



Engender
Equality

Submission to the Department of the Attorney General on the Religious Discrimination Bill 2019
(Federal) on October 2, 2019

Written by Rubee Dano on behalf of Engender Equality

About Engender Equality

Established in 1989, Engender Equality is the non-government agency in Tasmania supporting people who have experienced family violence. Engender Equality is a dynamic and evolving professional organisation, founding our philosophies, practice and resources on current research. Engender Equality has a high level of skill, knowledge and experience working with women, children and families impacted by family violence and abuse. Engender Equality's core work provides therapeutic counselling to people who are currently or have previously experienced family violence, abuse and other violations. Engender Equality provides training on family violence and gender inequality. Engender Equality also plays an active role in Tasmania in advocating for systemic changes in order to address gender inequality and reduce violence against women and their children.

Given Engender Equality's specialisation in working with women and families who have experienced family violence, this submission is informed by their experiences. This submission is also guided by the work we do with our Advocates for Change, a group program that supports women who have experienced violence and abuse to engage in representation and advocacy activities.

Introduction

Engender Equality is a highly specialised service provider that helps people of all genders through experiences of family violence, and seeks to provide training, advocacy opportunities, and contribute to the conversation around the prevention of family violence and gender inequality. Engender Equality is an accredited Our Watch training provider, and has run training on the national framework for the prevention of violence against women, *Change the Story*.

It is because of Engender Equality's specialisation in primary prevention of violence against women that the organisation opposes aspects of the Religious Freedom Reforms. It is Engender Equality's belief that the proposed legislative changes will undermine the national primary prevention framework and allow for individuals and groups to condone gendered violence (directly and indirectly), and impact negatively upon our ability to affect change for our service users. Engender Equality recommends, in particular, the exemption to Tasmania's Anti-Discrimination Act 1998 Section 17(1) be removed from the proposed legislation.

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As an accredited Our Watch provider, Engender Equality advocates for the primary prevention of violence against women through addressing the gendered drivers of this violence (Our Watch, 2015):

1. the condoning of violence against women;
2. men's control of decision making and limits to female independence in public and private life;
3. rigid gender roles and stereotyping of masculinity and femininity; and
4. male peer relations which reinforce aggression towards women.

The condoning of violence against women is a major concern of ours given the proposed changes to legislation around Tasmania's existing Anti-Discrimination Act 1998. This legislation protects individuals from discrimination based on:

- (a) race; (b) age; (c) sexual orientation; (d) lawful sexual activity; (e) gender; (ea) gender identity; (eb) intersex variations of sex characteristics; (f) marital status; (fa) relationship status; (g) pregnancy; (h) breastfeeding; (i) parental status; (j) family responsibilities; (k) disability; (l) industrial activity; (m) political belief or affiliation; (n) political activity; (o) religious belief or affiliation; (p) religious activity; (q) irrelevant criminal record; (r) irrelevant medical record; (s) association with a person who has, or is believed to have, any of these attributes.

This amendment to existing legislation removes protections afforded to clients of Engender Equality, and, in our view, works against the national framework for the prevention of violence against women by allowing for statements that condone violence against women, limit female independence, and reinforce negative gender stereotypes.

As each state and territory in Australia is an Our Watch member, and uses the national framework for the prevention of violence against women, it would be irresponsible to allow for the religious freedom reforms to override existing laws which protect women. Australia is in the midst of an unprecedented and long overdue social movement to promote the status of women in an attempt to reduce the unacceptable number of women who are murdered and harmed by their male partners each year. Efforts to address the prevalence of family and domestic violence need to be supported by other legislation, as this message needs to be consistent.

Furthermore, under current state legislation, Tasmanians' religious freedoms are already protected under 17(1). It is Engender Equality's opinion that the right to worship and hold religious beliefs is well understood and upheld in Tasmania, however to undermine Section 17(1) would be to undermine years of hard work on the part of women, LGBTQI+, and people with disabilities, among others, to achieve Engender Equality: EMPATHY. INSIGHT. ADVOCACY.

equality in the form of legislation that has been ratified for twenty years. Providing an exemption of 17(1) will do this in a number of ways, outlined below.

The National Framework for the Primary Prevention of Violence Against Women

As the proposed legislation asserts that statements intended to be malicious, or that harasses, vilifies or incites hatred or violence are excluded from protection, Engender Equality is concerned with the indirect reinforcement of the drivers of gendered violence, particularly drivers 2 and 3. This refers to men's control of female decision making, and reinforcement of gender stereotypes, the two drivers that pose the greatest risk to women the most under the proposed legislative changes.

Statements based on religious belief regarding women's role in the household; men's control over decision making in the home and society; and the shaming and limiting of female sexuality could be classed as non-discriminatory, and not likely to incite violence, however Our Watch recognises all of the above as attitudes that cause violence against women (Our Watch, 2015). Engender Equality is concerned that the reinforcement of the drivers of violence against women will work against the national framework for primary prevention, and that statements which might be found not to obviously incite violence or hatred will cause harm to women in Australian society and among religious groups. Providing an exemption for 17(1) would potentially still allow for statements which might, otherwise, have been found to be discriminatory under the Tasmanian Anti-Discrimination Act 1998. This speaks to the ability of those who do not support gender equality to directly and indirectly reinforce and normalise gender inequality.

