Submission on the Religious Discrimination Bill – Exposure Draft
October 2019
About Fair Agenda

Fair Agenda is a community of more than 36,000 Australians campaigning for a fair and equal future for women.

We are an independent not-for-profit organisation that is made up of Australians from all backgrounds and walks of life who come together to take action on issues affecting women.

We’re working for a future in which all women can live safely, with economic security, and agency over their lives and bodies. We know that the only way to achieve that is if we change the structures and systems that disadvantage women.

Fair Agenda members take action on issues that are important to them. Whether championing measures to address gendered violence, ensuring access to reproductive healthcare, or campaigning for women's economic equality – our community exists to advocate for improvements to law, policy and practice to bring us closer to a fair and equal future for women.

Further information about our work is available at [www.fairagenda.org](http://www.fairagenda.org)
Executive Summary

As an organisation dedicated to achieving fairness and equality for women, Fair Agenda supports protection from discrimination.

We are aware that many women of faith, particularly women of colour, require protection from prejudice and discrimination based on their religion, and we therefore support some aspects of the draft Religious Discrimination Bill.

However Fair Agenda are extremely concerned that many of the draft provisions proposed would privilege the religious beliefs of people of faith above the rights of other Australians to be protected from harm.

Fair Agenda recommends the following specific changes be made to the Religious Discrimination Bill:

• The Australian Government delete clauses 8(5) and (6) that regulate conscientious objections by health practitioners, as well as the related clause 31(7).
• The Australian Government consider including a provision in the Bill that provides that the obligation to refer in cases of conscientious objection is reasonable.
• The Australian Government should delete clauses 8(3) and (4), the related clause 31(6) should also be deleted.
• The Australian Government should delete clause 41.

Provisions relating to “conscientious objection”

Fair Agenda believes that any legislative provisions for a health practitioner’s conscientious objection should not infringe upon a patient’s right to access, or receive unbiased advice about, a health service.

We strongly oppose the proposed clauses relating to conscientious objection, on the basis that they prioritise the religious beliefs of a health practitioner over the needs of their patient. We note that the proposed provisions would make it much harder for health employers and professional bodies who want to do the right thing - by providing healthcare for all - to ensure their business and its employees treats patients according to their health needs.

Health practitioners choose their profession and their specialty and are in a position of power and authority in relation to their patients. They should be acting in their patients’ best interests. The experience of encountering a health practitioner with a conscientious objection that obstructs access to a health service can cause serious physical, mental, financial and social harm to a patient.

Fair Agenda strongly believes that any practitioners with a conscientious objection to providing care should be required to disclose this to the patient, and to provide the patient with information about where they can receive unbiased advice and care. We are deeply concerned that the proposed
provisions would not only fail to advance this practice, but would actively undermine it.

We are aware that across Australia, the obligations of health practitioners are set out in health professional conduct rules, legislation and in the policies of different health providers. And that, in addition, in each state and territory, there are some laws that accept the freedom of certain health practitioners to hold a conscientious objection - but only in relation to certain procedures, such as abortion or assisted dying. Some of those laws, such as abortion laws in Victoria, Queensland, and NSW, impose a clear duty to disclose the conscientious objection and to provide certain information to patients. Others are silent on those duties. And in the case of other reproductive healthcare issues, such as contraception, there are no laws regulating conscientious objection. Given that, we are very concerned that under the proposed provisions, whether or not a health service can require its staff to comply with an obligation to refer would require an individualised assessment of the impact of enforcing the rule on the particular health service and on the health of the patient.

We worry that such an approach would create uncertainty in relation to the enforcement of rules and policies that require disclosure of a conscientious objection and referral for unbiased advice, and would therefore obstruct many patients access to safe and timely healthcare.

We are extremely concerned that the proposed subsections will restrict many women’s access to reproductive healthcare - including contraceptives, the morning-after pill, fertility treatment and abortion care. As well as access to other procedures, such as voluntary assisted dying, pre- and post-exposure prophylaxis, and medical treatment for intersex or transgender patients.

We are particularly concerned that by increasing the barriers faced by many people in securing timely and affordable healthcare, these provisions would also increase the distress, difficulty and financial burden faced by many patients.

Such barriers to healthcare access would particularly impact:

- Women in rural and remote communities - whose healthcare options are already limited,
- Those who already face barriers and difficulties in accessing healthcare – including:
  - Women trying to escape abusive relationships who might be dealing with the control, surveillance and financial abuse of a partner,
  - Those for whom English is not their primary language; and
  - Women with disabilities,
- Those whose healthcare needs are most likely to be impacted by religious views, including: single women and mothers, women with disabilities, and members of the LGBTIQ+ community.

We note that the accessibility of reproductive healthcare such as contraceptives, emergency contraceptive and abortion care can be particularly important in circumstances of family violence.
Financial abuse by the perpetrator of violence can prevent a woman from being able to get to, or afford to, see a doctor easily or quickly. A perpetrator may obstruct her access to healthcare, prevent her from attending an appointment by herself, and/or use physical and online surveillance to make her feel unable to get to a doctor or clinic without his knowledge, or further violence. For women experiencing this abuse, the harm of a healthcare professional obstructing their access to healthcare will be compounded, and may not be overcome. It is vital no further barriers to healthcare access are put in their way.

