Religious Discrimination Bill – Exposure Draft

Your Submission

NT Working Women’s Centre

The Northern Territory Working Women’s Centre Incorporated (NTWWC) is a community based, not-for-profit organisation that provides free and confidential advice and support services on work-related matters to vulnerable female employees in the NT; we extend our services to trans people, intersex people, gender queer people, Brotherboys and Sistergirls. Services commenced in 1994, and we operate across the NT, from two offices in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. Many women who contact our service experience domestic or family violence.

We also conduct research and project work on a range of issues that women experience in relation to work. These have included access to childcare, family friendly practices, the needs of Aboriginal and Torres Strait Islander working women, pregnancy and parental status discrimination, work/life balance, pay equity and the impact of domestic violence on women workers and their workplaces. In conjunction with the National Alliance of Working Women’s Centres, we provide expert advice to government on legal and policy reform.

On average we provide over 3,500 contacts per year. Around 18% of our clients are Aboriginal and/or Torres Strait Islander women, and around 23% of our clients are women from culturally and linguistically diverse backgrounds. The service also provides community education and training around domestic and family violence as a workplace issue, workplace bullying, and general industrial entitlements.

We are very grateful for the support of the NT Government (Department of Trade, Business and Innovation) and the Federal Government (Fair Work Ombudsman).

Further information about the Centre is available on our website: www.ntwwc.org.au

Summary

The NTWWC strongly supports enforceable protection from religious discrimination, and welcomes the opportunity presented by the proposed legislation. In particular, the NTWWC supports the inclusion of unpaid work in the definition of employment for the purposes of protection from discrimination.
The NTWWC however is concerned that some of the provisions as currently drafted privilege religion over other protected attributes, which is contrary to the belief that human rights are universal and indivisible, and must be protected equally, as outlined in the Objects of the Act at Section 3.

Scope

The Bill provides that claims of religious discrimination can be made by corporations including religious institutions, schools, charities and businesses. This is different to existing domestic and international human rights laws, which protect the rights of natural persons.

The Bill also provides that religious bodies, such as those listed above, are exempt from engaging in religious discrimination, if it is in good faith and in accordance with their religion. This exemption is extremely broad and appears to entirely supercede protections against discrimination already existing in the areas of employment and the provision of goods and services.

The NTWWC is concerned about the extension of protection against discrimination to bodies corporate, which can hardly be said to have ‘human rights’ requiring protection, at the same time as the watering down of other protections, if the discriminatory treatment is on the basis of religious doctrine, teachings or beliefs.

Section 41 - Statement of Belief

The NTWWC does not believe that the right to express a religious belief should be elevated above other rights. The NTWWC is particularly concerned about women at work. It is our view that gender equality is a human right and there can be no justification, including justification on the grounds of religious belief, for the subordination or denigration of women through statements that offend, humiliate or intimidate. A statement of belief will allow statements that subordinate and denigrate the role of women, including in Australian workplaces.

What tone or culture might be created where individuals are permitted to express statements of beliefs against the equal role of women at work? What if there are more than a few individuals expressing those beliefs? What if the beliefs are expressed at the top by the CEO or the Chair of the Board? It is well documented that workplace culture is set by the leadership of any organisation. We strongly object to the allowance of any individual, but particularly leaders, to express views that offend, humiliate or intimidate.

The NTWWC regularly provides information and advice to women who experience differential treatment at work on the basis of their gender, race, disability, age and other attributes protected under both Territory and Federal Anti-discrimination legislation, as well as the Fair Work Act 2009. Very often, there is little direct evidence as to the basis of the differential treatment, beyond comments made by the employer/manager/supervisor which evidence their discriminatory attitude. The comments made are not always in direct relation to the Adverse Action or discriminatory treatment, however they reveal the motivation.

The NTWWC is therefore concerned that if a statement of belief, motivated by religious belief is specifically defined as not discrimination, there will be even less ability to use clearly relevant expressions of discriminatory attitudes in support of a claim of discrimination, where it may be the only clear supporting evidence.

Consider the following:

Potential scenario: Adverse Action claim on the basis of sex discrimination
A client attends the NTWWC for advice claiming that she has been discriminated against on the grounds of sex. She has recently learned that she is paid less than the two other men at her level, she was passed over for promotion despite her significant superior experience and qualifications and it has become obvious that she is excluded from team meetings where the most important issues are discussed and decisions are made. The client also states that her Manager has been open about his commitment to his faith and has made the following statements to her; ‘people need to respect that men have been designated the leaders of women by God’, and ‘God has created women and men as different, they’re just not equal, it’s that simple’.
The NTWWC has further fears in regards to Statements of Belief for a wide range of people who already experience high levels of discrimination, offence, humiliation and intimidation. The mental health consequences for such people are extensively documented. Consider the following former NTWWC client:

Case study: Afaafa

Afaafa is a migrant who fled domestic and family violence by separating from her violent husband. The NTWWC came into contact with Afaafa as she claimed unfair dismissal protection through the Fair Work Commission.

