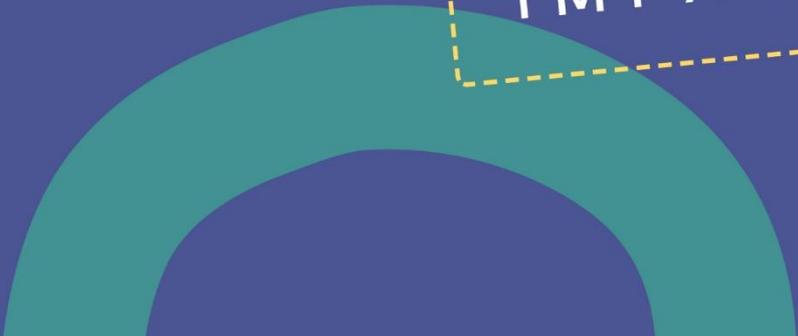




Women's Health Tasmania

Submission in response
to the draft Religious
Discrimination Bill 2019

2nd OCTOBER 2019



EQUITY
CHOICE
IMPACT

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About Women's Health Tasmania

Women's Health Tasmania (WHT) is a universal service, available to all women in Tasmania. It seeks to increase the range of services, and its reach, to women vulnerable to inequitable health outcomes due to social or economic determinants. WHT acknowledges the impact of societal influences such as income, education, gender, sexual orientation, ethnicity, disability and isolation on health outcomes, and seeks to reduce the negative effects of these factors on individual women.

WHT is part of a national network of women's health centres. It is a health promotion charity funded by the Tasmanian Department of Health and Human Services, and guided by the World Health Organisation's definition of health – "Health is a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity"¹. WHT provides a safe, supportive environment for women. It is run by women, for women, and aims to promote positive health outcomes by providing a diverse range of services, taking a holistic approach. This perspective on women's health has seen WHT at the forefront of preventative health in Tasmania.

WHT's vision is for Tasmanian women to be informed, supported and active decision-makers in their own health and well-being. As a result, WHT has also been a key advocate on issues such as a woman's right to make informed choices about her health. Our leadership has been evident in a wide range of health policy, in social justice and gender equity. WHT consistently advocates on behalf of women with both State and Commonwealth governments, on a range of legislation and policies impacting on women's health. In recent years, WHT has broadened its service delivery component by undertaking outreach activities, offering a state-wide information telephone line and using electronic technologies. It currently provides services to women from 74 different postcode areas.

WHT continues to provide direct services to individual women and to advocate for, and promote, the health and well-being of all Tasmanian women. Our knowledge and expertise are based on 30 years' experience working with, and for, the women of this state.

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1. Introduction

WHT is in a unique and crucial position in working to advance the status of women in Tasmania. As an holistic service taking a universal approach, WHT works to a social determinants of health model aimed at creating structural change toward equity for women. While WHT provides some direct services, much of our work is centred around broader preventative measures and engaging in public debate about the status of women across all sectors of society, and primarily in relation to gender inequality.

In commenting on the Religious Discrimination Bill 2019 and related exposure drafts, WHT would appear to be best placed to inform on the priority areas of Health and Wellbeing. However, as stated in the Tasmanian Council of Social Service (TasCOSS) report, *Acting for Change*,

Health is complex. Good health and wellbeing are intrinsically connected to economic security, education, literacy, housing, freedom from violence and a range of other circumstances outside the control of the individual.²

WHT has direct experience of operating in Tasmania for 30 years. Based on this experience and with its broader generalist perspective, WHT has focussed this submission on the potential impact of the proposed legislation on the health and well-being of Tasmania women. We have taken legal advice on the proposed Bill, and consulted with members and women's health organisations around Australia. We have many concerns about this proposed legislation, and believe the package of Bills represents a significant reversal to the rights of women to be fully-informed and active citizens, with real control over decision-making about their health.

