



TRANSGENDER VICTORIA

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31st January 2020

Attorney General
Hon Christian Porter MHR
By: email
FoRConsultation@ag.gov.au

Re: Religious Discrimination Bill 2019, Second Exposure Draft (“the bill”)

Dear Attorney General,

I am making this submission on behalf of Transgender Victoria (TGV). TGV has been representing and advocating for transgender and gender diverse (TGD) Victorians for more than 20 years. Our membership comprises TGD people of all cultural and faith backgrounds, including Christian, Orthodox Christian, Islam, Jewish, Hindu and Buddhist religious traditions as well as TGD people who hold no religious beliefs. TGV supports legislation which prevents discrimination against Australians on the basis of faith and religion, or for not holding those beliefs. Such legislation however should protect against discrimination on the basis of belief including not holding those beliefs without permitting discrimination against others. This draft bill enables people to discriminate against others on the basis of their faith and should not go ahead in its current form.

Our membership experiences discrimination on the basis of our gender identity, racial and cultural characteristics and also our faith and religious beliefs. In addition, TGD individuals also identify as a variety of diverse sexual orientations and experience the discrimination on the basis of sexual orientation in the same way as the LGB part of the LGBTIQ community. Of particular relevance to the proposed legislation is that multicultural and multifaith TGD Victorians and Australians often experience the compounding effect of these discriminations which do not occur in isolation but act in concert to create profound, multi-faceted and systemic discrimination, stigma and disadvantage. This effect is known as intersectionality. As an example of intersectionality, Muslim TGD Australians will experience both Islamophobia from the broader community and discrimination on their TGD identities and sexual orientation from both their religious community and the broader community. The negative effects on the individual are usually very profound.

TGV is concerned that the bill inhibits the rights of TGD Australians to practice in their faith traditions free from discrimination on the basis of the protected attributes of sexual orientation, gender identity or intersex characteristics. These further “protections” for religious groups contained in this legislation cuts through existing state and Commonwealth antidiscrimination legislation and permits discrimination against TGD Australians on the basis of their sexuality, gender identities and intersex characteristics provided this is done in the name of religious belief.

TGV believes that this is wrong and is based on the concept that TGD rights to freedom from discrimination and people of faith rights to freedom from discrimination are in opposition. TGV wholeheartedly rejects this concept. The narrative around religious freedom has already created great problems for multifaith TGD Australians struggling with reconciling their faith and TGD identities while also experiencing race-based discriminations. The second exposure draft version of the bill increases the wedge between faith communities, multicultural communities, and TGD communities that the government initiated in the first exposure draft. This bill attempts to enshrine protection in law for those who would increase these problems and should not be put to parliament in its current form. This legislation winds the clock back on important steps towards equality that TGD communities have fought and struggled over many years to achieve and that the overwhelming majority of Australians support, as evidenced by the vote in the Marriage Equality survey.

Any freedom from religious discrimination bill should be presented to parliament concurrent with legislation which removes provisions in existing national laws which allow religious schools to exclude and discriminate against LGBTQ students, teachers and support staff, especially where those schools receive funding from the government. TGV notes with dismay that the date for finalising the ALRC review into this matter has been delayed to December 2020. The government should also concurrently present legislative amendments to all legislation which ensure that organisations who receive government funding are not able to exclude TGD Australians from those government-funded services.

Australia has long prided itself as being the land of the fair go. Australians have consistently demonstrated that they value equality before the law. Australia is well on the path towards becoming a more equal place, and the TGV supports fair and balanced protections from all forms of discrimination for all people. Fair and balanced legislation will move us forward on this journey, legislating and legalising further discrimination will not.

To that end TGV submits that the bill in its present form is unacceptable and should not be presented to the parliament. The bill requires extensive revision to prevent religious beliefs being used as a smoke screen to allow discrimination against

- LGBTQI+ Australians
- TGD Australians
- Female Australians
- Single mothers
- Australians with a physical or mental disability
- Others whom faith groups may regard as unacceptable

We have had a relatively short time to consider the details of this bill and the other two bills which are proposed. Accordingly, our views on the religious discrimination package proposed by the Government are still evolving as we consider and understand all the potential impacts of this legislation on TGD people especially multifaith and multicultural TGD people.

