



Revised Religious Discrimination Bills

SUBMISSION

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Mentally healthy people,
Mentally healthy communities

Response to Revised Religious Discrimination Bills

Introduction

No one should face any kind of discrimination. All people deserve adequate access to appropriate healthcare and protection against harmful statements related to their identity.

Australians currently have federal legal protection for a range of attributes including race, gender, sex, age, and disability,¹ in addition to jurisdictional anti-discrimination laws. The government introduced a package of legislation (the Bills) in late September 2019 and revised in December 2019, which would see 'religious belief' added as a protected attribute. These Bills include the:

- *Religious Discrimination Bill 2019*,
- *Religious Discrimination (Consequential Amendments) Bill 2019*, and
- *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.

Mental Health Australia strongly recommends the Australian government does not proceed with its proposed Bills. Should Government proceed with the Bills, it is critical the revised Bills are again re-examined to ensure every Australian's rights to access adequate healthcare is not compromised by legislation that preferences religious freedom over other human rights. At a minimum, subsections 8(6), 8(7) and 41 must be removed from the Bill to achieve this.

The proposed *Religious Discrimination Bill 2019* section 3 states the objects of the Act are:

- a) to eliminate, so far as is possible, discrimination against persons on the ground of religious belief or activity in a range of areas of public life; and
- b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity; and
- c) to ensure that people can, consistently with Australia's obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief.

¹ See *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)*, *Age Discrimination Act 2004 (Cth)* and *Australian Human Rights Commission Act 1986 (Cth)*.



Subsections 3(a) and 3(b) are consistent with the objectives of other anti-discrimination laws, however Government has failed to evidence a need for introducing ‘religious belief’ as a protected attribute akin to race, gender, sex, age, or disability status.

Mental Health Australia believes people with religious beliefs should be protected from discrimination and the negative mental health outcomes stemming from discrimination. However, this package of legislation is an inappropriate vessel to provide such protection, and does so at the expense of existing protected attributes.

The proposed Bills both overcomplicate situations which are adequately dealt with under existing anti-discrimination law and fail to provide guidance or clarification on more complex situations which exist in the ‘grey area’ of current laws. For example, the Bill is silent on what legal protection is offered when two people hold religious beliefs which are inconsistent with the other’s belief. This could lead to situations where a majority or mainstream religious belief is prioritised over a minority religious belief, which is inherently inconsistent with the object of the Act.

Moreover, subsection 3(c) is well beyond the scope of any other anti-discrimination laws in Australia. Mental Health Australia cannot condone legislation which allows people to make “statements of belief” which can and will cause harm to the mental health of people. The protection of religious belief cannot come at the cost of harm to others who do not hold that belief. Consequently, Mental Health Australia recommends Government cease its support for these Bills.

As in our initial submission, Mental Health Australia remains concerned with the potential impact of these revised Bills on the mental health of population groups who already experience high rates of suicide and mental illness, including the LGBTIQ+ community, women, and people with disability.

While intending to protect people who are religious and religious institutions from direct and indirect discrimination, the construction of the Bills confuses and minimises protections provided under existing federal and jurisdictional anti-discrimination legislation, and international human rights obligations. In addition to creating confusing legal situations which will require wasteful and avoidable litigation, the revised Bills will likely impact vulnerable people in a multitude of negative ways.

If enacted, the updated Bills could make it easier for health practitioners to refuse health services on the basis of the health practitioner’s “conscientious objection” in subsections 8(6) and 8(7). These subsections are unnecessary as similar clauses already exist in state and territory legislation and professional codes (plus jurisdictional legislation includes necessary safeguards which prioritise patient safety and impress a duty to refer the patient to a professional who will provide the service being sought). Mental Health Australia recommends these subsections are removed from the Bill.

In addition to limiting access to, and options within healthcare, vulnerable people could be negatively impacted by statements which could be made under the very broadly defined “statement of belief” clause in section 42. Statements made under this protection have significant potential to negatively impact the mental health of the person the statement is directed towards, and others who share their identity. Mental Health Australia recommends this section is removed from the Bill.

Mental Health Australia supports and promotes the right of all Australians to access adequate healthcare, including mental healthcare. Mental Health Australia is the peak, national non-government organisation representing and promoting the interests of the Australian mental



health sector and is committed to achieving better mental health for all Australians. This submission builds on Mental Health Australia's initial submission made on 1 October 2019 ("Submission – Religious Freedom Bills"). In addition to providing comment on the revised Bills, this submission will reiterate the potential negative impacts, including the potential for poorer healthcare access and outcomes, and the potential for increased discrimination against vulnerable people that will impact negatively on their mental health.