2. The key issues identified with the Bills

The package of Bills represents a significant potential reversal in the rights of women to be fully informed and active citizens. This section focusses on the impact it will have on women's rights to access fully-informed health care of choice.

Based on religious belief or activity, the proposed legislation would:

- Over-ride other discrimination acts
- Override subsection 17 (1) of the Anti-Discrimination Act 1998 of Tasmania by allowing statements of belief to be communicated which offend, humiliate, intimidate, insults or ridicules others
- Undermine patients' rights to be partners in their own care
- Contrary to professional codes of conduct, allow health practitioners to refuse to treat patients
- Contrary to professional codes of conduct, allow health practitioners to refuse to treat patients without being required to refer them to another practitioner or service provider unless this is mandated in legislation
- Allow health practitioners to withhold health information from patients
- Allow health services operated by religious bodies to refuse to treat patients
- Override the Tasmanian Reproductive Health (Access to Terminations) Act 2013 providing Safe Access Zones for termination clinics and services
- Contribute to broader stigmatisation and associated ill health

3. The consultation process

The consultation period for this Bill was far too brief given the complexity of the legal issues being canvassed. Given the potential impact on women in general, but Tasmanian women in particular, Women's Health Tasmania asked for an extension from the Attorney-General's Department but this was refused.

We note that no Easy Read or Plain English documents were provided, even though this legislation potentially over-rides the rights of people with disabilities (as protected by other pieces of anti-discrimination legislation affected by this Bill). This is very poor process for any consultation but particularly one being held on matters of discrimination.

We note the absence of explanatory information accompanying the Bill to assist members of the Australian community who are not discrimination law experts to interpret it.

To inform our response to the Bill we have consulted with lawyers with expertise in discrimination law and human rights law, with lawyers from the Tasmanian Anti-Discrimination Commission and the Public Interest Advocacy Centre. We have been told repeatedly by these legal experts that the proposed Bill is internally contradictory and open to broad and conflicting interpretation. Our response is framed on an understanding of the advice we have been given.

4. Over-riding other anti-Discrimination Acts – the example of disability

We have received legal advice the proposed Bill over-rides all other State and Commonwealth anti-discrimination laws. Section 41 (1) of the proposed bill says that a statement of belief does not constitute discrimination for the purposes of any anti-discrimination law (within the meaning of the Fair Work Act 2009). This covers all discrimination provisions in all state, territory and Commonwealth Acts.

There are multiple examples that could be provided of how over-riding anti-discrimination legislation in the name of religious freedom is problematic. We have chosen to highlight one – the experience of women with disabilities.

Discriminatory attitudes and practices towards people with disabilities are deeply embedded in many cultures and often have doctrinal justification.

Some of the religious beliefs that impact on people with disabilities include:

- Disabilities are God's punishment for sin – the individual's sin, or their mothers' (Christianity Matthew 9:2,7; Catholic doctrine - Canon 22 of the Lateran Council (an ecumenical council of the Catholic Church))
- Disability is a way God demonstrates his power over people (John 9:1-3)
- Disability is divinely ordained suffering to teach other people respect, humility and charity (Christianity)
- Disability is a test by God which challenges an individual to develop strength of character (Christianity)
- Disabled people are weaker and therefore have a special position in the eyes of God (Islam)
- Albinism is an indicator of witchcraft (Nigerian Christian belief)
- Mental and physical illness is part of the unfolding of karma (Hinduism)
- Disabilities are a direct consequence of inappropriate action in past lives (Hinduism and Buddhism)

- Disabled people have no place in heaven (Hinduism)
- People with physical disabilities may not take part in religious ceremonies (Judaism)
- Intellectual disabilities are caused by supernatural phenomena (Islam)

These beliefs are all contrary to the social model of disability, which understands the vulnerability of people with disabilities to be a result of the failure of social environments and structures to adjust to their needs and hopes. The social model of disability is the underpinning framework of the National Disability Insurance Scheme and of what is internationally considered best practice in disability service delivery.

