



Dr Ann Webster MP

Chair

Parliamentary Joint Committee on Human Rights

Dear Dr Webster

Thank you for the opportunity to contribute to the Committee's work and to respond to the Package of Bills.

Background

Women's Electoral Lobby, established in 1972, is a volunteer, member driven, independent, non-party political lobby group dedicated to creating a society where women's participation and their ability to fulfil their potential are unrestricted, acknowledged and respected and where women and men share equally in society's responsibilities and rewards.

WEL applies a feminist approach to all its work, from policy analysis and development to campaigning. WEL has developed a Feminist Policy Framework, which sets out the values which we use to measure fairness for women and fairness for society. WEL believes that good policies should address these indicators and work with governments at all levels to achieve better and fairer policy outcomes.

WEL believes that fair policies are those that:

1. Ensure the benefits and outcomes are fairly distributed between women and men, as well across different groups of women,
2. Value and reward fairly people's different skills, experiences and contributions,
3. Recognise the value of caring and supporting roles, whether paid or unpaid,
4. Recognise and rectify past and current inequalities between men and women, and
5. Enhance opportunities for women and men to take on equal rights and responsibilities in all aspects of society: politics, community, employment and social life.

In the light of our analysis of the Bill and its impacts on women our overarching recommendation is that Government should not proceed with the Religious Discrimination Bill 2021 or its associated Bills. The Legislative Package, as it is currently drafted, has serious negative implications for inclusive workplaces, schools and access to services like health care.

Yours sincerely,

Mary O'Sullivan Convenor Women's Electoral Lobby NSW (0419444889)
maryosullivan@bigpond.com

Jozefa Sobski Convenor WEL Australia (0403895929).
jsobski@ozemail.com.au



Summary of WEL recommendations

1. The inquiry process to be extended, and the Bill substantially revised with meaningful consultation undertaken to inform the development of the Bill, particularly with vulnerable and marginalised groups that will be affected by the Legislative Package and expert community and legal representatives.
2. Section 9 allowing religious hospitals, aged care facilities, accommodation providers and disability service providers to discriminate in employment should be removed.
3. Religious affiliated charities which give preference in employment on the basis of religious belief should not be eligible to tender for delivery of Government services in health, aged care, crisis accommodation for domestic violence victims or disability services.
4. In the event that section 9 is retained, that the sections of the Clause 9 be strengthened along the lines of the related sections in Clause 11 (b) which provides that a religious educational institution may only preference people in employment when such conduct is: in accordance with a written policy that meets the following requirements:
 - I. outlines the religious body's position in relation to particular religious beliefs or activities;
 - II. explains how the position in subparagraph i) is or will be enforced by the religious body;
 - III. specifies how the preferential employment policies and practices employed by the religious body affect the services it provides for example reproductive health services, counselling services, protections and support for people with a disability, LGBTI people and others.
 - IV. is publicly available, including at the time employment opportunities with the religious body become available.
5. The Religious Discrimination Bill should be redrafted to remove provisions that protect 'statements of belief'. Specifically, section 12 of the Religious Discrimination Bill (and associated definitions) should be deleted.
6. The Religious Discrimination Bill should be redrafted to remove provisions that hinder the work of regulatory bodies. Specifically, section 15 of the Religious Discrimination Bill (and associated definitions) should be deleted.

Overarching recommendation

7. The Government not to proceed with the Religious Discrimination Bill 2021 or its associated Bills. The Legislative Package, as it is currently drafted, has serious negative implications for inclusive workplaces, schools and access to services like health care.

The basis of this advice

WEL does not provide technical legal advice or analysis as a matter of course. Where our advocacy requires a specialist legal perspective, we try to work with feminist and expert allies. In this case the submission from Equality Australia has informed a number of our observations on legal aspects of the Bill. We have also shared advice on medical and education Issues with Family Planning NSW. We have endorsed the submission to the Inquiry from the Equality Rights Alliance as a member of the Alliance.

WEL believes that the provisions and implications of legislation should be as clear as possible and broadly accessible to citizens without specialist legal training.

The Bill and the explanatory notes are complex, hedged with caveats and unprecedented provisions with unknown consequences that will ultimately depend on interpretation in the courts.

The conceptual underpinning of the Bill depends on amorphous and contentious definitions of religious belief and statements of belief. There are serious uncertainties about the implications of clauses which override other discrimination laws at the Federal and state level.

