



Religious Freedom Bills – Second Exposure Drafts

Introduction

YACSA is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them.

The release of the Ruddock Religious Freedom Review report¹ and the religious freedom reforms² have sparked significant debate in the community regarding both the concept of “religious freedom” and how those “freedoms” impact on the rights and freedoms of other citizens.

YACSA is concerned that this legislation, if passed, will not only erode the right for all citizens to be equal before the law but will also give unprecedented freedom for selected individuals, groups, organisations and institutions to legally discriminate against or publicly vilify other individuals and groups based upon personal characteristics and their own religious affiliations.

Australia’s obligation to adhere to universal human rights and protection from discrimination should be without condition and should apply to all citizens. As such, YACSA does not support any legislative change that will result in already vulnerable groups experiencing state-sanctioned discrimination. We instead urge government to develop legalisation regarding religious freedom that protects the right of individuals, groups and organisations to hold and observe a religious belief while also protecting the right to non-discrimination for the rest of the community.

Key points

This submission outlines the following:

- YACSA does not support any legislative change or any existing exemptions in anti-discrimination laws that impact on the right of all citizens to be free from discrimination and to be equal before the law.

¹ Australian Government. Religious Freedom Review: Report of the expert panel. Viewed online: 6 January 2020. <https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf> May 2018.

² Australian Government. Religious Freedom Bills – Second Exposure Drafts. Viewed online: 19 December 2019. <https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx>, 2019.

- Australia is obligated to adhere to and acknowledge the equal status of all universal human rights and to apply these rights to all citizens without condition.
- The right to hold a religious belief is already afforded and protected by international human rights instruments. This right does not and should not allow an individual or group to force that belief on anyone else or to impinge upon the inherent rights of others.
- Many of the provisions contained in the draft exposure Bills (in particular the broadening of the concept of conscientious objection for health care providers, exemptions in anti-discrimination legislation for religious individuals, groups, organisations and businesses to engage in positive discrimination and publicly expressing statements of belief) will have undue impacts on already vulnerable populations such as the lesbian, gay, bisexual, transgender, intersex and queer communities (LGBTIQ), rural and remote Australians, women and girls and Indigenous Australians.
- Government must review and re-draft religious freedom laws to ensure that human rights are applied equally and that protections are provided for people to hold and practice a religious belief while protecting the rest of the community from having those beliefs impact upon them.

The right to religious freedom

The right to hold and practice a religious belief is absolute and this right is provided for in international human rights instruments. However, the right to hold and practice a religious belief cannot impact on the rights of others. This important distinction is outlined within human rights instruments and the legislation of states to protect the rights of citizens to be free from having the religious beliefs of others impact upon them.

In Australia, people who practice a religious belief should have legal protections to protect them from discrimination. These protections exist within the legislation of various states and territories but are not applied in all jurisdictions. However, it is equally as important that other citizens should be protected from having those religious beliefs imposed upon them. While the government states that the religious freedom reforms effectively strike the balance between freedom of religion and other rights, the legislation will have the opposite effect, sanctioning discrimination against already vulnerable populations and creating a hierarchy of rights that firmly places the right to hold and practice a religious belief ahead of any other right. This is unprecedented in Australian anti-discrimination law and is contrary to the intent of human rights instruments³.

We must ensure through the process of preventing discrimination against people who hold and practice a religious belief that any additional protection for religious freedom does not further erode or remove the right for the rest of the community to non-discrimination. The best way forward for government is to develop legislation that supports, promotes and balances the right of people to hold and practice a religious belief while ensuring that the rest of the community is free from discrimination and free from having the beliefs of others impact upon them⁴.

³ Human Rights Law Centre. Getting the balance right: Submission on the Religious Discrimination Bill – Exposure Draft. Viewd online 20 December 2019, <https://www.hrlc.org.au/submissions/2019/11/27/submission-on-the-religious-discrimination-bill-getting-the-balance-right>, October 2019.

⁴ L. Elphick. The 'gay wedding cake' dilemma: when religious freedom and LGBTI rights intersect. The Conversation. Viewed online, 20 December 2019, <https://theconversation.com/the-gay-wedding-cake-dilemma-when-religious-freedom-and-lgbti-rights-intersect-93070>, 27 March 2018.

Human rights and other protections

The right to be free from discrimination is a foundation principle of all major treaties, charters and conventions and covenants on human rights⁵. Australia, as a signatory to those treaties, conventions, covenants and charters, is compelled to ensure that all citizens have equal rights. For example, Article 2 of the United Nations Convention on the Rights of the Child (UNCRC)⁶ states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Article 7 of the United Nations Declaration of Human Rights (UDHR) compels the Australian government to ensure that all citizens are equal before the law and that all citizens, without condition, receive equal protection before the law⁷. Similarly, Article 14 of the International Covenant on Civil and Political Rights⁸ requires both federal and state governments to ensure that all citizens are equal before the law.