We have chosen one example of how cultural and values driven approaches, deeply embedded in Judaeo-Christian belief systems, have impacted on women with disabilities.

Forced and coerced sterilisation has been imposed on women with disabilities for a long time. The scale of forced sterilisation of women with disabilities in Australia demonstrates how the individual values of health workers can over-ride the human rights of marginalised people. It is a concrete example of the dangers of prioritising the right to action based on personal belief over the right to be free from discrimination.

Forced sterilisation of girls and women with disabilities is internationally recognised as a harmful practice based on tradition, culture, religion or superstition.³

In their submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia⁴, Women with Disabilities Australia (WWDA), define forced sterilisation as sterilisation in the absence of the free and informed consent of the individual concerned. It includes instances in which sterilisation has been authorised by a third party, without that individual's consent.⁵ WWDA describes forced sterilisation as an act of violence,⁶ a form of social control, and a clear and documented violation of the right to be free from torture.⁷

Australia's high rate of forced sterilisation of women with disabilities is poor. Australia was censured in The Convention on the Elimination of All Forms of Discrimination against Women Committee's July 2018 report, which called on our government to abolish this practice and enforce strict guidelines on the sexual and reproductive health rights of women and girls with disabilities who are unable to consent.⁸

This package of Bills would allow people with religious beliefs and religious bodies to discriminate against people living with a disability. Permitting this to occur sends a legislative message to the broader community that denigration of people living with a disability is acceptable.

5. Part 4 - Over-riding the Tasmanian Anti-Discrimination Act

Section 17 (1)

The proposed Religious Discrimination Bill over-rides subsection 17 (1) of the Anti-Discrimination Act 1998 of Tasmania by allowing statements of belief to be communicated which offend, humiliate, intimidate, insult or ridicule others.

The Religious Discrimination Bill clearly limits the operation of section 17(1) so that it is effectively weakened and Section 17(1) will effectively be rendered inoperative under the Religious Discrimination Bill. (As an example of the potential litigation caused by this Bill, we have been informed that for section 17(1) to be over-ridden the the High Court may need to declare section 17(1) to be invalid to the extent it is inconsistent.)

The proposed legislation does make provision that statements of belief which are malicious, likely to harass, vilify, incite hatred or violence against another person or group of persons will be considered discrimination. This means discriminatory remarks which are humiliating but not a call to violence, cannot be the subject of a complaint.

Tasmania's Anti-Discrimination Act protects all Tasmanian citizens from being subjected to offensive and therefore damaging behaviour. It is to this higher bar that any anti-discrimination or human right legislation should be raised.

The Anti-Discrimination Act was passed in 1998, just a year after homosexuality was decriminalized in this state. Tasmanians wanted to put the polarization and cruelty of the gay law reform debate behind them. The Act was our commitment, as a state, to never again demonise a vulnerable minority. Since then, the Act - including Section 17(1) - has helped foster a fairer and more inclusive community. Public anti-gay hate, ubiquitous before 1998, has virtually disappeared and the same, dramatic increase in inclusion can be seen for other social minorities. Tasmania has also seen none of the racial or religious extremism plaguing the other states. It is a widespread belief in Tasmania that laws like section 17(1) provide a shield against such extremism.

Twenty years after the Anti-Discrimination Act Tasmania is a more inclusive society. Evidence of this includes the fact that Tasmanian religious schools now voluntarily regularly conduct LGBTIQ anti-bullying and inclusion programs and the Tasmanian faith-based welfare agency, Bapcare, received a state award for LGBTI inclusion in 2018. Tasmania, once seen as a risible bastion of homophobia recorded a 'yes' vote in the national plebiscite on marriage equality which exceeded the national average. Nearly 7 out of 10 Tasmanians voted for marriage equality. And finally, while Tasmania is not perfect, evidence of our greater inclusiveness is that little use has needed to be made of Anti-discrimination provisions by LGBTIQ people.

