

21 December 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Sent via email: legcon.sen@aph.gov.au

Dear Senator Henderson and the Legal and Constitutional Affairs Legislation Committee,

Re: Religious Discrimination Bill 2021 [Provision], Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions]

Following the recent referral of the Religious Discrimination Bill 2021 [Provision], Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions], and the Human Rights Legislation Amendment Bill 2021 [Provisions], hereafter known as the Legislative Package, to the Legal and Constitutional Affairs Legislation Committee for inquiry and report, I am writing to express Family Planning NSW's opposition to the Legislative Package.

Family Planning NSW is the leading provider of reproductive and sexual health services in NSW and Australia. We are experts in clinical service provision and comprehensive sexuality education. Our mission is to enhance the reproductive and sexual health and rights of our communities by supporting all people to have control over and decide freely on all matters related to their reproductive and sexual health. Our work is evidence-based and shaped by our research.

Family Planning NSW supports the notion that people of faith should be able to practice their religion free from discrimination, however, we strongly believe that this should not come at the cost of other indivisible human rights.

We acknowledge that the third version of the Religious Discrimination Bill is, in some areas, improved, however, it is our view that failure to adequately consider the broader implications of the Bill, both in terms of human rights and the provision of high-quality, evidence-based and judgement-free education, health care and other community services, will have significant impacts on the social, emotional and physical health and wellbeing of Australians, particularly those who are most vulnerable.



Family Planning NSW provided a detailed submission to the Parliamentary Joint Committee on Human Rights, outlining our major concerns with the Legislative Package. Primarily, we are concerned that that Australians will lose discrimination protections at work, school and when accessing essential health care, including reproductive and sexual health care, to accommodate the religious beliefs of people who may make discriminatory statements of belief against them.

In our submission to the Parliamentary Joint Committee on Human Rights, we recommended that:

1. 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.
2. the Religious Discrimination Bill should be redrafted to remove provisions that protect 'statements of belief'. Specifically, sections 3(1)(d) and 12 of the Religious Discrimination Bill (and associated definitions) should be deleted
3. 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.
4. the proposed amendments, including section 19 of the Charities Act 2013 (Cth) be removed from the Legislative Package.
5. the inquiry process 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.

We provide that submission as an attachment, for your consideration as part of the Senate inquiry to the Legislative Package. Family Planning NSW cannot support legislation which seeks to enable judgmental health care and education. It is essential that health care, particularly reproductive and sexual health care, is inclusive, welcoming and safe for all people.

The Legislative Package is a complex piece of legislation which undermines existing discrimination protections and has significant negative implications for access to health care and education. Due to the complexity and significance of the Bill, it is our view that the time period available for consultation is not adequate. We recommend the Bill not proceed, or be substantially revised with further 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.

Yours sincerely,



Adj. Prof Ann Brassil
CEO



Submission of Family Planning NSW

Religious Discrimination Bill 2021 and related Bills

December 2021

Parliamentary Joint Committee on Human Rights
Parliament House
human.rights@aph.gov.au

Family Planning NSW welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights regarding the 'Religious Discrimination Bill 2021 and related Bills'.

We have a strong history of consulting with the Australian Government on previous iterations of the Religious Discrimination Bill 2021 (the Bill) and cannot support any piece of legislation that impinges on the rights of individuals to access reproductive and sexual health care, education and other community services without judgement or discrimination.

Family Planning NSW has a strong relationship with key partners, who are experts in their respective fields, and endorses the submissions of ACON, Equality Australia and Women's Electoral Lobby.

About Family Planning NSW

Family Planning NSW is the leading provider of reproductive and sexual health services in NSW and Australia. We are experts in clinical service provision and comprehensive sexuality education. Our mission is to enhance the reproductive and sexual health and rights of our communities by supporting all people to have control over and decide freely on all matters related to their reproductive and sexual health. Our work is evidence-based and shaped by our research.

Each year we provide more than 31,000 clinical occasions of service to clients, information and health promotion activities to communities, and best practice education and training in reproductive and sexual health for health for doctors, nurses, teachers, disability support workers and other health, education and welfare professionals.

Family Planning NSW has significant experience in the provision of reproductive and sexual health services, including for people of diverse sexualities and genders, people from culturally and linguistically diverse and Aboriginal and Torres Strait Islander backgrounds, and young people. We work across the state of NSW including in regional communities with limited access reproductive and sexual health care.

