

## **CONSULTATION ON THE RELIGIOUS DISCRIMINATION BILL 2019 SUBMISSION TO THE AUSTRALIAN ATTORNEY-GENERAL October 2019**

### **About the Lobby**

The NSW Gay and Lesbian Rights Lobby (the Lobby) has a proud history of advocating on behalf of gay men, lesbians and their families. Indeed, this year the Lobby celebrates its 30th year of being an advocate for our community. In those 31 years, the Lobby has established strong ties to the community, consulting with our members and hearing their stories, many of them describing incidents of violence, discrimination and hatred. In the past 30 years, the Lobby has been comprised of volunteers who have lived these experiences too. We draw on our history of bearing witness to those stories in making this submission.

For 31 years the Lobby has been the leading organisation for lesbian and gay rights in NSW. Established in 1988, our mission is to achieve substantive legislative and social equality for lesbians, gay men and their families. We work closely with bisexual, transgender and intersex organisations, and all Members of Parliament to advance the rights of our communities in NSW and across Australia.

This submission has been produced by the  
Gay and Lesbian Rights Lobby (NSW) Inc.  
ABN: 71 581 014 456  
Benledi House, Suite 3, Level 1, 186 Glebe Point Rd, Glebe NSW 2037  
Email: [convenors@glrl.org.au](mailto:convenors@glrl.org.au)  
Website: [www.glrl.org.au](http://www.glrl.org.au)

## NO MANDATE FOR INTRODUCING RELIGIOUS BIGOTRY INTO OUR EVERYDAY LIVES

**Half a million more people.** 500,000 more votes.

That's roughly how many more Australians voted for legal equality for LGBTI Australians in 2017 than for the re-elected Morrison Government two years later, in May 2019.

The case for legal equality for LGBTI Australians in the 2017 marriage survey is linked directly to the new laws proposed for people of faith and religious bodies. That was guaranteed in the marriage survey process when former Prime Minister Turnbull promised the Ruddock review, and also when some loud religious figures put their words and their money on the line to oppose legal equality. In the end, the marriage survey was not just about the technical legal change to the Marriage Act but about the far-sweeping rights of LGBTI Australians to live a full and equal life in Australian society – particularly in contrast to some religious teachings about LGBTI people, not just relating to marriage.

In that context, the public case against LGBTI Australians was rejected by the Australian people by a very large margin. Throughout, the majority of LGBTI groups and Australian voters (when polled) have supported protection from discrimination for people of faith.

The outcome of a divisive and heated public debate was a concerted public effort to foster social cohesion and healing. This included the leadership shown by politicians who voted in line with their electorates in Parliament, rather than voting based on their personal views. Prime Minister Morrison notably did not vote for legislative equality despite his electorate of Cook supporting marriage equality 55-45. Yet Peter Dutton, also opposed prior to the survey, managed to vote for equality following the result from his electorate of Dickson.

In contrast to those efforts to foster social cohesion, it appears Prime Minister Morrison's new laws are not just about protecting people of faith from discrimination **but enabling religious bodies and individuals to powerfully discriminate against others.** Twice-over there is no mandate for this – neither the marriage survey nor the recent federal election provided a mandate for new special protections for religion over other human rights.

Rather than create social harmony, these new laws threaten the very social cohesion sought in the wake of the divisive marriage equality debate. Further, they open new legal avenues for sectarian and interfaith tensions to fester and foment in multicultural Australia.

**These laws clearly represent a broken election promise.** Prime Minister Morrison said in the third leaders' debate prior to the May 2019 election that religious people would receive the same protection afforded to others under anti-discrimination law.

**“That’s why we’d be pursuing a Religious Discrimination Act which would provide *the same protections* to those of sexual gender and appropriate forms of discrimination we have.”**

- SCOTT MORRISON, THIRD LEADER'S DEBATE 8 MAY 2019
- Transcribed by [The Guardian online, 8:10PM](#) ; italics emphasis added

In light of this context, there are two questions we must now ask. First, should the Australian government use the law to normalise religious bigotry in our everyday lives? Second, should freedom of religion be held above other community values? These appear to be the arguments on which the government has based its proposed new laws, and it clearly believes the answer to these questions to be “yes”.

