ASU Submission

The Religious Freedom Bills

TO THE AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL’S DEPARTMENT
1. Introduction

The Australian Services Union (ASU) is one of Australia’s largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union’s rules traditionally and primarily cover workers in the following industries and occupations:

- Disability support
- Social and community services
- Local government
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)

The ASU has members in every State and Territory of Australia, as well as in most regional centres.

The ASU in the community and disability sector:

The ASU represents workers throughout the community and disability services sector. Of specific relevance to this Inquiry, the ASU represents workers who are employed in the community based not-for-profit sector and in many faith based services including, but not limited to the following:

- Disability services
- Aged care services
- Community transport
- Youth and child protection
- Out of home care
Refuges for women, children, families, young people and men
Homelessness, housing and tenancy services
Family support services
Health and mental health
Alcohol, gambling and other drugs of addiction and rehabilitation
Rape, domestic and family violence
Aboriginal and Torres Strait Island services
Migrant and settlement services
Community Legal Services
Community and neighbourhood services
Policy and advocacy services

ASU members are highly skilled practitioners. They hold qualifications in law, psychology, management, social sciences, welfare work, disability work, social work, youth work, child protection, aged care and community work, mental health, drugs and alcohol counselling and a long list of other specialist qualifications. Our members also include clergy of many faiths.

ASU members work with vulnerable people of all ages, particularly those with physical, intellectual and mental health disabilities in their own homes, in out-of-home care, in refuges and in after care. Our members also work with those same people when they are homeless, living in cars, on the streets, ‘couch surfing’, and in other dangerous circumstances. Our members provide case work, crisis intervention, referral, financial and other support for individuals of all ages and families experiencing poverty, isolation and homelessness, gambling, drug and alcohol addictions, disabilities, mental health issues, overwhelming legal and financial problems, those who are refugees or have other settlement issues.

Our members work with people of all ages and with all disabilities who are experiencing or escaping violence and those who are trying to deal with their cultural or sexual identity.

We take this opportunity to state that we respect the right of all people, including our members, to hold whatever faith they choose in freedom and safety.

The Attorney-General has invited submissions from the community on the Religious Freedom Bills, which consist of the following:

- Religious Discrimination Bill 2019 (RDA)
- Religious Discrimination (Consequential Amendments) Bill 2019
- Human Rights Legislation Amendment (Freedom of Religion) Bill 2019
The ASU has read the ACTU submission and strongly supports their view these Bills do not achieve any strengthening of Australia’s human rights framework. Rather they add further confusion to an existing complex regime. They deliberately override hard fought and won human rights protections under State and Territory anti-discrimination laws. The ASU agrees with the ACTU that it is contrary to the basic principles of human rights law to privilege one category of rights over another: in this case, the right to freedom of religion over the right to equality and non-discrimination, particularly for women and LGBTIQ+ people.

2. The Human Rights Legislation Amendment (Freedom of Religion) Bill 2019

The proposed Bill arises from the Religious Freedom Review, conducted by former Liberal minister, Phillip Ruddock and amends:

- The Age Discrimination Act 2004
- Charities Act 2013
- Disability Discrimination Act 1992
- Marriage Act 1961
- Racial Discrimination Act 1975
- The Sex Discrimination Act 1984

The proposed legislation impacts upon ASU members, the people and communities with whom they work and the organisations for which they work. The legislation is most dangerous because it legitimises and normalises discrimination.

The proposed Religious Discrimination Bill fails to strike a fair balance between freedom of religion and the rights of other people, privileging those of faith over other human rights.

While the majority of the bill is similar to existing federal anti-discrimination laws, it also introduces carve-outs for people to express discriminatory views and to override State and Territory protections which ensure fair treatment, particularly for women accessing abortion services; and it could also impact dying with dignity legislation where that exists.

The Bill has provisions that would make it unlawful for health services to enforce government and professional codes of conduct that require doctors and other health care professionals to abortion to refer their patients to another health service on the basis of their own conscientious objection. This effectively prioritises a doctor’s personal religious beliefs over the right of women to access the healthcare they need.

This would mean that doctors who object will be able to obstruct vulnerable women by refusing to tell them where they can go to get the healthcare they need. This would be a particular issue in
regional, rural and remote communities, and for women of culturally and linguistically diverse (CALD) background, who are more likely to only have one local GP, or one GP who speaks their language, and so would effectively discriminate against them. It would also particularly impact women in First Nations communities if there is only one GP in the community.

In terms of employment law, the ASU regularly argues with employers about their right to control the social media posts and activities of their employees (particularly those in policy, advocacy and campaigning organisations), where they are more likely to employ social media savvy activists. Those employers often want to control their employees’ social media and out-of-work activities.

However, notwithstanding the above, there is a case to be made for an employer trying to encourage a diverse workplace who disciplines their staff for making racist/homophobic/misogynist etc. comments. This is because the Bill limits the ability of employers to enforce codes of conduct that promote diversity and non-discrimination and will override State and Territory discrimination laws in some circumstances.