Given our expertise in reproductive and sexual health care, education and service delivery, our submission is focused on the potential health and associated access implications of the Bill.

Implications of the Bill on human rights and access to health services

Family Planning NSW supports the notion that people of faith should be able to practice their religion free from discrimination. However, we strongly believe that this should not come at the cost of other indivisible human rights.

Family Planning NSW acknowledges that the third version of the Bill is, in some areas, improved, and commends the Bill's commitment to indivisible, universal human rights, as expressed at section 3(2). However, the Bill as it currently stands does not reflect this commitment to universal human rights and fails to adequately balance the right to be free from religious discrimination with other rights, including the right to:

- access health care without discrimination
- freedom from discrimination without distinction of any kind, including on the basis of sex, pregnancy, sexual orientation, transgender or intersex status.

It is our view that failure to adequately consider the broader implications of the Bill, both in terms of human rights and the provision of high-quality, evidence-based and judgement-free education,

health care and other community services, will have significant impacts on the social, emotional and physical health and wellbeing of Australians, particularly those who are most vulnerable.

Discrimination legislation, and the work of the Human Rights Commission, should be to ensure that all Australians are treated equally under the law, and that the law does not impact on one's right to the highest attainable standard of health and non-judgemental health care. We urge the Government to reconsider this Bill to ensure that it does not privilege religion over other grounds of discrimination.

Recommendations

Family Planning NSW recommends that:

1. 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
2. the Religious Discrimination Bill should be redrafted to remove provisions that protect 'statements of belief'. Specifically, sections 3(1)(d) and 12 of the Religious Discrimination Bill (and associated definitions) should be deleted
3. 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
4. the proposed amendments, including section 19 of the Charities Act 2013 (Cth) be removed from the Legislative Package
5. the inquiry process 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.

Major concerns

It is globally recognised that "all humans are born with equal and inalienable rights and fundamental freedoms".(1) These rights are universal, indivisible and interdependent meaning some rights cannot be privileged over others. Article 2 of the Universal Declaration of Human rights states "you should never be discriminated against for any reason. Rights belong to all people, whatever our differences".(1) Freedom of religion should not come at the expense of the rights of others.

While we recognise that the Religious Discrimination Bill 2021, is in some ways improved, particularly regarding the removal of conscientious objection clauses for health professionals, Family Planning NSW is deeply concerned that Australians will lose discrimination protections at work, school and when accessing essential health care, including reproductive and sexual health care, to accommodate the religious beliefs of people who may make discriminatory statements of belief against them.(2)

The Bill aims "to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity". However, it fails to do so as it places the rights of those who hold a religious belief over the rights of others. Provisions in the Bill prioritise and protect the religious beliefs of health care providers, educators and other professionals over the needs of

marginalised individuals and communities, many of whom are at increased risk of poor health outcomes and require non-discriminatory and welcoming access to education and health care.

As such, Family Planning NSW cannot support legislation which seeks to enable judgmental health care. It is essential that health care, particularly reproductive and sexual health care, is inclusive, welcoming and safe for all people. Our position is evidence-based and focused on meeting and addressing the reproductive and sexual health needs of all Australians, including those who are most vulnerable and marginalised.

Recommendation 1: 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.

To inform the Committee’s deliberations, our key concerns are listed below.

1. The Bill has a detrimental impact on an individual’s right to access health care without judgement and discrimination

While we recognise and welcome that the Religious Discrimination Bill 2021 removes the ability for health professionals to conscientiously object to certain practices of essential health care, the Bill fails to adequately and equally prevent discrimination, particularly within health care settings. In essence, clients will not be able to access judgement and stigma-free health care, which may have significant negative implications for their future engagement with health services, potentially leading to higher levels of underlying morbidity due to delayed diagnosis.

In graduation ceremonies around Australia new doctors recite *The Physician’s Pledge*(3) as they begin their new careers: “As a member of the medical profession... I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient...” It is important that doctors uphold these principles throughout their career, and in their public life, and do not inflict their personal religious or non-religious views on their patients.

Section 12 of the Bill overrides existing anti-discrimination protections in federal, state and territory laws to privilege certain ‘statements of belief’ based in or about religion. Additionally, the Bill allows people who hold a religious belief to make statements that they consider to be in accordance with their religion, even if no other member of their religions agrees with them.