Australian voters and large swathes of civil society don't hold the current government's view. Codifying religious bigotry into new laws stands at odds with the views of Australian voters based on national polling data which explicitly asked questions on this issue in recent years.

Does this explain why the Morrison team never took the proposed Bill to the May 2019 election for the people to properly assess and, once fully informed, cast their votes at the ballot box?

It is also at odds with the human rights framework the government uses to justify the new law. The government cannot argue for these new laws on the principled basis it will afford new protections to all Australians. They don't. Aside from privileging personal religious views above other human rights, the government is proposing the new laws should not even extend to all workplaces, suggesting that millions of Australians in a mix of public and private sector workplaces will live under different legal conditions to others.

If the government wants to achieve equality it must redraw the legislative map presently laid out. This map seeks to put religious rights above all other rights in Australia. It is leading us toward a low road – a place where religious bigotry is normalised and legally protected in our everyday lives. This should be anathema in a pluralist, liberal, egalitarian society that upholds all human rights.

What's more, this is not the first time such a change has been contemplated. Previous generations have wisely steered our nation away from the low road before and we implore this government and parliament to do so once more.

The Bills in their current form cannot be supported. More detailed issues about the Bills are outlined below.

## **ISSUE 1: ENACTING NEW WAYS TO EXPEL KIDS FROM SCHOOLS (SECTION 10)**

Australia has an education system and syllabus that encourages children to think independently and critically about the world around them.

It wasn't always the case that 'religious schools' received funding from Australian taxpayers but they do now, and with reduced accountability for how that money is spent compared to public schools.

Despite overriding a clear principle that a taxpayer funded essential service can exclude some of those same taxpayers and their children based on a religious ideology, religious schools in some states and territories enjoy the legal privilege to do so. However they don't enjoy the privilege to expel after the point of child being admitted into the school.

The Bill proposes to change this. This change is not supported. The status quo is preferred (right to deny at the point of admission) notwithstanding the flaws already highlighted.

If the government is welded to the concept then it should be reviewed by the Australian Law Reform Commission, as part of the current review into other rights of schoolkids and teachers who are LGBTI.

### **Example of how religious bigotry will be normalised if the law is implemented**

A child in a school suggests they do not believe absolutely the religious doctrine of the school they are at – this may be for any reason, not just due to their sexual/gender identity. This would be an example of a child in an education system thinking critically and independently. It does not necessarily mean the child has rejected religion outright.

It may be because a child takes issue with a mainstream or non-mainstream interpretation of one simple religious teaching at that school. Under the new expulsion power for schools this child, be they in the middle of their schooling or in the middle of Year 12 exams, can be expelled.

Children are vulnerable. This power is expansive and cruel. It will normalise bigotry and entrench an incontestable power that stifles transparency in decision-making relating to kid's education. It does not protect the rights of the child. What's worse, this is proposed to be done using taxpayer funds.

## **ISSUE 2: EXTRAORDINARY AND FRIGHTENING NEW CLAUSE TO NORMALISE RELIGIOUS BIGOTRY IN SOCIETY (SECTION 41)**

Section 41 proposes to exempt certain 'statements of belief' from all Commonwealth, State and Territory antidiscrimination protections. The Lobby does not support this proposal and rejects the grounds on which it has been argued for by the government.

This stands as one of the greatest threats to social cohesion proposed in modern Australian history. It provides a potential licence to people of faith to attack one another as well as non-religious bodies and individuals.

Further, the Bill states a view must be in line with 'doctrines, tenets, beliefs or teachings' of a religious person or body. The Lobby is aware of religious organisations which have redrafted articles of their religion that could be described as 'doctrines, tenets' or 'teachings' following marriage equality legislation. This includes information relating to employment of individuals – as seen in the prominent Victorian case of Rachel Colvin who was allegedly forced to resign for not signing an updated 'Statement of Faith'.

To be clear, this Bill proposes a new legal power to use religion to discriminate against others and will also allow religious persons or bodies to decide at any time what those doctrines, tenets or teachings may be.

