

Ref: RH:AL

10 October 2019

The Attorney-General  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

**RE: Submission - Freedom of Religion Consultation**

The LGBTI Legal Service Inc. ('the Service') is a non-for-profit community legal centre that began operation on 7 July 2010 and officially launched on 1 December 2010 by former Justice of the High Court of Australia, the Hon Michael Kirby AC CMG.

The Service recognises the difficulties faced by the LGBTI community and seeks to assist the Queensland lesbian, gay, bisexual, transgender and intersex ('LGBTI') community to gain access to justice. The Service provides legal assistance across a broad range of legal areas such as criminal law, family law, domestic violence, employment and discrimination law. The Service also has an active Law Reform division that seeks to advocate for law reform and the protection of human rights in Australia.

The Service welcomes the opportunity to make a submission to the Attorney-General Department's consultation of the exposure drafts of the *Religious Discrimination Bill 2019*, the *Religious Discrimination (Consequential Amendments) Bill 2019* and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.

We support the position and submission put forward by Equality Australia and provide the following additional comments.

The central position of the Service is that freedom of religion must be carefully balanced against human rights considerations. All people, whether they identify as LGBTI and/or practice a particular religious faith, should be able to feel safe and be free from discrimination at school, work and when accessing goods and services. Importantly, there are already legal provisions that allow for the lawful discrimination by religious bodies against people who identify as LGBTI. While the Service supports fair and reasonable laws that allow for protections against discrimination based on religious belief, the proposed laws go too far and will likely allow some to put religious views over the core rights of other individuals, such as LGBTI people.

The key concerns and our proposals with respect to the proposed legislation are as follows:

- Delete ss 8(5), 8(6) and 31(7) of the *Religious Discrimination Bill 2019* – These subsections create too broad a freedom for health practitioners to refuse healthcare services to patients on religious grounds;
- Delete ss 8(2)(d), 8(3)-(4) and 31(6) of the *Religious Discrimination Bill 2019* – These subsections limit the ability for large private employers to create an inclusive work environment, while discriminating against employees of small organisations or public sector or who are not religious;
- Delete s 41 and amend s 10 of the *Religious Discrimination Bill 2019* – These subsections provide protection beyond existing anti-discrimination legislation for those who express hateful or prejudicial views to groups such as the LGBTI community of Australia;
- Amend definitions of ‘person’ and ‘complaint’ under the *Religious Discrimination Bill 2019* – These definitions extend discrimination claims on the grounds of religious belief to be brought by religious bodies not just individuals, which is unlike other anti-discrimination laws;
- Delete proposed amendments to s 11(2) of the *Charities Act 2013* (Cth) from the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019* – This amendment privileging the view of marriage only being between ‘one man and one woman’ is offensive towards LGBTI people and undermines the legal definition under federal marriage law; and
- Delete proposed s 47C of the *Marriages Act 1961* (Cth) from the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019* – Additional exemptions for religious bodies to discriminate against students and teachers in educational facilities are unnecessary.

More broadly, the drafting of the *Religious Discrimination Bill 2019* requires further clarification, as the current legislation appears to contain loopholes that create protection for religious bodies from anti-discrimination claims even where their conduct would be otherwise unlawful.

Our Service also raises concerns and disappointment in the proposed introduction of a Freedom of Religion Commission, especially without the existence of a LGBTI Commissioner to ensure the rights of LGBTI people and people of faith are appropriately and fairly balanced.

We have had a number of clients who have experienced unfair treatment and discriminatory behaviour from organisations and individuals acting in the name of their religious views. This was particularly evident in the lead up to, and during, the 2017 Marriage Equality postal survey. This saw a rise in the number of clients seeking assistance in lodging complaints with the then Anti-Discrimination Commission of Queensland (now the Queensland Human Rights Commission), particularly with respect to their employment. One example was when negative views were expressed by a senior member of an organisation who held very strong religious views and was circulated to all staff members. This had adverse effects on the emotional wellbeing of LGBTI employees within the organisation and affected their ability to work within the organisation.

We have also assisted individuals who have been subjected to negative and humiliating comments in public places. Such comments have been seen by our clients as being against their own religious views and merely an expression of hatred against the LGBTI community.

This submission was prepared by Mr Alex Ladd at the Service. For further information, please contact Renea Hart on 07 3124 7160.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Renea Hart', written in a cursive style with a large loop at the end.

**Renea Hart**

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