Population groups with poor mental health outcomes are likely to be further disadvantaged as a result of the Bills

Mental Health Australia agrees with other organisations and people who are concerned that the Bills present "a risk to LGBTIQ people, women, and other vulnerable groups by overriding every other anti-discrimination law in the country."² The Bills are the first time religious exemption has been introduced for the *Disability Discrimination Act 1992* which denotes a step backwards, not forwards.

LGBTIQ+ people are already twice as likely to be diagnosed and treated for mental health disorders.³ The National LGBTI Health Alliance states that poor mental health outcomes can be "directly related to experiences of stigma, prejudice, discrimination and abuse."⁴

16% of LGBTI young people and 35% of transgender people have attempted suicide in their lifetime, compared to 3.2% of the general population aged 16 and over.⁵

Within a twelve month period, studies have shown that women experienced higher prevalence of mental disorders than men (22.3% compared with 17.6%).⁶ These increased rates of mental ill health are linked to both the detrimental effects of gender expectations and life events such as pregnancy.

1 in 6 women in Australia will experience depression and 1 in 3 women will experience anxiety during their lifetime. Women also experience post-traumatic stress disorder and eating disorders at higher rates than men.⁷

People with disability experience many risk factors which can lead to mental ill health, including social isolation, lack of employment opportunities, financial difficulty and discrimination.⁸

32% of adults with disability experience high/very high psychological distress, compared with 8% without disability.⁹

Although these statistics show a clear need for access to safe and effective mental and physical health services, the Bills have the potential to increase the stigma experienced by vulnerable people from health professionals, resulting in further deterioration of their mental health. This

² P Karp (2019) 'Religious discrimination bill attacked as 'extraordinary foray in the culture wars' *Guardian Australia* [accessed at <https://www.theguardian.com/world/2019/aug/30/religious-discrimination-bill-attacked-extraordinary-foray-culture-wars>]

³ National LGBTI Health Alliance (2016) *The Statistics at a Glance: the Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia*, retrieved from: <https://lgbtihealth.org.au/statistics/>

⁴ National LGBTI Health Alliance (2016). Ibid.

⁵ National LGBTI Health Alliance (2016) *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People*

⁶ Australian Institute of Health and Welfare (2018) *Mental health services – in brief 2018* [accessed at <https://www.aihw.gov.au/getmedia/0e102c2f-694b-4949-84fb-e5db1c941a58/aihw-hse-211.pdf.aspx?inline=true>]

⁷ Beyond Blue (2019) *Women* [accessed at <https://www.beyondblue.org.au/who-does-it-affect/women>]

⁸ Beyond Blue (2019) *Looking after your mental health while living with a disability* [accessed at <https://www.beyondblue.org.au/personal-best/pillar/in-focus/looking-after-your-mental-health-while-living-with-a-disability>]

⁹ Australian Institute of Health and Welfare (2019) *People with disability in Australia* [accessed at <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/health/health-status/mental-health>]



was discussed in several submissions made by a variety of organisations in response to the exposure drafts of the initial Bills.

The revised Bills undermine existing protections for human rights, including access to healthcare

The current exposure drafts of the revised Bills do not achieve appropriate protection for all parties as they privilege religious freedom rights over the human rights of others. Rather than protecting the beliefs of all religious Australians, the Bills create complicated legal situations which may privilege a majority religious belief over a minority religious belief, or belief held by non-religious persons.

Mental Health Australia condemns the privileging of certain faiths over others. Religious minorities already experience poor mental health outcomes, for example, religious discrimination against Muslims is associated with depression, anxiety, subclinical paranoia, and alcohol use.¹⁰ As it stands, the Bills do not provide sufficient protection for religious minorities and risk creating a situation where mainstream beliefs are privileged over minority religious views.