This is akin to Parliament creating a law giving a Federal Minister unlimited prospective regulation-making powers, including powers which undermine the original intent of a law passed by Parliament. Worse than that, in this comparison scenario it would be akin to there being no means to overturn new regulations via a disallowance procedure, as the House of Representatives and Senate can currently do. If this were the proposed design of any other law it would be extraordinary to think it would even be contemplated by Parliament, rather than dismissed out of hand until it is redrafted.

The only major way for others to be protected from this discrimination would be to enact more laws to turn certain types of religious-based discrimination into 'serious offences'.

The Lobby is aware of submissions made public in advance of the deadline where the concerns with this Section have been well canvassed, particularly by the Public Interest Advocacy Centre. The Lobby refers readers to this submission.

### **Example of how religious bigotry will be normalised if the law is implemented**

The Lobby refers lawmakers and advisers to the Public Interest Advocacy Centre submission and the frightening examples of its perverse impact on our society were it to become the law. These examples show how this impact would not be limited to LGBTI residents and taxpayers of Australia.

There is one addition we wish to make to those examples: the child abuse known colloquially as 'conversion therapy'. It's now widely known how this insidious form of child abuse can leave lifelong impacts on Australian children and communities, particularly after the national coverage in a recent 60 Minutes story September 2019.

Do Australian lawmakers really want to provide a licence for any individual, be they a family member, teacher, counsellor, social worker, priest or otherwise to perpetuate this abuse in the name of their 'personal religious belief'? Do Australian lawmakers really want to force the community, after passing these laws, to then go and advocate for additional laws in either a State or Federal jurisdiction that make such behaviour a 'serious offence' so that it is not a protected practise? Such torment can be avoided by better crafting these Bills and this Section from the get-go.

### **ISSUE 3: EXPANSIVE NEW PERSONAL DISCRIMINATION POWERS FOR HEALTHCARE WORKERS**

Even in times of war humans recognise that the provision of healthcare to others is a basic right that should be provided regardless of who the patient is that's receiving the care.

Terrorists, serial killers, bank-robbers, and paedophiles are among those who receive care without qualification. Serial killer Ivan Milat recently received treatment (and widespread media coverage) for a health condition while in jail. There is no "right" for the healthcare provider to refuse service on the grounds of the patient's character or personal qualities.

The Lobby does not support any exception to this principle. The Lobby does acknowledge that in some areas of existing practice a conscientious objection is afforded to some healthcare practitioners in limited areas. While this situation is inherently problematic it is narrowly defined and greatly preferred to the proposed change. In particular, 'health service' has been very broadly defined in the Bill and as a result it raises more questions than answers with respect to considering how religious bigotry could be enabled by this law.

The change is not supported.

#### **Example of how religious bigotry will be normalised if the law is implemented**

There are countless examples of how this new law would enable religious bigotry. The law is drafted so expansively that it would affect nearly all members of society who need healthcare.

From people seeking advice about sex health from a GP (male, female or non-binary), through to medicines from a pharmacist, to receiving treatment from optometrists or podiatrists (which raises more questions than examples), the possibilities would only be limited by the 'doctrines or tenets' of a religion. It's noted that these doctrines and tenets are not fixed and can be amended by religions at any time. When combined with Section 41, this legal power could grow to empower healthcare workers to personally discriminate against patients or customers on grounds not presently contemplated today.

### **ISSUE 4: A NEW TEST OF REASONABLENESS WHICH PRIVILEGES RELIGION ABOVE OTHER RIGHTS IN ANTI-DISCRIMINATION LAW**

The Lobby again refers lawmakers and advisers to the submission of the Public Interest Advocacy Centre which, along with other public submissions, provides a detailed outline of the problems with the suggested change.

In short, to quote from the publicly available submission, 'These provisions are unnecessary, and both complicate and potentially distort the approach to 'reasonableness' used in existing Commonwealth anti-discrimination legislation.

'The Bill should apply a standard test for reasonableness. Clauses 8(2)(d), (3), (4), (5) and (6) should be removed.'



## **ISSUE 5: A NEW HUMAN RIGHTS-BASED PROTECTION FOR RELIGIOUS ENTITIES – NOT JUST A ‘NATURAL PERSON’ AS DEFINED UNDER EXISTING LAWS**

Human rights exist for human beings, not for bodies corporate. It is a well-established legal principle that bodies corporate do not enjoy the same legal rights afforded to natural persons. A representative case of discrimination may be able to be made under existing law and this should be retained but bodies or entities themselves should not be able to do so. This principle should not be changed.

