



RELIGIOUS DISCRIMINATION BILL 2019 AND HEALTHCARE

The Federal Government has released its second draft Religious Discrimination Bill. The Bill strengthens the ability of health professionals to refuse treatment to patients on religious grounds and express views which impact on your healthcare. These rules will have significant impacts on non-judgmental access to healthcare for millions of Australians.

WHAT DOES THE RELIGIOUS DISCRIMINATION BILL 2019 DO?

The Bill will prohibit discrimination on the basis of religious belief or activity (including having no religious belief or refusing to engage in religious activity) in certain areas of public life, such as employment, education and the provision of goods and services.

So, for example, it will provide protection in certain circumstances to someone who is:

- treated unfairly at work, or turned away from a restaurant or shop, because they have or don't have a religious belief
- unreasonably prevented from wearing religious dress as part of a work or school uniform.

But the problem is that the Bill introduces special rules strengthening the ability of health professionals to refuse treatment to patients on religious grounds. These rules are unprecedented and will make it harder for

health sector employers and professional bodies to require health professionals to treat all patients, regardless of a health professional's personal religious views. The Bill also removes discrimination protections for women, people with disabilities, LGBTIQ+ people and others, when health professionals make certain religious statements which are discriminatory.

COMPROMISING ACCESS TO HEALTHCARE FOR ALL

Doctors, nurses, midwives, pharmacists and psychologists will be given greater protection to refuse treatment to patients on religious grounds.

Health sector employers and professional bodies that impose policies and standards requiring health professionals to treat people based on need and without judgement may find them under challenge.

Section 8(6) of the Bill prevents health sector employers and professional bodies from imposing additional requirements on doctors, nurses, midwives, psychologists and pharmacists which go beyond State or Territory laws allowing conscientious objection in healthcare (such as State and Territory abortion and assisted dying laws).

For example, an employing hospital or professional health body could not fill a gap in a State or Territory abortion law by requiring a doctor or psychologist to refer a patient to another treating professional where they object to treating the patient themselves.

When State and Territory laws are silent on conscientious objection (which is in the majority of health services), health sector employers and professional bodies will only be



able to restrict or prevent a health professional from refusing treatment to a patient if it causes an 'unjustified adverse impact' on the service or the health of the patient (s 8(7)).

When an adverse impact to patient health or the service will be *justified* is not clear. For example, it is unclear whether the following employment policies or professional standards will become unlawful under the Bill:

- an obligation to refer a patient if a practitioner objects to treating them on religious grounds
- an obligation to treat a patient if the patient's health needs cannot be met by another practitioner (for example, because of delay, distance or cost).

MAKING DISCRIMINATORY STATEMENTS LAWFUL

The Bill takes away existing discrimination protections for women, people with disabilities, LGBTIQ+ people and others where a health service provider makes offensive, intimidating or derogatory statements based on their religious beliefs.

For example, the proposed laws may protect a health worker who says:

- disability is caused by turning your back on God, or can be healed by prayer
- mental health issues, addictions or eating disorders are the work of the devil
- HIV is a punishment for sin
- homosexuality is a sin.

Statements which are malicious, or which are likely to harass, threaten, seriously intimidate, incite hatred or violence against people or which encourage serious offences, will not be protected. But where the line will be drawn between statements that are allowed and those which are not is unclear.

WHAT WILL BE THE IMPACT OF THE RELIGIOUS DISCRIMINATION BILL ON HEALTHCARE?

The Bill privileges the personal religious views of health professionals over their patient's health needs.

Australians will find it harder to access healthcare from health professionals, wherever they live. This includes access to sexual health, family planning, fertility, mental health and transgender health services.

Patients should not live in the fear of their healthcare being denied or delayed because of the religious views of their health professional.

Australians will have less protection if faced with judgmental statements in healthcare.

EXAMPLE SCENARIOS

Scenario 1: A trans woman seeks a referral from her GP to a specialist to discuss affirming her gender identity. Her doctor tells her 'God made humanity male and female, and, in his creative purposes, biological (bodily) sex determines gender'¹. Under the proposed laws, the patient could have her discrimination

¹ *Gender Identity Initial Principles of Engagement* (as adopted by the Anglican Synod on 23 October 2018, Resolution No 49/18), paras. 9.1.1(d) and 9.1.5(d).



protections taken away to accommodate the doctor's religious statement, while the doctor may be able to challenge any requirement imposed on him to provide non-judgmental care.

Scenario 2: A gay man is concerned that a condom broke during a sexual encounter. He asks his doctor to prescribe him post-exposure prophylaxis (PEP) within the 72-hour window. His doctor tells him that he refuses to provide any sexual health services to anyone because his religious beliefs forbid sexual activity outside of marriage. Under the proposed laws, it will be too late for the clinic to debate whether the patient's health needs should trump the doctor's personal religious views.

Scenario 3: A woman has been admitted to hospital after a sexual assault. She asks a nurse where she can get the morning after pill. The nurse refuses to answer because her Catholic faith forbids contraception. Under the proposed laws, the right to healthcare without judgement will be compromised.

Scenario 4: During a consultation, a psychiatrist says to a woman with depression that *'she should be looking forward to the Kingdom of Heaven'*.² Under the proposed laws, the psychiatrist could challenge their deregistration as religious discrimination, while the patient could have her disability discrimination protections taken away to accommodate the psychiatrist's religious statement.

² In 2015, a psychiatrist based in Western Sydney, made religious comments and gestures to 5 women, including this

WHAT YOU CAN DO

1. Make a submission by **31 January 2020** to the consultation on the Religious Discrimination Bill 2019 by sending it to [FoRConsultation@ag.gov.au](mailto:ForConsultation@ag.gov.au). See more information [here](#).
2. [Write to your local MP](#) voicing your concerns on the Religious Discrimination Bill 2019.

Have you been denied treatment in healthcare based on a religious objection? Have you been discriminated against in healthcare?

Write to us and tell us your story here:
equalityaustralia.org.au/contact-us/

statement. He was deregistered: [HCCC v Sarah \[2015\] NSWCATOD 99](#).