TGV however has developed broad specific concerns about the application of this bill in the way it will affect all Australians in the groups above but particularly TGD Australians. Critical concerns exist in the following areas and have increased as a result of the changes made to the bill from the first exposure draft

1. Conscientious objections in health care:

The bill makes it harder than even more difficult than existing conditions allow, for health sector employers and professional bodies to ensure doctors, nurses, midwives, pharmacists and psychologists do not refuse treatment to people on religious grounds. We believe that the current provisions are more than adequate to protect religious freedom. All Australians including TGD Australians will find it harder to access non-judgmental healthcare, including

sexual health, family planning, fertility, mental health if this draft bill is passed into law. Professional standards, such as those that require objecting health professionals to refer patients to alternative health professionals who will treat them, may come under challenge.

TGV is especially concerned that TGD people will not be able to access health services such as life-saving surgery and hormone treatment in addition to the services listed above. TGV is concerned that health professionals such as doctors and pharmacists may refuse to provide hormone treatments to trans people by refusing to provide hormone treatments to all patients, using a religious belief to defend this action. Recent research indicates that TGD people already suffer large challenges and discrimination in accessing health. Almost a half of 537 TGD Australians surveyed indicated that they needed health care but did not receive it in the last year.¹ This bill will make it harder for TGD people to access appropriate health care.

Additionally, it will be harder for health employers and professional bodies to require all health workers and services to treat TGD people equally in health care, despite any personal religious objections held by the health professional (s 8(6)-(7) and s32(7)). These objections to treatment of TGD people could intersect with objections on the basis of race or cultural identity and thus affect TGV's membership more profoundly; as health professionals can refuse to provide a particular type of health care which may include those used by the TGD community. These subsections (s 8(6)-(7) and s32(7)) should be removed. Conventional discrimination protections already allow health professionals to practice according to their faith without prioritising religious views over patient's rights to access health care.

Furthermore, the Prime Minister has stated that he is concerned about the mental health of the Australian community. The debate around the Religious Discrimination Bill has already had a negative impact on mental health of TGD communities in general, and multicultural and multifaith TGD communities specifically. The mental health of these communities is the worst of any group in the country. Over 70% of young TGD people have anxiety, depression and have self-harmed². This is due to the extreme discrimination and prejudice they face their gender identity in environments that are hostile to their gender identities, including their faith communities. This Bill will only exacerbate the negative effect that some faith communities have on the scandalously poor mental health of the TGD community. Feeling unsure of personal safety, sense of belonging, and the real possibility of discrimination by members of faith communities as well as the wider society can add to the cumulative minority stress commonly experienced by TGD individuals.

2. Privileging religious expression over discrimination protections:

Australians will lose their existing discrimination protections when others make offensive, derogatory or harmful statements based on their religious beliefs including at work, school and in the provision of goods and services (such as in hospitals, shops and other public services) (s42). TGD people already suffer discrimination in these areas of life and this bill will only enable more discrimination. These objections could intersect with objections on the basis of race or cultural identity and thus affect TGV's membership more intensely. The test for what constitutes a religious belief has been excessively broadened by allowing any statement of belief to be qualified under the act if just two individuals hold that belief.

¹ Kerr, L., Fisher, C.M., Jones, T. 2019. TRANScending Discrimination in Health & Cancer Care: A Study of Trans & Gender Diverse Australians, (ARCSHS Monograph Series No. 117), Bundoora: Australian Research Centre in Sex, Health & Society, La Trobe University.

² Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia. <https://www.telethonkids.org.au/our-research/brain-andbehaviour/mental-health-and-youth/youth-mental-health/trans-pathways/>

Section 42 should be removed, there is no need to permit discrimination against others to protect people of faith.

