

**Submission to the** **Joint Human Rights Parliamentary Committee Inquiry into the Religious Discrimination Bill 2021 (Cth)**

December 2021

Introduction

Women’s Health Victoria (WHV) welcomes the opportunity to comment on the third draft of the Religious Discrimination Bill 2021 (Cth) (the Bill) and accompanying legislation.

WHV endorses the submissions and recommendations made by Equality Rights Alliance (ERA) and Equality Australia (EA).

WHV is an independent Victorian state-wide health promotion, support and advocacy service. We advocate and build system capacity for a gendered approach to health that reduces inequalities and improves health outcomes for women. WHV is committed to a social model of health which focuses on addressing the social and economic determinants of health, including freedom from discrimination and harassment, and equitable access to economic power and resources. Gender equality and women’s sexual and reproductive health are key priorities for WHV. WHV also operates 1800 My Options, Victoria’s state-wide phone and information service for sexual and reproductive health.

Overview

Echoing ERA’s submission, WHV supports the domestic implementation of all international human rights instruments ratified by Australia, including the right to freedom of thought, conscience and religion as set out in the International Covenant on Civil and Political Rights.

However, WHV **opposes** the Religious Discrimination Bill because it goes beyond protecting such rights and instead privileges the right to freedom from discrimination on religious grounds above discrimination based on other grounds such as sex, race and disability and overrides existing anti-discrimination legislation at the state and territory level. The Bill thereby undermines steady progress achieved over recent decades towards building a more inclusive society in line with the human rights commitments Australia has undertaken, by ratifying various international instruments. As noted in EA’s submission (Sections 4e and Section 5b), the Bill also introduces unnecessary legal complexity and cost in the assessment and arbitration of instances of religious discrimination.

As a health promotion, support and advocacy service that works to improve health outcomes for women, WHV is particularly concerned the Bill will:

* undermine progress towards gender equality; and
* harm women’s sexual, reproductive and mental health and contribute to winding back women’s reproductive rights in Australia.

These impacts are a likely outcome of the Bill because it:

* privileges religious views in workplaces, schools and service delivery settings over women’s rights to equality, healthcare and other needs;
* facilitates a potential increase in stigma and discrimination against women asserting their rights to gender equality and sexual, reproductive and mental health care;
* perpetuates cultural beliefs that women’s equality and reproductive and bodily autonomy are optional or negotiable; and
* creates uncertainty for qualifying bodies and employers regarding how to respond to ‘statements of belief’ grounded in religious belief by members or employees that may otherwise constitute discrimination or the basis for disciplinary action.

Gender Equality

WHV shares the concerns articulated in ERA’s submission regarding the risks the Bill presents to gender equality. We particularly note the arguments made in Section 3 about the intricate relationship between culture and gender equality and the regressive effects the Bill would have on ongoing and long-standing efforts across all facets of Australian society to challenge sexist and heteronormative cultural norms.

Women in Australia have, since colonisation, been unfairly and profoundly limited by the discrimination they have collectively experienced based on sex and gender. Gender inequality continues to play out in all aspects of Australian life, as evidenced by low rates of workforce participation among women, gender pay discrimination, maternity-related discrimination, the disproportionate share of unpaid work shouldered by women, uneven access to sexual, reproductive and mental health care, and experiences of violence. Gender inequality is expressed and maintained through norms, practices and structures that support rigid gender stereotypes, unequal power structures between the genders, heteronormativity and cisnormativity. Gendered norms (including attitudes and beliefs), practices and structures overlap in our everyday lives and have a cumulative impact over time, profoundly influencing outcomes for women and men as well as trans and gender diverse people across the life course.

Addressing the diverse and complex ways in which gender inequality is maintained in our society is an ambitious but necessary long-term project requiring whole-of-community engagement to be effective. By going beyond securing protections against religious discrimination and seeking to extend protections for freedom of speech on religious grounds, even where this impinges on the right to freedom from discrimination on other grounds, the Bill will undermine progress towards dismantling the norms, practices and structures that underpin gender inequality in Australia.

We identify the potential adverse implications of the Bill for gender inequality in more detail on pages 4-6 below.

