Religious Discrimination Bill – Exposure Draft

Your Submission

Danila Dilba Health Service (DDHS) is an Aboriginal Community Controlled comprehensive primary health care service offering a wide range of health and related services to Aboriginal people in the Greater Darwin Region. Comprehensive primary health care encompasses the range of health care generally offered by general practice but extends beyond that to provide:

- Specialist and allied health professionals
- Health promotion to help people get more control over their health
- Care coordination for clients with complex health needs
- Social and emotional wellbeing services
- Drug and alcohol services
- Outreach services to clients
- Support services for young people including young people at Don Dale
- Family support and strengthening through the Australian Nurse Family Partnership Program.

Our organisation has adopted a ‘whole of life’ approach to the health of our clients, meaning that we look to the social determinants which drive inequities in health outcomes in our work and advocacy to improve those outcomes. DDHS is an inclusive and non-discriminatory organisation.

This submission does not address the entirety of the Bill but focuses on provisions that have the potential to directly impact on the delivery of health services, employment matters for our service or on the mental health and wellbeing of our clients.

In Clauses 8(5) and (6), the Bill restricts the imposition of ‘health practitioner conduct rules’ where those rules would limit a health practitioner’s conscientious objection on religious grounds to providing a ‘health service’. Furthermore, ‘health service’ is broadly defined in the Bill. While there are services recognised as raising ethical issues and for which it may be appropriate and necessary to balance the individual’s interests in conscientious objection with the public’s interest in service access, for example, abortion services, this Bill goes further. This Bill foresees a role for conscientious objection in almost all Primary Health Care functions. The definition and related Clauses could protect the outright refusal of services to people from certain groups by not limiting the services that a practitioner can object to providing. Under the proposed regime, it is the ‘religious belief or activity’ which determines whether the conduct rule limits conscientious objection not whether the service itself is the issue of conscience for the practitioner.

While there are some safeguards in Clause 8(6) which prevent the conscientious objection from having an ‘unjustifiable adverse impact’ on the ability of the organisation to provide the health service or the health of the person who otherwise would have been provided the service, there is too much uncertainty around interpretation to be satisfied that it is an
adequate protection. This potentially exposes and organisation like DDHS that supports inclusive and non-discriminatory service provision and work environment to challenges to codes of conduct and employment contracts. Such challenges are expensive and resource intensive and have the ability to impact negatively on service to clients.

In the Northern Territory, our Primary Health Care landscape is characterised by 'a thin market' for health services in regional and remote settings where a significant proportion of our Aboriginal and Torres Strait Islander population live. The market for many specialist services is even more "thin"and it is common for the entire NT to have only one specialist in a particular discipline. Provisions which allow services to be refused in such a broad way on the basis of religious belief is particularly concerning. For example, is a specialist were to refuse hormone treatment for a transgender person, the client would have no access to an alternative provider without travelling thousands of kilometres. Similary, it seems likely that DDHS could not impose a rule that all health professionals must provide ante natal care to women regardless of marital status.

Recommendation: Clauses 8(2)(d), (3), (4),(5) and (6) should be removed

The Bill provides that religious bodies (clause 10) engaging in good faith, in conduct that may reasonably be regarded as being in accordance with their religious beliefs, doctrines, tenets does not discriminate under the Act.

The broad definition of ‘bodies or organisations’ includes religious educational institutions, religious charities and other bodies conducted in accordance with the beliefs of that religion. This definition would likely encompass many of the religious organisations that operate in the social services sector including those in health and aged care.

Firstly, the threshold for the conduct’s connection to the religious doctrine is rather loose. Indeed the conduct need only be ‘reasonably be regarded as being in accordance with’ those doctrines or beliefs to activate the protection. This provision grants an excessively wide discretion to large religious organisations to discriminate in, for example, who they could provide services to and who they employ to provide those services.

In parts of the Northern Territory, religious organisations may be the only provider of social and health services. While the majority of these religious organisations do offer services equitably and employ staff without religious conditions, we don’t believe that these added protections are necessary. Furthermore, the protection could be used by these organisations in the future to take retrograde steps in the delivery of secular social and health services. It is not reasonable to allow an organisation receiving public funds intended to meet the important needs of a client group to exclude members of that client group on religious grounds.

Recommendation: Clause 10 should apply only where a person engages, in good faith, in conduct that conforms to the doctrine, tenets, beliefs or teachings of a religion. The Bill should not apply to ‘other bodies’ that include the social services arms of many of these Religions.

Clause 41 permits certain 'statements of belief' to be exempted from existing Commonwealth, state and territory discrimination protections. For example, the Bill explicitly overrides protections under subsection 17(1) of the Tasmanian Anti-Discrimination Act 1988 by providing that ‘statements of belief’ would not contravene that state provision. The Tasmanian provision prohibits people from offending, humiliating, intimidating, insulting or ridiculing others on the basis of attributes such as disability, sex, sexual orientation and gender identity. The overriding provision raises the threshold in the instance of ‘statements of belief’ to being those that are malicious or would likely harass, vilify or incite hatred or violence against another person or group of persons.

Commonwealth, state and territory legislation currently protects people from unfavourable treatment in the course of their employment, access to good and services and in other aspects of their public life on the basis of protected characteristics. The Bill, however, seeks to override these protections. The clause would allow people to make statements that humiliate, intimidate and insult on the basis of belief, a protection afforded in no other anti-discrimination or rights legislation.

Recommendation: Clause 41 be removed from the Bill