



SOCIETY OF AUSTRALIAN SEXOLOGISTS

Society of Australian Sexologists Ltd

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The Society of Australian Sexologists Ltd. welcomes the opportunity to make this submission to the Attorney-General's Department in relation to the proposed Religious Discrimination Bill (2019). The Society supports efforts to address discrimination and disconnection in our communities.

The Society of Australian Sexologists Ltd. (SAS) is Australia's leading peak professional body for the regulation and accreditation of psychosexual therapists and sexuality educators. We represent health and allied health professionals working in the area of sex therapy, sexuality education, and sexology.

Our mission is to encourage and promote the practice of sexology, sex therapy and sexuality education for the benefit of members and the communities they serve through the advancement of the scientific study of sexual counselling, therapy and education, and the development and maintenance of professional ethics and standards including the accreditation and recognition of professionals.

SAS is a member-organisation of the Asia Oceania Federation of Sexology (AOFS), and the World Association of Sexual Health (WAS). SAS is a founding organisation of the Australian Sexual Health Alliance (ASHA) – Australia's peak body of professional organisations working in sexual health.

The Society does not support laws that grant legal permission for some people to discriminate against others. The privileging of religious views over the human rights of all Australians, including the rights of those most vulnerable in our society, is likely to result in the violation of the Universal Declaration of Human Rights.

We submit for review our concerns and insights on the draft.

Sincerely,



Lisa Torney – National Chairperson



Kerrin Bradfield – National Deputy Chairperson

OVERALL CONCERNS

The proposed Religious Discrimination Bill (2019) and the second draft amendments still hold many areas of concern for Society of Australian Sexologists Ltd. (SAS), notably in relation to First Nation people, LGBTIQ+, CALD, sex workers, people with disability, youth, and other marginalised groups in our society. The proposed Bill represents an impingement on our organisational role in upholding ethical standards of practice¹ that are central to the safe and inclusive provision of sexual healthcare and education.

The predominant issues are, that the proposed Bill:

- does not provide explicit recognition of the spirituality of First Nation's people, with no meaningful protections for Aboriginal and Torres Strait Islander people or their cultures;
- enables discrimination by removing much needed protections from already marginalised and stigmatised groups;
- privileges religious views over health care needs which is a violation of human rights and sexual rights; and
- entrenches into law that a protected group can legally discriminate against unprotected groups.

Upholding human rights, and sexual rights, requires strong leadership in the face of discrimination. Religion in and of itself does not represent a vulnerability requiring protection in Australia. The vulnerability lies at the intersection of religion and diversity. The many individuals and groups that sit outside the margins of dominant patriarchal, hetero and cis normative ideals are the most at risk irrespective of their religious denomination.

If introduced, this Bill would have negative and far reaching consequences. Specifically;

- reduce access to healthcare for all Australians by providing practitioners with a national, broad and unprecedented freedom to refuse treatment to patients on religious grounds
- hinder the growth of inclusive and safer workplaces for all employees, and the people they do business with
- allow people who wish to express prejudiced, harmful or dangerous views about women, people with disabilities, LGBTIQ+ people and others, to hide behind their religiosity, free from any consequences

¹ The Society of Australian Code of Ethics and Practice is grounded in the World Association's Declaration of Sexual Rights which in turn is grounded in the Universal Declaration of Human Rights. This document, and its grounding documents, support the idea of human rights for all.

- grant religious and non-religious corporations an unprecedented right to bring discrimination complaints directly and on their own behalf, handing them a resource specifically to silence individuals with already little power and voice

As a member organisation of the World Association of Sexual Health, SAS and its members adhere to upholding the Declaration of Sexual Rights (2014; [available online](#)) and commit to recognising how vulnerability shows up in their work and with the people they serve. The Declaration of Sexual Rights forms an important foundation for ethical practice that respects human rights, heals trauma, protects the vulnerable, and celebrates diversity.

The Declaration:

- States that sexual rights are grounded in universal human rights that are already recognized in international and regional human rights documents, in national constitutions and laws, human rights standards and principles, and in scientific knowledge related to human sexuality and sexual health;
- Reaffirms that sexuality is a central aspect of being human throughout life, encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy, and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles, and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious, and spiritual factors;
- Recognises that sexuality is a source of pleasure and wellbeing and contributes to overall fulfillment and satisfaction;
- Reaffirms that sexual health is a state of physical, emotional, mental and social wellbeing in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence;
- Reaffirms that sexual health cannot be defined, understood or made operational without a broad understanding of sexuality; and
- Reaffirms that for sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.

Of relevance to this proposed Bill, the Declaration of Sexual Rights:

- Recognises that sexual rights are based on the inherent freedom, dignity, and equality of all human beings and include a commitment to protection from harm;
- States that equality and non-discrimination are foundational to all human rights protection and promotion and include the prohibition of any distinction, exclusion or

restriction on the basis of race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation;

- Recognises that a persons' sexual orientations, gender identities, gender expressions and bodily diversities require human rights protection; and
- Recognises that all types of violence, harassment, discrimination, exclusion, and stigmatization are violations of human rights, and impact the wellbeing of individuals, families and communities;
- Affirms that the obligations to respect, protect and fulfill human rights apply to all sexual rights and freedoms.

