care in the draft bill are too broad, apply to a very wide range of health practitioners, and will prevent some people from accessing the health care that they need. We are particularly concerned about access to healthcare by LGBTIQ people, who already face significant barriers to accessing appropriate healthcare, but also by other people who have traditionally experienced discrimination or marginalisation.

Existing state and territory laws already provide for conscientious objection in certain limited circumstances, however these provisions are usually conditional, and balanced against the health needs of patients. These state and territory laws strike the right balance between the rights of practitioners to conscientiously object, and the right of all people to receive the healthcare that they



need. Superseding these laws with a new right to conscientious objection would expose people to the risk that they are not able to get the healthcare that they need, when they need it.

Recommendation: That section 8(5) and 8(6) of the Religious Discrimination Bill be removed from the draft bill.

Promoting inclusive workplace cultures

ACOSS is concerned with section 8(3) and (4) and section 41 of the draft Religious Discrimination Bill, which read together will permit “statements of belief” in the workplace that condemn or offend other people of faith, people of no faith or other people who have been traditionally discriminated against or marginalised. People of faith, along with people who do not hold religious views, have a reasonable expectation that they will not be treated unfairly at work, refused services, or unreasonably prevented from wearing religious dress, because of their faith (including having no faith). ACOSS supports provisions in the draft bill aimed at achieving that. That said, this draft bill goes too far. All employers should be permitted to expect that their employees will not offend or condemn people of other faiths, people of no faith, or other people who have been traditionally discriminated against or marginalised (in particular LGBTIQ people). This capacity is essential to foster an inclusive workplace culture and prevent harm to employees (particularly LGBTIQ employees). Ensuring that all employees and service users feel that they are welcome and valued is critical for community sector employers in particular, and critical for their employees.

ACOSS also considers the provision of the draft Religious Discrimination Bill at section 8(3) that allows a large employer to establish “conduct rules”, which constrain the right to make statements of belief, where to do otherwise would impose unjustifiable financial hardship on an organisation to be problematic. All employers have a duty to provide a safe workplace and may experience other harms as a result of their employee’s statements of belief, including to their reputation or to workplace culture. Employers should be able to protect from all harms (not just financial harms) to their organisation and their employees by setting conduct rules that place reasonable regulations on employee conduct.

Recommendation: That Section 8(3) and (4) and Section (41) of the Religious Discrimination Bill be removed from the draft bill

The right of religious charities and schools to “act in accordance with their faith”

ACOSS accepts the right of churches, mosques, temples and similar bodies established for religious worship to act in accordance with their faith. That said, section 10 of the draft Religious Discrimination Bill is too broad because it extends to include religious charities and schools. In doing so, there is a risk that in permitting religious charities and schools to discriminate on the basis of religion, people using services of charities and students at religious schools could be refused service,



and teachers and community workers working at these institutions lose their jobs for reasons that are inappropriate, including their sexual orientation or gender identity, intersex status or a range of other reasons.

Recommendation: that Section 10 should be redrafted to limit the right to “act in accordance with their faith” to churches, mosques, temples and similar religious bodies, and not applied to religious charities and educational institutions

Proposed changes to the *Charities Act 2013*

Advocacy is vital to our democracy, strengthens public policy and ensures that the voices of the marginalised and disadvantaged are heard in the public debate. There is clear direction from the High Court of Australia in *Aid/Watch Incorporated v Commissioner of Taxation*, the *Charities Act 2013* and the *ACNC Act 2013* about what constitutes advocacy, and it is unclear why further clarification is required in relation to the right of charities to advocate for the pre-2018 definition of marriage. Indeed making this specific provision in the *Charities Act 2013* could set an unfortunate precedent, whereby other charities might argue that their purpose required clarification in the Act. A better approach would be to amend the *Charities Act 2013* and the *Australian Charities and Not-for-profits Commission Act 2013* to clarify the public benefit of advocacy as a charitable purpose.

Recommendation: That the proposed changes to the Charities Act 2013 not proceed, and that the Charities Act 2013 is instead amended to clarify the public benefit of advocacy as a charitable purpose.

Existing exemptions from anti-discrimination laws

In addition to the changes recommended to this bill, ACOSS is concerned that existing legislation permits religious bodies to discriminate on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in certain circumstances. ACOSS recommends removing the existing exemptions from anti-discrimination laws in the provision of goods, services and employment that currently apply to religious organisations, and replacing them with more limited exemptions that are confined to strictly permit religious organisations to organise and conduct affairs closely connected to religious worship, observance, practice and teaching.

Recommendation: That existing exemptions in anti-discrimination laws that currently apply to religious organisations be removed, and replaced with more limited exemptions that are confined to strictly permit religious organisations to organise and conduct affairs closely connected to religious worship, observance, practice and teaching.



If the department has any questions regarding this submission, the ACOSS contact person is Senior Advisor John Mikelsons, on (02) 9310 6212 or john@acoss.org.au .

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J Phillips".

Jacqueline Phillips
Acting CEO