

# FAIR

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# AGENDA

**Submission on the  
Religious Discrimination Bill  
Second Exposure Draft  
January 2020**

## About Fair Agenda

Fair Agenda is a community of more than 37,000 Australians campaigning for a fair and equal future for women.

We are an independent not-for-profit organisation that is made up of Australians from all walks of life, who come together to take action on issues affecting women.

We're working for a future in which all women can live safely, with economic security, and agency over our lives and bodies. We know that the only way to achieve that is if we change the structures and systems that disadvantage women.

Further information about our work is available at [www.fairagenda.org](http://www.fairagenda.org)

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## Executive Summary

As an organisation dedicated to achieving fairness and equality for women, Fair Agenda supports protection from discrimination.

We are aware that many women of faith, particularly women of colour, require protection from prejudice and discrimination based on their religion. We support an approach that provides all people with equal protection, whether or not they have a faith background.

However Fair Agenda are extremely concerned that the proposed *Religious Discrimination Bill* does not do that – and would instead privilege the religious beliefs of some people of faith above the rights of other Australians to be protected from harm.

Fair Agenda recommends the following specific changes be made to the *Religious Discrimination Bill*:

1. delete clauses 8(6) and (7) and 32(7) from the Bill
2. Include a provision in the Bill that provides that the obligation to refer in cases of conscientious objection is reasonable.
3. Revise definition of 'religious body' in clause 11(5) to expressly exclude bodies receiving government funding for service delivery
4. remove clauses 32(8)-(11) and 33(2)-(5) from the Bill
5. delete clause 42 and the related definition of 'statement of belief' in clause 5
6. delete clauses 8(3) - 8(5), and related clauses 8(2)(d) and (e) and 32(6)
7. revise clause 9 to only protect associates who are natural persons, such as spouses, housemates, relatives, carers or other individuals in a business, sporting or recreational relationship with the aggrieved individual
8. consult carefully with religious groups, and particularly minority religious groups that have been disproportionately targeted by hate speech, and introduce laws to prohibit vilification on the grounds of religious belief or activity

## I. Access to healthcare

The proposed Bill would allow doctors, nurses, midwives, psychologists and pharmacists to prioritise their religious beliefs over their patient's health needs.

The Bill would mean that prospective employers would be unable to ask any prospective employees whether any religious objections will make them unable or unwilling to do the job; and make it harder for health sector employers and professional bodies to prevent obstruction of treatment on religious grounds.

Fair Agenda are very concerned that this would mean that women and other community members will find it harder to access non-judgement healthcare – particularly in the areas of sexual health, family planning, fertility, mental health and transgender health services. We envisage that the Bill will particularly impact access to: contraceptives, the morning-after pill, fertility treatment and abortion care. As well as access to procedures such as voluntary assisted dying, pre- and post-exposure prophylaxis, and medical treatment for intersex or transgender patients.

Across Australia, the obligations of health practitioners are set out in health professional conduct rules, legislation and in the policies of different health providers. In addition, in each state and territory, there are some laws that accept the freedom of certain health practitioners to hold a conscientious objection - but only in relation to certain procedures, such as abortion or assisted dying.

Some such laws, such as abortion laws in Victoria, Queensland, and NSW, impose a clear duty to disclose the conscientious objection and to provide certain information to patients. Others are silent on those duties. In the case of other reproductive healthcare issues, such as contraception, there are no laws regulating conscientious objection.

Given that, Fair Agenda are very concerned that under the proposed provisions, an individualised assessment of the impact of enforcing the rule on the particular health service and on the health of the patient would be required to determine whether or not a health service can require its staff to comply with an obligation.

We worry that such an approach would create uncertainty in relation to the enforcement of rules and policies that require disclosure of a conscientious objection and referral for unbiased advice. And that this would obstruct many patients' access to safe and timely healthcare.

Fair Agenda is also extremely concerned that the Bill fails to: provide frontline health professionals with a professional obligation to provide appropriate care in emergencies, to minimise disruption to patient care in a timely manner, and not to obstruct or deny their patient's access to lawful healthcare.

## The impact of healthcare obstruction

When a patient encounters a health practitioner with a conscientious objection that obstructs their access to care, it can have serious ramifications for their physical, mental, financial and social circumstances.

By enabling an increase in barriers to healthcare access, we expect that the Bill will particularly impact:

- Women in rural and remote communities - whose healthcare options are already limited,
- Those who already face barriers and difficulties in accessing healthcare – including:
  - Women trying to escape abusive relationships who might be dealing with the control, surveillance and financial abuse of a partner,
  - Those for whom English is not their primary language; and
  - Women with disabilities,
- Those whose healthcare needs are most likely to be impacted by religious views, including: single women and mothers, women with disabilities, and members of the LGBTIQ+ community.