SPECIFIC CONCERNS

1. Removal of existing discrimination protections

The issue:

Australia is a global leader in anti-discrimination and equality legislation however this new Bill proposes to water down these protections for the people who need them most.

There is a wealth of evidence demonstrating that strengthening our diverse and complex population will come from creating connection, inclusion, and understanding. We must look toward legislation and social norms that make it unacceptable to intimidate and threaten, actions which are often born out of fear and ignorance.

The Society of Australian Sexologists are committed to creating professional practices, education systems, and therapeutic engagements which are centred on acceptance and we reject the introduction of harmful practices that seek to stigmatise, discriminate, and ostracise individuals for healthy, developmentally appropriate, consensual behaviours and identities that are supported by science and evidence. To this end, SAS holds its members to a strict Code of Ethics and Practice ([available online](#)) founded on the Declaration of Sexual Rights.

Our recommendation:

The Society of Australian Sexologists Ltd. supports the removal of Section 42 as we do not believe that protecting people of faith should also mean protecting them from unlawfully discriminating. Conventional protections already guard an individual's right to express their faith by requiring any restrictions to be reasonable. Discrimination should not be tolerated in our society and we should support religions to promote greater harmony and connection in their actions, not greater segregation and fear.

2. 'No Consequences for conduct' clause

The issue:

This clause will hinder the ability of the Society of Australian Sexologists Ltd., and other professional bodies, to uphold its Code of Ethics and Practice, particularly Section 11 of SAS's Code of Ethics and Practice as listed below:

11. ANTI - DISCRIMINATORY PRACTICE

11.1 Issues of prejudice and stereotyping are universal. Members must be alert to their own biases, prejudices and stereotypes and how these may impact upon the therapeutic relationship

11.2 Attitudes, assumptions and values can be identified by the language used and interventions offered. Members must ensure that interventions offered are culturally sensitive to Clients and that minority populations are considered and are given a voice

11.3 Autonomy and right to self-determination of Clients and of others with whom they may be involved must be protected, subject to the limits of confidentiality and safety

11.4 The Society and its Members do not support 'reparative' therapy of members of sexual minorities. All Members must agree to comply with this statement

As a peak professional body, the ability to hold our members accountable to a Code of Ethics and Practice is an important protection for the field of sexology and in the communities we work. The ability of SAS to reasonably respond in an appropriate and public way when members make statements that erode public trust in our profession should not be impacted by legislation. Public trust is built through our complaints process and an enforceable code of ethics, ensuring that issues are currently dealt with in a timely and professional manner.

We actively promote inclusion and encourage our members to find and build workplaces that are inclusive and safe. They also need legal protection to remove employees who discriminate and use malicious language that furthers harm, often to people who have already experienced trauma, to enable our members to uphold our professional standards and the foundations of the work we do.



To ignore the potential harm caused to our profession and members and affording some members a greater level of protection in breaching our code of ethics is unacceptable and only seeks to reinforce the risk of unethical and dangerous practices.

Our recommendation:

The Society of Australian Sexologists supports the removal of subsections 8(3)-(5) and 32(6). Existing discrimination protections protect the ability for people to express their faith without requiring restrictions on religious expression, especially outside work contexts, to be reasonable.

3. Compromising access to healthcare

The issue:

The refusal of healthcare based on religious beliefs is an unacceptable standard in Australia. There are already clauses in many state's legislation allowing for conscientious objection to abortion and euthanasia. Health sector employers and professional bodies require independence to impose policies, and codes of ethics and practice that require members to treat all patients according to their health, needs not their membership of a group, to avoid the risk of compromising healthcare, health outcomes, and increasing health disparity.

A guiding principle of health and human services is to do no harm. Allowing practitioners to refuse not only the treatment or service of an individual but to also refuse to refer is an especially dangerous precedent with the potential to cause significant harm to already marginalised groups.

There should also be no impingement on the professional and regulating bodies of healthcare practitioners in Australia that would limit them from upholding the ethical standards of their profession, chiefly for registration and accreditation.

Informed consent is a cornerstone of human rights and healthcare, and it would be dangerously impacted by legislation that permits health practitioners to withhold information from specific people or populations. The current proposal extends to cover services that practitioners participate in, meaning that a practitioner could withhold details of a treatment or service (a potentially lifesaving one) if it contradicted their religious beliefs. The role of a practitioner is to provide full and impartial information to allow clients/patients to make informed decisions about their own wellbeing.

With particular regard to sexual rights, these precedents could mean that some practitioners neglect sexual health for anyone outside of marriage; deny services or referral for groups such as people with diverse sexual orientation and gender identities (SOGI), in polyamorous relationships, first nations people, and many other groups at greater risk of poor health outcomes and increased risk to sexual health issues.