Under section 12 of the Bill, clients who access health services, including reproductive and sexual health services, may not be protected under existing anti-discrimination laws where a health professional makes an offensive, uniformed, insulting, leading, demeaning or damaging statement of belief that is based in or about religion.(2) For example, in the context of reproductive and sexual health care, a doctor or nurse may impose their religious beliefs on a woman accessing contraception or a woman seeking information about the full range of pregnancy management services, by saying “abortion is a sin” leading to a hostile, unsafe environment which creates additional barriers around accessing essential health care.

Given the majority of clients at Family Planning NSW, the state’s leading reproductive and sexual health service, are women, this will have significant impacts on women’s access to inclusive reproductive and sexual health care, resulting in poorer reproductive and sexual health outcomes. While these statements must be made in ‘good faith’, it is unclear how this acts practically.(2) This

clause allows for statements that today would constitute discrimination under other federal, state and territory legislation, to be protected.

If accessing reproductive and sexual health care comes with potential exposure to religious based views that compromise patient trust, this will have significant negative implications for disclosure and retention in ongoing care. For example, if health professionals share religious views that are not supportive of contraceptive use or sexual health screening, it is unlikely that individuals will feel safe or comfortable accessing these services. This may lead to lower rates of contraceptive uptake potentially resulting in increased rates of unintended pregnancy, and reduced rates of sexual health screening, resulting in undiagnosed sexually transmissible infections, of which both have attendant individual and societal health, social and economic consequences.

It is essential that all health care is provided without judgement or infliction of potentially offensive, insulting or damaging statements by a health professional. Evidence demonstrates the strong link between stigma, discrimination and poor health outcomes, particularly sexual health outcomes.(4)

Additionally, Family Planning NSW is concerned that experiences of homophobia and transphobia, resulting in exclusion and isolation from health services, will be compounded by statement of belief protections for health care providers. Research shows that over one-third of lesbian, bisexual or queer women are overdue for cervical screening(5) and that transgender men are significantly less likely to access cervical screening compared to the general population.(6) It is essential that health services are welcoming, inclusive and non-judgmental to foster ongoing engagement with the health system, and to ensure all people feel safe and comfortable when accessing essential health care.

Recommendation 2: the Religious Discrimination Bill should be redrafted to remove provisions that protect 'statements of belief'. Specifically, sections 3(1)(d) and 12 of the Religious Discrimination Bill (and associated definitions) should be deleted

2. The Bill makes it difficult for bodies regulating health professionals to endorse practice standards that make their profession safe and inclusive for all

It must be lawful for organisations providing reproductive and sexual health services, such as Family Planning NSW, to implement and enforce codes of conduct that require employees not to publicly advocate or provide personal statements of belief against the provision of the full range of lawful reproductive and sexual health services, advice, counselling, and information offered by that service. Family Planning NSW is very concerned that the Bill will hinder the work of regulatory bodies seeking to ensure that the public can maintain the trust and confidence placed in our health professionals.

Section 15 of the Bill allows professionals, including health professionals, who express offensive, uniformed, insulting, leading, demeaning, or damaging views based in or about religion and outside the course of their employment to do so without facing consequences for their conduct, even when it impacts on other employees, clients or diminishes public trust in a profession. Under the Bill, a qualifying body that attempts to maintain professional standards may itself be accused of religious discrimination. For example, qualifying bodies may be accused of religious discrimination if they take action against, for example, a nurse who letterboxes flyers saying that HIV is punishment for living a sinful lifestyle.

This may have significant impacts on the level of trust individuals needing health care have in professionals to provide that care and will exacerbate experiences of marginalisation, contributing to clients not feeling safe to seek appropriate professional support.

Recommendation 3: 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.

3. The Bill undermines the provision of inclusive and equitable quality education

Australia has made a global commitment to ensuring inclusive and equitable quality education for all.⁽⁷⁾ The Bill undermines the country's commitment as it may enable the provision of education that is not evidence-based, nor consistent with the Australian Curriculum, but consists of 'statements of belief' to be provided to Australian students.

