

1 October 2019



Honourable Christian Porter MP
Attorney-General and Minister for Industrial Relations
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: Christian.Porter.MP@aph.gov.au
CC: FoRConsultation@ag.gov.au

Dear Attorney

Response to the Draft Religious Discrimination Bill 2019 — Pride in Law

We write to express concerns surrounding the draft Religious Discrimination Bill. Further, Pride in Law wishes to alert the Commonwealth Government to aspects of the bill that would permit religious interests over the interests of other Australians.

Pride in Law is Australia's first and only LGBTIQ+ Law Association, which is '*Law Focused, Pride Inspired*'. Since launching in July 2017, Pride in Law has continued to provide visibility, education and advocacy around LGBTIQ+ issues in the legal profession. We represent and promote legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits legal professionals can provide. Pride in Law also assists the public by advising government on improvements to laws affecting Australians.

At its recent meetings, Pride in Law has extensively discussed the persistent concerns shared by members regarding the draft Religious Discrimination Bill. The following paragraphs are a summary of these discussions for your consideration.

Conscientious objections in health care

Pride in Law's main concern, which precedes other issues in this space, is that the draft Religious Discrimination Bill will permit a conscientious objection in health care. Members have identified it will be harder for health employers and professional bodies to require all health workers and services to treat all Australians, despite any personal religious objections held by the health professional.

Pride in Law supports Equality Australia's public statements that sections 8(5) and (6) should be removed. In the rare instances where States and Territories have allowed conscientious objection, they have done so carefully to ensure patient care is not compromised. These clauses do not achieve that balance. Without these clauses, the Bill will still allow an appropriate accommodation of personal religious views without compromising patient care.

Privileging religious expression over discrimination protections

Our Association is significantly concerned certain religious statements will trump other legal discrimination protections in federal, state and territory laws, leaving some Australians vulnerable in public life, such as workplaces, schools and in the provision of goods and services.

In our view, which is shared by Equality Australia, section 41 of the Bill overrides federal, state and territory discrimination protections, and Tasmanian offensive conduct provisions.

Folau's law – Section 8 (3) – (4)

Pride in Law is concerned that the draft Religious Discrimination Bill will make it harder for large employers to foster an inclusive culture or achieve their mission by imposing reasonable employee conduct rules on religious expression outside of work hours.

Pride in Law supports Equality Australia's public statements that the "Folau clause" frames the freedom of expression as only being about religion and money. In addition to our concerns above, the test for 'unjustifiable financial hardship' is novel and does not appear to take into account other harms that employers should be able to legitimately consider when setting employment conduct rules, such as damage to staff morale or safety, cultures of inclusivity and achieving non-financial organisational objectives such as promoting health and well-being. Standard indirect discrimination definitions in law would already look at the reasonableness of such requirements – so it is unclear why a specific class of employers should be singled out. In our view, it does not achieve the right balance and should be removed.

Other issues

- Employer conduct rules imposed by other types of employers, or during work times, must comply with general indirect discrimination provisions, which require rules those otherwise disadvantage employees on religious grounds to be reasonable in all the circumstances.
- The test for 'unjustifiable financial hardship' is novel and does not appear to take into account other harms that employers should be able to legitimately consider when setting employment conduct rules, such as damage to staff morale or safety, cultures of inclusivity and achieving non-financial organisational objectives such as promoting health and well-being. Standard indirect discrimination definitions in law would already look at the reasonableness of such requirements – so it is unclear why a specific class of employers should be singled out.

Pride in Law respects all communities, religions, beliefs and a person's right to live according to their faith, or, indeed, of no faith. It is through this mutual respect that life can flourish.

Our Association does not support this bill. Overall, the draft Religious Discrimination Bill goes too far in prioritising religious rights over all others. In our view, the draft Religious Discrimination Bill goes well beyond the general indirect discrimination provision.

The idea behind the bill is a good one: to prohibit discrimination based on religious belief or non-belief. But, in its current form, the bill provides too many broad and special protections to those of religious faith. The best guarantee for religious freedom is human freedom.

Pride in Law stands for equality, not privilege. Unfortunately, in our view, the draft Religious Discrimination Bill does not offer equality. It builds on the existing privilege of organised religion to deny equal rights to LGBTIQ+ Australians and other minorities.

If you have any queries regarding the contents of this letter, please do not hesitate to contact me or our Pride in Law team by phone on **REDACTED** or by email to enquiries@prideinlaw.org.

Yours faithfully



Dean Clifford-Jones

President, Pride in Law

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