As a member of the Equality Rights Alliance WEL shares the grave concerns outlined in their submission about the Bill's compatibility with Australia's obligations under the *Convention on the Elimination of Discrimination against Women (CEDAW)*. We will discuss this further in our commentary on Clause 12 of the Bill.

Clarity and accessibility is especially important for anti-discrimination legislation.

People seeking justice as victims of discrimination are often vulnerable and with limited legal and financial resources. This is particularly the case with women from diverse language and cultural backgrounds, Aboriginal women, women with disabilities and LGBTI people.

In this regard we are particularly concerned that the Bills will give unprecedented powers to religious affiliated charities to protect themselves against employees or even volunteers on the basis of a codification of religious belief which may be publicly notified but will be exclusionary.

We are particularly concerned that where a complaint relates to a State anti-discrimination protection that the Federal Religious Discrimination Act overrides, the complainant will have to take their case to through the state and Federal court system.



This expensive and time consuming process will mean that very few recipients of offensive, disturbing or humiliating statements made under the cover of religious belief will pursue complaints.

In this regard we ask the Committee to respond to comments in the submission from Constitutional scholar, Professor George Williams:

The legislation is also full of shades of grey, unclear terms and doubts as to its scope.... In the absence of Parliament providing greater clarity, fundamental issues will be left to the courts to resolve. Too often, basic questions of religious freedom will be left mired in expensive litigation.

The text of the Bill appears to have been negotiated with religious leaders – many of whom are embedded in the patriarchal hierarchies of traditional religions.

There is considerable variation and contestation on issues of gender and authority within many large faith communities, but the Bill does not reflect these people's input - rather its effect could be to give greater top down doctrinally based control to the heads of denominations and faith communities with which many charities are affiliated. We discuss this further in our comments on Section 9.

Recommendation 1

The inquiry process to be extended, and the Bill substantially revised with meaningful consultation undertaken to inform the development of the Bill, particularly with vulnerable and marginalised groups that will be affected by the Legislative Package, and expert community and legal representatives.

The need for religious discrimination protections

WEL supports stronger protections for religious belief and manifestations. Legislation designed on the model of other discrimination legislation and which recognises intersectionality, would especially benefit Muslim women who are most subject to discrimination because of their dress. There appears to be no quantitative data on other religious groups suffering anything like the same level of discrimination.

We cannot support the protections in this Bill which privilege religious belief, speech and religious organisations over other protections such as sex, race, disability and gender identity. These could license harmful, disturbing, painful or humiliating speech under the guise of faith.

Recent research on declining levels of religious affiliation in Australia and the very small proportions of committed or devout practitioners within most of the major religions makes the Bill's proposals to use legislation to enable ring fencing of religious charities in the interests of orthodoxy and to set religious speech above all other statements of belief, undemocratic, and untimely.^[1] No other area of belief or practice has attracted such retrogressive protection from the state.

This submission will focus on Sections, 9, 12 and 15 of the Bill with comments on Section 11 where we endorse recommendations from submissions related to the education sector.

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

The Bill allows health, accommodation providers, disability services and aged care services affiliated with or run by Religious Charities to actively discriminate in employment on the basis of faith.

Clause 9(3) provides that a religious hospital, religious aged care facility, religious accommodation provider or religious disability service provider does not discriminate under the Religious Discrimination Bill 2021 and related bills by engaging in certain conduct.

According to the Explanatory Notes, this clause enables these bodies to maintain their religious ethos through decisions about staff composition, and that this is fundamental to maintaining the religious nature of these bodies.

The clause provides protection for these bodies to maintain their ethos in this manner by providing that it is not discrimination to make faith-based decisions in employment and partnerships.

WEL notes that the Bill extends the capacity for religious affiliated charities to discriminate against their own employees. Preference for employees on the basis of religious belief could compromise the quality of service and care.

WEL believes that religious affiliated hospitals and medical services, aged care services, accommodation providers (which includes services for the victims of domestic violence) and disability services which are recipients of Commonwealth or State funds should not be able to discriminate against their own employees on the basis of religious belief. Nor should they be able to tender for Government funded services if they adopt employment criteria which include religious belief.

Such staff preferences on the basis of religious beliefs and conduct could compromise the range and quality of services the organisation contract to deliver.

