

Attorney-General's Department
3-5 National Circuit
Barton, ACT 2600
FoRConsultation@ag.gov.au

31 January 2020

To whom it may concern,

Re: Religious Discrimination Bill – Second Exposure Draft consultation

Thank you for the opportunity to provide comment on the Religious Discrimination Bill 2019 – Second Exposure Draft.

cohealth is one of Victoria's largest community health services, providing primary health care and social support services across nine local government areas in Victoria. Our mission is to improve health and wellbeing for all, and to tackle inequality and inequity in partnership with people and their communities.

cohealth provided a submission in relation to the First Exposure Draft¹ in which we expressed our serious concerns that provisions in the Bill will have negative impacts on the health and wellbeing of people who may be the subject of unfavourable religious views. Our previous submission is provided as an attachment to this one.

The Second Exposure Draft does nothing to allay the concerns we had about the first version. Laws which should protect religious people from discrimination will still be able to hand a licence to discriminate against LGBTIQ+ people, women, people with disability, and others.

The Second Exposure Draft does narrow the range of medical professionals able to conscientiously object to providing certain treatment on the basis of their religious belief. However, the provision still applies to doctors, nurses, psychologists, midwives, and pharmacists — the healthcare workers most likely to be the first line of response for people seeking treatment. The Second Exposure Draft also clarifies that medical professionals cannot discriminate against an individual or a group of people. Nonetheless, the Bill still allows health professionals to refuse to provide treatment or procedures to patients on religious grounds, jeopardising the health needs of patients.

The negative impact on health care of these provisions, particularly for anyone who may be the subject of unfavourable religious views, is described in our previous submission (attached).

¹ <https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx#c>

cohealth maintains our view that addressing discrimination against one group of people cannot be done by overriding the rights of, and increasing discrimination against, another group. As such we are deeply concerned that the proposed Bill will do just this, by privileging the rights of people holding religious views above those of others, particularly in the area of health care.

We reiterate our recommendations that sections of the Religious Discrimination Bill 2019 allowing for refusal to provide health care on the basis of religious belief (sections 8(6) and (7)) be removed, and that no part of the Religious Discrimination Bill 2019, and associated bills, should privilege religious interests above the interests of other Australians.

I would welcome the opportunity to discuss this submission with you and can be contacted on Nicole.Bartholomeusz@cohealth.org.au.

Yours sincerely,

Nicole Bartholomeusz
Chief Executive

Attorney-General's Department
3-5 National Circuit
Barton, ACT 2600
FoRConsultation@ag.gov.au

02 October 2019

To whom it may concern,

Re: Religious Discrimination Bill – Exposure Draft consultation

Thank you for the opportunity to provide comment on the Religious Discrimination Bill 2019 – Exposure Draft. cohealth holds serious concerns that provisions in this Bill will have negative impacts on the health and wellbeing of people who may be the subject of unfavourable religious views.

About cohealth

cohealth is one of Victoria's largest community health services, operating across nine local government areas in Victoria. Our mission is to improve health and wellbeing for all, and to tackle inequality and inequity in partnership with people and their communities.

As a primary health service, cohealth provides integrated medical, dental, allied health, mental health and community support services. More than 800 staff over 34 sites deliver programs promoting community health and wellbeing and involving communities in understanding needs and developing responses. Our service delivery model prioritises people who experience social disadvantage and are consequently marginalised from mainstream health and other services – such as people who are experiencing homelessness or mental illness, Aboriginal and Torres Strait Islanders, refugees and asylum seekers, people who use alcohol and other drugs, recently released prisoners, LGBTIQ+ communities and children in out of home care.

Summary

cohealth is committed to providing responsive health and community services that respect the human rights of all people, celebrates their diversity, enables their access, and promotes their participation in all aspects of their health and wellbeing. Human rights are the inherent entitlements to just and fair treatment afforded to each person by virtue of their humanity regardless of sex, age, gender, ethnicity, sexuality, gender identity, faith, socioeconomic status or ability.

cohealth strongly supports approaches that address discrimination in any form. We are committed to ensuring the rights of people who use our services are protected and fulfilled across the scope of our practice. As cohealth prioritises working with people who experience social disadvantage and marginalisation we are acutely aware that many people who use health and community services are at risk of having their rights denied or disrespected. To address this, we work to build awareness of rights and responsibilities among all people who use and deliver services with us. We strive to achieve safe and high-quality healthcare for all without discrimination.

As such, we support measures to eliminate discrimination on the basis of any personal characteristic, life experiences or personal circumstances, including discrimination on the basis of having, or not having, religious belief.

