

Freedom of Religion Consultation
Human Rights Unit, Integrity Law Branch Integrity and Security Division
Attorney-General's Department
3-5 National Circuit, Barton ACT 2600
FoRConsultation@ag.gov.au

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Dear Attorney-General

Jesuit Social Services welcomes the opportunity to respond to the Freedom of Religion Consultation on the second exposure draft of the *Religious Discrimination Bill 2019* (the bill).

Jesuit Social Services supports the rights of all Australians to freedom of religious expression and freedom from direct or indirect discrimination arising from those beliefs. However, the right to freedom from religious discrimination should not come at the cost of equally valid rights such as the right to equitable access to health care and freedom from racial discrimination. The *Religious Discrimination Bill* risks undermining these rights.

On 10 December 2019, Prime Minister Scott Morrison said the *Religious Discrimination Bill* was a "bill for all Australians"¹. We contend that it is not a bill for all Australians. In potentially limiting access to health care for Aboriginal people in remote communities, this bill jeopardises the health of many Australians.

Health inequity in remote Aboriginal communities

Jesuit Social Services works with Aboriginal people in remote communities in the Northern Territory. With small populations spread across vast geographical distances, equitable service provision is a constant challenge. In our work, we see the vital role that health practitioners play in providing critical services to communities who have experienced generations of health injustice.

Subclause 8(7) of the bill states that the right of a health practitioner to conscientious objection should not be limited unless there would be an "unjustifiable adverse impact on third parties, such as the practitioner's employer and potential patients. This may arise in times of emergency or in other critical situations when patient health outcomes are clearly at risk".

This subclause and the two examples used in the explanatory notes essentially place the rights of the practitioner above the rights of the patient. It increases the probability of inconsistent application and interpretation by individual health practitioners. Further, the bill does not properly take into account the role that distance plays as a significant barrier to health care for people in remote communities.

Aboriginal people in remote communities already experience health disadvantage, due in part to their distance from metropolitan and regional health services. Jesuit Social Services staff in the Northern Territory note that social services in several NT communities are provided by religious organisations or people of faith. Faith-based practitioners may also work for either Aboriginal or government health services, and may be the sole practitioner in that area. In addition, several services rely on locum or fly-in-fly-out practitioners.

This presents no practical concern if that practitioner has no religious objection to any legal health procedure, but it represents a significant problem if they do deny care on those grounds. For those patients denied, the next health practitioner may be many hours' drive away.

¹ Transcript of press conference, December 10, 2019, <https://www.pm.gov.au/media/press-conference-sydney-nsw-1>

In these areas, if a person is denied service, it can be extremely difficult for them to access a second provider – more so if they are a child, elderly, have a disability, have family duties or have no access to a vehicle. Therefore, a health inequity arises where an Aboriginal person in a remote community can be denied a health service - or have a health service delayed – as a result of the religious conviction of the person providing the service. Anecdotal reports suggest this is already happening in some areas, especially when women are seeking contraception or family planning advice or referrals, and when LGBTIQ residents are seeking a service.

Statements of belief may make patients feel uncomfortable or unwelcome

The bill allows for religious “statements of belief” to be expressed in the workplace, provided they are in accordance with the tenets of that religion and do not “harass, threaten, seriously intimidate or vilify a person or group”. Consequently, the bill will, in effect, allow for statements that may offend, humiliate, or intimidate people, despite the potential harm that might be caused by such statements.

A power differential can exist between patient and practitioner, or between a social service provider more generally and their client. It is conceivable that vulnerable patients in remote Aboriginal communities confronted with such statements of belief might be made to feel so uncomfortable, ashamed, unwelcome or offended they simply don’t return to that health service, even if it is the only one available. This is of detriment to the patient’s health and the efficacy of prevention health care, and will add to the drivers of health inequity in remote Aboriginal communities.

Conclusion

In setting the right of an individual to deny a health procedure on the grounds of religious belief, even where no alternative care is available, above the right of an individual to equitably access health care, this bill may compromise the health of many Australians. While the bill’s purpose might not be to deny health care to people in remote communities, that is its practical outcome.

We appreciate the consultation taking our views into account.

Yours sincerely



Sally Parnell
Acting CEO, Jesuit Social Services