For example the professionalism of advice and support for women seeking domestic violence crisis accommodation services could be distorted through the lens of religious beliefs which



prioritise preservation of marriage and the need to understand and reconcile with perpetrators. We are aware of cases where crisis accommodation providers for domestic violence victims have advised against terminations following sexual assault and rape by the perpetrator.

Some types of religious ethos run counter to gender equality

It is important for the Committee to consider some historically sexist and patriarchal aspects of 'religious ethos', which, if embedded into employment practices, could sanction conduct leading to homophobic and sexist attitudes linked with abuse and domestic violence. These attitudes and practices are publicly repudiated by many church leaders. Some members and leaders within religious organisations are working hard to change these aspects of their ethos.

In this respect it is difficult for WEL to understand the reasons the Bill confers such special status to religious charities choosing to use belief and faith to filter and exclude employees over other faith based charities which are likely to decide against such conditions and in fact oppose this Bill.

When the ethos of faith based charities is driven by specific doctrines based on a narrow biblical worldview, orthodox beliefs or on the teachings of a sect, such beliefs almost always include teachings on the authority of men, the complementary but not necessarily equal status of women, the irreducibility of gender differences, the centrality and of heterosexual marriage and codes relating to sex and sexuality including same sex attraction etc.

Women comprise a significant proportion of Australian faith communities and often contribute to these communities disproportionately as volunteers and active participants, but few occupy top leadership roles. In some prominent and politically influential faith traditions, theological and other discriminatory arguments are advanced to support and defend their exclusion from leadership positions.

Patriarchal Traditions

The heads of Christian denominations in NSW are overwhelmingly (if not exclusively) male, and this is also the case with Muslim, Hindu and Buddhist communities.

There is a lack of clarity regarding the precise relationships between religious authorities and leaders, basic religious charities whose main purpose is religious – as defined under the Charities Act 2013 – and on the other hand social and health care, accommodation and disability services organisations affiliated with religious bodies.

Reporting under the Workforce Gender Equality Act indicates a general absence of leadership and some sharp differences amongst faith based charities in terms of gender representation in upper Management, Chair, Board and CEO levels.

For example 2020 WGEA data on Catholic Healthcare indicates that 69% of the Chairs and Board members were male with similar levels of inequitable gender representation at other high executive and leadership positions.^[2] Twenty percent of Board members were female and 80% male with the figures for health care and social assistance improving at 40.8% female and 59.2% male.

Figures for the Trustee for the Salvation Army Social Work are somewhat better with a roughly equal balance between male and female managers overall, 66% of Executives and General Managers being women but 100% of the CEO and key management personnel being male. Baptist care reported 3,200 employees of which 84% were women with only 26% of key management positions occupied by women and 27% directors being female.

Few Australian businesses of equivalent size to some of our major religious organisations retain such a blatant lack of diversity in their top management hierarchies.

Unrepresentative of broader faith communities

Unsurprisingly heads of religious denominations, as guardians of orthodoxy, do not always represent the broad and evolving range of beliefs and practices spanning their communities, especially on everyday matters like family planning, marriage and divorce, and sexuality. Recent research on Religiosity in Australia commissioned by the Rationalist Society show that around 27% of Australians describe themselves as active members of religious organisations with only 15% classifying themselves as 'devout'. On most 'doctrinal' issues related to gender and women most religious and non-religious Australians hold beliefs that do not accord with those of the religious leaders calling for adoption of this Bill.^[3]

Most Australians (93%) are now pro-choice, with 70% supporting ready access on demand, and majorities in favour across the religious spectrum. Most Australians (75%–80%) have supported Voluntary Assisted Dying since the mid 1990s. Current opposition is just 11%. Between 2016 and 2019, overall support remained the same, but strong underlying support increased, including amongst Australia's most religious. A large majority support marriage equality.

Similarly religious schools speaking out against both the Sex Discrimination Act's exemptions allowing religious schools to discriminate against staff and students and the Draft Religious Discrimination Bill's provision allowing religious schools to preference staff with particular



religious backgrounds know that most Australians (74%–82%) are opposed to religious schools having the right to expel LGBTI+ students or to sack LGBTI+ staff and contractors.

It is ironic that the Bill's clauses which strengthen exemptions from anti-discrimination law for religious charities, hospitals and aged care facilities could rebound on the already precarious employment security of the women whose religious backgrounds differ from the religious charity run hospital/medical facility, crisis accommodation provider aged care service or disability service which employs them.