We note that there is significant evidence that the personal beliefs of some health practitioners are already being used to increase barriers to some women's healthcare access.

Case studies collected by *1800 My Options* indicate that there are already issues with some doctors obstructing patient access to reproductive healthcare (particularly abortion care).

*1800 My Options* is a Victorian based service that provides information about contraception, pregnancy options and sexual health. It is operated by Women's Health Victoria and funded by the Victorian State Government. According to *1800 My Options*, whilst many health professionals are working to improve access to abortion and contraception (over 300+ services have registered on their database), they do receive reports by service users of obstruction to abortion care access by doctors, including these recent examples:

- A woman in rural Victoria whose GP told her they would not assist her with abortion care, and would not refer her on to another practitioner who would provide. The woman was then scared to approach another local GP, in case of similar treatment. She could only find services 4+ hours away when using Google.
- A woman seeking medical termination of pregnancy early in pregnancy was told by her GP that they do not provide these services. The GP said that the only services available are private, and that they cost several thousands of dollars, even though this is not the case. The GP did not provide referral for termination of pregnancy.
- A rural GP told a woman they would not assist her with termination of pregnancy outside of ordering pathology and ultrasound, but ordered inappropriate tests that caused delays in accessing services. The woman was then scared to approach another local GP, in case of similar treatment.
- A metro GP who said "we only help women who keep their babies", then showed the patient the door.

This service has noted that women living in small rural communities already have less access to sexual and reproductive health services, with many of them having one or in some cases no providers in their local area.

Further, a 2019 report from BMC Medical Ethics has also shown some doctors purposely delaying women to make accessing abortion more difficult.<sup>1</sup> As evidenced in these quotes:

*“I’d say it would be very common for me... that I would hear stories of – I don’t know whether it would be one in 20... of women who struggled, who went to their GP first to find out where they could go, and where the GP clearly didn’t agree... definitely was trying to get them to change their mind... to deter them or delay them.”*

*“We still get some patients coming in and saying ‘oh gee, I went to my doctor and he was not too helpful, and sent me on the run-around waiting for this ultrasound, and then come back and see me a week later and on and on’ we still get that.”*

The same Victorian report identified that in some rural areas, refusal to refer patients on when seeking abortion care is “common practice”.<sup>2</sup>

These barriers to healthcare access need to be reduced, not increased.

Fair Agenda are extremely concerned that the Religious Discrimination Bill will impact many women’s wellbeing by enabling further instances of obstruction of reproductive healthcare access.

#### Impact on women affected by family violence

The accessibility of reproductive healthcare such as contraceptives, emergency contraceptive and abortion care can be particularly important in circumstances of family violence.

Financial abuse by the perpetrator of violence can prevent a woman from being able to get to, or afford to see, a doctor easily or quickly. A perpetrator may obstruct a woman’s access to healthcare, prevent her from attending an appointment by herself, and/or use physical and online surveillance to make her feel unable to get to a doctor or clinic without his knowledge, or further violence. For women experiencing this abuse, the harm of a frontline healthcare professional obstructing their access to the care they need will be compounded and may not be overcome.

It is vital that no further barriers to healthcare access are put in the way of those experiencing abuse and violence.

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<sup>1</sup> Louise Anne Keogh et al, “Conscientious objection to abortion, the law and its implementation in Victoria, Australia: perspective of abortion service providers”, *BMC Medical* (31 January 2019).

<sup>2</sup> Louise Anne Keogh et al, “Conscientious objection to abortion, the law and its implementation in Victoria, Australia: perspective of abortion service providers”, *BMC Medical* (31 January 2019).

## A better approach to conscientious objection

It is critical that health professionals have a duty to disclose any conscientious objection (preferably in advance of any appointment) and to refer patients to another health professional who can provide unbiased advice and care.

This is an approach that has broad community support. Recently, polling commissioned by Fair Agenda and the NSW Pro-Choice Alliance in New South Wales showed that 85% of respondents in the state agreed that a patient should be provided with information about where they can receive unbiased advice and care about abortion, regardless of their doctor's moral beliefs on the matter.<sup>3</sup>

We are deeply concerned that the proposed provisions would not only fail to advance this practice but would actively undermine it.

We strongly oppose the proposed clauses relating to conscientious objection, on the basis that they prioritise the religious beliefs of a health practitioner over the needs of their patients. Any legislative provisions for a health practitioner's conscientious objection should not infringe upon a patient's right to access or receive unbiased advice about a health service.

