Consumers Health Forum OF Australia

31 January 2020

Freedom of Religion Consultation
Attorney General's Department
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To whom it may concern,

Submission: Religious Freedom Bills – Second Exposure Drafts

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide feedback on the second exposure draft of the *Religious Discrimination Bill 2019* (the Bill) and associated amendments.

CHF is the national peak body representing the diverse interests of Australian healthcare consumers and those with an interest in health consumer affairs. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF supports providing protection from discrimination for people of faith, including people of no faith, but we believe this Bill goes too far and undermines existing anti-discrimination provisions by privileging religious expression over other values.

CHF is deeply concerned about the impact the Bill will have on access to essential healthcare services. In particular we are concerned about provisions that prioritise the religious beliefs of healthcare workers over the healthcare needs of consumers, especially those consumers from vulnerable and marginalised communities who require sensitive and specialist health services. We support the concerns raised by the Australian Federation of AIDS Organisations (AFAO) in their October 2019 submission and do not believe these concerns have been adequately addressed or rectified in the second exposure draft.

Conscientious objection to providing healthcare

Drawing on analysis by Equality Australia, CHF is concerned that subclauses 8(6) and 8(7) of the Bill are likely to reduce access to healthcare for consumers by conferring upon health practitioners a broad and unprecedented freedom to refuse treatment to patients on religious grounds.

We acknowledge the changes in the second exposure draft to narrow the list of health professions, and the requirement that an objection must be to a procedure, not a person. These changes are welcome, but we believe these clauses remain a barrier to consumers

accessing essential health services, particularly consumers in rural and remote areas where there is often no or very limited choice of provider.

We are also concerned that these subclauses will make it harder for employers and professional bodies to impose conditions on how conscientious objections should be handled, such as the requirement to refer patients to another provider or needing to provide advanced notice of the objection. It is not clear if existing laws in Victoria and Tasmania, for example, which obligate a doctor who objects to perform termination of pregnancy to provide a referral to another qualified practitioner, would be overridden by these provisions. There is a risk that these kinds of provisions, which are designed to ensure a doctor's objection does not impede the consumer's access to care, could be considered 'unreasonable'.

Additionally, an interaction with a health professional where they refuse to perform a procedure or dispense a medication can be an extremely stigmatising experience for the consumer. Even if it is possible for the consumer to seek access from another health professional (which, as noted earlier, is often not the case outside of major cities in Australia), the experience of being denied care is likely to add to fears of rejection and condemnation that are a barrier to vulnerable groups accessing healthcare in the first place.

The Australian Human Rights Commission has noted that experiences of interpersonal and institutional discrimination in settings such as schools, healthcare facilities, and structural barriers to informed and appropriate healthcare were among the key factors that contributed to the higher risk of poor mental health outcomes for LGBT people.[1]

CHF's view is that provisions already exist in state and territory laws for health professionals to conscientiously object to performing certain procedures, with appropriate provisions to ensure consumers still have access to these legal health services. The provisions in this Bill go further than necessary and risk limiting access to care for many people. Patient care must never be compromised to prioritise the personal religious beliefs of health professionals.

Recommendation: delete subclauses 8(6) and 8(7) from the Religious Discrimination Bill

Protections for 'statements of belief'

CHF does not support the provision for 'statements of belief' outlined in clause 42. This provision protects statements informed by religious views which would otherwise constitute discrimination. We are concerned that this clause gives a license to express prejudiced, harmful or dangerous views without any consequence, under the guise that those views are founded in religious belief. This clause is not about protecting people of faith from

[1] Australian Human Rights Commission (2015) Resilient Individuals: Sexual orientation, gender identity & intersex rights – national consultation report, Sydney: Australian Human Rights Commission, available at www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf (accessed 16 January 2020), p.18.

discrimination, but rather is about giving a legislative green light to discriminate against others.