The change is not supported.

### **Example of how religious bigotry will be normalised if the law is implemented**

Religious entities would be entitled to bring their own discrimination cases before a court against a person or organisation.

Religious service providers are a notable and significant portion of service provision in Australia – in healthcare, education, aged-care etc.

Religious service providers routinely compete to tender for government services where clear rules of service to the members of the public are outlined. Under the proposed law a religious entity could bring forward a case of discrimination against the entity running the tender process – for example, a government – for stipulating that the successful tenderer must provide services to individuals regardless of religious views or beliefs.

This is just one example. The proposal would have a sweeping impact on potentially all facets of modern life in Australia. It would pit religious views against other rights, with the views of religious entities having the legal upper hand against others including, notably, the personal views of other ‘minority’ or sectarian/non-legacy religious Australians who do not have the same institutional power and resources as larger, entrenched legacy religions.

## **FURTHER ISSUES**

### **ISSUE 6: TO ‘HARASS’, ‘VILIFY’ – WHAT DOES THIS MEAN IN PRACTICE?**

It appears in the Bills that ‘harass’ and ‘vilify’ are the lower threshold points in law for religious-backed discrimination which will not be accepted.

It is unclear what the impact of this will be in practice. A plain English description of ‘harassment’ and ‘vilification’ under the proposed new laws would benefit all Australians. For instance, would a one-off serious statement to a work colleague, a customer or other individual be unlawful or permissible? Or is that simply an insult, meaning it does not meet the lowest threshold of harass or vilify? Would it be an example of behaviour that would otherwise be considered workplace bullying (where applicable) but doesn’t qualify because it is said just once? For example, a statement along the lines of “you know [insert religious teaching] means you are unnatural and going to hell”? In instances of sexual harassment, it appears that a one-off serious statement is captured.

Further explanation is warranted, particularly as the new legal framework proposes to introduce a right to discriminate based on personal religious belief with only some exceptions curbing that right – thereby signalling to the general public that personal religious discrimination against others is legally permissible behaviour. This makes the protections from this discrimination especially critical and deserving of further clarification before the Bills are presented to Parliament.

This ‘positive right’ framework where other human rights are relegated is fundamentally different to the general tenor of the human rights based approach Australia notionally supports at a state, national and international level via the International Covenant on Civil and Political Rights. This too makes the protections from this discrimination vital and deserving of further clarification before the Bills are presented to Parliament.

#### **ISSUE 7: HUMAN RIGHTS COMMISSIONER FOR RELIGIOUS RIGHTS BUT NOT FOR LGBTI?**

The case for a new Religious Freedom Commissioner is unfounded. It was not supported by the Religious Freedom Review, and it raises questions about the role of each of the Human Rights Commissioners. It is appropriate to question what the role of each commissioner is and whether a commissioner is there to enforce a protected attribute under human rights or anti-discrimination law, or whether they are simply appointed based on the whims of the government of the day.

Certainly, if a new Commissioner is to be introduced for ‘religious freedoms’ – above and beyond the role of existing Commissioners – then certainly there is a strong evidentiary basis for introducing a new Human Rights Commissioner for LGBTI Australians. The evidence can be seen in the form of discrimination cases as well as in health and wellbeing outcomes for LGBTI Australians.

Alternatively, it could be contemplated that one or more of the existing Commissioners could continue to provide support, as they do today, for both people of faith and LGBTI people.

#### **ISSUE 8: AMENDMENT TO THE CHARITIES ACT**

Amendments to the Charities Act appear to be unwarranted from a policy perspective while also unreasonably focussing on specific anti-LGBTI actions related to the current Australian law relating to marriage.

The hard fought for legal changes of 2017 should not be unwound in a sneaky Machiavellian manoeuvre that seeks to covertly undermine marriage equality. Marriage equality is now Australian law as a result of the largest mandate for a political issue in a generation.

All charities should be subject to the same test for disqualifying purpose in section 11.