

21 December 2021

Committee Secretary
Parliamentary Joint Committee on Human Rights
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

To the Committee Secretary,

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights and its inquiry into the Religious Discrimination Bill 2021 and related bills.

About us

HIV/AIDS Legal Centre (HALC) is the only not-for profit, specialist community legal centre of its kind in Australia. We provide free and comprehensive legal assistance to people in NSW and Queensland with HIV or hepatitis-related legal matters. We also undertake Community Legal education and Law Reform activity in areas relating to HIV and hepatitis.

HALC has represented clients in discrimination matters nationwide. This has included representation at NSW anti-discrimination, the NSW Civil and Administrative Tribunal, the Queensland Human Rights Commission, the Equal Opportunity Commission – Western Australia, the South Australian Civil and Administrative Tribunal, the full court of the Federal Court of Australia, the Supreme Court of NSW, the Fair Work Commission and the Australian Human Rights Commissions. We have represented clients who have been discriminated against by employers, health care workers and other service providers.

The National Association of People with HIV Australia (NAPWHA) is the national peak, non-government organisation representing community-based groups of people living with HIV (PLHIV) across Australia. NAPWHA's membership of national networks and state-based organisations reflects the diverse make-up of the HIV-positive community and enables NAPWHA to confidently represent the positive voice in Australia. NAPWHA's vision is of a world where people with HIV live their lives to their full potential, in good health and free from discrimination.

Our organisations understand that protection against discrimination in relation to religious belief is part of Australia's international obligations. However, these obligations should not extend to the creation of a positive right to discriminate on the basis of religious belief against others where it will be detrimental to the mental and physical health of people with other protected attributes. We are deeply concerned that the current Religious Discrimination Bill 2021 (**RD Bill**) in its current form will have a disproportionate impact on our clients and communities we assist.

While some issues identified in previous drafts of the RD Bill have been addressed, including the removal of the conscientious objection provision, the revised RD Bill still contains provisions that prioritise the rights of individuals and organisations who hold a religious belief over the rights of others. The RD Bill also takes unprecedented action in discrimination law by overriding state and territory discrimination legislation, effectively undermining Australia's current discrimination law framework, which also forms part of Australia's international obligations.

Our specific concerns about the RD Bill and related bills are outlined below.

1. Australia's International Obligations

Clause 3(2) of the RD Bill acknowledges the 'indivisibility and universality of human rights, and their equal status in international law.' Several provisions within the bill directly contradict this object by favouring one human right, the right to religious freedom, over others. We recognise that human rights can often contradict one another and that the International Covenant on Civil and Political Rights (ICCPR) acknowledges this in articles 18 and 19 by implementing special duties and responsibilities on each state party. This includes implementing certain restrictions where it is necessary for the protection of public order, health or morals.

We are deeply concerned that provisions of the RD Bill will have a detrimental impact on the mental and physical health of community members with other protected attributes including people living with HIV, members of the LGBTQI+ communities and people living with disabilities.

People living with HIV continue to report high levels of stigma with 56% of people living with HIV who participated in the HIV Futures 9 study reporting they had experienced some form of stigma in the reporting period.¹ The study also found that 38% of participants indicated they had been treated negatively or differently by healthcare workers because of their HIV status². While HIV-related discrimination is illegal in all Australian jurisdictions, discriminatory and stigmatising conduct continues to occur, and can often be compounded with prejudices based on sexuality, drug use and sex work. We fear that provisions of the RD Bill will further drive stigmatising and discriminatory behaviour by providing legal protections to those who would target people living with HIV, members of the LGBTQI+ communities, sex workers, people who inject drugs and people living with disabilities.

Religious bodies or organisations that spread misinformation about HIV will be protected under the RD Bill through the 'statement of belief' clause discussed below. People living with HIV come from a wide range of cultural and religious backgrounds and should not be forced to face stigmatising and discriminatory messaging from faith-based employers, healthcare service providers and disability service providers. We are also concerned that people living with HIV may be reluctant to access essential health services due to fear of

¹ https://www.latrobe.edu.au/__data/assets/pdf_file/0007/1058614/HIV-Futures-9.pdf

² Ibid.

being discriminated against, particularly where there is a lack of service options due to financial or geographical restraints.

Our organisations strongly believe that the introduction of the RD Bill will undermine the necessary protections currently in place for people with living with HIV and other protected attributes. Allowing individuals and organisations to discriminate based on religious beliefs will have a detrimental impact on the mental and physical health of people living with HIV in contravention of Article 18(3) of the ICCPR which states that the ‘freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.’

Allowing service providers to refuse to provide services to certain clients on the basis of religious belief will undermine Australia’s HIV response; which up until now has been globally renowned for being one of the world’s best. Allowing religious individuals or faith-based organisations to provide services in ways that, according to religious beliefs or doctrine, stigmatise against and judge service users with other protected characteristics will make it difficult and, in many cases, impossible for these service users to confidently access the healthcare services they need free from the fear of discrimination. HIV related stigma (and related homophobia) in Australia already makes accessing HIV testing, treatment and care difficult and so undermines Australia’s HIV response. This proposed legislation will have a catastrophic effect on our ability to end HIV transmission in Australia by 2025 as we have committed to do under the 8th National HIV Strategy. Further it will erode the mental health, quality of life and ability to access services for those people who are discriminated against on the basis of religious belief.

2. Statements of Belief

Under clause 12 of the RD Bill, a statement of belief would not constitute discrimination under any federal, state or territory anti-discrimination legislation. Although statements that are malicious, threatening, intimidating, harassing, or vilifying would not be protected, we continue to have significant concerns about the impact of such a provision.

