



CENTRE FOR
Women's Safety
and Wellbeing

Preventing violence
Promoting health
Advancing gender equality

Religious Discrimination Bill 2021 and related bills

Submission to the Parliamentary Joint Committee on Human Rights

Centre for Women's Safety and Wellbeing

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About the Centre for Women's Safety and Wellbeing

The Centre for Women's Safety and Wellbeing is the leading voice for women and children affected by gender-based violence in Western Australia and the peak body for family, domestic and sexual violence services and community based women's health services in WA.

The Centre for Women's Safety and Wellbeing (the Centre) works to prevent domestic, family and sexual violence against women and their children; promote women's health and wellbeing; and advance gender equity. The Centre works to ensure that the evidence is taken up in policy and practice to further the safety, health and wellbeing of women and their children. We advocate for systems and structures that enable and support the safety, wellbeing and economic security of women.

The Centre for Women's Safety and Wellbeing also promotes non-violent and respectful attitudes and behaviours towards women and girls in the broader community, and community responsibility for violence prevention.

Introduction

The Centre for Women's Safety and Wellbeing welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights and its inquiry into the Religious Discrimination Bill 2021 (the Bill) and related bills. The Centre acknowledges that due to the short timeframe available for submissions to be accepted by the Joint Committee, there was insufficient time for consultation with members and the broader sector for the preparation of this submission.

In this submission we focus on the Bill's potential impact on women, particularly those who experience multiple, intersecting forms of disadvantage, and the potential impact on the women's sector, including specialist family, domestic and sexual violence services and women's community based health services. While this submission is focused on the impact on women, the Centre acknowledges that the Bill will impact many other groups, the majority of whom experience significant disadvantage. The Centre supports other submissions from specialist organisations and peak bodies that detail the impact of the Bill on groups including LGBTIQ+ people, Aboriginal and Torres Strait Islander peoples, people with disabilities and culturally and linguistically diverse people.

The Centre for Women's Safety and Wellbeing believes all people have the right to be free from discrimination, and supports the principle of protection against discrimination on the basis of religious belief or activity. However, the Centre is concerned that, while the third version of the Bill is improved, it remains fundamentally flawed, and provides unprecedented protections to religious beliefs that are not afforded to other protected attributes. While the intention of the Bill is to ensure Australians are protected from discrimination on the basis of religious belief or activity, it simultaneously erodes the existing protections for people on the basis of sex, marital status, race, religion, disability, sexual orientation, gender identity or intersex status. The Bill allows faith-based institutions to maintain exemptions that allow them to discriminate against those who do not share their beliefs, and permits offensive, insulting, humiliating or intimidating conduct if part of a statement of belief.

The Centre has significant concerns that the Bill will disproportionately result in women, LGBTIQ+ people, people with disabilities and other marginalised Australians facing discriminatory and harmful behaviours in the workplace, when accessing health and community services and in the broader community.

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Impact on women

Access to health and community services

The Bill has the potential to allow health and community service providers to restrict, deny or delay services on the basis of religious belief. The Bill will also allow providers to make discriminatory and harmful statements to individuals on the basis of religious belief, as *Clause 12* of the Bill stipulates that a statement of belief, in and of itself, does not constitute discrimination.

Under existing legislation there are already significant barriers women face when accessing health care, particularly sexual and reproductive health services, due to providers religious beliefs. We are aware of many women's negative experiences when accessing services, for example, the only pharmacy in a regional town not stocking emergency contraception; a General Practitioner refusing to provide contraception to an unmarried woman; healthcare providers refusing to provide emergency contraception to young people under 18, conflicting with legal age of access, and not providing referral to another provider. In relation to termination of pregnancy, healthcare providers obfuscating options, disseminating misinformation and/or disinformation to cause unnecessary delays to services, and refusing to provide referrals to termination services. The Bill emboldens this practice under the auspice of a health practitioner's statement of belief, and may limit the ability of the relevant governing body to discipline professionals. It further reduces women's access to vital and timely health and community services, and disregards women's needs, experiences, and human rights.