Exactly what is a faith based charity?

Nevertheless the publicly available data makes it difficult to accurately identify the organisations which would be able to utilise this legislation. There is little guidance in the Bill itself other than the definition of a religious body as 'any of the following that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion: (a) an educational institution; (b) a registered charity; (c) any other kind of body (other than a body that engages solely or primarily in commercial activities)'. The veracity of this claim would be testimony from a member of the 'particular religion'.

A 2015 report for the Australian Charities and Not for Profits Commission estimated that charities overall employed around 428,000 full time and 490,000 part time staff. ^[4]

The charities that identified as faith-based were reported as employing a total of 133,000 staff or 14% of all staff employed by charities. However the authors state that this 'is likely to be a significant understatement of faith-based charities' contribution to total employment by the charity sector'.

A key finding from this detailed analysis was that 'many charities with a religious affiliation did not include religion [in their registration as a charity with the Charities and Not for Profit Commission] as one of their purposes or activities'. For example, many schools and community service providers established under the auspices of a religious organisation were not contained in the Australian Charities and Not for Profits Commission data which informed the 2015 study. Therefore, the findings in the 2015 report under-represent the number and contribution of faith-based charities in Australia.

A recipe for employment insecurity

Over 90% of aged care workers are women and at least 35% are from diverse religious and cultural backgrounds.

Nurses and other health professions with a high proportion of women employed in the religious affiliated charities which deliver health, disability and crisis accommodation services for women

fleeing domestic violence could also be profoundly affected by these increased powers for religious charities to recruit and employ on the basis of religious belief.

Aged care charities alone employ around 171,863 paid staff. There is a very high proportion of female aged care staff from culturally and religiously diverse backgrounds, working as casuals at multiple sites or on special immigrations visas.

Faith Tests

Taken to an extreme where a religious based charity resolved that all of its employees should be members of a specific faith community, Clauses 93d and 95d could exempt otherwise discriminatory faith tests, where they are used as conditions of recruitment and continuing employment.

Largely female applicants and contractors in the health, aged care, domestic violence crisis accommodation and disability sectors could be required to disclose their religious beliefs and practices, may be required to regularly reaffirm these and through their conduct bear witness to doctrines on marriage, family planning, homosexuality and other areas of private behaviour.

Employees' private lives could be monitored, especially in small and closed religious communities, where rumours spread quickly.

Women who contravene religious codes of sexual conduct by living in de facto and /or lesbian relationships, seeking reproductive health care from a local pharmacist or doctor, being single mothers and other such fodder for local scandals, could be especially susceptible to interrogation and dismissal. Even immodest dress that may offend religious sensibilities could provoke reprimand or dismissal.

Nurses, midwives, pharmacists and ordinary care workers living in de facto relationships, single women pregnant and with children and of course LGBTI+ people are all vulnerable as employees who may infringe 'conduct that a person of the same religion could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion'. ^[5]

We note that the Australian Human Rights Commission's observations in their submission on the first exposure draft still apply to this third draft of the Bill:

Charities and other religious organisations have a significant role in public life in Australia... They employ a very large number of people. Many receive a significant amount of funding to support them in carrying out their activities. The extent to which such organisations are permitted to engage in conduct that would otherwise be unlawful discrimination has an impact on the lives of many Australians. (Australian Human Rights Commission, Religious Freedom Bills, September 2019 paragraph 74, page 20). ^[6]

Religious controlled and affiliated charities on contract from government already dominate the delivery of a wide range of care related services in NSW, have a significant presence in health, disability care, domestic violence services and deliver a high proportion of aged care services.



Government funded contracted services include homelessness services, domestic violence services and disability services which all come under the provision of this Section

Should the Bill become law it is likely that a number of such faith affiliated charities will seek to 'bake in' specific beliefs and conduct for all employees as a condition of employment, beyond the leadership, management and designated religious leaders of the Charity. We offer a hypothetical scenario below.

Catholic Healthcare already recommends a Code of Ethical Standards to employees in its facilities. ^[7] Most of the Code is benign but it explicitly excludes provision of most methods of contraception and most terminations, except where a women's life is endangered and then with some constraints.