While freedom of religious practice is also enshrined in international human rights instruments, these rights extend only to the ability to hold a religious belief. This right does not and should not provide an individual or group the right to impinge upon the inherent rights of others to be equal before the law and to be free from discrimination. And in fact, Article 18 of the International Covenant on Civil and Political Rights⁹ is clear that the right to adopt and observe a religious belief is subject to limitations and these limitations can be prescribed by law to protect the fundamental rights and freedoms of others. Article 14 of the UNCRC similarly states that the freedom to manifest one's religion is subject to limitations to “protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

Broadly, the UN treaties, charters and covenants recognise that basic rights and freedoms are inherent to all human beings regardless of country of residence, ethnic origin, gender identity, sexuality, religion or language. And while some rights may come into conflict with other rights from time to time, human rights are universal and inalienable; indivisible; interdependent and interrelated. Importantly, all human rights have equal status, and no single right is more important than another¹⁰. The current religious freedom reforms seek to place the right to hold and express a religious belief over the right of all citizens to be free from discrimination and to be equal before the law.

⁵ A. Donald and E. Howard. The right to freedom of religion or belief and its intersection with other rights. Discussion Paper. ILGA-Europe, Brussels, Belgium, 2015.

⁶ The United Nations. Convention on the Rights of the Child. Treaty Series 1577 (November): 3, 1989.

⁷ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948), <http://www.un.org/en/documents/udhr/>, viewed 18 December 2019.

⁸ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>, viewed 9 December 2019.

⁹ Ibid.

¹⁰ United Nations Population Fund. Human Rights Principles. Viewed online 20 January 2020, <https://www.unfpa.org/resources/human-rights-principles>, 2005.

Positive discrimination

Despite the government assuaging fears that this legislation will lead to increases in positive discrimination¹¹, provisions not only maintain current exemptions for faith-based schools to engage in positive discrimination (regarding the employment of staff) but also broadens those exemptions to faith-based hospitals, aged care facilities and charitable service providers to discriminate against prospective and current staff based on religious belief. This leads to a position where choice of religion may be of greater consequence when looking for and applying for available positions than qualifications and experience¹². It also means that a growing section of the population¹³ could be discriminated against and excluded from a range of positions based on having either no religious belief, an alternative religious belief to a prospective or current employer or possess the characteristics of a group or community (such as the LGBTIQ community) seen as antithesis to the tenets of one of the major religions.

More troublingly, the legislation will also open the door for faith-based camps and conference centres to engage in positive discrimination against not only their staff or prospective staff members, but also against their prospective customers (as long as they publish a policy explaining their religious ethos and rules)¹⁴.

These provisions are deeply concerning and go above and beyond the discussion and recommendations contained in the Ruddock Review report¹⁵. The provisions also contradict the government's own assessment and claims about the impacts of this legislation and will only serve to create a greater divide between religious groups and the rest of society and more importantly will cause unnecessary harm to a range of citizens.

YACSA has previously urged government (in our submission to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018) to cease the right of religious affiliated educational institutions to lawfully discriminate against teachers and other educational staff based upon sexual and gender identity, intersex status, marital status or pregnancy¹⁶. YACSA also strongly opposes the broadening of these exemptions to allow positive discrimination to occur by other faith-based entities.

¹¹ S. Martin. N. Zhou. Coalition stops short of 'licence to discriminate' in religious freedom bill. The Guardian. Viewed online 19 December 2019, <https://www.theguardian.com/australia-news/2019/aug/20/coalition-stops-short-of-licence-to-discriminate-in-religious-freedom-bill>, 20 August 2019.

¹² National Secular Lobby. Submission to the Religious Discrimination Bill 2019 (Second Exposure Draft). Viewed online 15 January 2020, <https://www.nationalsecularlobby.org/resources/submissions/religious-discrimination-bill-2019-second-exposure-draft/>, January 2020.

¹³ G. Bouma. Religion in Australia: What are the Implications of 'None' being the New Normal? ABC News. Viewed online 21 January 2020, <https://www.abc.net.au/religion/religion-in-australia-what-are-the-implications-of-none-being-th/10094576>, 28 June 2018.

¹⁴ P. Karp. The Coalition's religious discrimination bill: what's changed and can doctors refuse treatment? The Guardian. Viewed online 18 December 2019, <https://www.theguardian.com/australia-news/2019/dec/11/the-coalitions-religious-discrimination-bill-whats-changed-and-can-doctors-refuse-treatment>, 11 December 2019.