### Hypothetical scenario:

*Joan needs to access the morning after pill to prevent a crisis pregnancy, after her partner's condom breaks. She knows the local pharmacist doesn't stock it, so she books in for the next available appointment at the one local health clinic, late that afternoon.*

*Under the Bill the GP could tell her that he believes that "life begins at conception" and that he "will not provide her with medication that would kill her baby".*

*As a result, Joan can't take the morning after pill in the first 24 hours. It is the first time she has needed the morning after pill and doesn't know where else she can get it. She doesn't know (nor does the doctor tell her) that she can still take the morning after pill after 24 hours (though it will have reduced efficacy).*

*As a result of that interaction Joan gives up, and when she later finds out she is pregnant, has to pay for a termination.*

*The Bill could take away Joan's discrimination protections in order to protect the doctor's statements of belief and strengthen the hand of the doctor in any complaint Joan might make to a health complaints body about her treatment.*

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<sup>3</sup> The survey involved 1,018 respondents across NSW, was undertaken by ORU released by Fair Agenda and the NSW Pro-Choice Alliance on 7 September 2019.

Hypothetical scenario:

*Jill urgently needs the morning after pill. That day she has a long shift at her retail job and her boss has said she can't take the time she needs to go to the chemist because they're too busy. So Jill heads down to the local pharmacy at the end of her shift, thirty minutes before it closes.*

*The one pharmacist on duty tells Jill that he objects to providing emergency contraception and will not provide her with the tablet. He has not put up a sign indicating his religious objection, so Jill had no way of knowing she couldn't get the help she needed.*

*There is no other pharmacy in town, and the one in the next town doesn't open until tomorrow morning. At that point, she will be outside the 24 hour window at which the medicine is most effective, and face a greater risk of a crisis pregnancy.*

*Under the Bill this pharmacist would have greater protections if he refused Jill treatment contrary to his employer's policies or professional standards.*

**Recommendation: Subsections 8(6)-(7) and 32(7) should be removed.**

**Recommendation: A provision should be included providing that the obligation to refer in cases of conscientious objection is reasonable.**

## **II. Consequences for harmful conduct**

Fair Agenda are also concerned that proposed provisions relating to 'statements of belief' will give a license for people of faith to make a wide range of potentially harmful and offensive statements. This in turn could contribute to hostile, unsafe and non-inclusive workplaces, schools and other public spaces.

The Bill will make it difficult for employers to protect their staff and clients, even if they try to put in place policies to ensure equality. We are extremely concerned that the provisions relating to 'statements of belief' will open avenues for attacks on women, people with disabilities, LGBTIQ+ people and members of minority faith communities, and undermine protections that allow us all to work and study together with equal dignity.

Fair Agenda believe that all women should be entitled to undertake their employment, access goods and services, and engage in other designated aspects of public life, without unfavourable treatment because of who they are. No religious belief should override the right of another person to work and study with dignity.

Hypothetical scenario:

*Jane works in a large ASX company. At the end of the work day, Jane gets changed into her exercise gear to cycle home. She is wearing bike shorts and an exercise shirt.*



*As she rides her bike down the street from her work, she crosses paths with another employee, Joe, who tells her she is "committing a sin of indecency and women should dress modestly". Joe is the HR representative, and the representative for instances of sexual harassment.*

*If Jane complains about his behaviour, Joe's statements of belief could be privileged over Jane's anti-discrimination protections, and enforcing HR policies which prohibit this kind of conduct could amount to unlawful religious discrimination against Joe if he is successful in arguing that the conduct occurred outside the course of his employment.*

We are also concerned that the Bill will hamper the ability of professional bodies to respond appropriately if professionals make statements based on religion or about religion outside of work contexts which erode public trust in their profession.

For example, we note that health professionals are often a first point of contact for women seeking support to escape domestic violence. The proposed provisions preventing qualifying bodies from imposing rules restricting or preventing 'statements of belief' other than in the course of their profession - could lead to an increase in conduct that might deter many women from feeling it is a safe and supportive place to seek assistance or disclose the violence they are experiencing.

**Recommendation: delete clause 42 and the related definition of 'statement of belief' in clause 5. Delete clauses 8(3) - 8(5), and related clauses 8(2)(d) and (e) and 32(6)**

### **III. Religion of two test**

Fair Agenda is deeply concerned by the proposed new 'religion of two' test.

This test would allow a broad range of religious institutions, including schools and charities, to discriminate against those with different or no religious beliefs by defining religion at an extremely individualised and subjective level.

The Bill lowers the bar on what is considered a religious doctrine, tenet, belief or teaching, providing special protection to much more extreme and unorthodox beliefs. Requiring just two people to establish that a religious requirement exists and deserves protection is unacceptable; and is likely to legitimise conduct based on extreme interpretations of religious texts, beliefs or practices.