Many employees in Catholic public hospitals are unaware of this document. They are like to have committed to support a broad Christian ethos. However provisions in this Bill may mean specific commitments to elements of the Code relating to reproductive health care and end of life care in terms of belief and conduct as a condition of employment. Clauses 9(3)(d) and 9(5)(d) provide that the conduct must be in accordance with a publicly available policy issued by the religious body.

WEL does not support the Bill's provision for religious charities to apply faith tests to recruitment and employment but should the Bill pass Clauses 9(3) d and 9(5)d might provide some transparency where none exists under current provision.

Since recruitment on the basis of faith could have negative impacts on services provided by a Charity to women and LGBTQ people, we recommend that the sections of the Clause 9 be strengthened along the lines of the related sections in Clause 11 (b) which provides that a religious educational institution may only preference people in employment when such conduct is in accordance with a written policy that meets the following requirements:

- i) outlines the religious body's position in relation to particular religious beliefs or activities;
- ii) explains how the position in subparagraph i) is or will be enforced by the religious body;
- iii) specifies how the preferential employment policies and practices employed by the religious body affect the services it provides, for example reproductive health services, counselling services, protections and support for people with a disability, LGBTI people and others.
- iv) is publicly available, including at the time employment opportunities with the religious body become available.

Recommendation 2

Section 9 allowing religious hospitals, aged care facilities, accommodation providers and disability service providers to discriminate in employment should be removed.

Recommendation 3

Religious affiliated charities which give preference in employment on the basis of religious belief should not be eligible to tender for delivery of Government services in health, aged care, crisis accommodation for domestic violence victims or disability services.

Recommendation 4

In the event that section 9 is retained, that the sections of the Clause 9 be strengthened along the lines of the related sections in Clause 11 (b) which provides that a religious educational institution may only preference people in employment when such conduct is: in accordance with a written policy that meets the following requirements:

- i) outlines the religious body's position in relation to particular religious beliefs or activities;
- ii) explains how the position in subparagraph i) is or will be enforced by the religious body;
- iii) specifies how the preferential employment policies and practices employed by the religious body affect the services it provides for example reproductive health services, counselling services, protections and support for people with a disability, LGBTI people and others.
- iv) is publicly available, including at the time employment opportunities with the religious body become available.

Clause 11 - Conduct in relation to employment by religious educational institutions - overriding certain State and Territory laws

WEL opposes Clause 11 of the Bill which effectively gives religious schools and educational institutions the right to positively discriminate through giving a preference to all employees on the basis of religion.

The effect of this section will be to reinforce the exemptions already provided to religious schools in the Sex Discrimination Act.

In one of the many instances where this Bill rides roughshod over state legislation, Clause 9 also overrides recent anti-discrimination legislation in Victoria, which forbids this type of discrimination against teachers and students.

The Bill appears to be pre-empting the possibility of other states and territories legislating against discriminatory employment practices in State and Commonwealth funded religious schools.

Despite a 2019 commitment by the Government to amend the Sex Discrimination Act which currently permits religious educational institutions to discriminate against LGBTI students on the



basis of sexuality, the Law Reform Commission Inquiry into this is yet to commence and is not due to report until later in the year.

Clause 11(1)(b) introduces a new provision which provides that a religious educational institution may only preference people in employment when such conduct is in accordance with a written policy that is publicly available, including at the time employment opportunities with the religious body become available. Such public information should be as detailed as possible in order to inform not only potential and present employees but also reveal the flawed and tendentious bases for such discriminatory exclusions.

Again, WEL anticipates that women teachers as well as LGBTI people will be seriously disadvantaged by this clause, including many who themselves share the faith of the religious educational body but who may 'fail' any detailed faith tests or be reported for conduct contravening codes of belief and behaviour. Religious codes of conduct impinge far more on women as 'sexual beings' than on men.

Other submissions to this and the previous two versions of the Religious Discrimination Bill such as those from Equality Australia and unions with members in religious schools have detailed detail the ways in which religious schools have weaponised the exemptions in the Sex Discrimination Act to undermine and destroy the careers of excellent and religiously committed teachers. WEL endorses their recommendations.