In fact, of the complaints taken to the Tasmanian Anti-Discrimination Commission, over a third are on the grounds of disability, another third are on the grounds of race, gender and age, with the balance covering the remaining ten grounds. Complaints on the ground of sexual orientation and gender identity make up only 5 – 10 per cent of complaints.

The Tasmanian Act provides the ability to speak about issues of faith. The Tasmanian Supreme Court has found that Section 17(1) does not infringe free speech or freedom of religion. James Durston, the author of an anti-gay flyer found by the Anti-Discrimination Tribunal to have breached section 17 and section 19 (incitement to hatred) of the Anti-Discrimination Act 1988 (Tas) appealed to the Supreme Court on the grounds that his free speech and freedom of religion were being infringed. Justice Brett found that sections 17 and 19 do not infringe these rights, and that they are valid under the

Australian Constitution. He also concluded that freedom of religion and freedom of speech are not unfettered rights, and the Tasmanian Anti-Discrimination Act strikes the right balance between these rights and right of citizens to live free from hate.⁹

Section 17 (1) of Tasmanian Anti-Discrimination Act is not open to a subjective interpretation of offence, humiliation, intimidation, insult or ridicule. Section 17(1) does not simply allow someone to complain because they feel offended. Whether someone is “offended, humiliated, intimidated, insulted or ridiculed” must be something that would be anticipated by “a reasonable person”. There is a growing number of court decisions establishing what a reasonable person would anticipate. These are cited in the Tasmanian Supreme Court decision on Durston (discussed above). The reasonableness threshold is higher than for the many similar offences, including the uniquely Tasmanian proscription against offending politicians.

The complaint of faith leaders about the Anti-Discrimination Act does not refer to a perception of 20 years of injustice but to just one complaint, the Porteous complaint. As this complaint has been cited as a reason for the religious freedom provisions in the Religious Discrimination Bill, it is dealt with in more detail below.

The Porteous Complaint

A complaint was taken against the Australian Catholic Bishops Conference over the 2015 publication and distribution of a booklet entitled, “Don’t Mess with Marriage”.¹⁰ The complaint focused on the mixture of Catholic doctrine and editorialising in the booklet, as the text was not clear what was doctrinal belief and what were the personal opinions of its authors.

Throughout both the national marriage equality postal survey debate and the Parliamentary debate on amending the Marriage Act, the Porteous complaint was repeatedly cited - in all forms of media, and most Houses of State and Federal Parliaments - as evidence of the need to grant greater protection of religious freedoms.

The position of those citing this case as an example of how religious freedom is inhibited is that the entire contents of this booklet are Catholic doctrine. The evidence given for this statement is the pamphlet was authored by the Catholic Bishops Conference.

While it is understood Catholic doctrine teaches homosexual acts are a sin and that sin damages one’s relationship with God, there were several concerning statements in the publication which went further than this. One of these was same-sex parenting damaged children and was “messing with kids”. One of the concerns for the complainant was that in its idiomatic usage this is also a phrase used to describe paedophilia.

The core issue of the complaint therefore was not the right of the Catholic Bishop to assert the Catholic doctrine that children should be raised by heterosexual couples within the institution of heterosexual marriage, but the inclusion of a statement which to the best knowledge of the complainant was not Catholic doctrine and which was described in language that was offensive and humiliating. The complaint was referred to a conciliation process where it was resolved.

In 2016 the Tasmanian State Government, in response to complaints about the Porteous case, moved legislation to weaken the Anti-Discrimination Act by amending section 55 to include religious purposes as an exception to sections 17 and 19. This would have permitted incitement to hatred and offensive conduct if it was done in the name of religion. An independent Upper House member also moved to water down the offensive conduct provision. Both proposed amendments to the Act were made in the name of religious freedom.

