



South Australian Rainbow Advocacy Alliance

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Dear Attorney-General,

Thank you for the opportunity to make a submission regarding the second exposure draft of the Religious Discrimination Bill 2019 (the Bill).

This submission is made on behalf of the South Australian Rainbow Advocacy Alliance (SARAA), a not-for-profit incorporated association that advocates for the rights and wellbeing of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) South Australians.

Since the release of the first exposure draft in August 2019, SARAA has been consulting with LGBTIQ+ South Australians and with other community groups who stand to be affected by this Bill. Through this consultation, SARAA has heard the concerns of approximately 200 South Australians who believe this Bill will adversely affect them.

SARAA respects the Government's intent to create a Bill that will protect people of faith (and no faith) from being discriminated against on the basis of their beliefs. It is SARAA's belief that no Australian should be discriminated against for who they are or what they believe. Regretfully though, we cannot support the second draft of this Bill as the main concerns highlighted in our first submission – concerns that have repeatedly been expressed by community members during our consultations and raised by other organisations in their own submissions – have not been satisfactorily resolved.

As in our first submission, SARAA's primary concern is that the scope of the Bill is too broad. In an attempt to create protections from discrimination on the basis of religious belief, the Bill effectively provides a license for people of faith to discriminate against other Australians. We cannot support this, as it is clear to us that this will unreasonably and disproportionately harm LGBTIQ+ people throughout Australia.

SARAA is deeply disappointed that the second draft has expanded this ability to discriminate. As such, we consider the Bill to be untenable in its current form and it is our firm position that the Government must abandon the Bill entirely and consider other options that will not cause harm to Australian communities.

Executive summary

SARAA stands by its vision of a diverse, inclusive Australia free from all forms of discrimination. While we do not support the current draft of the Bill, we offer our support to alternative solutions that manage to protect religious Australians without harming others.

In the first instance, SARAA recommends that the Government adopt the following option as an alternative to the currently proposed Religious Discrimination Bill:

1. Abandon the Religious Discrimination Bill in its entirety, and;
2. Develop an Australian Charter of Human Rights, as proposed by the Human Rights Law Centre;

If the Bill is to proceed, then we support the following methodology:

1. Implement the Religious Discrimination Bill in two stages, as proposed by Dr Sarah Moulds and the Australian Council of Human Rights Authorities, or;
2. Refer the Religious Discrimination Bill to the Australian Law Reform Commission in its entirety so a more comprehensive review can occur.

If none of the above options are adopted, SARAA recommends the following changes to the Religious Discrimination Bill. We consider all of these changes to be essential:

1. Amend clause 8 so it does not undermine the ability of employers to provide inclusive workplaces for employees and customers;
2. Remove subclause 8(4) so that qualifying bodies can continue to safeguard the integrity of their relevant professions;
3. Remove subclauses 8(6) & 8(7) to ensure no one is disadvantaged or harmed through the introduction of conscientious objection provisions;
4. Remove religious charities (public benevolent institutions) from clause 11;
5. Remove clause 42 in its entirety;
6. Consult with LGBTIQ+ organisations such as Equality Australia, and other affected communities, to ensure that issues not explored in this submission are considered.

Please also refer to the following pages for further analysis of our recommendations. We welcome the opportunity for further consultation about this issue.

Kind regards,
Matthew Morris
Chair, South Australian Rainbow Advocacy Alliance

SARAA's concerns with the Bill

SARAA continues to hold several concerns about the second draft of the Bill. Over the following pages, the main concerns held by SARAA and by LGBTIQ+ South Australians that we have consulted with are summarised.

SARAA notes that this list is not exhaustive, and primarily focuses on issues relating to LGBTIQ+ people. We recommend the Government consults further with organisations such as Equality Australia, Democracy in Colour and peak bodies in the health, social services and legal sectors to ensure all relevant issues are adequately explored.

1. Clause 42 provides a license to discriminate in the name of religious beliefs

While SARAA respect that people of faith should not be discriminated against on the basis of their beliefs, clause 42 is unnecessary. Rather than protecting people from discrimination, this clause enables people to make discriminatory statements provided that the statement is religiously motivated.

SARAA is concerned about this clause for three main reasons.

First, it creates a double standard in Australian law. It stipulates that statements of religious belief are exempt from other anti-discrimination legislation. It also sets a higher threshold at which a religious statement of belief would constitute discrimination.

“All Australians should be equal in the eyes of the law, but this clause would privilege religious beliefs over other beliefs.”

Second, the explanatory notes for the second draft make it clear that clause 42 will allow service providers – including doctors – to make discriminatory remarks to people they are meant to be helping (paragraph 549). While the intent of such statements may not be malicious, and therefore would be permissible according to clause 42, the impact of the statement can be incredibly harmful. These types of remarks should not be protected.