3. Protection for Inclusive Employers:

It will be 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. These provisions would appear to reduce the ability of the defined class of employers to promote diverse and inclusive cultures which benefit our members who often find they are excluded from employment. Large companies are often in the forefront of diversity and inclusion not just because of moral and ethical imperatives but also for the proven benefits that such diversity brings to their businesses and the economy as a whole. Research indicates that that diverse and inclusive organisations perform better on a variety of measures including

- Innovation
- Customer focus
- Effectiveness

The evidence in the multicultural, LGBTI and TGD areas are especially strong³. In seeking to reduce the ability of large organisations to improve in these areas, this bill would seem to run counter to the liberal party position as enunciated by the Prime Minister “We are on your side. If you have a go in this country, you’ll get a go. That’s what fairness in Australia means. My ambition is for an even stronger Australia – to keep our economy strong, to keep Australians safe and to keep Australians together.”

TGV submits that this legislation in its present form does not indicate that the federal government is on the side of TGD Australians and that this legislation weakens Australia and its economy and endangers the safety of TGD and many other Australians.

4. Religious Organisations Protected Discrimination:

Religious organisations will be allowed to discriminate against others when providing publicly funded services. Large sums of money go to religious organisations for service provision in the areas of

- Health
- Housing
- Social services
- Education

TGD people already suffer discrimination in these areas and need support. This bill will make it more likely for organisations to refuse to provide inclusive services for TGD people and make it more difficult for them to access these services. In particular religious schools, even when taxpayer funded, continue to enjoy the right to discriminate on the basis of sexuality, gender identity, marital or relationship status and pregnancy under the Sex Discrimination Act. This bill further entrenches this right to discriminate.

³ Credit Suisse LGBT: The Value of Diversity online presentation
<https://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity>;
<https://www.mckinsey.com/business-functions/organization/our-insights/delivering-throughdiversity>;
Diversity Council of Australia “Out at Work: From Prejudice to Pride”
<https://www.dca.org.au/mediareleases/out-work-prejudice-pride>

5. Freedom of Religion Commissioner:

This position will be established under the Australian Human Rights Commission while LGBTI people remain the only group protected under Australian law without a commissioner. We request the Government move promptly to establish a Commissioner for all Australian LGBTI people

TGV believes that the government should act to amend the legislation in such a way that protection is given in all these areas and requests that the Attorney General do so

Final Statement

TGV believes that the bill in its current form is overly complex and while it could be revised it probably should be scrapped and a new law drafted. TGV supports legislation which prevents discrimination against Australians on the basis of faith and religion, or for not holding those beliefs. Our membership experiences discrimination on the basis of our racial and cultural characteristics, our faith and religious beliefs and also on the basis of TGD identities. Any new law should be a simple anti-discrimination bill without conferring the numerous special privileges and rights that the current proposed legislation provides for.

In addition, TGV believes the scope of the ALRC report into religious exemptions in antidiscrimination should not be narrowed as has occurred but should be returned to the original April 2019 terms of reference. We recommend that it be further broadened to include matters raised in the exposure draft particularly in relation to balancing various competing rights of religions and various groups including TGD Australians as summarised above. In addition, the ALRC inquiry should include reviewing legislative amendments to all legislation which ensure that organisations who receive State or Federal Government funding are not able to exclude any Australians, including TGD people, from those government-funded services. Accordingly, the timing of the release of the ALRC report into religious exemptions in antidiscrimination legislation should be brought forward to as early a date as possible and in any case be as close as possible to the date originally set, 10 April 2020. No legislation of the type proposed in the exposure draft legislation should be further considered until the ALRC report is available.

Yours sincerely,



Brenda Appleton OAM
Chair, Transgender Victoria

Transgender Victoria operates on land belonging to the Wurundjeri, Boonwurrung, Taungurong, Dja Dja Wurrung, and Wathaurung peoples of the Kulin Nation. We pay our respects to Elders past, present, and emerging, and acknowledge that sovereignty has never been ceded.