The amendments both failed in the Tasmanian Legislative Council in 2017. The Councillors reported two reasons for this: they viewed the evidence in the Porteous case, and the members were given briefings by a range of people in the community who felt their rights were protected by the Act – particularly people with disabilities. The Councillors reported being particularly struck that overwhelming majority of complaints under the incitement to hatred and offensive conduct sections are from people living with a disability.

In public debates about the Religious Discrimination Bill it has been stated by Government representatives ‘a law that requires a Catholic bishop to answer for what is written in a Catholic pamphlet is clearly not working’. This point of view is only understandable if the Government believes that all the contents of the “Don’t Mess with Marriage” pamphlet are Catholic doctrine and further believes that the question of whether it contains non-doctrinal content cannot be tested in law.

This presents two issues. Firstly, the religious freedom provisions in this proposed Bill will inevitably lead to litigation, where what is religious doctrine and what is not will be the point of argument. Secondly, the view that a citizen who holds the position of Catholic bishop could never be subject to the same legal complaints processes as other citizens is clearly untenable in a modern pluralistic society.

6. Section 8 (3) Codes of Conduct - Faith Based Organisations

Section 8 (3) and (4) allows employees greater freedom to say what they like in the name of religion outside work hours and limits the capacity of employers to impose codes of conduct unless they can demonstrate the comments cause financial hardship.

This is an extraordinary provision, giving a particular set of rights to that group of people who are employed in organisations with revenue of more than \$50 million. The benchmark of \$50 million appears arbitrary. The choice of revenue as the only measure of potential detriment to the employing organisation appears arbitrary.

It seems the Government has only large corporate like Rugby Australia in mind with this legislation, but many non-government organisations have revenue of \$50 million per annum or more, derived from a mixture of grants, donations, social enterprises and fee for service.

Non-government organisations have employee codes of conduct to protect their reputation and brand, and to maintain the safety and confidence of vulnerable people accessing their services. Large NGOs will be impacted by the provisions in Section 8 (3).

7. Section 8 (5) and (6) Conscientious Objection

Conscientious objection by individuals

A substantial body of State and Territory, health professional association, regulatory body and health service conscientious objection laws, policy and health service accreditation requirements on patient’s rights already exist. How this proposed legislation will operate in conjunction with these current laws, policies and standards is a source of confusion and serious concern – it over-rides anti-discrimination legislation, it may over-ride conscientious objection legislation and it does appear to over-ride professional codes of ethics.

This confusion will potentially have significant impacts on services to women seeking information and services for pregnancy terminations and contraception, people living with a disability, LGBTIQ

people, and transgender people seeking treatments. Obviously, this is particularly pertinent to some religions' views regarding women's reproductive rights.

Section 8 (5) and (6) of the Religious Discrimination Bill are unnecessary. The right of health professionals to conscientiously object already exists in current clinical practice within clear guidelines. The Australian Medical Association (AMA), Australian Nursing & Midwifery Federation (ANMF) and the Pharmacy Guild of Australia have policies and codes of ethics permitting conscientious objection - but also outlining the responsibilities such a stance brings for those health professionals to:

- ensure the patient is informed of the conscientious objection
- refrain from expressing their own personal belief
- treat the patient with dignity and respect
- appropriately facilitate continuity of care for the patient and ensure access to care is not impeded
- not refuse to carry out urgent life-saving measures or procedures

Under the Tasmanian Reproductive Health (Access to Terminations) Act 2013, medical practitioners have the right to conscientiously object to performing a surgical or medical termination. But they must state their objection and are then required to refer women to another medical professional or health service, ensuring access to care is not impeded. We have received conflicting legal advice on whether the proposed Federal legislation would override the Reproductive Health Act, making the process of obtaining appropriate and timely care more difficult than at present, and putting women's physical and mental health in jeopardy.

Refusal to treat patients based on religious beliefs will not apply only to women seeking a termination. Contraception is against the beliefs of some religions, as is the treatment of pain for the terminally ill. Health practitioners of faith may also refuse to treat patients with HIV, with drug or alcohol addiction, or to provide information or referral to IVF treatment.

