



DiversityACT
COMMUNITY SERVICES

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Religious Discrimination Submission – Diversity ACT Community Services

Diversity ACT Community Services

Diversity ACT Community Services (Diversity ACT) is a community based registered charity, run by volunteers that provides a service hub, social worker, support networks, groups and community resources to assist the LGBTIQ+ community of the ACT Region. We welcome this opportunity to contribute to the Religious Discrimination Bill 2019.

Background (The Westar Institute¹ and Uniting Network²).

The New Testament of the Christian Bible does not contain an explicit reference to homosexuality. There is no word nor phrase in the New Testament that should be translated into English as “homosexual” or “homosexuality.” The paucity of references to homosexuality in the New Testament suggests that it was not a matter of major concern either for Jesus or for the early Christian movement.

The Religious Discrimination Bill 2019 appears to be based on the Old Testament of the Christian Bible which has limited applicability in the modern era where humans strive for tolerance of species variation.

The recent, ongoing bushfires show the decency and humanity of the average Australia. The heart of the nation is on show and it points to an inclusive, giving, informed and caring Australia. This legislation is aimed at pleasing a tiny minority of Australians, who take their values from Old Testament settings, who appear to struggle with change and difference, who seem to need to exercise some level of unwanted and unwarranted control over the actions of others and place value on their personal judgment above the dignity of difference.

¹ <https://www.westarinstitute.org/resources/the-fourth-r/what-the-new-testament-says-about-homosexuality/>

² <https://www.unitingnetworkaustralia.org.au/wp-content/uploads/2019/06/02-Human-Sexuality-in-Biblical-Perspectives.pdf>

Focus of the Proposed Legislation

Diversity ACT considers that any provisions for religious freedom or protection from discrimination should be driven by an overriding focus on enabling and maintaining a society which encourages mutual respect and is free from discrimination for everyone. There should be no winners and losers when it comes to the protection of human rights in Australia.

We view the right to religious freedom as an important element in the protection of all human rights by law nationally. As a result, the position of Diversity ACT is that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.

There are elements of the second Exposure Draft that we support. Overall, we believe that under the legislation, Australians (including LGBTIQ+ Australians) will be able to continue to freely practice their religion.

However, Diversity ACT is concerned that this legislation adds to the complex patchwork of anti-discrimination laws already in place but does not adequately achieve the balance between competing rights. We are concerned that the second Exposure Draft leans too heavily in favour of religious freedom over other rights. We believe that the second Exposure Draft has in fact worsened this situation over that created by the first draft. As such, Diversity ACT is deeply concerned that the protections afforded to the most vulnerable members of our society are at risk of being diminished by this legislation.

We are concerned that this legislation may result in unnecessary cost to the average tax-payer through possible duplication of existing legislation, regulation and spurious law suits.

Coverage of the Legislation

The LGBTIQ+ community has members of many different faiths and spiritualities, and we are concerned to ensure that any legislated religious freedoms are not simply the prerogative of the followers of major faiths. We note that there is only one mention of Indigenous spirituality in the draft legislation and the Explanatory Notes. This is in stark contrast to the 57 references to the Abrahamic faiths.

Timing, process and due consultation

Diversity ACT notes that the consultation period for the second draft is in the vicinity of six weeks in length. Further, we note that the consultation period for the second draft includes the Christmas/New Year period.

We believe that this period and scope for submissions and consultations is too short and attempts to rush this through will result in substandard legislation for Australians more widely. This is compounded by having the submission period across Christmas and New Year. The optics of this timeframe are extremely poor; the likelihood of a reduced number of submissions from minority groups and organisation such as ours seems high. The decision to open submissions across the December-January period has potentially excluded minority groups and communities who are concerned that they might feel the brunt of these proposed legislative changes

We ask that the timeframe for submissions on the second draft be extended, and that adequate time and consultation be given to ensuring that all groups in society that are likely to be impacted by this legislation are adequately consulted.

Hereafter we wish to raise areas of concern that we have with the second Exposure Draft Legislation. We will address these concerns by addressing examples from the Explanatory Memo (EM), other stakeholders and our members about what people would be allowed to say or do if the bill passes.

Statements of Religious Belief which seek to divide average Australians

Protection received: statements of religious belief will not be found to breach other federal, state and territory discrimination laws.