The Hon Susan Ryan AO, who was involved in drafting both the *Sex Discrimination Act 1984* and the *Affirmative Action (Equal Opportunities in Employment) Act 1986*, damned the Bills:

“A ‘right to discriminate’ would undermine all Commonwealth anti-discrimination laws and create disruption and conflict throughout Australia’s multicultural, multi-faith society ... There is no need for further anti-discrimination laws. Balancing conflicting rights is difficult but can be done – and is done satisfactorily under existing laws.”¹¹

In addition to marginalising Australians who hold a minority faith, the Bills have the potential to increase stigma and discrimination against other marginalised people who already experience disproportionate rates of mental illness. Mental Health Australia believes these potential detrimental impacts may include, but not limited to:

- LGBTIQ+ people seeking general healthcare, including mental healthcare,
- people with disability seeking general healthcare, including mental healthcare,
- people seeking access to contraception and other reproductive healthcare (including where an assault has occurred),
- people seeking access to sexual healthcare, including gender-affirming care, and
- people seeking access to help for substance abuse.

Conscientious objection provisions as they currently are written will inhibit access to healthcare

Like many organisations, Mental Health Australia raised issues with the wide, non-defined scope of “health practitioners” used in the original *Religious Discrimination Bill 2019*. While the revised Bill clarifies that conscientious objection provisions are only available to nurses, midwives, doctors, psychologists and pharmacists, Mental Health Australia remains concerned about the

¹⁰ Rippy AE and Newman E (2006) ‘Perceived Religious Discrimination and its Relationship to Anxiety and Paranoia Among Muslim Americans.’ *Journal of Muslim Mental Health* 2006; 1(1):5-20 in American Psychiatric Association (2019) *Mental Health Disparities: Muslim Americans* [accessed at <https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts>]

¹¹ K Pender (2019) ‘Examining the second draft of the religious bill’ *The Saturday Paper*, 21 December 2019 [accessed at <https://www.thesaturdaypaper.com.au/2019/12/21/examining-the-second-draft-religion-bill/15768468009270>]



potential for limiting access to healthcare and therefore recommends subsections 8(6) and 8(7) are removed from the *Religious Discrimination Bill 2019*.

Mental Health Australia remains significantly concerned about these subsections in the revised Bill as it lacks identification of specific treatments, medicines or procedures which can be refused under the conscientious objection provision. While medical professionals are currently able to refuse treatment, professional bodies ensure their members meet their professional obligations to treat their patients by providing referral to another service offering the treatment. These subsections confuse an established area of legal and professional practice, require wasteful and avoidable litigation (avoidable by not introducing this subsection).

Dr Chris Moy, chair of the Australian Medical Association's Ethics and Medico-Legal Committee, raised concerns about the inconsistency subsections 8(6) and 8(7) would create between professional standards and legal standards:

“If you have termination of pregnancy, and particularly in a rural area for example, a doctor is not allowed to impede care and should in fact facilitate the care of that patient because they need care. And so the problem was that we were going to end up with our professional standards which said, we needed to care for patients, but we have this really basal sort of legislation which says you could walk away and not have anything to do with it.”¹²

Subsections 8(6) and 8(7) of the *Religious Discrimination Bill 2019* create ambiguity around referral obligations to patients whose medical professionals refuse to treat on the basis of conscientious objection, which will likely have disastrous impacts on already vulnerable people. Note 2 under subsection 8(6) clarifies “this provision does not have the effect of allowing a health practitioner to decline to provide a particular kind of health service, or health services generally, to particular people or groups of people.” In laypersons terms, this means a doctor cannot conscientiously object to providing abortions *to single women*, nor could a pharmacist conscientiously object to providing pre-exposure prophylaxis (PrEP) *to gay men*.

In practice however, the new legislation would allow health practitioners to refuse to treat groups of people where the particular service they refuse to provide is sought by one group far more than any other. For example, this would be the case for PrEP, where the main consumers of this medication are men who have sex with men. The refusal to provide PrEP *to anyone* disproportionately impacts *gay men*, which consequently may have negative physical health effects such as increased risk of HIV transmission and poorer mental health outcomes.

In regional and remote areas where there are limited health providers, this creates a situation of inequality of access to healthcare where people refused treatment by their local general practitioner or pharmacist may not be able to travel to a nearby town to receive the care they require.

At a minimum, the revised *Religious Discrimination Bill 2019* must include a provision similar to that of state legislation which requires the practitioner to refer the patient to another practitioner if invoking conscientious objection provisions to refuse treatment.¹³ Preferably, Mental Health Australia recommends subsections 8(6) and 8(7) are removed from the *Religious Discrimination Bill 2019* and “conscientious objection” clauses remain out of federal legislation.