In the United States, where healthcare-specific religious refusal laws exist allowing medical providers to refuse to perform certain procedures or to prescribe or dispense medications, not only can pharmacists refuse to provide contraceptives/morning after pills, they can also refuse to dispense HIV medication, hormone therapy to treat gender dysphoria, medication for sexually transmitted infections, and much more.

The proposed Bill has the potential to undermine efforts to improve vaccination rates. Some religious faiths and people of faith object to vaccinations. Forty-seven states and D.C. in the US permit parents to opt out of vaccinating their children before attending school based on religious beliefs.¹¹ In the US, some conservative Christian groups oppose mandatory vaccination for diseases typically spread via sexual contact, arguing the possibility of disease deters risky sexual contact. On January 1, 2016, Australia introduced legislation removing eligibility for childcare and welfare benefits if parents refuse to vaccinate their children including religious exemptions. It is reasonable to conclude people of faith may be able to claim religious discrimination under the proposed legislation under Part 2 Section 8 (1) and (2).

Conscientious objection by religious bodies

Religious bodies are defined in the proposed legislation as educational institutions, registered charities and any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a religion. This means that the right to refuse service to individuals whose characteristics raise religious concerns for practitioners, the owners or directors of organisations is also extended to hospitals, health services and welfare agencies run by faith-based organisations. In the US this has seen extraordinary developments, like the refusal of hospitals in Mississippi to treat trans people, whether or not their treatment is transition related.¹²

With significant government outsourcing of public services since the 1990s, faith-based charities are now the country's largest providers of aged and disability care.

Again, this puts at risk the rights and health of marginalised Australians. It also puts at risk Government policy priorities that use faith-based welfare organisations as the mechanism for reaching hard to reach populations.

Patients' care a secondary consideration to individual religious belief

The proposed legislation would create a system where a patient's care is a secondary consideration to that of the health care providers' personal beliefs. This is entirely at odds with the current health care practice of patient-centred care. The National Safety and Quality Health Service (NSQHS) Standards¹³ - which all hospitals, day-procedure services and the majority of public community and dental services across Australia are required to implement - clearly outline this in the Partnering with Consumers Standard¹⁴. The intention of this standard is to create an organisation in which there are mutually valuable outcomes by having:

- Consumers as partners in planning, design, delivery, measurement and evaluation of systems and services; and
- Patients as partners in their own care, to the extent that they choose.

8. Section 8 (5) and (6) – conduct rules

The Bill states the conduct rules for health practitioners are "not reasonable", if they prevent a doctor or nurse from conscientiously objecting on the basis of their religion. A conduct rule is any requirement from an employer relating to the provision of a health service. It is unclear how regulatory bodies will be able to enforce regulation of health practitioners with this in place.

The Bills also over-ride sections of State Anti-Discrimination legislation. As discussed above, it specifically over-rides the section of the Tasmanian Anti-Discrimination Act 1998 which prohibits a person from ridiculing or offending someone on the basis of attributes including, among others, gender or pregnancy. In a healthcare service, this would allow health professionals and/or non-medical staff to express their religious beliefs to patient in ways which could offend, humiliate, intimidate, insult or ridicule them. For example, a health professional expressing their religious beliefs might readily offend, intimidate and humiliate a woman seeking a termination, a single mother, a mother with children by different fathers, a woman seeking contraception, a woman who is same sex attracted, etc.

Tasmania's safe access zones, around termination clinics and services, could be rendered totally ineffectual by this Bill - bringing a return to the days of patients and termination clinic staff having to run the gauntlet of protestors. If the recent anti-abortion protests in NSW are anything to go by, this would be a frightening prospect for both patient and employee - and will undoubtedly impact on women's decisions, and potentially their physical and mental safety.

Part 2 Section 8 (6)(b) of the Exposure Draft describes when a conduct rule is necessary to 'avoid an unjustifiable adverse impact on the health of any person who would otherwise be provided with the health service by the health practitioner'.