In our experience, women currently face significant barriers to reporting harmful and discriminatory experiences with health and community service providers. The onus is on an individual who has experienced a traumatic event perpetrated by a professional, in a position of power and trust, to have the self-efficacy required to complete the relevant reporting or complaints process. The Bill adds additional barriers to reporting, including the lack of clarity around the relationship between State and Federal legislation and reporting processes, diminished confidence in the ability for governing bodies to take action and the unreasonable measure that only statements of belief that are malicious, likely to harass, threaten, seriously intimidate or vilify another person or group of persons, or which encourage serious offences, are not protected under the Bill.

The impact of the Bill on the access to, and provision of, health and community services for women seemingly has no consideration for the health and wellbeing impacts of experiencing discrimination. When discrimination occurs, it places the physical, mental, and emotional wellbeing of the individual(s) at risk. In health and community services settings, discrimination can exacerbate the presenting issue, can compound existing issues, and can cause new conditions to develop. The Bill has the potential to reduce access to timely, appropriate, and safe services; deter or prevent individuals from seeking services due to fear of experiencing discrimination; and cause additional negative health and wellbeing impacts. It is important to acknowledge that these consequences of the Bill will disproportionately impact marginalised women who experience intersecting forms of disadvantage, including women with disability, young women, LGBTIQ+ people, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, and women in regional, rural and remote areas.

Employment

Clause 9 - Areas of public life in which the conduct of religious hospitals, aged care facilities, accommodation providers and disability service providers is not discrimination and Clause 11 - Conduct





in relation to employment by religious educational institutions- overriding certain State and Territory laws both supersede existing anti-discrimination laws. The effect of these clauses is to allow religious hospitals, aged care facilities, accommodation providers, disability service providers and educational institutions to have a hiring policy that states only people of the same faith will be employed, as long the hiring policy is publicly available. The impact of the discriminatory hiring practices allowed as part of the Bill will overwhelmingly impact women, as Health Care and Social Assistance and Education and Training are female dominated industries¹.

The Bill will allow these religious employers to preference hiring people of the same faith. This means religious organisations whose statement of beliefs cover areas such as women should not work outside of domestic duties, women must be married to have children and divorce is unacceptable, will be able to discriminate against women in a range of circumstances with no consequence. Women, particularly those who are sole parents, experience high rates of unemployment, underemployment, casual and part-time employment. Discriminatory hiring practices based on religious beliefs will compound the current employment experiences of women, particularly as the Bill predominately impacts female-dominated industries.

The Centre does not support these clauses as they allow discriminatory hiring practices that may violate existing anti-discrimination legislation and the Fair Work Act. In practice, the Bill will allow for religious beliefs to be treated as more important and more protected than other characteristics as part of hiring and employment practices. This will disproportionately impact marginalised groups, including women, currently protected under discrimination legislation, and will contribute to poor health and wellbeing outcomes for marginalised groups as employment is a well-documented social determinate of health.

The Centre is also concerned that for women who disclose experiences of domestic and family violence to an employer, *Clauses 9, 11 and 12* will allow religious employers to respond with harmful messaging, conditional support and potentially termination of employment. For example, a woman who discloses to her employer that she is experiencing domestic violence perpetrated by her husband may be told that she is responsible for the abuse, that it is her duty as a wife to remain with her abusive husband or that if she separates from her husband she no longer abides by the religious ethos of the organisation and her employment will be impacted. If permitted, these types of responses will further compound the distress and disadvantage experienced by victim-survivors of domestic and family violence, with no consequence for the employer.

Gender equality

The Bill has the potential to actively contribute to and promote gender inequality by allowing harmful gender stereotypes and social norms, dominant forms of masculinity, and limits to women's independence in public and private life under the pretence of religious beliefs. The Bill will allow workplaces, educational institutions, community and healthcare services and other parts of our community to foster cultures that are unsafe, unsupportive, non-inclusive, and working against efforts to achieve gender equality.