Family Planning NSW strongly believes that every student has a right to receive a quality education in a school where they feel safe, included and respected. We are very concerned that the Religious Discrimination Bill 2021 may have significant unintended consequences on the provision of inclusive education and safe learning environments for Australian students. Implementation of the Bill may protect teachers and other education and wellbeing professionals who make harmful statements of belief within school settings, or directly to students and other staff, resulting in exclusionary and unsafe learning environments for vulnerable and marginalised students, including those who hold differing religious beliefs, students with disability and students who are sexuality and/or gender diverse.

Concerningly, the *Writing Themselves In 4: A national survey of health and wellbeing among LGBTQA+ young people in Australia* report found that more than half (60.2%) of participants at Australian secondary schools felt unsafe or uncomfortable at school due to their sexuality or gender identity in the past 12 months.⁽⁸⁾ Further, over 50% of participants had experienced verbal harassment based on their sexuality or gender identity.⁽⁸⁾ Almost three-fifths (58.9%) of all participants had seriously considered attempting suicide in the previous 12 months, and 59.1% of those were aged 16-17. This is more than five times that observed within studies of the general population aged 16-17.⁽⁸⁾

It is essential that schools are safe and inclusive learning environments for all students, and that education is provided without judgement or infliction of harmful statements by teachers and other education professionals. Inclusive education should recognise the differing intersections of identity,⁽⁹⁾ and allow students to feel safe, comfortable and respected in their learning environment. Positive teacher attitudes to inclusion are crucial in the provision of inclusive education.⁽¹⁰⁾

4. The Bill fails to protect all Australians, equally

Prohibiting discrimination on the grounds of religious belief or activity is consistent with the tolerant, pluralistic nature of Australian Society. The overriding of other Australian discrimination laws is inconsistent with the objectives of the Bill which recognise the indivisibility and universality of human rights. Instead, this provision seeks to favour one right over all others and as such, does not protect all Australians, equally.

Section 12 of the Bill privileges 'statements of belief' over federal, state and territory antidiscrimination protections. This provision empowers people to make statements that are based in or about religion.⁽²⁾ The provision exposes marginalised people and communities, for example those at risk of HIV or those who access contraception and other pregnancy options, to unmediated public commentary from individuals under the guise of a statement of religious belief. This will wind back existing anti-discrimination protections that prevent such events from occurring.

Family Planning NSW is concerned that the Bill will enable an environment where public figures are able, and protected, to use the public domain as a platform to negatively profile people with personal characteristics and life experiences they consider to be not recognised or disapproved of by their religion. This is considered discrimination under today's law.

4. The Human Rights Legislation Amendment Bill 2021 does not support the tolerant, pluralistic nature of Australian society

Family Planning NSW does not support the proposed amendments to the Charities Act 2013 (Cth). This amendment allows for a charity that “engages in or promotes activities advancing, expressing or supporting a view of marriage as a union of a man and woman to the exclusion of all others, voluntarily entered into for life” to be “presumed, conclusively” to be acting for the public benefit, and not contrary to public policy.

Two thirds of people in Australia voted in favour for legislating marriage equality. These unnecessary and unusual clauses are out of step with the majority of the country.

Recommendation 4: The proposed amendments, including s19 of the Charities Act 2013 (Cth) be removed from the Legislative Package.

5. The consultation period for the Legislative Package was not adequate

As previously mentioned, Family Planning NSW welcomes the opportunity to contribute to this important piece of proposed legislation. The Bill is a complex piece of legislation which undermines existing discrimination protections and has significant negative implications for access to health care and education. As such, there needs to be sufficient time allowed for consideration and consultation of the Legislative Package, particularly with communities which it will have the greatest impact on.

Due to the complexity and significance of the Bill, it is our view that the time period available for consultation is not adequate. We recommend the Bill, not proceed, or be substantially revised with further consultation undertaken to inform the development of the Bill, particularly with vulnerable and marginalised groups, and expert community and legal representatives.

Recommendation 5: The inquiry process should 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.

Conclusion

This Religious Discrimination Bill 2021 privileges religion over other grounds of discrimination, leading to serious negative implications for access to judgement-free health care and education. When health care and education providers are allowed to make statements of belief that potentially have significant negative implications for their patient's/students' current and future access to health care and education, this challenges Australia's pursuit of achieving equitable and universal access to both health care and education. Discrimination on the grounds of religious belief or activity is inconsistent with the tolerant, pluralistic nature of Australian society. Family Planning NSW opposes the Religious Discrimination Bill 2021 and related Bills.

References

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