Clause 12 – Statements of belief **Blurring the boundaries between public and private**

The Bill defines religious belief as meaning:

(a) holding a religious belief; or 30 (b) engaging in religious activity; or 31 (c) not holding a religious belief; [\[please check\]](#)

Section 5 of the Bill defines a statement of religious belief as:

'A statement: (i) [that] is of a religious belief held by a person; and (ii) is made, in good faith, by written or spoken words or other communication (other than physical contact), by the person; and (iii) is of a belief that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion'.

Through these definitions the Bill sets very loose boundaries and proffers no objective criteria for assessing the difference between religious belief and non-religious beliefs (such as the belief that women's bodies must determine their destiny which could be religious but also persists as a prejudice in our culture), statements of belief (such as a foetus is a person) and religious bodies, as distinct from other entities.

In the case of an individual holder of religious belief, the person simply has to make the statement in good faith and genuinely believe the statement to accord with doctrines, tenets, beliefs or teachings of that religion. 'That religion' could be a religion of one.

As the Equality Australia Submission explains, these amorphous definitions make religious speech and belief potentially limitless, where the boundaries of personal and private belief systems associated with religion extend to public, professional and work life. Clause 12 of the Bill sanctions this disruption of the boundaries through protecting statement of religious belief in public and work contexts but goes further in protecting them above all other statements.

Another consequence of religious belief and statements of belief being so loosely defined is that many statements originating in religious belief are made as if they are statements of fact framed by a religious belief but independent from the privacy and 'provisionality' of beliefs – which can prove wrong. Such statements are often believed to be true by those who hold the belief and make the statements. They are unqualified by doubt.

This 'divinely conferred' truth status makes protections of statements of belief that would otherwise be discriminatory especially pernicious when made in professional contexts.

Examples include domestic violence and sexual assault counselling (a women must defer to her husband, men have no control of their sexual impulses, when a woman is drunk she demeans herself and invites assault, rape is no excuse to kill an unborn child), psychology, medical and health care contexts (common beliefs regarding contraception, pregnancy, the foetus, terminations), educational settings (beliefs about race, indigenous people, sex and sexuality) and disability services (beliefs about the inferiority of people with disability conflated with God's Plan).

An attack on the architecture of the federal and state anti –discrimination architecture

Australian discrimination law operates on the basis that there are concurrent and complementary federal and state discrimination laws.

Clause 12 will fragment the long established ecosystems and architecture of Australia's Federal and state anti-discrimination regimes by determining that a statement of belief does **not** constitute discrimination for the purposes of **all** Federal and State/Territory anti-discrimination and equal opportunity legislation.

The clause overrides all federal, state and territory anti-discrimination law to make 'statements of belief' immune from legal consequences under those laws.

Under clause 12 a statement of belief will not be protected if it is: malicious; if a reasonable person would consider the statement would threaten, intimidate, harass or vilify a person or group, or if the statement would promote or encourage the commission of an offence punishable by at least two years' imprisonment. These caveats set the bar very low. WEL understands that



some state/territory anti-discrimination complaints will not be able to be considered by state/territory tribunals, where the respondent claims a 'statement of belief' exemption. As state/territory tribunals cannot consider federal laws, these matters will now have to be heard by a state/territory court or a federal court if this provision becomes law.

This chain of litigation will significantly increase the cost for complainants in other discrimination matters, making the complaint process less accessible - especially to complainants with limited resources and diminished confidence.

Clause 12 will radically weaken state and territory anti-discrimination laws as it will provide immunity for respondents against complaints about discrimination on the basis of sex, relationship status, pregnancy, parental status, breastfeeding, race, age, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities where statements were made under the guise of religious belief.

Whether the conduct suffered by the victim actually amounted to a statement of belief would need to be considered by the state/territory court or a federal court.

This will particularly disadvantage women who are subject to intersectional discrimination where statements of religious belief touch on a combination of normally protected characteristics, such as pregnancy, relationship status, sexual activity family responsibilities

Impact of Section 12 on our commitments to CEDAW under International law

The Government's has recently declared a renewed commitment to women's equality and in particular to acting on the public and political cultures which demean and humiliate women and ultimately foster sexual assault and family violence. In this regard WEL is very disappointed that Section 12(1) of the Bill appears to reverse the limitation on the manifestation of belief as set out in the International Covenant on Civil and Political Rights.

The ICCPR states that the manifestation of a belief can be subject to *such limitations as are prescribed by law and are necessary to protect ... the fundamental rights and freedoms of others*, such as the right to freedom from sex discrimination under CEDAW and the Sex Discrimination Act 1984 (SDA).