¹² C Moy (2019) Transcript: Chair of AMA Ethics and Medico-Legal Committee, Dr Chris Moy, ABC Radio Melbourne, Mornings with Virginia Trioli, Wednesday, 11 December 2019 – Subject: Religious Freedom Legislation [accessed at <https://ama.com.au/media/dr-chris-moy-religious-freedom-bill>]

¹³ See for example: *Abortion Law Reform Act 2008* (Vic), s 8; and *Termination of Pregnancy Act 2018* (Qld), s 8.



The ‘statement of belief’ clause may be used as protection for statements which cause harm and trauma

The Bills provide exemptions to the protections afforded to vulnerable Australians through discrimination laws.¹⁴ Experts have called for the striking of section 42 of the *Religious Discrimination Bill 2019*,¹⁵ expressing concerns about the scope of statements which may be allowed under this ‘statement of belief’ clause which could provide exemptions to statements which otherwise would be considered discriminatory. Accordingly, Mental Health Australia recommends section 42 is removed from the *Religious Discrimination Bill 2019*.

The Forum on Australia’s Islamic Relations’ Executive Director Mr Kuranda Seyit expressed concern for religious minorities, stating the clause “could potentially embolden far-right groups to ramp up their vitriol and continue their campaigns of hate.”¹⁶

The *Explanatory Notes* which accompany the second exposure draft give the example that under the revised Bills, “a statement made in good faith by a Christian of their religious belief that unrepentant sinners will go to hell may constitute a statement of belief.”¹⁷

“the proposed laws may protect a teacher, boss, support worker or shop-owner who might say:

*...women must submit to her husband or learn to stay silent.*¹⁸

*...disability is caused by turning your back on God, or can be healed by prayer.*¹⁹

*...mental health issues, addictions or eating disorders are the work of the devil.*²⁰

The Law Council of Australia’s president, Mr Arthur Moses SC, raised concern about the narrowing of protections available for vulnerable Australians.

“The concept of offend and insult in section 18C is not to be found in this legislation – so the test is much more difficult to establish in relation to provisions of the religious freedom bill than what is currently contained in the Racial Discrimination Act ... This is an area where we have said you need to be very careful because some comments that are made do have an impact on the most vulnerable members of our community.”²¹

These example statements which may be protected under the revised *Religious Discrimination Bill 2019* perpetuate stigmatic attitudes, self-stigma and spread of misinformation, which contribute to poorer mental health outcomes for members of marginalised communities. Accordingly, Mental Health Australia recommends section 42 is removed from the *Religious Discrimination Bill 2019*.

¹⁴ Australian Human Rights Commission (2019) *Religious Freedom Bills – Submission* [accessed at <https://www.humanrights.gov.au/our-work/legal/submission/religious-freedom-bills>]

¹⁵ Public Interest Advocacy Centre (2019) *‘Religious Freedom’ Bills – Submissions on Exposure Drafts* [accessed at <https://www.piac.asn.au/wp-content/uploads/2019/10/19.09.30-PIAC-Submission-Religious-Freedom-Bill-Final.pdf>]

¹⁶ K Pender (2019) ‘Examining the second draft of the religious bill’ *The Saturday Paper*, 21 December 2019 [accessed at <https://www.thesaturdaypaper.com.au/2019/12/21/examining-the-second-draft-religion-bill/15768468009270>]

¹⁷ Attorney-General’s Department (2019) *Second Exposure Draft of the Religious Discrimination Bill 2019 - Explanatory Notes* [accessed at <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/explanatory-notes-second-exposure-draft-religious-discrimination-bill-2019.pdf>]

¹⁸ Equality Australia (2019) *Religious Discrimination Bill 2019 – In Focus: Women* [accessed at <https://equalityaustralia.org.au/resources/women-factsheet/>]

¹⁹ Equality Australia (2019) *Religious Discrimination Bill 2019 – In Focus: Disability, Mental Health and Wellness* [accessed at <https://equalityaustralia.org.au/resources/disability-factsheet/>]

²⁰ Equality Australia (2019). Ibid.

²¹ P Karp (2019) ‘Religious discrimination bill could legalise race hate speech, Law Council warns’ *Guardian Australia* [accessed at <https://www.theguardian.com/law/2019/sep/04/religious-discrimination-bill-could-legalise-race-hate-speech-law-council-warns>]



The updated Religious Discrimination Bills may be unlawful

Stigmatising attitudes, especially when embedded in statute, cause harm to the whole population and to vulnerable people. The revised Bills go beyond protecting faith and belief and instead the Bills embed stigmatising attitudes and redact current protections.