¹⁵ "the panel does not accept arguments that a right to discriminate in the provision of goods and services is required or proportionate to ensure the free and full enjoyment of Australians' rights to freedom of religion under international law. Rather, the Panel is of the view that allowing businesses and individuals to discriminate in the provision of goods and services would unnecessarily encroach on other human rights, and may cause significant harm to vulnerable groups in the community." Australian Government. Religious Freedom Review: Report of the expert panel. Viewed online: 6 January 2020. <https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf> May 2018.

¹⁶ Youth Affairs Council of South Australia. Submission to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018). Viewed online 19 December 2019, <https://www.yacsa.com.au/publications/sexdiscriminationamendment>, January 2019.

Again, the rights of one individual, organisation or institution should not be permitted to impinge upon the right of any other citizen to be equal before the law. Our international, national and state based laws and obligations should be applied to all citizens regardless of the personal beliefs of any other citizen, group, organisation, business or institution¹⁷.

Statements of belief

YACSA is concerned that the Religious Discrimination Bills will create the legal environment in which potentially offensive and harmful “statements of belief” (that would normally be subject to current anti-discrimination laws) will be rendered lawful.

Under the proposed legislation, individuals, groups and institutions will have the right to make statements of belief (that may offend or harm other individuals and communities) free from the operation of Commonwealth, state and territory anti-discrimination law, if the statement is said in good faith and if a person of the same religion could reasonably consider the statement to align with the doctrines, tenets, beliefs or teachings of the person’s religion. Sometimes referred to as the “Folau Clause”¹⁸, this provision would allow individuals to make derogatory and harmful statements in the public sphere about already vulnerable populations with no legal recourse. Only statements that meet the higher threshold of harassment, vilification or incitement of hatred will be considered unlawful¹⁹.

YACSA strongly opposes any legislative change that creates the social and legal environment in which an individual, group or organisation can make a potentially offensive public statement of belief with only the tenuous qualification that other individuals might hold the same opinion or belief. Any statements of belief should be subject to anti-discrimination laws and workplaces should be free to counsel or sanction workers who publicly make offensive and/or harmful statements based upon their own internal policies and contract inclusions.

Access to health care for vulnerable populations

Section 8 of the Religious Discrimination Bill seeks to widen conscientious objection provisions to apply where these laws do not currently operate and to enforce those provisions where they do. The religious freedom reforms explanatory notes document states that “It is not intended that this provision would allow health practitioners to exercise their conscientious objection in a manner which directly affects the patient, causes disruption to patient care or intentionally impedes patients’ access to care”. YACSA is concerned that access to health care will be compromised for already vulnerable populations where health practitioners conscientiously object to providing health services.

Groups such as young women and girls (particularly regarding reproductive health), the LGBTIQ population/s, young people living in rural and remote areas and Indigenous Australians already face discrimination and a lack of access to services leaving them disproportionately at risk. Conscientious

¹⁷ Youth Affairs Council of South Australia. Submission to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018). Viewed online 19 December 2019, <https://www.yacsa.com.au/publications/sexdiscriminationamendment>, January 2019.

¹⁸ J. Ireland. “Discrimination Bill’s ‘Folau Clause’ is ‘alien to a fair go’, Jewish peak body says. Sydney Morning Herald. September 27 2019. Viewed 18 December 2019, <https://www.smh.com.au/politics/federal/discrimination-bill-s-folau-clause-is-alien-to-a-fair-go-jewish-peak-body-says-20190927-p52vkw.html>

¹⁹ Queensland AIDS Council. Religious Freedom Bills: Overview. Viewed online 13 January 2020 https://quac.org.au/wp-content/uploads/2019/09/Religious-Freedom-Bills-Overview-1_Sept-2019-1.pdf, 2019.

objection provisions, which already exist in some jurisdictions, prioritises the religious belief of health care practitioners over the health and wellbeing of patients and their access to health care services²⁰.

The Australian Medical Association (AMA) state - in their position statement regarding conscientious objection - that any health practitioner who invokes a conscientious objection should do so in such a way that minimises disruption to a patient's care. Medical practitioners are further obligated to inform patients early (that they have a conscientious objection), inform them of their right to see another practitioner and equip them with the information they need to access health care from another practitioner²¹. There is no provision in this legislation compelling health professionals to refer patients they refuse to treat on religious grounds to another health practitioner or to ensure continuity of care for patients.

It's important to note that people are often vulnerable when accessing health care and some may be seeking advice or treatments that are likely to spark religious sensitivities (such as abortion, birth control, treatment for HIV/AIDS, blood transfusions or euthanasia). The advice or treatment that patients receive or do not receive based on a religious objection may make those patients less likely to seek out preventive services or treatment for critical medical issues²².