Section 12(1) specifically **removes** protections that women and others might have under existing discrimination laws. Rather than limiting the right to manifest beliefs to protect the rights of others, section 12(1) actually limits the human rights of others to freedom from discrimination, in order to protect the right to manifest beliefs. As the submission to the Inquiry from the

Equality Rights Alliance states: *This is an exact reversal of the actual limits to the right to freedom of thought, conscience and religion.*

Misrepresenting religious belief: statement of religious belief that would otherwise be discriminatory have precedence

Section 12(2) does exclude from the exemption those statements of belief which are malicious or which that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group.

However, section 12(2) does **not** exclude statements of belief which would make a woman feel demeaned, judged or deeply uncomfortable. It does not exclude statements which would encourage others to adopt views which are racist, abelist or sexist, provided no actual vilification, harassment or threat occurred. The notes to s. 12(2) make clear that a 'moderately expressed' belief does not constitute vilification.

In its current form, this Bill will protect sexist, racist and other discriminatory statements as long as they constitute a religious belief, particularly (but not only) if they are politely or benevolently expressed, regardless of the seriousness of the outcome to the person affected.

Harmful, disturbing and humiliating statements made in the guise of religious belief to women employees, colleagues, fellow workers, patients, students in workplaces and the wider public sphere would be exempt from any redress or accountability.

We see no reason in the complex nature or origins of religious belief itself for the Government to legislate to specifically privilege fringe statements which express such beliefs about women, LGBTQI people, people of colour and others, over all other expressions, including religious expressions.

The Government has not set out the public case for this Section.

Rather the Prime Minister's second reading speech failed to note the absolute precedence the perpetrator of otherwise discriminatory religious speech would take over any impact such speech might have on others. In fact the second reading speech dissembles by claiming that the Bill embodies the principle that 'every religion and belief should have the same rights and freedoms....and that means the faith of any religion, as well as 'no religion', should not override the rights of others in a free society'.

Counter to the Prime Minister's claim in the last sentence of the preceding paragraph, Clause 12 of the Religious Discrimination Bill does exactly the opposite, by allowing religious speech to override the rights of others.

In response to the first two exposure drafts of the Bill, numerous submissions from expert legal groups argued that Section 12 is unprecedented in explicitly overriding state and territory



anti-discrimination laws and the Commonwealth's own anti-discrimination legislation, including the Fair Work Act. By privileging statements of religious belief above all others, Section 12 disrupts the balance of shared rights and freedoms underpinning the public sphere in modern pluralist democracies such as Australia.

In workplace settings, derogatory and even patronising statements of belief are never made out of context or without purpose. A statement of belief is a *speech act* made in relation to others/another. Exempting such statements could make anti-discrimination cases even more difficult to substantiate.

It is particularly unjust that under the Bill's provisions, the author of such a statement can claim exemption from discrimination but the recipients are without redress where the expression is of a religious belief. It is especially egregious that the Bill provides for a witness of the same religious belief as the person defending their statement against a complaint of discrimination to assess whether the statement is in fact religious.

Traditional Christianity and religious values in general continue to play a role in shaping gendered norms in Australian culture. While not unique to religious traditions, the canons of religious commentary harbour an arsenal of misogynistic and derogatory statements regarding the subordinate roles of women. They focus on the need for women to know their place as subordinate to their husbands, to control women's dangerous sexuality and emotional life, their inferior intellectual and personal qualifications for leadership, and their god given destiny as mothers and carers, amongst other limitations.

On the other hand, a growing number of religious people and faith communities have contemporary views on women's autonomy and equality with men and actively encourage women's leadership of their denominations. Moreover historians and scholars of religious history and culture document vast fluctuations in religious perspectives on issues like abortion, sexuality, clericalism which make attempts to fix these in codes of 'doctrines, tenets, beliefs and teachings' seem artificial at best.

It is unfortunate that this Bill could add authority to the small regressive and bigoted elements within some religious groups and undermine the efforts of the many ordinary people of faith who seek to make their communities more open and their leaders more responsive, measured and diverse.

WEL believes that justice should operate in a secular sphere and on principles and norms arrived at through the law and democratic legislative processes. Religious speech should be no more an exception to this tradition than any other form of speech.

