

Response Religious Discrimination Bill Exposure Draft 2019

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Freedom from discrimination

Firstly, Working It Out welcomes legislation that protects people of faith (or people not of faith) from discrimination as a basic human right. We are hopeful all Australians can live a life free from discrimination, to the extent the rights of others are also protected.

Freedom to discriminate

This protection described above, with relevant exceptions, could have been easily provided by an amendment to the Racial Discrimination Act 1975, as recommended by the Religious Freedom Review (Ruddock, 2018). That this recommendation was not followed, and instead a broader and more complex Bill has been developed speaks to the broader intent of the Religious Discrimination Bill.

Anti-discrimination law in Australia has been developed to protect people who have suffered systematic discrimination based on stigma stemming from ignorance, prejudice and/or community attitudes. Such beliefs have often been underpinned by religious doctrines.

Key examples include attitudes towards women, unmarried mothers, people with disabilities, people of colour and diverse ethnic backgrounds, aboriginal people and LGBTI people. These doctrines have largely been derived from religious texts without reference to science or evidence, based on hearsay and supernatural events such as miracles and messages from a divine being delivered to individuals who may or may not have been historically verified. Doctrines are often adopted or discarded based on current church edicts and thinking, and change over time, place and faith. In the past 200 years, religious doctrine has been used to support slavery, capital punishment, domestic violence, sexual abuse, genital mutilation, forced separation of mothers and babies, ostracizing people with a disability or mental illnesses, racism and genocide.

While it is important to acknowledge the role of faith and spirituality in the role of people's lives, and in their wellbeing, is also important to understand how these religious doctrines are conceived and disseminated, how they can lead to harm for others, and to understand how to create a balance between protecting the rights of individuals to hold these beliefs and protecting others who may be harmed by them.

The damage done by doctrines of hate, or doctrines of denial, towards LGBTI individuals, such as those often championed by key religious groups in Australia, is well documented through research, data and lived experience examples. It includes widespread discrimination and harassment, including many instances of physical abuse, sexual abuse and murder (LGBTI Health Alliance, 2019). A 2017 study by Sowe, Taylor & Brown concludes:

.... greater exposure to religious anti-gay prejudice predicted higher levels of anxiety, stress, and shame; more instances of physical and verbal abuse; and more problematic alcohol use. Furthermore, while sexual minority individuals tended to fare more poorly than their heterosexual counterparts on almost every outcome measure assessed, homonegative

prejudice predicted poorer outcomes among all respondents regardless of their sexual orientation or religious identification. Hence, results are among the first to demonstrate that anti-gay religious exposure is associated with substantial threats to wellbeing, and that such effects may be observed beyond religious sexual minorities.

Comparatively, by definition, those people not members of stigmatized/discriminated groups enjoyed a level of privilege. They do not, generally, suffer significant stigma, discrimination and harassment as a result of their identity. As the Ruddock Religious Freedom (Ruddock, 2018) review found, Australians enjoy a very high level of religious freedom and expression. There is little evidence that any religious group is being systematically persecuted, and the review found no need for the extra 'protections/privileges' being afforded in this Bill.

Anti-discrimination law should seek to even out the privilege/disadvantaged dichotomy and ensure the disadvantaged group can live in society *at the same level* of freedom as others (i.e. not more than, just equal to). The current proposed legislation is aimed at a group which has not suffered significant and ongoing discrimination in Australia in the recent past. Rather, they have enjoyed a significant level of privilege where their ideas, especially those of Christianity, have held significant sway in society, and have instead underpinned significant discrimination against others.

They have not been the persecuted. They have, in many cases, been the persecutors.

Resetting culture

Over the past 10 years, particularly through the same-sex marriage debate, Christianity and the doctrines that have traditionally stigmatised and vilified others, have been challenged by many in our society. Most Australians now understand that diverse gender and sexual identities represent natural and relatively common variations of humanity. Accordingly, Australians have become more accepting and have supported significant legal changes to ensure the rights of LGBTI individuals are protected (Wilkins, 2017).

The broader community has also come to understand that considerable harm is done to people when they are portrayed as somehow inherently immoral; when they are excluded from families, communities and workplaces; when they are victimized and harassed. Adverse mental health outcomes for LGBTI individuals are amongst the highest of any population group in Australia, with extremely high rates of psychological distress, self-harm and suicide (LGBTI Health Alliance, 2019). These mental health outcomes are a direct result of discrimination, exclusion and harassment.

The social change described above has at times been at odds with the more traditional views of religious organisations. In a recent discussion with government officials, a statement was made that parts of the Religious Discrimination Bill were about 'resetting culture'. It was also clear that the Bill was a direct result of disquiet from the same-sex marriage postal survey and increasing opposition to some religious messaging on this topic.

Given the nature of the Bill, and the above comments, one can only surmise that this cultural 'resetting' is about ensuring the privilege of religious organisations and their members to express their traditional views unchallenged. That is, we need to go back to when religious organisations could freely advocate against LGBTI people without being held to account.

Parts of this Bill, therefore, are about the right of religious organisations and followers to discriminate, stigmatise, and harm others. The loss of this right is being framed as persecution, when in fact it is merely leveling the playing field to where the rest of us sit.