Jacinta* is a client at Engender Equality, she has been seeking counselling about leaving and coming to terms with an abusive relationship with her husband. Jacinta is an active member of a Pentecostal Church, who have internal policies on dealing with family violence situations. Jacinta previously reported the abuse she was experiencing to her Bishop, however he did not support her claims and instead isolated her from her place of worship. Jacinta had similar experiences attempting to bring a complaint against her Bishop with state and federal Church leaders. He made comments about how she should 'pray more' if she did not want to be abused, and that 'both partners in marriage are equally culpable for what happens', based on his interpretation of religious teachings.

Jacinta describes her treatment by her own Church as reinforcing of the abuse and trauma she experienced in her abusive marriage, to the point where at one stage she told her counsellor she

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could not bring herself to read scripture as she used to, as it brought up too many trauma-related memories and flashbacks. Jacinta consulted with Engender Equality about its advocacy work, and sought help in writing a letter to the leaders of the Church in the USA, highlighting the Church's need for more inclusive practices that allow for women who experience family violence to be supported and not shut out of their Church communities.

Not only was Jacinta treated in a way that condones violence against women, but she had her own rights for religious worship infringed upon due to the trauma the Church inflicted upon her in addition to the trauma from her abusive marriage. Engender Equality believes that in allowing for potentially discriminatory statements in the name of religious belief could potentially limit the ability of certain protected groups to access their own religious worship, as well as be safe from violence, which is in direct conflict with the stated aims for this proposed legislation.

Family Violence Within Religious Communities

It is the concern of Engender Equality that service users who are members of religious communities may be oppressed within their own communities, thus ultimately putting people who experience violence and abuse at greater risk, and may limit their capacity to remove themselves from violent situations. Women could be shamed and stigmatised for wanting to leave their abusive partners by members of their own religious community in public life, leaving them in situations where the risk of harm is very real.

Furthermore, the religious backgrounds of our clients could reinforce reproductive coercion (White Ribbon, 2019), and the proposed legislative changes could further enforce the lack of options for religious clients in situations where their abusive partners might be trying to control their reproductive choices. Religious beliefs expressed among peers and by religious leaders may limit or shame their reproductive choices, which could potentially leave them more dependent on an abusive partner, or in a more vulnerable situation.

Sally* is a client of Engender Equality who is a Catholic. Her priest regularly talks about contraception, abortion, and divorce, as 'unspeakable sins'. Sally's husband, Paul*, is emotionally, financially, and sexually abusive, however she feels she cannot leave him for it is sinful to seek a divorce. Sally does not use contraception as she is scared her faith community would judge her. When Sally falls pregnant after non-consensual sex, the abuse gets worse, but she does not believe she is able to terminate the

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pregnancy or leave her husband as she does not know where she would go or who would provide for her.

Conscientious Objector Allowances

The proposed changes to legislation surrounding the ability of medical professionals to conscientiously object on religious grounds to providing medical treatments could cause harm women. It is our belief that the current provisions, which state that conscientious objectors must provide referrals to another professional who will provide the service their patient is seeking, protect many women from reproductive coercion in relationships, particularly in more rural and remote areas where there is less choice regarding access to medical interventions and greater risk of stigmatisation and alienation from the local community.

Access to contraception and abortion has the ability to save many of our clients from being forced to have a child to an abusive partner. Taking away this right without the option of being provided an alternative could cause grave harm to our clients and further enforce the cycle of abuse that they are already experiencing. Furthermore, the control that a medical professional could exercise over a woman's reproductive choice could reinforce the feeling of being controlled by an abusive partner, whether that relationship is current or in the past (Herman, 1997).

It is the belief of Engender Equality that limiting access to safe reproductive health may cause women to resort to unsafe options in place of a safe, legal termination. We are concerned for the women who might be affected in these situations, and the shame and stigma that might be reinforced for them by medical professionals who are unable to separate their personal beliefs from their professional practice. While this does not necessarily stop them from being able to go to another professional to seek treatment, Engender Equality believes it may have the effect of shaming or guiltting women into not seeking out further help.

Conscientious objectors are allowed to object based on their belief currently. They are not forced to carry out procedures they do not believe in, they are only mandated to provide a referral elsewhere. Engender Equality fails to recognise how this could conceivably demonstrate greater oppression than the oppression that will be felt by women who are denied healthcare based on a professional's personal religious beliefs.

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Employer conduct rules

Engender Equality is concerned that the bill stipulates only businesses with annual revenues over \$50m who can demonstrate a loss of profit resulting from a view being expressed may have the ability to terminate or discipline employees based on statements of belief they may make at a time other than when they are performing work.

Engender Equality cautions this could be damaging to the reputation of many service providers, and could result in harm to clients, particularly women, people with disabilities, and the LGBTQI+ community. Many not-for-profits and other community services agencies do not have annual revenue over \$50m, and furthermore there is no clear measure for revenue for these kinds of services, considering the variation in sources of funding (eg. donations, government grants, private grants). There is a real concern that this stipulation could put agencies such as Engender Equality in a negative standing with the community should an employee make remarks based on their religious belief, in a public space.

