

2 October 2019

Religious Freedoms Bill Inquiry Secretariat  
Attorney-General's Department

By email: [FoRConsultation@ag.gov.au](mailto:FoRConsultation@ag.gov.au)

Dear Sir/Madam,

**Religious Discrimination Bill 2019 - Exposure Draft**

1. Women's Legal Service NSW (WLS NSW) thanks the Attorney-General's Department for the opportunity to comment on the Religious Discrimination Bill 2019 - Exposure Draft (**'the Bill'**).
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. We note with concern the short timeframe for this inquiry.
4. We have read and endorse the Human Rights Law Centre (**'HRLC'**) submission to this inquiry.
5. WLS NSW operates from a feminist framework. We support a woman's right to autonomy and access to safe and affordable healthcare, including reproductive healthcare.
6. Our concerns centre around how women's access to reproductive health care will be significantly limited by this legislation. This submission will focus on this issue.



Women's Legal Service NSW  
PO BOX 206 Lidcombe NSW 1825  
Admin (02) 8745 6900  
Fax (02) 9749 4433

[www.wlsnsw.org.au](http://www.wlsnsw.org.au)  
Women's Legal Resources Ltd.  
ACN 002 387 699  
ABN 88 002 387 699



## Balancing human rights

7. Human rights are universal, indivisible, interdependent and rarely absolute.
8. We support the right to freedom of thought, conscience and religion but this must be fairly balanced with the rights of others.
9. We have consistently supported advocacy that any limitation on human rights must be a reasonable, necessary and proportionate means of achieving a legitimate purpose.<sup>1</sup>
10. We agree with the HRLC and Women's Legal Service Tasmania ('WLST') that these Bills do not provide the appropriate level of balance between competing rights.
11. The HRLC in their submission to this inquiry states that "*the right of health professionals to freedom of religion must be balanced with the rights of their patients to life, health, autonomy and non-discrimination*". The HRLC refers to international jurisprudence upholding this, including a Canadian appeal court decision which found doctors with a conscientious objection have a duty to provide a patient with an effective referral, including, for example, abortion care.
12. The United Nations Committee on the Elimination of Discrimination Against Women General Recommendation No 24: Women and health affirms "*access to healthcare, including reproductive health care is a basic right under the Convention of the Elimination of all Forms of Discrimination against Women*",<sup>2</sup> compliance of which is "*central to the health and wellbeing of women*".<sup>3</sup>
13. The Committee further states:

*It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.*<sup>4</sup>

---

<sup>1</sup> For example, endorsement of National Association of Community Legal Centre's submission to the inquiry into the Exposure Draft Human Rights and Anti-Discrimination Bill, 21 December 2012.

<sup>2</sup> United Nations Committee on the Elimination of Discrimination Against Women *General Recommendation No 24: Women and health*, 1999, paragraph 1.

<sup>3</sup> *Ibid*, paragraph 2.

<sup>4</sup> *Ibid*, paragraph 11.

## The Bill

14. Clauses 8(1) and (2) of the *Bill* reflect the usual approach to responding to indirect discrimination.
15. Clause 8(3) is aimed at limiting the application of employer conduct rules relating to statements of belief made “*at a time other than when the employer is performing work on behalf of the employer*” where the employer has or had an annual revenue of \$50 million, such that compliance with the rule is deemed unreasonable unless “*necessary to avoid unjustifiable financial hardship to the employer*”.
16. Clause 8(4) provides (3) does not apply in limited circumstances, namely the statement of belief is “*malicious*” or “*would, or is likely to harass, vilify or incite hatred or violence against another group of persons*” or “*a reasonable person, having regard to all the circumstances, would conclude that, in expressing the belief, the person is counselling, promoting, encouraging or urging conduct that would constitute a serious offence*”.
17. While Cl 8(4) provides some protection for large employers, we agree with the HRLC that the usual test of reasonableness outlined in cl 8(2) is sufficient on its own. Clauses 8(3) and (4) should be deleted.
18. Clauses 8(5) and (6) will impact on the provision of health services, such as reproductive healthcare, where an employee has a conscientious objection.
19. Clause 8(5) states:

*For the purposes of paragraph (1)(c), if a law of a State or Territory allows a health practitioner to conscientiously object to providing a health service because of a religious belief or activity held or engaged in by the health practitioner, a health practitioner conduct rule that is not consistent with that law is not reasonable.*

*Note: A requirement to comply with a health practitioner conduct rule that is not reasonable under this subsection is also not an inherent requirement of work (see subsection 31(7)).*

Clause 8 (6) states:

*For the purposes of paragraph (1)(c), if subsection (5) does not apply, a health practitioner conduct rule is not reasonable unless compliance with the rule is necessary to avoid an unjustifiable adverse impact on:*

*(a) the ability of the person imposing, or proposing to impose, the rule to provide the health service; or*

*(b) the health of any person who would otherwise be provided with the health service by the health practitioner.*

*Note: A requirement to comply with a health practitioner conduct rule that is not reasonable under this subsection is also not an inherent requirement of work (see subsection 31(7)).*

20. Noting the barriers to accessing reproductive healthcare, particularly in regional, rural and remote areas where access to services is already limited, we are concerned such provisions will particularly impact on women in these areas.
21. Clauses 8(5) and (6) should be deleted.

#### **Summary of recommendations**

22. WLS NSW shares the concerns raised by the HRLC and WLST and supports the HRLC recommendation to delete clauses 8(5) and (6) that would regulate conscientious objections by health practitioners and related clause 31(7).
23. We support the HRLC recommendation to consider including a provision which *“provides that the obligation to refer in cases of conscientious objection is reasonable”*.
24. We further support the HRLC recommendation to delete clauses 8(3) and (4) and *“rely on the standard indirect discrimination test to balance the rights of employees expressing good faith statements against the interests of employers in regulating that speech in certain circumstances”*, as well as delete related clause 31(6).
25. We share the concerns of the HRLC and WLST that clause 41 of the Bill will create a higher threshold for discrimination complaints arising from harmful religious speech and support the recommendation to delete clause 41.
26. We share the concerns raised by the HRLC and WLST that the exemption allowing religious bodies to discriminate on the basis of religion is too broad and should be replaced as proposed by the HRLC.
27. We share the concerns raised by the HRLC and support their recommendation that the Australian Government *“address religious exemptions for schools now through these*

*legislative reforms by introducing laws that prohibit discrimination against LGBTIQ+ children in all Australian schools”.*

28. We have consistently advocated for anti-discrimination laws to include positive duties and promote substantive equality. We repeat this recommendation in relation to this Bill and all anti-discrimination legislation.<sup>5</sup>
29. We have also consistently advocated for the federal government to consolidate and modernise anti-discrimination laws with the harmonisation of legislation *“reflecting at least the highest level of protection currently provided across the relevant States, Territories or Commonwealth”*.<sup>6</sup> We repeat this recommendation.
30. We support the enactment of a Charter of Human Rights.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

**Women's Legal Service NSW**

**Janet Loughman**  
**Principal Solicitor**

---

<sup>5</sup> For example, Joint submission prepared by Kingsford Legal Centre, with assistance from Women's Legal Services NSW, the Public Interest Advocacy Centre, and the Public Interest Law Clearing House, on behalf of the National Association of Community Legal Centres and the Combined Community Legal Centres Group (NSW), *Submission to the Senate Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, 7 August 2008, recommendation 1.

<sup>6</sup> For example, *#Me Too: Legal Responses to Sexual Harassment at Work: A Kingsford Legal Centre, Redfern Legal Centre, Women's Legal Service NSW and National Association of Community Legal Centres joint report*, 2019, recommendation 27.