It is hoped this would be used to protect patients in an emergency situation, for example a woman in need of an emergency termination. However, some people with religious beliefs would view a foetus as a person also at risk of an unjustifiable adverse impact and may make the protection of the pregnancy their priority. The wording in this Exposure Draft seems to be deliberately ambiguous and open to doctrinal debate.

9. Section 11. The right to discriminate for religious purposes

This section appears to legalise a further range of practices which may otherwise be deemed discriminatory.

An application of this section could potentially be to overcome attempts to ban gay conversion therapy on minors. Gay conversion therapy is the process of persuading LGBTIQ people to become heterosexual. It can take the form of exorcisms, prayer groups, counselling, spiritual healing, hypnosis and aversion therapy. It is a form of therapy closely associated with Christian church communities. It is condemned by the Australian Medical Association, the Royal Australasian College of Physicians and the World Medical Association. It has been banned in 18 US states, 2 US territories and 55 US counties and municipalities.

Various efforts have been made by Australian jurisdictions to bring the practice to an end in this country, including:

- The Victorian Health Complaints Commission has been given the power to impose prohibitions on and criminally prosecute religious organisations who conduct gay conversion therapy and to ban unregistered health practitioners who treat homosexuality as a disorder or purport to be able to convert gay people
- The West Australian Government has announced they will re-examine existing laws on 'gay conversion therapy' to see if they needed strengthening.¹⁵
- The ACT has announced it will ban gay conversion therapy.¹⁶

However, there has been support for conversion therapy in some parts of the Australian Liberal Party.¹⁷

The proposed Bill will over-ride state laws and make it legal to discriminate, that is, over-ride the rights of children not to be discriminated against on the basis of their sexuality if it meets a need arising out of a religious belief or activity of a person or group of persons.

This section would also appear to enable a religious group to limit women's autonomy and human rights.

10. Examples of possible scenarios

Over-riding work conduct rules means professionals could decide to not provide health information to patients, misleading them about the options available to them. A doctor of Christian faith may have a conscientious objection to providing a woman with referral information about a surgical termination provider. Under Tasmanian law the doctor is required to give a woman the phone numbers of services which she can choose to call if she wishes to begin that referral process. There is no proscription on other health service providers to do so, but various professional codes of ethics requires them to provide a referral pathway. Under this legislation the doctor could remain silent. In Tasmania currently there is a great deal of misinformation about terminations and the woman could reasonably believe they are not available in this state.

A general practitioner of Muslim faith may have a patient who has been sexually assaulted. He could tell her she has invited the sexual assault, as she was 'uncovered meat' (not modestly dressed) – a belief expressed by a senior Muslim cleric in Sydney in 2006.

A psychiatrist with evangelical Protestant Christian beliefs could tell a Catholic psychiatric patient that the patient worships Satan – a belief expressed by Josiah Folau to students at a Sydney Catholic school earlier this year. (Some evangelical Protestants believe the Pope is the Anti-Christ.)

The Australian reforms appear influenced by the recently-enacted US 'religious refusal' laws. The following highly-publicised examples have happened under those laws:

- A Catholic hospital refused critical medical care to a woman suffering a miscarriage (Michigan) ¹⁸
- A Michigan paediatrician refused to provide a newborn check-up to the infant child of a lesbian couple ¹⁹
- In Mississippi, doctors can refuse treatment to transgender people, regardless of whether the treatment is transition-related ²⁰

11. Broader social impacts that will cause ill-health

When describing the social and environmental factors that cause ill health, public health experts talk about 'the social determinants of health'. Discrimination and stigma because of gender, marital status, disability, sexuality are social determinants of health.

Should this legislation come into effect, it will allow people, in many other areas of life, to refuse to deliver a service based on their religious conviction. This will create a broad ripple effect across the community. For example, a landlord refusing to rent a property to a single mother, a school sacking a teacher for living with their partner out of wedlock, a doctor losing their job for performing a medically necessary termination in a church-owned hospital, a woman living with a disability being humiliated by being told her disability was a punishment for her own sin, or an elderly same-sex couple refused beds in an aged-care facility.

