



# Australian Council of Social Service

31 January 2020

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

Email: [ForConsultation@ag.gov.au](mailto:ForConsultation@ag.gov.au)

To whom it may concern,

## **Submission: Religious Freedom Bills – Second Exposure Draft**

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, and considers this a better approach than standalone religious discrimination legislation. ACOSS also strongly supports the right of all people to live their lives free from discrimination including on the basis of their sexual orientation, gender identity or intersex status. Like the first iteration of this bill, this second exposure draft goes too far, privileging religious interests over the rights and interests of other people.

ACOSS, and a number of other human rights and community sector organisations made submissions to the first phase of the consultation process for this legislation. We are disappointed that very few of the concerns we raised have been addressed in this second exposure draft. Indeed the second exposure draft raises a number of new concerns and issues and takes a retrograde step. Noting that, ACOSS considers that the second exposure draft should be withdrawn, and that the Department redraft the Bill so that it takes a more conventional approach to discrimination legislation, using for example the *Age Discrimination Act 2004* as a template. In line with that approach, ACOSS has identified in this submission some key problems with the draft bill that should not form part of a redrafted bill.

## **Conscientious Objections to Providing Healthcare**

ACOSS remains concerned about the capacity of health practitioners to conscientiously object to providing health services provided for at subsection 8(6). While we acknowledge that there have



been some minor improvements to the draft Bill (in particular the narrowing of the range of professionals covered), we consider that the changes go nowhere near far enough to address our concerns, and that if the Bill is enacted, people will be denied the healthcare that they need.

We are particularly concerned about healthcare for LGBTIQ people, people living with HIV, women and people in rural and regional areas. The draft bill provides for healthcare professionals, including doctors, nurses, midwives, pharmacists and psychologists to conscientiously object to providing healthcare on the basis of their religious belief. This could prevent people accessing sexual health services, including key HIV prevention technologies such as Pre-exposure Prophylaxis (PrEP) and Post Exposure Prophylaxis (PEP), sexual health testing, contraception and a range of other healthcare services because the healthcare practitioner believes that sex should not occur outside marriage. For trans or gender diverse people, we are concerned that the conscientious objection of a healthcare practitioner may prevent them accessing the hormone therapy and other care that they need because of a religious belief that there are two sexes – male and female – and that your gender can only be assigned at birth. In rural and regional areas this problem is even more acute, noting the fact that there are often fewer services available and less opportunities for referral to other practitioners.

Everyone should be able to access quality health services, regardless of who they are, where they live, or what their financial situation is. 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(6) and 8(7) of the second exposure draft be removed from the Bill.*

### **Religious Exceptions Provisions**

ACOSS remains concerned about the capacity of religious organisations to discriminate on the basis of religion, as outlined in our submission to the first exposure draft of this Bill. ACOSS accepts the right of churches, mosques, temples and similar bodies established for religious worship to act in accordance with their faith (of course balanced against the rights of others to non-discrimination). That said, section 11 of the draft Religious Discrimination Bill is too broad because it extends the capacity to discriminate on the basis of religious belief to include religious schools and universities, charities, including charities that provide commercial services (as long as they are a Public Benevolent Institution), hospitals, aged care services and accommodation providers. In doing so, there is a risk that in permitting these organisations to discriminate on the basis of religion, people using the services of these organisations could be refused service, and workers refused employment or employment opportunities for reasons that are inappropriate, including their religion, gender, sexual orientation, intersex status or a range of other reasons.



*Recommendation: that Section 11 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 schools and universities, charities, including charities that provide commercial services (as long as they are a Public Benevolent Institution), hospitals, aged care services and accommodation providers*

### **Statement of Belief Provisions**

ACOSS remains concerned with the provisions relating to statements of belief at section 42 of the second exposure draft Bill. The practical scope of this clause is extremely broad. It will protect statements of belief that would otherwise be discriminatory from successful complaint in all areas of public life, from employment, to education, health to aged care and community services, hospitality to public spaces. This provision will affect everyone, but in particular women, LGBTIQ people, people with disability or mental ill health, divorced people, unmarried couples and sole parents.

This provision is particularly insidious in the employment context. 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.

*Recommendation: That Section 42 of the second exposure draft be removed from the draft Bill*

### **Proposed changes to the *Charities Act 2013***

ACOSS raised concerns about the proposed changes to the *Charities Act 2013* in our submission to the first exposure draft of this Bill. Although there appears no change from that process to this, we reiterate our concerns about this proposed change. 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.*



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](mailto:john@acoss.org.au) .

Yours sincerely,

A handwritten signature in black ink, appearing to read "C. Goldie".

Dr. Cassandra Goldie  
ACOSS CEO