Despite the separation occurring a number of years ago, Afaafa is fearful of where she goes and where she accesses services in Darwin. She fears coming into contact with people who share the religious beliefs of her ex-husband as she knows they will berate her for leaving the relationship and urge her to accept that marriage is for life despite the occurrence of domestic violence towards her and her children.

Health Care

The NTWWC is concerned about the carve out afforded health practitioners in the proposed Bill. Specifically, the NTWWC is concerned that the specific conditions that apply in the Northern Territory have not been properly considered.

Across all remote and regional areas of the Northern Territory, it is common place for an entire community to be offered health care through a single health care provider, either Aboriginal Community Controlled or a government service. Our concern is that where a health practitioner conscientiously objects to the provision of health care, the patient may be unable to gain health care from another source.

The Bill provides that any conscientious objection must not result in unjustifiable adverse impact to the health practitioner’s employer or the patient. Our view is that this protection, which is likely intended for residents of rural communities, does not afford reasonable protection to many of our clients. The potential right of medical practitioners to conscientiously object will facilitate and encourage new religious freedoms across the community. That a patient who has not been afforded health care on the basis of a religious belief can readily assert the position that they ought to be provided health care or they shall suffer an unjustifiable adverse impact denies the realities associated with remote Northern Territory life. It also places an unreasonable burden on the patient to advocate for their own basic health care.

Our extensive experience across thousands of Northern Territory workplaces informs our view that it is unrealistic to expect that as part of an induction process a medical practitioner will be informed of the requirement that conscientious objections based on religious belief must not result in unjustifiable adverse impact to the patient in regional and remote settings. In the Northern Territory, the provision of health care is built around the reality of a transient population including short term and agency based workers. Many such workers fail to receive even the most basic orientation information.

Adequate access to health care is of concern to the NTWWC as our staff regularly refer clients with workplace issues into the health care system, particularly for mental health care. Our experience is such that we note many clients have difficulty obtaining health care in ordinary circumstances. The NTWWC asserts that barriers to the accessibility of health care for regional and remote people ought to be removed. This Bill introduces a new potential barrier.

The NTWWC is also concerned about the breadth of professionals who may be considered to be medical practitioners including psychologists who are APHRA registered. The inclusion of APHRA registered psychologists broadens the context in which conscientiously objecting practitioners may be located. Of particular concern is the vulnerability of people who access counselling and support for issues associated with gender identity, sexuality, sex and domestic and family violence and the significant harm that can occur as a consequence of the expression of offensive religious beliefs.

Religious Bodies Exempt from Religious Discrimination

Again, the NTWWC is concerned that the specific conditions that apply in the Northern Territory have not properly been considered. The Bill provides that where religious bodies or organisations engage in good faith in conduct that may reasonably be regarded as being in accordance with their religious beliefs, these acts cannot be unlawful. In the Northern Territory, there are numerous religious institutions which are the sole provider of an array of services to remote communities.
The table below is not an exhaustive analysis of service provision across the Northern Territory, it provides a snap shot only. However, the table below does depict that in many remote communities the sole provider of a service is a religious institution. In some communities, where there are two service providers, both providers are religious institutions.

Table depicting select communities where service are provided by a religious institution only.

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<thead>
<tr>
<th>Location</th>
<th>Type of Service Provided</th>
<th>Organisations Providing Service</th>
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</thead>
<tbody>
<tr>
<td>Wadeye</td>
<td>Alcohol and Other Drug Counselling</td>
<td>Catholic Care NT</td>
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<tr>
<td></td>
<td>General Counselling</td>
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<td></td>
<td>Domestic and Family Violence Assistance</td>
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<tr>
<td>Tennant Creek</td>
<td>Victims of Crime Counselling</td>
<td>Catholic Care NT</td>
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<td></td>
<td>Parenting Support</td>
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<td>Suicide Intervention</td>
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<td>Youth Services</td>
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<tr>
<td>Alice Springs</td>
<td>Victims of Crime Counselling</td>
<td>Catholic Care NT</td>
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<td>MacDonnell</td>
<td>Family Assistance</td>
<td>Catholic Care NT and Lutheran Community Care</td>
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<tr>
<td>Central Desert</td>
<td>General Counselling</td>
<td>Catholic Care NT and Lutheran Community Care</td>
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The NTWWC is concerned that where religious institutions engage in good faith in accordance with their religious beliefs and thereby exclude certain people from accessing services, that those people might not have access to basic government funded services readily available to those in more urban settings. This shall further disadvantage regional and remote people.