12. Conclusion

WHT supports the extension of protection from discrimination to people on the basis of religious belief, a right currently enjoyed by Tasmanians, to those Australians who do not currently enjoy this human right.

However, the proposed legislation needs dramatic redrafting. In its current form it will create a system where a patient's care comes second to the religious beliefs of health care providers, including the beliefs of the people who own hospitals, medical services, pharmacies and insurance companies. Personal beliefs should never determine the care a patient receives.

It will create a legislative environment in which medical professionals don't have to provide relevant information, and it will offer protection to health professionals who say offensive things to patients. No person should be shamed or refused medical care because of the religious beliefs of a health provider.

Tasmania's Anti-Discrimination Act 1998 already protects people from discrimination on the basis of religious belief or affiliation. This legislation only acts to reduce the rights of everyone.

WHT believes there are adequate protections for freedom of religion in this country, particularly in Tasmania. We encourage the Attorney General to consider recommending all states and the Commonwealth conform to the anti-discrimination, incitement-to-hatred and offensive language standards set by Tasmania.

WHT urges the Attorney General to withdraw this Bill and opposes any attempt by the State or Commonwealth Governments to weaken the Tasmanian Anti-Discrimination Act.

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- ⁶ The United Nations Special Rapporteurs on Violence against Women have asserted that forced sterilisation is a method of medical control of a woman's fertility. it violates a woman's physical integrity and security and constitutes violence against women. See: Manjoo, Rashida (2012) Report of the Special Rapporteur on violence against women, its causes and consequences; un General assembly; un doc. a/67/227; and also Radhika Coomaraswamy (1999), Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].
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- ⁸ Concluding observations on the eighth periodic report of Australia; Committee on the Elimination of Discrimination against Women CEDAW/C/AUS/CO/8; 26 (d) Page 7. 25 July 2018
- ⁹ Durston v Anti-Discrimination Tribunal (No 2) [2018] TASSC 48 (4 October 2018) <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC//2018/48.html>
- ¹⁰ Don't Mess With Marriage - A Pastoral Letter from the Catholic Bishops of Australia to all Australians on the 'Same-sex Marriage' Debate; 2015 Australian Catholic Bishops Conference
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- ¹³ The National Safety and Quality Health Service (NSQHS) Standards <https://www.safetyandquality.gov.au/standards/nsqhs-standards>
- ¹⁴ The National Safety and Quality Health Service (NSQHS) Standards - Partnering with Consumers Standard <https://www.safetyandquality.gov.au/standards/nsqhs-standards/partnering-consumers-standard>
- ¹⁵ <https://www.abc.net.au/triplej/programs/hack/gay-conversion-therapy-to-be/8969414>
- ¹⁶ <http://www.starobserver.com.au/news/national-news/australian-capital-territory/act-ban-gay-conversion-therapy/168925>
- ¹⁷ Gay 'conversion' off Liberal agenda after party president pulls pin; The Age. April 16, 2018 <https://www.theage.com.au/national/victoria/gay-conversion-off-liberal-agenda-after-party-president-pulls-pin-20180416-p4z9ug.html>
- ¹⁸ Abortion ban linked to dangerous miscarriages at Catholic hospital, report claims; Molly Redden; The Guardian. February 2016. <https://www.theguardian.com/us-news/2016/feb/18/michigan-catholic-hospital-women-miscarriage-abortion-mercy-health-partners>
- ¹⁹ Pediatrician refuses to treat baby with lesbian parents and there's nothing illegal about it; Abby Phillip; Washington Post; February 2015 <https://www.washingtonpost.com/news/morning-mix/wp/2015/02/19/pediatrician-refuses-to-treat-baby-with-lesbian-parents-and-theres-nothing-illegal-about-it/>
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