In practice, this would make it near impossible for a person who has been harmed to argue that conduct of a religious body is not in accordance with the doctrines, tenets or beliefs of the religion.

**Recommendation: Redraft all provisions which contain the ‘it just takes two’ test. If people are to be afforded protection for whatever religious doctrines, tenets, beliefs or teachings they believe in, the Bill must ensure that no conduct is protected, authorised or permitted where it is contrary to public safety, order, health or morals or the fundamental rights and freedoms of others.**

## **IV. Service discrimination**

Proposed clauses 32(8)-(11) would allow for religious hospitals, aged care facilities and accommodation providers to discriminate in employment and partnerships on the basis of the “religion of two test” and the religious susceptibilities test (including by giving preference to staff of the same religion).

Fair Agenda are concerned that the Bill may allow providers of government funded services – including homelessness and domestic violence services - to discriminate against individuals with different or no religious beliefs in receipt of those services.

### Impact on women affected by family violence

Fair Agenda are particularly concerned that provisions in section 11 (to enable religious bodies to act in accordance with their faith), could enable many providers of services that interact with women experiencing violence to discriminate in the provision of services.

Charities and other religious organisations play an important role in providing services to vulnerable members of the community, including women seeking safety from abusive partners.

It is not appropriate for any body funded by Government to deliver such important services to be granted the power to discriminate on religious grounds in providing services and employment. Public money should not fund discrimination.

**Recommendation: remove clauses 32(8)-(11) and 33(2)-(5) from the Bill.**

**Recommendation: Revise definition of ‘religious body’ in clause 11(5) to expressly exclude bodies receiving government funding for service delivery**

## **V. Right to sue**

Fair Agenda are extremely concerned that the Bill would expressly empower corporations to sue providers of goods, services, facilities, accommodation, clubs and sporting bodies based on their association with religious individuals.

Fair Agenda opposes the inclusion of provisions that will provide corporations with the right to sue goods, services, facilities and accommodation providers who deny them things based on their association with religious individuals, as these provisions will silence the ability of ordinary Australians to boycott in protest, or to conduct business in line with their values.

Hypothetical scenario:

*An incorporated religious organisation is organising a conference featuring a controversial spokesperson who has said:*

*“To abort an unborn child conceived by rape is to respond to violence against one innocent victim with violence against another. Rape is a great injustice to the woman, but an even greater injustice is done by killing her child...*

*An innocent [incest] victim’s pregnancy gives her the first real chance of overcoming family denial; abortion could remove her proof of abuse.”*

*A local conference facility owner approached to host the event is a survivor of incest and rape, and does not want to host the conference, because she doesn’t want provide a platform for that speaker and his harmful views.*

*The organisation behind the conference could sue the conference centre owner for denying them a platform to promote those harmful views, under the Bill.*

**Recommendation: Clause 9 should be revised to only protect associates who are natural persons.**

**Recommendation: If associates of individuals with religious beliefs (who are natural persons) are to be afforded protection in this Bill, the same protection should be extended to other federal anti-discrimination laws, including the *Sex Discrimination Act 1984* and *Age Discrimination Act 2004*.**

## **VI. Protect against religious vilification**

Legislation that seeks to prevent discrimination on the basis of religion should also protect against the vilification experienced by many members of minority faith communities.

Religious vilification and hate crimes are a real threat to members of minority faith communities, and the women within them. For example, recent analysis of hate crimes showed Muslim women and girls were the most common targets of nearly 350 Islamophobic incidents reported over a two-year period, with abuse starting from as early as preschool.<sup>4</sup>

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<sup>4</sup> See Derya Iner (ed), *Islamophobia in Australia Report II (2017-2018)*, Charles Sturt University and ISRA (2019) (available here: <http://www.islamophobia.com.au/wp-content/uploads/2019/12/Islamophobia-Report-2019-2.pdf>).

Yet there are very limited federal protections from vilification on the basis of religion or belief and state and territory laws provide differing levels of protection. The Bill fails to address those gaps.

We share the concerns noted by Democracy in Colour in their submission regarding the first Exposure Draft of this legislation, that when religious vilification is allowed to go unchecked and becomes normalised, it lays the groundwork for more violent attacks against minority communities.

Reform in this area should ensure that members of religious groups, particularly minority faith groups that are disproportionately targeted by hate speech, are protected.

**Recommendation: The Australian Government should consult carefully with religious groups, and particularly minority religious groups that have been disproportionately targeted by hate speech, and introduce laws to prohibit vilification on the grounds of religious belief or activity.**