

31 January 2020

Via Email to: FoRConsultation@ag.gov.au

Freedom of Religion Consultation
Attorney General's Department
4 National Circuit
BARTON ACT 2600

To Whom it may concern,

Re: Submission regarding Religious Freedom Bills - Second Exposure Drafts

The Tasmanian Council of Social Service (TasCOSS) is making this submission in our capacity as advocates for and on behalf of vulnerable members of the community to prevent or relieve injustice, poverty, disadvantage and/or social exclusion. We also work to inform the public of the causes and effects of poverty, injustice, disadvantage and/social exclusion and to champion a vision of a fair, just and inclusive Tasmania. Our work is heavily informed by the lived experiences of the Tasmanians we represent as well as by evidence-informed policy and principles of human rights.

The Religious Freedom Bills as currently drafted are unnecessary, dangerous and undermine Australia's commitment as a signatory to the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights. TasCOSS therefore believes that the Bills should be withdrawn and replaced by legislation designed purely to protect religious belief and activity (including having no religious belief or refusing to engage in religious activity).

The proposed legislation is unnecessary because, while we believe that religious belief, practice and affiliation should be protected, the Bills go much further in providing a right to discriminate on the basis of belief, something no existing anti-discrimination legislation does.¹

The current proposed Bills should be replaced by legislation using the above tried and tested forms of anti-discrimination legislation that protects direct and indirect discrimination on the basis of religious belief and activity, in the same way that existing laws² protect Australians from discrimination on the basis of sex, age and disability.

This legislation is unnecessary particularly in Tasmania, which has arguably the most robust anti-discrimination legislation in the country through the protections it affords Tasmanians from

¹ *Age Discrimination Act 2004, Disability Discrimination Act 1992, Racial Discrimination Act 1975, Sex Discrimination Act 1984* <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Australias-Anti-Discrimination-Law.aspx>

² Ibid

language that humiliates, intimidates, insults or ridicules, including in the name of religion.³ Section 42(1) of the proposed legislation explicitly overrides these protections. If the legislation is passed, a wide range of Tasmanians, including some already experiencing vulnerability, will lose these protections and will therefore be exposed to discrimination. These include people of minority faiths, sole parents, people with disability, women seeking reproductive health services and LGBTI people.

The proposed legislation is also dangerous in that it gives some Australians the right to make discriminatory statements about other Australians in a range of settings, and where they may be vulnerable to power imbalances and abuse, including the workplace, healthcare and in the provision of publicly-funded services. This will undermine existing rights, and the welcoming Australia these rights have created, by permitting statements of religious belief that are offensive and harmful to some members of the community.

Finally, the legislation is contrary to the intent of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Australia is a signatory. The International Covenant in particular establishes the right to 'manifest one's religion or beliefs' but not if that manifestation undermines the fundamental rights and freedoms of others.⁴ In other words, according to international human rights law freedom of religious belief and expression does not extend to statements and practices that limit the human rights of others.

This issue was also identified by the Law Council of Australia in its submission on the first exposure drafts of the Bills. Noting that the second exposure draft of the bills retains these discriminatory provisions, we agree with the following assessment made in that submission:

Some of these provisions are concerning because, contrary to well established principles of international and domestic law, they prioritise the protection of freedom of religious expression over other well-recognised human rights, such as the right not to be discriminated against on the grounds of race, sex, sexual orientation, disability, or age, or the right to health, in a manner which disproportionately limits their enjoyment.⁵

In light of the range of harms and divisions the proposed legislation could precipitate, TasCOSS calls on the Government to:

- withdraw the bills, and
- introduce legislation designed purely to protect religious belief and activity (including having no religious belief or refusing to engage in religious activity) using current tested anti-discrimination legislation as its basis.

³ *Anti-Discrimination Act 1998, Section 17(1)*

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046#GS17@EN>

⁴ Article 18(3) <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

⁵ Law Council of Australia, 'Religious freedom bills', October 2019,

<https://www.lawcouncil.asn.au/docs/05f00464-68e9-e911-9400-005056be13b5/3695%20-%20Religious%20Discrimination%20Bills.pdf>

TasCOSS made a submission to the first exposure draft of these bills, which we attach to this letter.

Yours sincerely



Kym Goodes
CEO