Women’s Health

Patriarchal beliefs about gender are found within many of the dominant religious traditions and commonly translate into restrictions on women’s sexual and reproductive autonomy (Perales and Bouma, 2019). Similarly, mental health problems have historically been highly stigmatised and often associated with religiously based explanations. As sexual and reproductive health and mental health are key priorities for WHV, we are very concerned about the Bill’s potential impact on women’s access to non-judgmental sexual and reproductive health services, including contraception and abortion, and mental health care services.

**Sexual and reproductive health:** Safe access to contraception and abortion is good public health practice and plays an important role in supporting women’s health, wellbeing and gender equality. It is also a matter of human rights. As the Beijing Platform for Action on women’s empowerment states: ‘the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence’ (page 58).

**Mental health:** Women are approximately twice as likely as men to suffer from a mental illness, report consistently higher levels of psychological distress than males, and are twice as likely to experience anxiety, depression and post-traumatic stress disorder, and to be hospitalised for self-harm. Gender-based discrimination and gender-based violence both cause and perpetuate women’s experience of mental health problems over a lifetime. Women are significantly more likely than men to access both primary and tertiary mental health services, but they continue to experience barriers to equitable access, including negative and stigmatising attitudes and limited understanding of women’s needs and experiences among mental health professionals.

The Bill would exacerbate existing barriers to good sexual, reproductive and mental health and healthcare in Australia – we outline how in more detail on pages 4-6 below.

Key concerns about the Bill’s impacts on gender equality and women’s health

1. Enabling discriminatory statements of belief (Clause 12)

Contrary to the recommendations made by WHV on the first and second exposure drafts of the Bill, the third draft still removes protections against discrimination for women, LGBTIQ+ people, people living with disability, and other marginalised groups (including people of minority faiths) when discriminatory statements are made on the grounds of religion in workplaces, schools or while delivering services. Under Clause 12, the expression of people’s religious views in these settings would override all existing protections against discrimination under federal, state and territory anti-discrimination laws. As such, beliefs regarded as stemming from religion would have more protection than beliefs that do not stem from religious belief or lack thereof, such as support for gender equality and women’s reproductive rights and bodily autonomy. This means the Bill would protect offensive, derogatory or harmful statements of belief based on religion, even if they amounted to racial discrimination, sex discrimination or discrimination on any other ground prohibited under existing anti-discrimination laws. In effect, religious people making ‘statements of belief’ would be exempt from complying with laws that non-religious people must comply with.

**Gender equality:** As noted in ERA’s submission and highlighted by Our Watch’s Change the Story framework, sexist views serve as the foundations of unsupportive environments for women and gender diverse people. Enabling these views to be lawfully expressed when grounded in religion in workplaces, schools and while delivering services would be a regressive step for gender equality in Australia. As ERA’s submission (page 8) also acknowledges, women who could face ‘multiple and intersecting’ forms of religious-based discrimination on the grounds of race, age, disability and/or sexuality would be in a particularly vulnerable situation if the Bill were passed in its current form.

**Women’s sexual, reproductive and mental health:** Religious based views that abortion and contraception are morally wrong can shame or discourage women seeking such healthcare. This may result in delays in access to abortion, which can lead to more complex and expensive terminations at later gestations, being forced to carry an unwanted pregnancy to term, financial loss due to time away from work and travel and medical expenses, and negative impacts on mental health. Exposure to sexually transmitted infections (STIs) and unwanted pregnancy may also result from delayed or inhibited access to contraception. Additionally, some religious views about the cause and treatment of mental health problems can be dangerous and prevent women from accessing appropriate care.[[1]](#footnote-1)

If the Bill proceeds, Clause 12 should be **deleted**.

1. Limiting qualifying bodies’ ability to enforce standards of conduct across their professions (Clause 15)

WHV is concerned that the Bill limits qualifying bodies’ ability to uphold standards of conduct across their professions. As Equality Australia argues, under Clause 15 of the Bill, qualifying bodies could be prevented from refusing to register or renew the registration of a health practitioner and from revoking the practitioner’s registration based on ‘prejudiced, harmful or dangerous’ statements made based on or about religion outside their employment (Equality Australia 2021, p. 19). Such conduct could negatively impact on other employees, clients or customers, or public trust in the profession. In the case of the health professions, this could impact on patient safety.

