



National Secular Lobby
Advancing Australia's Secular Agenda

Submission on the Religious Discrimination Bill 2019 (Second Exposure Draft)

14 January 2020

Introduction

In examining the changes made to the Religious Discrimination Bill in its second exposure draft, the National Secular Lobby⁽¹⁾ finds this proposed legislation to be entirely ineffective in its stated aims.

As put forward in point 5 of the government's own explanatory notes for the second exposure draft:

All Australians, regardless of their religious belief or activity, should be able to participate fully in our society. All people are entitled not to be discriminated against on the basis of their religious belief or activities in public life, and are entitled to the equal and effective protection of the law.⁽²⁾

However, the second exposure draft fails to provide this protection. Indeed, the second exposure draft specifically enshrines into law the right for religious institutions and individuals to discriminate against others on the basis of their beliefs.

The changes made to the Bill in its second exposure draft only serve to increase the legal privilege granted to some parts of society over others, effectively allowing various groups to be refused employment and services due to their religion, destroying Australia's social cohesion and creating a form of religious apartheid in Australian society.

It is our view that as currently drafted, the Religious Discrimination Bill is a dangerous and unworkable piece of legislation which will create a raft of new religious discrimination problems in Australia where there were previously very few.

Any scope is problematic

A significant failing of the Bill is that while it defines religious belief (somewhat confusingly) as “holding a religious belief or not holding a religious belief”, it does not define which beliefs are covered by the legislation.

The Bill states it is intended to cover “major faith traditions”, “smaller and emerging faith traditions” and “Indigenous spirituality”, but religious belief takes a multitude of forms and defies simple definition, especially if a person holds views that are not in line with any mainstream religion.

Whether the Bill attempts to define a specific and limited scope of coverage, or whether it covers any and all forms of faith, its scope is problematic.

If only “mainstream” beliefs are covered, this results in an uneven application of the law as it does not cover all religious belief. Conversely, if the Bill covers any and all beliefs, extremists suddenly gain legitimacy and a greater right to act in line with their views. Indeed, what would prevent the formation of new religions specifically with the aim of granting followers the legal right to discriminate against those with whose views or lifestyles they disagreed?

Were the Bill only providing protection from discrimination, scoping would not be so problematic; it only becomes a danger when the legislation includes provisions for “positive discrimination” against others.

Expanded rights for religious institutions to discriminate

The second exposure draft includes provisions allowing religious hospitals, aged care facilities, accommodation providers (such as retirement homes) and public benevolent institutions (charitable service providers) to discriminate against staff on the basis of religion.

This is in addition to religious schools, which already have these rights.

The *Our Work Matters* report, released by the Australian Catholic Bishops Conference in November 2017, stated that the Catholic Church employs more than 220,000 people in Australia, making it the largest non-government employer in the country.⁽³⁾ As a result of this license to discriminate, the 77.4% of the population who are not Catholic⁽⁴⁾ may be excluded from employment in these 220,000 positions.

This, combined with the employment opportunities offered by institutions of other religions, means that those Australians with no religion (29.6% -- or 39.2% if those who did not declare a religion at the last Census are included)⁽⁴⁾ will potentially face significant discrimination in a search for employment, and Australia as a whole will

be in a position where one's choice of faith may be a more consequential factor than one's qualifications and experience when it comes to finding work.

Aside from this right to discriminate in employment, the second exposure draft sets a precedent in allowing discrimination in provision of services: the new draft creates a right for religious camps and conference centres to discriminate in to whom they rent their premises.

All of these provisions clearly go against statements made by Attorney-General Christian Porter and Prime Minister Scott Morrison at various times which assured that "the laws will protect people from being discriminated against, but will not give them a licence to discriminate against other people."⁽⁵⁾

In making religion a qualifying factor in employment and service provision, the Bill will destroy any notion of a "live and let live" view of religion in Australia, increasing religious intolerance and anti-religious hostility.

Rights for medical practitioners to refuse provision of services

Under the second exposure draft, a range of medical professionals (nurses, midwives, doctors, psychologists and pharmacists, removing dentists, occupational therapists, optometrists, physiotherapists and podiatrists) can "conscientiously object to providing a health service" (perform certain procedures or dispense certain drugs).

While no medical practitioner should be forced to provide a service, the Bill allows practitioners to ignore any professional or employer obligation to treat patients, provide information or refer patients on for treatment elsewhere.

This means that a person's access to healthcare will not only be influenced by the personal faith of their medical practitioners but also by the availability of alternate service providers. People in rural areas will be especially affected by this, as there will be fewer provider options available.

These provisions will make women particularly vulnerable as they are the people most likely to require the types of medications and services that will more typically be the subject of conscientious refusal, such as birth control options, 'morning after' emergency contraception, and medical or surgical abortion.

Dr Harry Nespolon, President of the Royal Australian College of General Practitioners, stated that "GPs cannot allow [conscientious] objection to impede access to legally available treatments."⁽⁶⁾ This is precisely what the Bill will do.

Summary

In our view, the Religious Discrimination Bill's second exposure draft is even more problematic than the first.

It vastly oversteps its mark in permitting "positive discrimination", and does so in ways which will be impossible to fairly and reasonably legislate, and which will be open to challenge.

It will result in a form of religious apartheid in Australia in which personal faith becomes a deciding factor in who can be employed for a position and who can access healthcare. It enshrines into law the right for religious institutions and individuals to discriminate and will divide society down religious lines.

We submit that any bill seeking to positively discriminate in this way is unworkable, unwarranted, dangerous and should be scrapped.

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Footnotes

- (1) The National Secular Lobby: <https://www.nationalsecularlobby.org/>
- (2) *Second Exposure Draft of the Religious Discrimination Bill 2019: Explanatory Notes*
<https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills-second-draft/explanatory-notes-second-exposure-draft-religious-discrimination-bill-2019.pdf>
- (3) *Our Work Matters: Catholic Church employers and employees in Australia*, Robert Dixon, Jane McMahon, Stephen Reid, George Keryk and Annemarie Atapattu, November 2017.
<https://ncpr.catholic.org.au/wp-content/uploads/2018/03/Our-Work-Matters.pdf>
- (4) *2016 Census*, Australian Bureau of Statistics, 2016.
https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/036
- (5) *Coalition stops short of 'licence to discriminate' in religious freedom bill*, Sarah Martin and Naaman Zhou, The Guardian, 20 August 2019.
<https://www.theguardian.com/australia-news/2019/aug/20/coalition-stops-short-of-licence-to-discriminate-in-religious-freedom-bill>
- (6) *Doctors can object to procedures, not specific patients, under revised religious discrimination bill*, Doug Hendrie, newsGP, 12 December 2019.
<https://www1.racgp.org.au/newsgp/professional/doctors-can-object-to-procedures-not-specific-pati>