“All Australians should be able to access services without being exposed to discriminatory statements.”

Third, we are concerned that any perceived benefit that would arise from this clause comes at far too high a cost. This clause will make it legal for religious Australians to make

discriminatory statements, provided their intent is not malicious and they are not intending to incite violence or hatred. This will protect statements about LGBTIQ+ Australians and other marginalised groups that are currently deemed discriminatory, and it will prevent the targets of these statements from being able to make a complaint.

“Religious freedom should not come at the expense of the rights of other groups in our society.”

Furthermore, through our consultation with LGBTIQ+ South Australians we have heard again and again that statements of religious belief are already being made against our community members, such as:

- HIV and other sexually transmitted infections are punishment for gay men going against god’s wishes;
- It’s because of LGBTIQ+ people that natural disasters occur;
- LGBTIQ+ people with disabilities would be healed if they repented for their sexuality/gender identity;
- LGBTIQ+ people will never find love or happiness because god intended for men to be with women.

People SARAA has consulted with are concerned that clause 42 will further embolden people to continue to make these statements about LGBTIQ+ people and other marginalised groups in the name of their religious beliefs. We note as well that this clause will permit people to make discriminatory statements about people of faiths different to their own, which contradicts the objective of the Bill. None of these statements should be protected under law, especially when they are declared by people in positions of authority such as doctors, teachers or media personalities. This will only create a more divided Australia rather than unifying us.

For all of these reasons, we completely oppose this clause.

Recommendation: Remove clause 42 in its entirety.

2. Subclauses 8(6) & 8(7) privilege a health practitioner’s religious beliefs over a patient’s right to healthcare

Subclauses 8(6) & 8(7) will still allow doctors, nurses, midwives, psychologists and pharmacists to conscientiously object to providing any service or procedure that they disagree with on religious grounds, provided that they object to the procedure and not the patient. Although SARAA notes that these are greater restrictions to the conscientious

objection provisions than in the first draft of the Bill, we stand by our previous assertion that this provision should not exist at all in this piece of legislation.

SARAA respects that most healthcare practitioners would not discriminate in their delivery of services, but there is no doubt that some would use conscientious objection provisions to deny services to patients from particular communities including LGBTIQ+ people.

For example, this provision would allow:

- A pharmacist to refuse to provide hormone replacement therapy to a transgender patient, as they believe it is contrary to god's design;
- An emergency room doctor to refuse to give contraceptives to a woman who has been raped because they believe life begins at conception;
- A psychologist to practise harmful so-called "conversion therapy" with a gay client because they believe taking an affirming stance to the client's sexuality is contrary their faith.

In all of these cases, people are harmed because the health practitioner's rights are privileged over the rights of the patient.

"No one should have to worry about whether a doctor or psychologist will deny them support based on who they are."

The impact of these subclauses will also be felt in conjunction with clause 42 which, as already mentioned, would allow healthcare providers to make statements of belief during their provision of care to a patient.

SARAA notes as well that, in addition to the concerns raised by LGBTIQ+ communities, the conscientious objection provisions in this Bill are not supported by peak medical bodies such as the Australian Medical Association¹, Australian Nursing and Midwifery Federation², or the Royal Australian and New Zealand College of Psychiatrists³ - all of whom made their own submissions expressing their concerns about the first draft and, we are confident, will do so again in this round of consultation.

¹ Australian Medical Association submission (accessed 27 January 2020): <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Medical%20Association.pdf>

² Australian Nursing and Midwifery Federation submission (accessed 27 January 2020): <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Nursing%20and%20Midwifery%20Federation.pdf>

³ Royal Australian and New Zealand College of Psychiatrists submission (accessed 27 January 2020): <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Royal%20Australian%20and%20New%20Zealand%20College%20of%20Psychiatrists.pdf>

Recommendation: Remove subclauses 8(6) & 8(7). Do not pursue alternate changes to conscientious objection provisions without extensive consultation with relevant professional organisations to ensure that patients’ rights are not adversely affected.

3. Subclause 8(4) will limit the ability of qualifying bodies to ensure that professional conduct is upheld in relevant professions

Following on from the previous point, SARAA is also concerned that the newly added subclause 8(4) restricts the ability of qualifying bodies such as the Medical Board of Australia or the Australian Psychological Society to enforce standards of professional conduct in their respective professions.

As SARAA has not been able to consult with qualifying bodies about this new subclause we are reluctant to comment further on it, but we recommend it be withheld from the Bill until adequate consultation has occurred in order to ensure no harm is caused.

Recommendation: Remove subclause 8(4). Consult further with qualifying bodies to ensure professional standards will not be harmed.