Religious based views about abortion and contraception, even if made outside the course of a health practitioner’s employment or directed at other health practitioners, can impact on women by contributing to a sense of shame or discouraging them from seeking such healthcare. Similarly, some religious based views about the cause and treatment of mental health problems can prevent or discourage women from accessing appropriate care or exacerbate distress by adding to existing stigma associated with mental ill-health. More generally, religious views expressed by health practitioners on these topics outside of their employment can also reduce public confidence in the profession, which is of particular importance for women from priority groups (e.g., Aboriginal and Torres Strait Islander women, women from minority ethnic backgrounds, women from minority faith traditions, trans and gender diverse people, and women with disabilities) who have historically experienced poorer access to healthcare.

Given the importance of sexual, reproductive and mental health to women’s wellbeing, autonomy, and social and economic participation, restricted access to these forms of healthcare also impacts on gender equality.

If the Bill proceeds, Clause 15 should be **deleted**. Health practitioners who do not wish to provide abortion services because of their religious beliefs are already able to utilise conscientious objection provisions and, as noted in Equality Australia’s submission (Section 5d), existing discrimination protections would provide adequate protection for qualified professionals wishing to express religious views without unreasonably affecting the rights of others.

1. Creating uncertainty for employers (Clauses 12 and 14)

WHV welcomes the removal of clauses in previous exposure drafts preventing employers from imposing reasonable conduct rules on employees’ religious expression outside of work hours, where those views are contrary to the employer’s values or mission and are harmful to the employer’s reputation, other employees, customers or members of the public. Such clauses would have limited the ability of employers to foster safe, respectful and inclusive workplace cultures and services which are important drivers of gender equality.

However, a further effect of Clause 12 is to create uncertainty for employers. If an employee makes a statement of belief in the workplace, a school or while delivering services that may amount to sex discrimination prohibited under existing anti-discrimination laws, another employee, student or client may make a complaint, putting the employer in a difficult position of needing to determine which complaint has more basis and running the risk of breaching either the religious discrimination law or the sex discrimination law.

As noted in ERA’s submission (Section 4), Clause 14 on Indirect Discrimination may have similar effects. Under this clause, employers may not impose a staff rule or policy which will disadvantage people with a genuinely held religious belief unless the rule or policy is deemed reasonable. However, if *not* imposing such a rule or policy conflicts with the employer’s obligations under other anti-discrimination law, the employer again is put into a challenging position but cannot defend the ‘reasonableness’ of the policy or rule until the matter reaches the Federal Court.

Recommendations

1. WHV endorses the Equality Rights Alliance’s recommendation to synthesise all existing legislation into a single federal anti-discrimination act (including religious discrimination) to enable rights to freedom from all forms of discrimination to be fairly balanced where these rights may come into conflict.
2. WHV further endorses the need for Australia to introduce a Human Rights Act at the national level to bolster the protection of all human rights rather than relying on more narrowly focused anti-discrimination legislation. This would enable an intersectional approach to be taken to assessing discrimination claims, where a person experiences discrimination based on more than one protected attribute.
3. Should the Government proceed with the Religious Discrimination Bill, WHV endorses all 14 of Equality Australia’s recommendations for amending the draft legislation.

References

Equality Australia (2021). Protect all of us, equally: Submission on the Religious Discrimination Bill 2021 and related bills. Sydney, Australia: Equality Australia.

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Our Watch (2021). Change the story: A shared framework for the primary prevention of violence against women in Australia (2nd ed.). Melbourne, Australia: Our Watch.

Perales, F. and Bouma, G. (2019). ‘Religion, religiosity and patriarchal gender beliefs: Understanding the Australian experience’, *Journal of Sociology*, 55(2), pp. 323–341. doi: 10.1177/1440783318791755.

United Nations (1995). [Beijing Declaration and Platform for Action on women’s empowerment](https://beijing20.unwomen.org/~/media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf).

1. WHV acknowledges that holding religious beliefs is not synonymous with the rejection of evidence-based medicine (EBM). Most religious people accept EBM, and reasons for rejecting EBM are many and varied. [↑](#footnote-ref-1)