While YACSA understands that a medical practitioner cannot be forced to engage in a procedure that they conscientiously object to, the wellbeing and care of the patient should be the paramount concern. Any legislation that outlines the concept of conscientious objection must detail the obligations of medical practitioners and health services to the patient, including how patients receive continuity of care, particularly where access to health practitioners is limited such as in regional and remote areas.

The impacts of discrimination on LGBTIQ young people

With the historically fraught relationship between religion and sexual and gender diverse communities²³, there is great deal of community concern²⁴ about what impact greater religious freedom will have on the LGBTIQ communities in Australia²⁴.

While relatively recent legislative changes in Australia, including the long-fought victory to achieve marriage equality, have significantly contributed towards overall equality for LGBTIQ people, there are still a range of obstacles to the full recognition of fundamental human rights for the LGBTIQ community²⁵. This includes the right to be free from discrimination and the right to be equal before the law.

²⁰ Amnesty International. Submission to the Religious Discrimination Bills – Exposure Drafts. Viewed online 19 December 2019, <https://www.amnesty.org.au/wp-content/uploads/2019/10/20191002-Submission-to-Religious-Discrimination-Bill-Exposure-Drafts.pdf> October 2019.

²¹ Law Council of Australia. Religious Freedom Bills. Viewed online 19 December 2019, <https://www.lawcouncil.asn.au/resources/submissions/religious-freedom-bills>, October 2019.

²² National Secular Lobby. Submission to the Religious Discrimination Bill 2019 (Second Exposure Draft). Viewed online 15 January 2020, <https://www.nationalsecularlobby.org/resources/submissions/religious-discrimination-bill-2019-second-exposure-draft/>, January 2020.

²³ RW. McGee. The Relationship between Religion and Views Toward Homosexuality: An Empirical Study of 98 Countries. Viewed online 29 January 2020, <https://ssrn.com/abstract=2799870>, 2016.

²⁴ SBS News. New religious laws prompt LGBTI warning. Viewed online 21 January 2020: <https://www.sbs.com.au/news/new-religious-laws-prompt-lgbti-warning> July 2019. 2016.

²⁵ L Zeeman, N Sherriff, K Browne, N McGlynn, M Mirandola, L Gios, R Davis, J Sanchez-Lambert, S Aujean, N Pinto, F Farinella, V Donisi, M Niedźwiedzka-Stadnik, M Rosińska, A Pierson, F Amaddeo, Health4LGBTI Network; A review of lesbian, gay, bisexual, trans and intersex (LGBTI) health and healthcare inequalities, European Journal of Public Health, viewed 18 December 2019. <https://academic.oup.com/eurpub/article/29/5/974/5151209>, 2018.

Fear, vilification, social isolation and the experience of discrimination significantly impacts the mental health of LGBTIQ people, and young LGBTIQ people in particular, causing a range of health and psychological health issues, including an increased incidence of mental health issues and suicidality²⁶. The impacts of discrimination on LGBTIQ young people can be damaging and long lasting. When this discrimination is sanctioned by the state, such as with laws that allow discrimination to occur against citizens based upon certain personal attributes, it sends a clear message to the rest of society that the LGBTIQ community is unequal and deserving of discrimination. Further, it sends an even clearer message to young LGBTIQ people that they are unequal and don't share or deserve the same rights as their family, friends and the rest of society.

In general, the LGBTIQ youth population is more vulnerable to social isolation, discrimination, abuse and violence, mental health issues and suicidality. As such, we need to do all we can to ensure that LGBTIQ young people feel accepted, included, acknowledged, enjoy their right to be equal before the law and are free from discrimination.

With the adoption of resolution 17/19 and 27/32 - Human rights, sexual orientation and gender identity and resolution 32/2 Protection against violence and discrimination based on sexual orientation and gender identity in the UDHR – the United Nations has made clear the obligations of signatories to protect the rights of the LGBTIQ population²⁷. Providing the legislative platform for religious institutions and individuals to lawfully discriminate against LGBTIQ people or to express an offensive religious statement/belief is antithesis to our obligations as signatories to international human rights instruments.

²⁶ G Rosenstreich, Discrimination, LGBTI mental health and suicide Discrimination, LGBTI mental health and suicide. Newparadigm, spring 2011 edition 'Around Australia', viewed, 19 December 2019 <https://lgbtihealth.org.au/wp-content/uploads/2015/02/REFERENCED-Discrimination LGBTI Mental Health and Suicide-Rosenstreich.pdf>

²⁷ United Nations Human Rights Office of the High Commissioner. United Nations Resolutions - Sexual orientation and gender identity. Viewed online 19 January 2020, <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>, 2020.



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