4. Clause 11 will allow religious charities to discriminate in their provision of taxpayer funded services

In our first submission, SARAA called on the Government to explicitly exclude taxpayer funded charities (public benevolent institutions) from being able to discriminate on the basis of religious belief. We note as well that the Australian Council of Social Services – the peak body for the community service sector – expressed these same concerns in their submission⁴. We are disappointed to see that the second draft instead intends to enshrine this ability through the inclusion of various additional subclauses.

Faith-based charities provide a significant proportion of all social services in Australia. To be clear, SARAA acknowledges that some of these charities have specifically been created to provide services to their own faith community and thus they seek to operate in alignment with the beliefs of that religion. We do not object to this, and we believe that this is adequately protected under clause 12 (Reasonable conduct intended to meet a need or reduce a disadvantage).

⁴ Australian Council of Social Services submission (accessed 27 January 2020): <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Council%20of%20Social%20Service.pdf>

Our concern is that clause 11 will allow government funded religious charities to discriminate when they are being funded to support all Australians.

Based on the second draft of the Bill, clause 11 would allow a religious charity to:

- Require its counsellors to engage in so-called “conversion therapy” with LGBTIQ+ clients, even if this is contrary to the counsellor’s personal or professional ethics;
- Refuse to acknowledge that a same-gender couple are legally married when they are accessing the charity’s services;
- Give preference to people of the same faith when providing disability services;
- Prevent aged care residents of a different faith from practising their faith in communal spaces;
- Encourage married victims of domestic violence to remain in an abusive relationship or to attend relationship counselling;

If a religious charity receives government funding to provide a service to the entire community, they should not be allowed to discriminate in who they employ or who they assist. SARAA considers this no different to the right for every Australian to receive an equitable service from a government agency in accordance with existing anti-discrimination legislation. We also note that in many areas – especially in regional Australia – alternative services are often not available if a religious charity opts to treat somebody in a discriminatory manner.

“All Australians should be able to access vital social services without being discriminated against or treated unfairly.”

SARAA is likewise concerned that clause 11 will expand the exemptions currently provided to religious schools in the *Sex Discrimination Act (1984)* to also apply to religious charities.

LGBTIQ+ people who currently attend, or previously attended, religious schools have told us of being bullied, harassed, or discriminated against at school, often with school staff doing nothing to support them – or in some cases engaging in the behaviour themselves. In most cases, these students were not directly discriminated against by being expelled or denied enrolment, but the experiences they endured were so severe that they either left the school willingly to escape the abuse or they felt compelled to hide their sexuality or gender identity until after graduation in order to keep safe.

“If religious charities are granted the same exemptions as religious schools, there is every reason to expect that their clients could be susceptible to the same harmful behaviours that are already occurring in many schools.”

SARAA notes as well that the Australian Law Reform Commission has already been tasked with reviewing religious exemptions for schools in the *Sex Discrimination Act (1984)*. We believe that it would be preferable to refer the matter of religious exemptions as a whole to the ALRC rather than prematurely introduce further religious exemptions prior to the completion of the ALRC's review.

Recommendation: Exclude religious charities from clause 11, but maintain clause 12 to protect charities that have been founded to support a specific faith community. Allow the Australian Law Reform Commission to examine whether there is a need for religious exemptions in all religious organisations, such as religious schools and charities, and act upon their recommendations.

5. Clause 8 will reduce the ability of large organisations to create a safe and respectful workplace for their employees and customers

SARAA stand by the stance from our first submission that clause 8 – and in particular subclause 8(3) – will restrict the ability of large organisations to create inclusive workplaces. When combined with clause 42, we believe there is considerable risk that LGBTIQ+ people and other marginalised groups will be susceptible to discriminatory statements of religious belief from employees within these organisations, with employers being severely limited in their ability to manage the employee's behaviour.

Recommendation: Amend clause 8 (and remove clause 42) so employers can continue to provide safe and respectful workplaces for all.

6. Additional considerations

SARAA notes that there are other concerns with the Bill that have not been explored in this submission, such as:

- Whether traditional spiritual beliefs of Aboriginal and Torres Strait Islander people will be considered a religious belief in this Bill;
- Clauses 32 and 33 allowing religious hospitals, aged care services and accommodation services to discriminate in who they employ;
- The highly subjective nature of determining whether a 'statement of belief' is consistent with the doctrines, tenets, beliefs or teachings of a religion given the diverse interpretations of religious texts.

SARAA recommends careful consideration of these issues.