WEL would also like to draw the Committee's attention to Equality Australia's comments in relation to **Subsection 12(1)(c)**. This provision of the Bill appears to allow the Governor-General

(on the advice of the Commonwealth Attorney-General) to prescribe, and thereby override, any federal, state or territory law which the Government considers 'unreasonably limits freedom of religious expression'.

We understand that such regulations are subject to disallowance by the Senate, but in the event of a majority in the Senate for a Government hostile to perceived state based constraints on religious freedom, any state and territory legislation - such as Safe Access Zones, regulation of covert anti-choice organisations masquerading as abortion providers, or Victoria's conversion practices legislation, could be overridden as constraining freedom of religious expression.

Recommendation 5

The Religious Discrimination Bill should be redrafted to remove provisions that protect 'statements of belief'. Specifically, section 12 of the Religious Discrimination Bill (and associated definitions) should be deleted.

Clause 15 – Discrimination on the ground of religious belief or activity – qualifying body conduct rules

Clause 15 prohibits a qualifying body, such as those bodies which certify or register professionals such as lawyers, teachers, accountants or health practitioners, from setting professional conduct rules that limit the ability of professionals or members of a trade or occupation to make statements of belief in their personal capacity, unless compliance with such rules is an essential requirement of the profession/trade/occupation. The effect of clause 15 is that a professional association cannot discipline a member of that association for making a statement of belief, while an employer can so discipline an employee.

As with Clause 12 on statements of Religious Belief, Clause 15 provides cover for professionals and other skilled workers and experts whose work is regulated by qualifying bodies to express highly offensive, bigoted and insulting comments on the basis that it is regarded as an expression of religious belief.

As discussed in our comments on Section 12 the definitions of religious belief and statements of belief blur the boundaries between belief and evidence based knowledge and statements.

There are many professional contexts where infringing these boundaries will be able to attract no penalties from professional or regulatory bodies.

For example the Commonwealth funded school chaplain program funds chaplains in public schools. Each state has devised a code of conduct for the chaplains which generally includes a prohibition against proselytising on religious grounds. It is possible that such proselytising will now be protected under the Bill and that chaplains will be unable to be called to account for this infringement.

Another example might involve a doctor who made a statement to a woman seeking advice on abortion that abortion is murder, according to their belief, or that contraception contravenes



god's natural law. Currently such statements would clearly violate the Medical Board of Australia's 'Good Medical Practice: A Code of Conduct for Doctors in Australia'. The Code states that Good Patient Care includes ensuring that your personal views do not adversely affect the care of your patient. There is ample Australian evidence of doctors using statements loosely cast as religious belief to discourage women from seeking abortions.

Similarly psychologists could introduce statements of religious belief into their consultations when patients are both trusting, possibly traumatised and potentially sensitive to suggestion. Examples might include beliefs relating to the sanctity of marriage when counselling a woman troubled by a relationship separation or counselling on the need to constrain so called provocative sexual activity in the case of a client who has sought help following sexual assault.

Section 15 of the Bill will clearly curtail the work of regulatory and professional bodies to discipline members who infringe codes of conduct and to maintain the professionalism and quality of the services their members provide. It has especially concerning implications for women accessing reproductive health and counselling services and for education including schools and universities.

Recommendation 6

The Religious Discrimination Bill should be redrafted to remove provisions that hinder the work of regulatory bodies. Specifically, section 15 of the Religious Discrimination Bill (and associated definitions) should be deleted.

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- [1] Francis, Neil 'Religiosity in Australia Part 1' Rationalist Society of Australia 2021:p131-133
- [2] WGEA data explorer https://data.wgea.gov.au/organisations/3073#governing_bodies_content
- [3] Francis, N Religiosity in Australia Part 1 May 2021 :pp 1-3
- [4] Op Cit Faith Based Charities in Australia March 2015:
- [5] Religious Discrimination Bill 2019, Exposure Draft 2 Part 2, Section 9, Clause 11
- [6] 'Human Rights Commission Submission to the Attorney General's Department' 27 September 2019 <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Human%20Rights%20Commission.pdf> : p 20 Para 74.
- [7] Code of Ethical Standards for Catholic Health and Aged Care Services in Australia:Part II, Section2.5 'Sterilization and Contraception' and Section 2.23 'Abortion' <https://www.cha.org.au/images/resources/Code%20of%20ethics-full%20copy.pdf>