Examples:

- A Christian may say that unrepentant sinners will go to hell, an example cited in the EM which mirrors the facts of Israel Folau's case
- A doctor may tell a transgender patient of their religious belief that God made men and women in his image and that gender is therefore binary (EM)
- A single mother who, when dropping her child off at daycare, may be told by a worker that she is sinful for denying her child a father (Public Interest Advocacy Centre, (PIAC))
- A woman may be told by a manager outside work that women should submit to their husbands or that women should not be employed outside the home (PIAC)
- A student with disability may be told by a teacher their disability is a trial imposed by God (PIAC, Diversity ACT member)
- A person of a minority faith may be told by a retail assistant from another religion that they are a "heathen destined for eternal damnation" (PIAC).

Medical Services

Protection received: unless it is against the law to refuse treatment, health practitioners are allowed to conscientiously object to providing a health service and no professional rules can override that right.

Examples:

- A Catholic doctor refusing to provide contraception to all patients (EM) or to prescribe hormone treatment for gender transition (Equality Australia, Just Equal, LGBTI Health Alliance, Diversity ACT members)
- A Catholic nurse who refused to participate in abortion procedures (EM) or to provide the morning-after pill to a woman admitted to hospital after a sexual assault (Equality Australia)
- A pharmacist refusing to provide the pill to women for contraceptive use (EM), or hormone treatment (Public Interest Advocacy Centre, LGBTI Health Alliance)
- A doctor could refuse to prescribe post-exposure prophylaxis (PEP) within the required 72-hour window to a patient whose condom broke during a sexual encounter on the basis of religious beliefs that forbid sexual activity outside of marriage (Equality Australia, Diversity ACT members)
- A psychiatrist could say to a woman with depression that “she should be looking forward to the kingdom of heaven”. Under the proposed laws, the psychiatrist could challenge their deregistration as religious discrimination, while the patient could have her disability discrimination complaint refused (Equality Australia)
- A law passed by a state parliament that banned the promotion of programs that seek to “convert” LGBTIQ people could be overridden by the federal attorney general as an infringement on “statements of belief” (Just Equal).

Schooling

- A Jewish school may require that its staff and students be Jewish and accordingly refuse to hire or admit someone because they were not Jewish (EM)
- A student attends the same religious school through their primary and secondary education. At 16 they lose faith in the religion of the school and tell a teacher that they are now agnostic. The school would be able to expel, suspend or otherwise punish, for example, give detention to the student (PIAC).
- A student attends the same religious school through their primary and secondary education. At 16 they come out as a member of the LBTIQ+ community. The school would be able to expel, suspend or otherwise punish the student (Diversity ACT members).

In most of these examples, the issue of the abuse of power is our major concern, specifically in the preferencing of the religious rights of one group (often with power over others) over the human rights of another group (usually with less power). Professionals hold the power in many of the examples provided, and

the people on the receiving end of these statements have little or no agency in the situations. The social and emotional damage done to vulnerable people by statements and actions such as those included in these examples has the potential to inflate the already disproportionate rates of anxiety, depression and suicidal ideation among these at risk populations³. In some instances, such as the refusal to supply the morning after pill or post-exposure prophylaxis (PEP), the general health and economic flow on effects could be dramatic. While Australia recently recorded the lowest rates of HIV infection in 18 years⁴, empowering medical practitioners to deny PEP treatment on the grounds of religious belief could put such gains at risk.

Australian Human Rights Commission Funding

If the proposed legislation comes into being, Diversity ACT would expect to see the Federal Government providing an appropriate increase in funding to the Australian Human Rights Commission, adequately meeting the costs associated with the new commissioner and the expanded brief.

Conclusion

In conclusion, Diversity ACT is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant on Civil and Political Rights⁵. Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination.

Diversity ACT remains concerned that the second Exposure Draft Religious Discrimination Bill 2019 does not yet achieve that balance and that vulnerable people in particular are likely to be adversely impacted should it be implemented in its current form.

As this discrimination bill is further developed Diversity ACT would welcome being consulted further.



³ The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia <https://lgbtihealth.org.au/statistics/>

⁴ <https://www.abc.net.au/news/health/2019-07-03/hiv-rates-in-australia-hit-18-year-low/11271662>

⁵ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

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