To achieve gender equality, structural and systemic barriers to equality must be removed and social norms, attitudes and behaviours that perpetuate inequality and gender stereotypes must be

¹ Australian Bureau of Statistics, *Gender Indicators, Australia, 2020* <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>





addressed. The Bill protects people who express views as part of their statement of belief (*Clause 12*). Statements which are malicious, that harass, threaten, intimidate or vilify, or which encourage serious offences, will not be protected. However, this is a different threshold compared to other anti-discrimination legislation which typically prohibits speech that offends, insults or humiliates. In practice this difference means that the Bill allows people to make statements under the protection of a religious belief that can offend, insult or humiliate; be harmful to individuals; perpetuate and reinforce gender stereotypes; and contribute to the gendered drivers of violence against women. While we cannot predict the statements and behaviours individuals will engage in under the protection of a statement of beliefs, based on women's current experiences this could include examples like, a health professional in a position of trust, power and influence could say to a woman that her miscarriage was punishment from God; after disclosing lived experience of domestic violence a colleague could tell a woman that it is her duty as a wife stay with her husband and the abuse was her fault; a teacher could tell a class of students that women should be subservient to men and be responsible for all domestic duties; and a Manager could tell their team member she is going to hell because she had a child before she was married. The Bill does not take into account the impact of comments or behaviours on those being targeted by religious beliefs and undermines the existing anti-discrimination protections. The Bill also does not recognise the broader community impact of allowing harmful, prejudiced statements to be made without consequence. The Centre is concerned this will be a retrograde step for gender equality at a time when momentum is building for genuine progress.

Impact on the women's sector

As an employer

The Bill creates complexities for employers managing a workplace in line with current legislation. There is explanation of the impact on employers and employees who wish to proceed with any actions at the intersection of the Bill and the current State and Territory legislation. For many women's sector services, who are almost exclusively not for profit organisations, there is limited capacity to cover costs of litigation if required.

The implications of the Bill on managing staff who make religious statements or behaviours that breach organisational policies or best practice guidelines, or negatively impact clients or other staff is unclear. For example, a women's refuge staff member tells a client that she should not have an abortion based on the staff member's own religious beliefs, can the staff member face disciplinary action without the employer breaching the Bill.

Employers are required to navigate highly sensitive topic areas to make decisions about what constitutes a statement of beliefs with no 'test' available. Employers will need to manage problematic and potentially discriminatory religious beliefs that are exempt from other anti-discrimination legislation, while simultaneously nurturing an inclusive and safe workplace. There is the potential that the balancing required will damage workplace cultures and create division between religious and non-religious staff, the antithesis of the Bill's intention.

Qualifying bodies

Clause 15 – Discrimination on the ground of religious belief or activity – qualifying body conduct rules means that a professional association cannot discipline a member of that association for making a statement of belief. This makes it more difficult for professional associations to enforce policies or





standards. For health and community services this may mean that professional associations struggle to implement policies that require health services be provided to all people regardless of gender, sexuality, marital status etc, and there may be no action possible if complaints are received about discriminatory practices (under existing legislation) a professional.

The reduction in the ability for professional associations to respond to their members can result in decreased access to services, reduced help-seeking, delayed help seeking, additional health issues due to discrimination experiences and a myriad of other issues for individuals and the wider community. This is especially concerning in areas where there are limited health and community services available, e.g. regional, rural and remote areas. In these areas there may be no alternative service/practitioner available meaning there are safe and appropriate services available for marginalised people and no pathway for action to address the discriminatory professional. Lack of clear, consistent and enforceable professional standards will lead to poorer health outcomes and reinforcement of health inequities.

Conclusion

The Centre for Women's Safety and Wellbeing supports religious freedom and the right for all Australians to live free from discrimination. However, we do not support the Religious Discrimination Bill 2021 and related bills. As outlined in this submission, we are concerned that the Bill will have significant negative impacts on women and other marginalised groups, will allow discrimination that is currently legislated against, will place unnecessary stress of women's sector organisations, and roll back gender equality efforts.

The Bill places the protection of religious beliefs as more important than other protected attributes. The Centre believes any legislation to prevent religious discrimination should be the same as existing discrimination legislation, affording the same protections and not creating a hierarchy of rights.

The Centre supports calls for an Australian Human Rights Act that incorporates existing Federal discrimination legislation and sets out the rights that are guaranteed equally to all people in Australia, without discrimination of any kind.