An employee of a service provider with no religious affiliation in a remote part of Tasmania's North West coast has a public Facebook account. He does not identify himself as an employee of this service provider, but in the small community, clients may recognise him online. He frequently posts anti-choice materials, based on his religious belief as a Christian. This case study explores the potential scope of the proposed legislation based on current, anecdotal knowledge of one of our staff.

The service provider employing the worker is aware of his online presence, but under the new legislation cannot intervene. Jenny* is a client of the service provider, who, in the small community, has mutual friends with the worker, who she engages with on a weekly basis for counselling relating to a current abusive relationship. When Jenny falls pregnant, she feels she cannot bring it up with the worker, and feels unsupported by the service provider as a result. This puts Jenny directly in harm's way: she is unable to explore her options around the child she has conceived to a violent partner. Statistics show that pregnancy can be a marker for increased violence in abusive relationships (Campo, 2015).

The proposed legislation does not offer enough clarity for community services organisations on this stipulation surrounding the right of an employee to publicly state their religious beliefs, when those religious beliefs might relate to the rights of others. Engender Equality recommends further consultation with the community sector on this issue, as the bill in its current state could potentially harm service users and inhibit service providers from being able to reach clients in the community.

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Conclusion

While Engender Equality does not fundamentally disagree with protecting the religious freedoms of individuals, nor that there is a need for legislation surrounding this on a federal scale, in its current form, Engender does not support the Religious Freedom Reforms.

Engender Equality does not see the need for the exemption to Tasmania's Anti-Discrimination Act 1998 Section 17(1), which affords protections based on religious belief already. Engender Equality believes that circumventing 17(1) in the proposed reforms creates an imbalance of rights between religious individuals and other protected groups, including but not limited to women, the LGBTQI+ community, CALD communities, and people with disabilities. The expressed purpose of Tasmania's Equal Opportunity Commission is to provide all Tasmanians with the right not to be discriminated against, and Engender Equality does not believe that it is discrimination for somebody to raise a complaint if they feel victimised; that is a fundamental right. Attempting to protect religious individuals from having complaints raised against them is privileging their rights over the rights of other protected groups to feel welcome and valued in society. It is Engender Equality's opinion that this section of the bill would cause demonstrable harm to many Tasmanians; greater harm than would be caused to religious individuals who are not able to express negative opinions about others.

Engender Equality further insists upon the removal of the exemption to 17(1) based on the bill's contradiction of the National Framework for Primary Prevention of Violence Against Women. Our Watch's goal is to tackle the gendered drivers of violence against women, and the proposed legislation in its current form could undermine the goal of tackling gender inequality in order to facilitate primary prevention. If the Australian government is serious about the prevention of violence against women, its legislation needs to support this outside of specific legislation relating to violence against women and sex discrimination. Gender inequality is, in Engender Equality's opinion, pervasive and present in many different aspects of life, so efforts to reduce it should be present in all legislation, and the Religious Freedom Reforms do not reflect this goal, especially within the context of the exemption of 17(1).

Engender Equality fundamentally believes in the right of individuals to express their religious beliefs and to hold religious beliefs, however suggests a line must be drawn when the religious belief of one person impacts negatively upon others. Stigmatisation is a major concern of Engender Equality regarding the bill's proposed changes to the professional requirements of conscientious objectors, and the proposed employment conduct changes. Yes, it is harmful to not be allowed to express a personal belief based on

religion, however Engender Equality is wary of the harm that could be done to those in society who are already vulnerable or underprivileged when they are the targets of these views. Engender Equality is particularly wary of reinforcing privileges in society that lead to oppression and harm. It is not Engender Equality's belief that the expression of *any* view (religious, political, or other) that reinforces societal privilege and gender inequality should be socially acceptable, and this bill does not adequately address *every person's* right to live in society equally and without stigma based on who they are fundamentally as a person. We must have laws that afford freedoms and rights in society to every person equally, and there will always be a disharmony between the freedom of some with the rights of others, it is inherently imperfect (Forji, 2010). However, Engender Equality strongly recommends that the proposed legislation in its current state creates an imbalance that greatly disadvantages already vulnerable groups to the privilege of religious peoples, even where these vulnerable groups extend to include other religious peoples, where they are afforded less privilege in society based upon their gender, sexuality, race, ability, and other factors.

Engender Equality would like to raise the concern that these proposed legislative changes are intentionally vague and open to misinterpretation. Even as a specialist organisation with a proven track record of legislative input, it is difficult to understand and many areas are left open for interpretation. The danger of this lies in the lack of understanding that may surround it should the bill pass and become law, and how this could unintentionally lead to misunderstandings resulting in direct discrimination. Furthermore, on unintended consequences, the vagueness of the bill makes it impossible to anticipate its unintended consequences, which is blatantly socially irresponsible. Engender Equality recommends the bill be seriously reviewed, as the proposed legislation in its current form puts at-risk people, particularly women, in danger of harm.

Bibliography

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