3. **Amendments to the Charities Act, Marriage Act and Disability Discrimination Act**

The ASU objects to the proposed amendments as follows:

Recommendation 4 of the Religious Freedom Review recommended that the Commonwealth should amend section 11 of the Charities Act to clarify that advocacy of a ‘traditional’ view of marriage would not, of itself, amount to a ‘disqualifying purpose’. This recommendation is implemented by Items 3 and 4 of the proposed Bill which amend the Charities Act to clarify that ‘engaging in, or promoting, activities that support marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life, will not, of itself, amount to a disqualifying purpose’.

Recommendation 12 of the Religious Freedom Review recommended that the Commonwealth should progress legislative amendments to make it clear that religious schools are not required to make available their facilities, or to provide goods or services, for any marriage, provided that the refusal:

- conforms to the doctrines, tenets or beliefs of the religion of the body, or
- is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

This is most likely to be a problem in regional communities where the only community facility may well be the local school or church hall. Beyond the provision of facilities, this section of the legislation again raises those concerns at the demise of the Safe Schools program. There is abundant evidence that young people who are struggling with their identity are more at risk than other young people of the same age. They are more likely to self-harm, attempt (or achieve) suicide, have fraught and broken relationships with family and friends, do less well at school, are more likely to be bullied and more likely to experiment with dangerous personal behaviour. It is at
this time when a safe and supportive school environment can be literally lifesaving and certainly life changing. Young people most often attend the school to which their parents and care givers send them. They usually have little or no choice in these arrangements. It is entirely unreasonable and likely to be dangerous to those young people if they attend a school that effectively has a licence to discriminate and bully rainbow families and their children. While bullying at school can occur in any location, the problem is likely to be of particular concern in regional and remote communities, and among poor communities where there is less choice about which school a child can attend. Often the local faith-based school is the only option for low income families seeking to enrol their child in a school with disability access and support services. Depending upon the nature of the school executive this may not be a good option for families in a non-traditional family arrangement. Although they are publicly funded, it is notoriously difficult to complain to faith-based hierarchies, particularly when the family is dependent upon that school as the only viable option for their child.

This recommendation is implemented by Item 7 of the proposed Bill which amends the Marriage Act ‘to extend the existing exemption for bodies established for religious purposes to refuse to provide goods, services and facilities in relation to the solemnisation of a marriage in accordance with their religious beliefs to educational insti-

Item 4 inserts new subsection 11(2) into the Charities Act to ‘clarify that, for the avoidance of doubt, the purpose of engaging in, or promoting, activities that support a view of marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life, is not, of itself, a disqualifying purpose.’ Therefore, a charity that advocates for a traditional view of marriage will not lose its charitable status solely due to such advocacy. This provides licence for certain organisations to actively discriminate against rainbow relationships and families, particularly those in a vulnerable care arrangement. Individuals, couples and families with disabilities have the right to hold religious and spiritual beliefs or not. They also have the right to live in accordance with whatever beliefs they may hold. A rainbow couple or family may also have a disability and require specialist housing or other support. Their religious beliefs should not impact upon their right to fully access whatever health, accommodation or other services they may need to live with dignity. Many disability service providers are faith-based. It is important that people should not be excluded from these services, particularly in regional, rural and remote communities where there are inevitably fewer services to choose from. It is also important that when accessing services, people should not be discriminated against within the services because of their religious or spiritual choices or their lifestyle arrangements.

**Amendment to the Disability Discrimination Act** – so that people with a disability also have the right to freedom of religion. While at first blush this seems reasonable, it is also possible that this legislation might be used by some of the more unscrupulous providers in terms of imposing what is effectively discriminatory action – such as not allowing a rainbow couple or family to share a group home or out of home care arrangement as set out above.
4. Conclusion

Since it was first suggested there has been considerable community debate around the proposed legislation. We take this opportunity to restate that we respect the right of all people, including our members, to hold whatever faith they choose in freedom and safety. However, from the point of view of our members, it seems that there is very little to be gained from the proposed legislation and a great deal at risk as people of any and all faiths effectively become privileged to use their own adherence to a particular faith to attack others who do not share that faith.

Of particular concern is the Federal Government’s apparent commitment to override Tasmania’s anti-discrimination act, which prohibits conduct which “offends, humiliates, intimidates, insults or ridicules” other members of our community. It is difficult to understand what benefit there can be to anyone in the community to dispense with this right to protection.

The nature and number of complaints made so far under the auspice of Tasmania’s anti-discrimination legislation demonstrates that it is particularly important to people with a disability. This suggests that the proposed legislation will directly weaken protections for people with a disability, as well as for women, LGBTIQ+ communities and others who do not fit within traditional faiths and traditional family arrangements.

In a world that is increasingly difficult to navigate for many, it seems to us that the role of the federal government should be to strengthen protections for its citizens rather than weaken them.

We have not seen any data or evidence to support a rise in attacks on people of faith. The evidence to the contrary is overwhelming. We therefore support the submission by the ACTU and ask that the Government withdraws its proposed legislation.