The NTWWC recommends that the federal government undertakes detailed analysis of service provision by religious institutions where religious institutions are the sole provider(s) of services. The NTWWC does not agree with the extension of protection against discrimination to bodies corporates.

Potential scenario: Josephine

Josephine and her three children have been subjected to domestic violence for more than 10 years, they live in Milikapiti on the Tiwi Islands where there is one Safe House provided by a Catholic institution.

Josephine is deeply connected to Milikapiti, all her family supports are there, her children attend the school there, and it is her country.

Her violent ex-husband has been convicted of assault against her twice and has served jail terms but he continues to use violence against her and chooses to stay in the community.

It is important for Josephine to have ready access to the Safe House. She and the children regularly attend the Safe House for short-term periods when the risk of violence is high.

Thus far the Safe House is known to be open to all community people, nobody has been turned away on the basis of religious belief. However, Josephine has learned that women and children who have recently attended the Safe House have been asked about their faith and told that the Safe House is intended to be for Catholics. Josephine has also heard that there has been a change of leadership at the head office and that many things are changing in the organisation.

Josephine is not Catholic and does not want to be pressured to adopt anybody else’s faith. She is not sure how she will feel
about attending the Safe House and questions if it somewhere she can go in the future. There are no other Safe House’s on the island.

The issue of religious bodies being exempt from religious discrimination will not only impact on the accessibility of services, it may also impact on people seeking and maintaining employment. In regional and remote communities, the labour market is limited. For example, in the instance of a resident who holds a qualification such as a certificate 3 in Community Services the table above depicts that they may be qualified to work for one religious institution employer in their community. Should the religious institution employer seek to ensure that their employees are of for instance a particular faith, gender status or sexual orientation which is considered suitable as per the religious doctrine, there shall be a complete loss of employment opportunity in the community.

The NTWWC fears that the elevation of the freedom to express religion above other forms of discrimination may lead to unintended consequences associated with workplace rights. The NTWWC is already aware of workers who suppress or hide attributes due to the fear of discrimination against them.

Case study: Eloise
Eloise was a newly qualified counsellor working for a community based religious institution. Eloise was worried that if her employer knew that she was a lesbian that she may lose her employment. Thus, she was careful to keep her personal life private and not share details with colleagues.

Eloise’s partner’s mother, with whom she has a close relationship, died. Eloise was unable to ask for bereavement leave to travel interstate to attend the funeral as she felt that any such request might lead to personal questions and thus the inadvertent disclosure of her sexual orientation.

Eloise was distressed about having to potentially lie to her employer about why she wanted leave.

Conclusion
The NTWWC asserts that the Religions Freedoms Bill elevates the rights of those who hold religious beliefs above the rights of others. The NTWWC is particularly concerned about increasing sex discrimination against women in the workplace and the exclusion of regional and remote Territorians’ access to basic community services including health care.

Recommendations
Recommendation 1
The NTWWC recommends that the protection against discrimination for unpaid workers provided by the Bill also be included in the existing four Commonwealth discrimination Acts, namely the Racial Discrimination Act 1975 (Cth), the Sex Discrimination Act 1984 (Cth), the Disability Discrimination Act 1992 (Cth) and the Age Discrimination Act 2004 (Cth).
Recommendation 2
The NTWWC recommends that the definition of ‘person’ be removed from the Bill and that the Explanatory Notes be amended to reflect that a complaint of discrimination on the ground of religious belief or activity may only be made by or on behalf of a natural person.
Recommendation 3
The NTWWC recommends that clause 41, dealing with discriminatory statements of belief, be removed from the Bill.
Recommendation 4
The NTWWC recommends that the federal government undertakes detailed analysis of service provision by religious institutions where religious institutions are the sole provider(s) of services.
Recommendation 5
The NTWWC recommends that clauses 8(3)–(4), dealing with the separate treatment of employer conduct rules by private sector businesses with annual revenue of more than $50 million, be removed from the Bill.
Recommendation 6
The NTWWC recommends that clauses 8(5)–(6), dealing with the separate treatment of rules about conscientious objections by health practitioners, be removed from the Bill.
Recommendation 7
The NTWWC recommends that clauses 31(6)–(7), dealing with additional restrictions on what amounts to an inherent
requirement of a job, be removed from the Bill