The introduction of a ‘statement of belief’ exemption clearly acknowledges that statements of belief can amount to discrimination, including racial discrimination, sex discrimination or disability discrimination, but provides protections to perpetrators instead of victims. Our communities are often faced with stigmatising and discriminatory statements from both religious and non-religious organisations and individuals.

The unprecedented action of overriding anti-discrimination laws in all other Australian jurisdictions will have a detrimental impact on people with other protected attributes. For example, a person living with HIV may be told by service providers, healthcare workers or employers that they contracted HIV ‘because they had sinned’, or a queer person may be told that their actions will ‘condemn them to hell.’ These types of statements would be protected under the RD Bill. We submit that religious organisations and individuals should not be offered protections to discriminate against others in the community. This provision

clearly demonstrates that the RD Bill privileges people of faith over people with other protected attributes.

Australia's HIV response relies on the ability of people with, or at risk of, HIV being able to access non-stigmatising testing treatment and care services without the fear of discrimination and judgment. This proposed legislation threatens to undermine our world leading response to HIV.

Furthermore, the explanatory memorandum outlines that the RD Bill's statement of belief provision only protects discriminatory statements and does not protect discriminatory conduct. Despite this, the protection of discriminatory statements is likely to have an impact on findings of tribunals and courts in discrimination matters. Courts and tribunals often rely on discriminatory statements in determining whether conduct by an individual or organisation, in refusing service or employment for example, was discriminatory. In finding a statement of belief was not discriminatory, a court or tribunal will be hesitant to rely on this statement to determine if their conduct was discriminatory.

For example, a person living with HIV may be required to undertake a pre-employment health check. During this process, the potential employee discloses that they are living with HIV. After the health check they receive a phone call from the employer to discuss the health check and the employer states 'your HIV is a punishment from God.' A week later, the employer informs them they have not been successful in their application. As a statement of belief, the statement would not be considered discriminatory under the RD Bill. It would then be difficult for a court or tribunal to make a finding that the conduct, of not offering employment to the person living with HIV, was discriminatory without further evidence linking their HIV status to the employer's conduct. The legislation, as proposed, by protecting discriminatory speech will, *de facto*, also potentially protect discriminatory actions despite its objectives stating the opposite.

3. Interaction with State Based Mechanisms

The HIV/AIDS Legal Centre often represents financially disadvantaged clients who have been discriminated against due to their HIV status at state and territory anti-discrimination bodies and in state and territory tribunals. We are concerned that the implementation of the RD Bill will force matters out of these low-cost jurisdictions into state and federal courts where respondents claim to rely on the 'statement of belief' exemption.

Current anti-discrimination legislation in state and territory jurisdictions empowers tribunals to make findings in discrimination matters. State and territory tribunals cannot make findings regarding federal laws meaning that matters concerning the 'statement of belief' exemption would need to be heard by state and territory or federal courts. This would significantly increase the costs for both the applicant and respondent in discrimination matters and make the complaint process less accessible. This is of particular concern to HALC's clients who are often members of the community that are facing financial disadvantage. Large religious organisations that wish to rely on the 'statement of belief' exemption will have the funding and resources to pursue such matters and may negatively impact their willingness to engage in early mediation processes in good faith.

Our clients already face difficulties in bringing complaints forward out of fear of further stigmatising and discriminatory conduct from the perpetrator. The burden of additional costs would only further deter people from accessing just outcomes after having faced discriminatory conduct.

4. Discrimination in Employment – Health Care Services, Aged-Care Services and Disability Services

Clause 9 of the RD Bill outlines the areas of public life in which religious hospitals, aged care facilities and disability services providers can legally discriminate against people in decisions regarding employment and partnerships. Again, this provision further highlights the privileges offered to faith-based organisations in the RD Bill over other members of the community. Allowing religious bodies to discriminate against employees will only further entrench institutionalised discrimination against marginalised communities including people who identify as LGBTQI+, women, people living with a disability and people living with HIV.

We are deeply concerned that this provision will create work environments that lack diversity in service areas that often engage with a wide range of society. This is of particular concern where members of the community may be unable to ‘pick and choose’ service providers due to financial and geographical constraints. It is important that staff members in health care, aged care and disability services reflect the diversity of the Australian community. Diversity in cultures, backgrounds and faith can inform better practices and is an important element in removing institutionalised discrimination.

People do not always have a choice about which health care, aged-care or disability service facility they attend. Often, choices are made to ensure they are close to their family, friends and other support services, or only one service provider may exist in their area and they are unable to relocate due to financial restraints. While service providers will not be able to discriminate against clients, the RD Bill allows for the potential to create working environments that can be harmful to our clients and potentially exposing them to stigmatising work practices.

5. Effects of the broader Australia society

Our organisations are also deeply concerned about the effect that legal protections for people who seek to discriminate against those with other protected characteristics will have on our broader society.

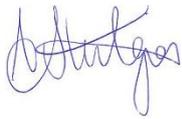
Public statement of religiously motivated hate speech in the media against our communities already causes rates of hate crimes and violent attacks on our communities to increase. Legally protecting this kind of speech would supercharge this trend by empowering and emboldening those who would go beyond speech to violent attack. This will create a hostile environment in which many vulnerable Australians will daily fear for their personal safety.

This proposed legislation will create a hostile environment for marginalised communities and will entrench homophobia and other outdated views. This will divide Australian society and lock in constant disagreements and outrages as people are denied health services, family planning services, surrogacy and adoption services, same sex marriages and many other services.

HALC and NAPWHA submit that this is not the society Australians want. A litigious and polarised society that is constantly in a state of aggressive disagreement undermines the quality of life of all Australians.

If additional information or citations in relation to this submission are required, please feel free to contact Rhys Evans on rhys@halc.org.au.

Yours sincerely,



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