We are concerned about the consequences this will have for the mental health and wellbeing of already vulnerable and marginalised communities. These impacts were highlight in the National LGBTIQ Health Alliance's submission to the first exposure draft of this Bill. In particular the Alliance highlighted the following concerning statistics which are worth re-emphasising:

- There is a clear and demonstrable relationship between abuse and harassment, and psychological distress for LGBT people.
- LGBT people aged 16 and over have an average K10 score of 19.6 (moderate psychological distress) compared to the general population score of 14.5 (low psychological distress).
- LGBT people who have experienced abuse and harassment scored an average K10 score of 22.83, indicating high levels of psychological distress.
- 39.5% of LGBT people reported experiences of harassment and abuse, 61% of same-gender attracted and gender diverse young people have experienced verbal abuse, and 18% have experienced physical abuse.
- Compared to the general population, LGBTI people are more likely to attempt suicide, have thoughts of suicide, and engage in self harm.

Additionally, the results of a 2017 peer-reviewed study from researchers at Macquarie University showed that exposure to religious anti-gay prejudice (the disapproval of homosexuality on religious grounds) predicted higher levels of anxiety, depression, stress, and shame; more harmful alcohol use; and more instances of both physical and verbal victimisation amongst both LGB individuals and heterosexual individuals.[2]

It is also important to note that the negative health and wellbeing impacts of discrimination, social exclusion and harassment apply, not only to the LGBTIQ community, but also to other vulnerable and marginalised groups. CHF believes everyone should be able to feel safe and free from discrimination in all parts of their life and therefore we oppose this clause of the Bill in its entirety.

Recommendation: delete clause 42 from the Religious Discrimination Bill

Exceptions for religious organisations – hospitals

CHF is concerned about the amendment to the second exposure draft of the Bill to allow religious hospitals and aged care facilities to make staffing decisions on the basis of faith (subclauses 32(8) to 32(12)). CHF's view is that the primary consideration for employing

[2] Sowe, B. J., Taylor, A. J., & Brown, J. (2017). "Religious Anti-Gay Prejudice as a Predictor of Mental Health, Abuse, and Substance Use." *American Journal of Orthopsychiatry*. 87:6. p690-703.

health professionals should be the ability of the individual to deliver safe, high quality care to consumers. Allowing for consideration of religion risks the hiring of less qualified candidates and the delivery of lower quality care.

As the Bill's explanatory notes outline, religious hospitals and aged care facilities are excluded from clause 11 in recognition that these bodies provide essential public services to the general community, and that it is not appropriate for those bodies to discriminate on the basis of religious belief in the provision of these services. CHF argues that given the essential nature of the services these institutions provide it is also inappropriate for these bodies to discriminate on the basis of faith in relation to employment.

CHF recognises the appropriateness of an exemption for employment decisions related to positions which have an intrinsically religious character (e.g. chaplaincy) but does not believe this exemption should extend more broadly to all staff across hospitals and aged care facilities. We do not believe that a religious hospital being able to discriminate in order to only hire medical, nursing and allied health staff of the same religion as the hospital is necessary to maintain the 'religious ethos' of the organisation, as the Bill intends.

In particular, CHF believes that religious hospitals and aged care facilities should not be able to discriminate in their employment decisions where their activities are commercially driven and/or government funded.

Recommendation: Amend subclauses 32(8) and 32(10) to limit the exemption to only apply to employment decisions for positions that have an intrinsically religious character within hospitals and aged care facilities.

CHF would like to thank the Attorney-General for the opportunity to provide a submission on the Religious Discrimination Bill 2019 Second Exposure Draft.

In addition to the comments made above, CHF endorses the Australian Federation of AIDS Organisation's (AFAO) submission to this review and the recommendations in the AFAO submission. Like AFAO, we are deeply concerned that the provisions in the Bill prioritise the religious beliefs of healthcare workers over the healthcare needs of marginalised individuals and communities, particularly those who are living with or at increased risk of HIV and who require sensitive and specialist health services.

If you require any further information about this submission, please do not hesitate to contact CHF's Senior Policy Officer Lisa Gelbart on (02) 6273 5444 or l.gelbart@chf.org.au.

Yours sincerely,

Leanne Wells

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