Alternative solutions

Despite the recommendations offered in this submission, a significant proportion of LGBTIQ+ people that SARAA has consulted with over recent months are of the belief that this Bill is fundamentally flawed and should be abandoned. Generally though, LGBTIQ+ people SARAA spoke with also believe that religious Australians – especially religious minorities, and including LGBTIQ+ people of faith – should not be discriminated against on the basis of their faith.

As a result of this, SARAA remains committed to the vision of an Australia free from discrimination in all its forms, and where all people have equal rights before the law. It is with this in mind that SARAA recommends the Government considers alternative solutions that appear more likely to protect people of faith from discrimination without causing harm to LGBTIQ+ people and other communities.

1. Abandon the Bill

Many South Australians have questioned whether a Religious Discrimination Bill is even required. They are of the belief that existing State, Territory and Commonwealth legislation provides adequate protection for people of faith and they believe that the currently proposed Bill will cause more harm than good.

SARAA agrees that the Bill is untenable in its current form and, without major reform, SARAA shares the belief that abandoning the Bill would be a better alternative to protect vulnerable communities from harm.

With that said, SARAA also believes that religious minorities deserve to have greater protections from discrimination. As a result of this, SARAA argues that the best solution would be to implement a model that protects people of faith from being discriminated *against* without leaving other communities susceptible to discrimination *from* religious individuals or organisations.

2. An Australian Charter of Human Rights

Proposed by the Human Rights Law Centre in their submission⁵, an Australian Charter of Human Rights would recognise the indivisible, equal status of all human rights, including

⁵ Human Rights Law Centre submission (accessed 27 January 2020): <https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Human%20Rights%20Law%20Centre.pdf>

religious freedom. If the Government is committed to ensuring the rights of all Australians rather than privileging religious belief over other rights, this could be a viable alternative.

While it is undeniable that considerable consultation would need to occur to design such a Charter, it is SARAA's belief that this might offer the most balanced model for the protection of all human rights in the long-term.

3. Two stage implementation of the Bill

In her submission regarding the first draft of the Bill, Dr Sarah Moulds⁶ from the University of South Australia suggests a two stage model whereby the conventional aspects of the Bill could be implemented during the first stage, and the more novel elements would be referred to the Australian Law Reform Commission or Australian Human Rights Commission for further consideration. This model was also supported by the Australian Council of Human Rights Authorities in their submission⁷.

As SARAA's concerns primarily relate to the novel clauses in this Bill that deviate from – or directly negate – existing anti-discrimination legislation, it is SARAA's view that an additional period of consideration of these clauses by the ALRC or AHRC could result in a suitable solution being developed.

4. Refer the entire Bill to the ALRC for a more comprehensive review

Similar to Dr Moulds' recommendation above, SARAA recommended in our first submission⁸ that the Bill could be referred to the ALRC in its entirety.

Anti-discrimination legislation must be carefully considered to ensure it protects vulnerable communities from discrimination. Given the controversial nature of this Bill, it is SARAA's belief that a more thorough assessment by an independent body would create a better result than the current draft Bill.

⁶ Submission by Dr Sarah Moulds (accessed 27 January 2020):
<https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/dr-sarah-moulds.PDF>

⁷ Australian Council of Human Rights Authorities submission (accessed 27 January 2020):
<https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/Australian%20Council%20of%20Human%20Rights%20Authorities.pdf>

⁸ South Australian Rainbow Advocacy Alliance submission (accessed 27 January 2020):
<https://www.ag.gov.au/Consultations/Documents/religious-freedom-bills/submissions/South%20Australian%20Rainbow%20Advocacy%20Alliance.pdf>

Summary

SARAA respects the diverse religious beliefs that exist in Australia and believes that all Australians deserve to be protected from discrimination regardless of who they are or what they believe, provided that they are not harming others. It is with this in mind that SARAA proposed various recommendations to the first draft of the Religious Discrimination Bill that would protect religious Australians without causing harm to other members of Australian society.

Regrettably, the recommendations that SARAA and numerous other organisations proposed have not been incorporated into the Bill and it continues to allow religious individuals and organisations to discriminate in the name of their religious beliefs. It is therefore SARAA's belief that the second draft of the Religious Discrimination Bill continues to be fundamentally flawed and thus, based on the ongoing issues that have not been addressed in this second draft, SARAA does not support this Bill.

SARAA stands by its vision of a diverse, inclusive Australia free from all forms of discrimination. We offer our support to various alternative solutions that have been recommended by other organisations in order to protect people of faith from discrimination without putting LGBTIQ+ people and other marginalised communities at risk of greater discrimination. We strongly believe the Government should consider these alternate models.

SARAA is grateful for the opportunity to provide a submission about this Bill. We welcome future opportunities to consult on this matter with the hope that a solution can be found that protects all Australians from discrimination without causing harm to anyone.