Fair Agenda are also concerned about the expansive application of the proposed provisions, and note concern from some legal experts that the inclusion of practitioners like optometrists and podiatrists in this provision may lead to outright refusal of services to people from certain groups.

We note that there is significant evidence that the personal beliefs of some health practitioners are already being used to increase barriers to some women’s healthcare access. We are extremely concerned that the proposed provisions would increase these instances, and prevent health employers from providing healthcare for all.

We are aware via case studies collected by 1800 My Options that there are already issues with some doctors obstructing patient access to abortion care. 1800 My Options is a Victorian based service that provides information about contraception, pregnancy options and sexual health. It is operated by Women’s Health Victoria and funded by the Victorian State Government.

According to 1800 My Options, whilst many health professionals are working to improve access to abortion and contraception (over 300+ services have registered on their database), they do receive reports by service users of obstruction to abortion care access by doctors, including these recent examples:

- A woman in rural Victoria whose GP told her they would not assist her with abortion care, and would not refer her on to another practitioner who would provide. The woman was then scared to approach another local GP, in case of similar treatment. She could only find services 4+ hours away when using Google.
- A woman seeking medical termination of pregnancy early in pregnancy was told by her GP that they do not provide these services. The GP said that the only services available are private, and that they cost several thousands of dollars, even though this is not the case. The GP did not provide referral for termination of pregnancy.
- A rural GP told a woman they would not assist her with termination of pregnancy outside of ordering pathology and ultrasound, but ordered inappropriate tests that caused delays in accessing services. The woman was then scared to approach another local GP, in case of similar treatment.
- A metro GP who said “we only help women who keep their babies”, then showed the patient the door.
This service has noted that women living in small rural communities already have less access to sexual and reproductive health services, with many of them having one or fewer providers in their local area.

Further, a 2019 report from BMC Medical Ethics has also shown some doctors purposely delaying women to make accessing abortion more difficult. As evidenced in these quotes:

“I’d say it would be very common for me... that I would hear stories of – I don’t know whether it would be one in 20, it’s very hard to put a figure on it, of women who struggled, who went to their GP first to find out where they could go, and where the GP clearly didn’t agree... definitely was trying to get them to change their mind... to deter them or delay them.”

“We still get some patients coming in and saying ‘oh gee, I went to my doctor and he was not too helpful, and sent me on the run-around waiting for this ultrasound, and then come back and see me a week later and on and on’ we still get that.”

The same Victorian report identified that in some rural areas refusal to refer patients on when seeking abortion care is “common practice”. The report also showed that “conscientious objection” had occurred in contexts other than doctor’s direct provision of care to their patients. Including telephone staff in government services refusing to be involved in access to medical abortion, and pharmacists refusing to stock medication related to abortion.

These barriers to healthcare access should be reduced, not increased. The duty to disclose a conscientious objection and to refer patients to another health professional who can provide unbiased advice and care is vital. It is also an approach that has broad community support. Recent polling commissioned by Fair Agenda and the NSW Pro-Choice Alliance in New South Wales showed that 85% of respondents in the state agreed that a patient should be provided with information about where they can receive unbiased advice and care about abortion, regardless of their doctor’s moral beliefs on the matter.

Accordingly, we recommend that the Australian Government delete clauses 8(5) and (6) that regulate conscientious objections by health practitioners, as well as the related clause 31(7). And consider including a provision in the Bill that provides that the obligation to refer in cases of conscientious objection is reasonable.

---

1 Louise Anne Keogh et al, “Conscientious objection to abortion, the law and its implementation in Victoria, Australia: perspective of abortion service providers”, BMC Medical (31 January 2019).

2 Louise Anne Keogh et al, “Conscientious objection to abortion, the law and its implementation in Victoria, Australia: perspective of abortion service providers”, BMC Medical (31 January 2019).

3 The survey involved 1,018 respondents across NSW, was undertaken by ORU released by Fair Agenda and the NSW Pro-Choice Alliance on 7 September 2019.
Provisions relating to “statements of belief”

Fair Agenda are also concerned that proposed provisions relating to ‘statements of belief’ made by religious people will give a license for people of faith to make a wide range of potentially harmful and offensive statements, and contribute to hostile, unsafe and non-inclusive workplaces, schools and other public spaces.

No religious belief should override the right of another person to work and study with dignity.

We are concerned that the proposed clauses will make it difficult for employers to protect their staff and clients, even if they have policies to ensure equality. We are extremely concerned this provision will open avenues for attack on women, people with disabilities, LGBTIQ+ people and members of minority faith communities, and undermine protections that allow us all to work and study together with equal dignity.

While we recognise that the draft clause 41(2) excludes conduct which is in bad faith, malicious, harassing, vilifying or incites hatred or violence, we remain concerned that it will leave people without protection from a significant range of conduct that is humiliating, intimidating, insulting, ridiculing or offensive. And that this provision would operate to bar claims against harmful behavior that is likely to be directed towards women, particularly single mothers, and women with a disability.

We believe that all women should be entitled to undertake their employment, access goods and services, and engage in other designated aspects of public life, without unfavourable treatment because of who they are.

Fair Agenda also notes that we do not support statements of religious beliefs being given special status of exemptions to the Disability and Race Discrimination Acts.

 Accordingly, we recommend that the Australian Government should delete clauses 41, 8(3) and (4), and related clause 31(6).