



Better freedoms or bigger burden?

Serious concerns about the redrafted Religious Discrimination Bill 2019

Based on a report from an Expert Panel (*Religious Freedom Review, 2018*), “the Australian Government accepts the central conclusion of the Religious Freedom Review, that there is an opportunity to further protect, and better promote and balance, the right to freedom of religion under Australian law and in the public sphere” (Australian Government, 2018).

From this conclusion, the Religious Discrimination Bill 2019 began to take shape.

On 29 August 2019, the Attorney-General released exposure drafts of three draft bills, which together form a legislative package on religious freedom. On 10 December 2019, the Prime Minister and the Attorney-General released second exposure drafts of the three bills.

Though having addressed some concerns raised about the first exposure drafts, the second exposure drafts continue to raise a range of concerns including about how the Religious Discrimination Bill 2019 has the potential to increase conflict in Australian workplaces. The Bill’s restrictions on businesses and community sector organisations, in seeking to protect religious and non-religious beliefs and activities, are unreasonable. Businesses and community sector organisations need to be able to maintain appropriate standards of conduct and have clarity about their obligations.

We, together with our colleagues at ACOSS, along with a number of other peak bodies (e.g. AMA, Law Society, etc) and industry groups (e.g. AIG, ACCI) have raised a number of concerns about the exposure draft and its likely impacts on our workplaces and on broader community relations.

Aside from other impacts it is SACOSS’ view that the Religious Discrimination Bill will **create an onerous compliance burden for the community sector** (and business more generally) by:

- Imposing complex new legal requirements on employers which have the potential to conflict with existing requirements under the *Fair Work Act*, OH&S legislation and Federal and State anti-discrimination laws.
- Requiring expensive legal advice to ensure that employers are not susceptible to religious discrimination complaints by employees or clients.
- Requiring professional bodies, accreditation agencies and trade certifiers to undertake comprehensive reviews of their codes of conduct or qualification standards. This would be required to ensure that these codes and standards do not restrict or prevent a person from making a statement of belief, in or out of the workplace.
- Requiring employers to make subjective and complex judgements about whether an individual’s belief system is, in fact, a religious belief for the purposes of complying with the relevant provisions proposed in the Bill.
- Significantly increasing the likelihood of expensive litigation in any workplace disputes which involve claims or defences relating to religious belief.

As most would be aware, there are existing federal and state laws specifically designed to eliminate discrimination – particularly when it comes to employment. Having now had an opportunity to review the redrafted, proposed Religious Discrimination Bill 2019 SACOSS believes that it would actually be preferable to address any concerns about securing “religious freedoms” by using the same framework established in the existing discrimination laws which are long standing and have elements of proportionality.

Alternatively, one of the best ways we could potentially seek to protect crucial human rights and freedoms would be through the development of a national Bill/Charter of Rights.

If neither of these things is likely to happen, SACOSS believes that it is absolutely imperative this proposed Bill is amended to ensure that these key issues are addressed so that harmonious and co-operative Australian workplaces are not compromised.

We need the community sector’s help to ensure this happens. Now is the time to help by:

- Firstly, become more familiar with the legislation (<https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills-second-exposure-drafts.aspx>, <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Freedom-of-Religion.aspx>) and its likely impacts.

In familiarising yourself with the legislation, you may also wish to read over some of the submissions that highlight concerns with this Bill. You can access a wide range of these submissions about the First Exposure Draft through the Attorney-General’s webpage (<https://www.ag.gov.au/Consultations/Pages/religious-freedom-bills.aspx>). We believe the following submissions are particularly good and explore the issues from a range of perspectives. Please note though that these submissions relate to the *first* draft of the Bill, but many of the concerns are still valid.

- Australian Council of Social Service [PDF 789KB]
- Australian Council of Human Rights Authorities [PDF 232KB]
- Australian Discrimination Law Experts Group [PDF 6.4MB]
- Australian Human Rights Commission [PDF 438KB]
- Australian Industry Group [PDF 508KB]

You can read more about the Religious Discrimination Bill in the Standard Briefing note for the Rights Resource Network¹ exploring the broader impact of the Bill. Equality Australia have also prepared a very useful Factsheet (<https://equalityaustralia.org.au/resources/religious-discrimination-bill-work-place-fact-sheet/>).

- Secondly, you could outline your own concerns in writing as a formal submission and forward them to ForConsultation@ag.gov.au by 31 January 2020.
- Finally, please consider writing to or speaking with your local federal MP to ensure they understand your concerns

¹ Rights Resource Network SA is a network of organisations, academics and individuals working on rights related issues in South Australia. This Briefing Note has been prepared by Dr Sarah Moulds with assistance from Network Members. It does not reflect the views of individual members of the Network or the views of UniSA. Further information at <https://www.facebook.com/rightsnetworksa>

https://www.aph.gov.au/senators_and_members/guidelines_for_contacting_senators_and_members).

SACOSS, together with the COSS network will be supporting ACOSS to prepare a submission on the bill and may also prepare a brief submission of our own to demonstrate we are an interested party – should the matter be referred to a Senate Committee.

Please don't underestimate the impacts this legislation may be likely to have on our workplaces and on our community.