Legal experts have voiced concerns about the expansive scope of “protection” offered to religious persons and institutions in the Bills, without measures to balance the views of extremists. The Hon Michael Kirby wrote to the *Australian Law Journal* to express his concern:

“The new laws will support extreme assertions of religious rights by religious minorities who want to go around condemning others, often based on previously obscure passages in religious texts that Faith communities or their zealots invoke to defend their ‘religious freedoms’ ... Passages of scripture can be found for just about every prejudice known to mankind.”²²

Australians are afforded inherent and inalienable rights in the first two articles of the *United Nations Declaration of Human Rights*, which state “All human beings are born free and equal in dignity and right” and “Human rights are indivisible and universal.” Mental Health Australia echoes the statement made in the Law Council of Australia’s submission to the first exposure draft:

“reforms to Australia’s anti-discrimination framework should preserve or enhance – rather than weaken – existing protections against discrimination and promote substantive equality. The available exceptions are narrow, and discriminatory statements which do not fall within their scope may nevertheless serve to reinforce stigma for people who are already marginalised in the community.”²³

In addition to weakening existing protections, multiple sections of the proposed Bills establish a hierarchy of rights, where people who are religious may make statements or complete actions under the Bills’ protections which infringe on the rights of others.

*“Overriding ... all other Australian discrimination laws is not warranted, sets a concerning precedent, and is inconsistent with the stated objects of the bill.”*²⁴

The updated Bills will likely have far-reaching, unintended negative impacts

The revised Bills as drafted may also hamper efforts to ensure there are appropriate services available to LGBTIQ+ people, women, and people with disability. Looking beyond diminished access to health services, the Bills will likely:

- lead to increased stigma, which will likely have a direct impact on the willingness of vulnerable people experiencing mental health difficulties to seek help,

²² M Kirby (2019) ‘A Letter from The Hon Michael Kirby AC CMG,’ *Australian Law Journal – Update Summaries*, 11 November 2019 [accessed at <http://sites.thomsonreuters.com.au/journals/2019/11/11/a-letter-from-the-hon-michael-kirby-ac-cmg/>]

²³ Law Council of Australia (2019) *Religious Freedom Bills* [accessed at <https://www.lawcouncil.asn.au/docs/05f00464-68e9-e911-9400-005056be13b5/3695%20-%20Religious%20Discrimination%20Bills.pdf>]

²⁴ Australian Human Rights Commission (2019) *Religious Freedom Bills – Submission* [accessed at <https://www.humanrights.gov.au/our-work/legal/submission/religious-freedom-bills>]



- increase the number of employees who hide aspects of their identify (and in turn, increase their psychological distress)²⁵ for fear of dismissal for not aligning with a religious employers' preferences, and
- increased mental ill health caused by extended litigation processes as religious discrimination issues will be arbitrated in federal tribunals (as this is federal legislation), rather than the current jurisdictional tribunals (as most existing anti-discrimination law is jurisdictional).

The proposed Bills should not become law

All Australians deserve access to appropriate healthcare, including mental healthcare and protection against harmful statements related to their identity. To protect these human rights, Mental Health Australia recommends the government does not proceed with its proposed Bills.

Should the government proceed with the Bills, it is critical that the revised Bills are again re-examined to ensure Australians' fundamental human right to access to healthcare is not compromised by legislation that preferences religious freedom over other human rights. At a minimum, sections 8(6), 8(7) and 42 must be removed from the Bill to achieve this. As they currently stand, the revised Bills do not protect these fundamental human rights. Worse, the revised Bills allow for increased discrimination against vulnerable Australians – the opposite of the purpose of anti-discrimination law.

Conclusion

No one should face any kind of discrimination. Any introductions or amendments to anti-discrimination laws should preserve or enhance currently protected attributes. Furthermore, any changes to anti-discrimination laws must not impinge on human rights.

Consequently, Mental Health Australia strongly recommends Government does not proceed with its proposed Bills. Should Government proceed with the Bills, it is critical the revised Bills are again re-examined and subsections 8(6), 8(7) and 41 are removed from the *Religious Discrimination Bill 2019*.

²⁵ Meyer I (2003) 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence,' *American Psychological Association Psychological Bulletin* 2003, 1:5(674-697).



Mental Health Australia



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