However, addressing discrimination against one group cannot be done by overriding the rights of, and increasing discrimination against, another group. As such we are deeply concerned that the proposed Bill will do just this, by privileging the rights of people holding religious views above those of others, particularly in the area of health care.

The impact of the Religious Discrimination Bill on health care

As a health service cohealth is particularly concerned about section 8(5) and (6) of the Religious Discrimination Bill 2019, which allow for conscientious objection in healthcare. These sections prohibit employers and professional bodies from imposing a 'conduct rule' on a health practitioner that would require them to perform services to which they had a religious objection.

A wide range of health professions are covered by this provision, including Aboriginal and Torres Strait Island health workers, dentists, medical, nurses, midwives, occupational therapists, pharmacists, physiotherapists, podiatrists and psychologists.

As such the proposed legislation will make it harder for healthcare providers, including cohealth, to require our employees to treat all clients and patients equally. While the Bill adds that conduct rules are reasonable if to avoid an 'unjustifiable adverse impact' on a patient or a service provider, what this means is unclear and does not allay our concerns.

As a result of these unprecedented and broad proposed rules on conscientious objection, Australians will find it harder to access healthcare from health professionals.

This includes anyone who may be the subject of unfavourable religious views, such as:

- LGBTIQ+ people seeking access to healthcare services, including sexual health, reproductive or transgender health services
- women and girls seeking access to reproductive services
- anyone seeking access to contraception
- divorced people, unmarried couples, or single parents.

These provisions compromise health care for groups that already experience discrimination and disadvantage and is likely to have significant negative health impacts.

cohealth is committed to fostering a service and workplace culture of safety and inclusiveness. This reflects our clear understanding that many groups of people already face discrimination in finding health care that is compassionate and non-judgemental.

Sections 8(5) and (6) will jeopardise our ability to expect a standard of behaviour and professional care be extended by all employees to everyone who uses our services. Rather, an individual employee who holds religious views about the types of care they will or will not provide will be protected under law should they refuse to provide particular care, or provide care in a judgemental or discriminatory manner.

The cohealth code of conduct states:

'You may hold views on particular matters that differ from those of cohealth, but such views must not interfere with the performance of your duties. Act in the best interests of cohealth rather than for the benefit of sectional interests.' and 'You must not ... discriminate on the grounds of sex, sexual preference, age, marital status, pregnancy, the state of being a parent, childless or a de facto spouse, race, colour and national extraction, lawful religious or political belief or activity, disability or impairment.'

Under this legislation, cohealth will not be able to require, and enforce, these obligations for any staff who hold religious views that are contrary to them. If a care provider refuses to provide care our clients and patients will suffer from poorer health care, and the reputation of cohealth as an organisation and as a welcoming, non-discriminating healthcare provider will suffer.

The benefits of equity to the health of communities are well established, as are the adverse impacts of discrimination.² Section 8(5) and (6) of the Religious Discrimination Bill 2019 will increase discrimination against a range of groups in the community, with negative impacts on their health. Patients should not live in the fear of their healthcare being denied or delayed, or that care may be substandard or discriminatory, because of the religious views of their health professional. Their care and treatment should not be compromised because a health professional with religious views can discriminate against them.

Recommendation 1

Sections 8(5) and (6) of the Religious Discrimination Bill 2019 should be removed.

² <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/discrimination#5>

Other provisions

Other sections of the Religious Discrimination Bill 2019 will further privilege the right of people holding and expressing religious views by protecting them from consequences, including:

- Section 8(3) will limit the ability of private employers with at least \$50m to stop an employee from making religiously-based statements outside work hours, even if these statements are contrary to the values and ethos of the organisation.
- Section 41, which overrides federal, state and territory discrimination protections by preventing 'statements of belief' from being the subject of a complaint under these laws, providing that such statements are not malicious; are not likely to harass, vilify, or incite hatred or violence; or do not promote or encourage conduct constituting a serious offence. This section would mean statements based on religious belief that offend, humiliate, insult or intimidate women, LGBTIQ+ people or persons with disabilities would be lawful, unless they meet the high threshold of harassment, vilification or incitement of hatred. These provisions give licence to a wide range of potentially harmful and offensive statements by religious people, contributing to hostile or unsafe workplaces, schools and other public environments.

Recommendation 2

Ensure that no part of the Religious Discrimination Bill 2019, and associated bills, privileges religious interests above the interests of other Australians.

I would welcome the opportunity to discuss this submission with you and can be contacted on Nicole.Bartholomeusz@cohealth.org.au.

Yours sincerely,

Nicole Bartholomeusz
Chief Executive