As an LGBTI support organisation, Working It Out strongly opposes measures in this Bill which promote such an agenda.

In particular,

Section 8 (3)

Codes of conduct are an important way for organisations to define who they are and what they stand for. Religious organisations do this through their employment practices and requirements of faith. They effectively have 'codes of conduct'. Not allowing large businesses and/or organisations to do the same is discriminatory, and also sends a message that abusing others in the name of religion is an acceptable thing to do.

Section 8 (5)

Being able to withhold medical assistance on the basis of a person's religious beliefs is a very dangerous precedent to set. If a health professional is not able to treat every member of the Australian public (a public who contribute extensively to the training and often employment of health professionals through our tax system) equally, then perhaps they should not be health professionals, or should not go into areas of medicine/health in which their beliefs might be challenged.

Being denied medical treatment, even if such treatment is available elsewhere or by another person, is a form of abuse to the person requesting that service. It has significant impact on their sense of worth, belonging, validity and well-being. Presumably, these are the kind of consequences the person of faith is being protected from also by having to perform a service they are trained and paid to do, which they feel conflicts with their beliefs. What is the justification for championing one person's discomfort above another's, especially in the area of health and wellbeing? Especially when one is being paid to provide a service to the other?

As previously noted, this also creates two sets of standards. A non-religious person could not decide to refuse medical assistance on the basis that they did not 'approve' of the person or medical procedure they were asked to provide. Why then, is this privilege being afforded to people of faith?

Finally, religious doctrine is so expansive, so changeable, so open to interpretation and manipulation, how is one to decide what is genuine doctrine? The Christian Bible for example, has very little to say about people being transgender, and that which it does say can be interpreted in different ways. Yet, now we hear Christian churches denouncing transgender people, with the possibility of health professionals denying such individuals services based on these new laws, extremely high. By allowing this kind of discrimination, the onus is on the individual being denied service to somehow prove the discrimination was not faith-based. This puts an unreasonable burden on that individual and is likely to have serious health and wellbeing consequences.

Section 10

Section 10 allows religious organisations to discriminate in areas that nonreligious organisations may not, creating a set of double standards in which people of faith are privileged above others.

Section 41

This broad right overrides the rights of all others. It allows a person to express harmful thoughts and ideas and not have it count as a form of discrimination or of abuse.

It also speaks to the 'cultural resetting' process that this Bill champions. It seeks to undermine social progress which makes it now increasingly unacceptable to vilify people who are different.

Significant harm has been done over history based on the licence of religious organisations and their followers to demonise certain groups of people and to silence difference. The recent Royal Commission into Child Abuse highlights the damage that can be done by allowing institutions of faith to act as if they are outside the law, as if they cannot be brought to account. How many children suffered unspeakable harm because they were not believed? Because their words were inconsequential in opposition to the words of a powerful church or religious institution?

This Bill is in direct opposition to what should be happening to prevent these and other atrocities from occurring again. Religious organisations should not be above the law that the rest of the community must abide by. They should not have 'get out of gaol free' cards based on their beliefs. They should not have licence to harm others with their words and actions.

By overtly overriding Tasmania's Anti-discrimination Act (1998) 17(1), a law which has been thoroughly reviewed, dissected and affirmed by both judicial and legislative processes, this Bill particularly weakens the protection afforded people in Tasmania. That this protection works as intended is evidenced by the successful case of Rob Williams versus James Durston in relation to the distribution of flyers titled 'Homosexuality Stats' that said gay people were likely to die prematurely and that "scripture rejects homosexuality as utterly abominable". Under this proposed Bill, it would not have been successful under this section of the Act.

In addition, this section once again creates different standards for different people. It creates one set of rules for people of faith, and one set for everyone else. If this clause becomes legislation it is entirely conceivable that a person of faith would be protected from prosecution for an act whereas the same act, not done in the name of faith, would not have such protection. For example, the writer of a pamphlet with claimed homosexuality is against the will of God could claim protection, while the writer of a pamphlet which claimed homosexuality was against nature could not.

Summary

As an LGBTI support agency, Working It Out sees the harm done by others, much of it in the name of religion. We see the young person exited from their families. We see the youth bullied in their school. We see the person tortured by the conflict between their beliefs and their sexuality. We see the employees who are unable to progress in their careers. We see the older people frightened to seek aged care assistance. We also see the intense hurt and trauma which come from the above, the acts of self-harm, the suicide attempts, the loss of life.

How all this understanding held by us and countless other organisations and individuals is discounted so that others can be free to exercise their privilege is difficult to reconcile.

Our goal is that an LGBTI support agency such as ours does not need to exist. That we can live in a world where no people are inherently 'wrong'; that people instead get judged on how they behave in this world; how they demonstrate kindness and tolerance to others.

The portions of this Bill which seek to protect people and organisations of faith over and above others, which allows discrimination and abuse in the name of faith, and attempt to 'reset the culture' are inherently wrong and in the end ensures ongoing harm to members of the LGBTI communities in the name of religion.

We urge that the recommendation of the Ruddock Review (2018) be adopted and that freedom from discrimination for people of faith be protected via the Racial Discrimination Act (1975), and in line with other discrimination law. We also urge that all other protections that enable religious organisations and their followers privileges over and above the rest of the population, be eliminated.

References

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