A practical example which highlights the potential harm would be in relation to pre-exposure prophylaxis (PrEP) for the prevention of HIV. Australia is leading the world in the reduction of HIV and is one of the few countries on track to achieve significant reductions in new infections in these populations. Interestingly for the first time ever, new infections amongst middle-aged heterosexual men have overtaken those in other key affected populations. Previously targeted high-risk groups such as gay cis men, transwomen, and other SOGI individuals could potentially be denied this life-saving medication. There is also potential that they could be denied knowledge of its existence, refused referral to a prescribing practitioner, or denied service at a pharmacy. The only outcome of these would



be an increase in new infections which puts the entire community at risk and increases the burden of disease including an economic burden on the government.

Our recommendation:

The Society of Australian Sexologists recommends that subsections 8(6)-(7) and 32(7) be removed. Existing discrimination protections would protect the ability of practitioners to practice in accordance with their faith without prioritising religious views over a patient's right to access healthcare. Laws should never authorise adverse impacts on a patient or communities health, or the refusal of treatment to patients without safeguards such as a comprehensive referral plan.

4. Double standards in education, accommodation, and service delivery

The issue:

To grant a wide-reaching exemption to some people to discriminate in the delivery of education, accommodation, and employment has the potential to create significant disharmony and discrimination in our communities. The proposed sections also place minority faith groups most at risk.

Another important outcome to consider when granting the ability to actively exclude people of different faiths and ideologies from education, accommodation, and services is the radicalisation of people, particularly youth, within insular religious groups. It is well documented that isolation leads to segregation from society (community), in turn a regression of ideas and philosophical indoctrination. To set in place legislation which is active in its promotion of isolation and homogeneity will only increase great radicalisation in Australia.

The solution to addressing discrimination and fear is inclusion. The more diverse spaces and experiences are, the more open-minded people become. We need to remove any legislation that seeks to cut off ideologies from mainstream conversations around difference.

Of concern is the way this proposal relates to service delivery. Older LGBTIQ+ Australians are already at much higher risk of elder abuse relating to several cumulative life experiences including being silenced and stigmatised, loss of family and support connections, and life-time employment issues. To extend discrimination into aged care and home care providers, particularly whilst the *Royal Commission into Aged Care Quality and Safety* is still underway is negligent.

Another important concern for SAS is this Bill's impingement on sexuality education in schools. To tailor sexuality education based on religious ideology is a dangerous precedent that will directly increase harm not only for normative youth but for those on the margins. This approach is directly linked to higher youth pregnancy, higher youth STI rates, and higher rates of sexual assault. There is international evidence and policy to support comprehensive sexuality education, which is inclusive, age appropriate, and unbiased. To deny young people access to information is a model we see frequently in America with abstinence approaches mandated in many states.

Our recommendation:

Any religious exemption must include better balancing mechanisms to protect the rights of individuals who are employed, enrolled, or interact with such organisations or who rely on government-funded services delivered by these organisations. Government funded services should not be allowed to discriminate based on religion as to do so further entangles church and state in this country.

5. 'It just takes two' test

The issue:

The Bill lowers that standard on what is considered a religious doctrine, tenet, belief, or teaching and provides special protection to much more extreme and unorthodox beliefs.

There is the potential for those individuals, charities, and organisations who wish to discriminate against others with different beliefs to do so by pointing to doctrines, tenets, beliefs or teachings that only one other person must reasonably consider to be part of their brand of faith.

This low onus of proof as a basis for discrimination is an unacceptable inclusion which is subjective and creates a legal loophole for more radical and extreme ideologies. A person who believes what you believe should not legally be the arbiter of whether you are correct in what you say your beliefs entail.

Our recommendation:

The Society of Australian Sexologists recommends redrafting all provisions which contain the 'It Just Takes Two' test. If people are to be afforded protection for their religious doctrine, tenet, belief or teaching, the Bill must ensure that consistent with article 18(3) of the International Covenant on Civil and Political Rights, no conduct is protected, authorised or permitted where it is contrary to 'public safety, order, health, or morals or the fundamental rights and freedoms of others'.

6. Protecting corporations against discrimination

The issue:

Corporations will be able to sue goods, services, facilities, accommodation providers, and owners of premises, who deny them service based on their association with religious individuals. These provisions silence the ability of Australians to boycott in protest. This inclusion also creates a double standard as there is no provision for individuals to sue healthcare practitioners who deny them service based on their non-affiliation or affiliations with a different faith group.

Our recommendation:

Human rights law needs to protect all humans. If associates (including business entities, employment relationships and other undefined relationships) are to be protected they should be protected equally including in the Sex Discrimination Act 1984. They should also be limited to natural persons who are spouses or de-facto partners, relatives, carers of the person, or in business, sporting, or recreational relationships with the person.

7. Overriding laws protecting public order and safety

The issue:

Street preachers and religious organisations that are denied permits by local government authorities may be able to sue for religious discrimination, even if their religious activities would contravene local by-laws that everyone must comply with.

Our recommendation:

Council by-laws that impermissibly limit any human rights (such as the right to peaceful assembly) should be amended or overridden. It is time for a broader review of laws which discriminate on all prohibited grounds, and greater statutory protections for all human rights, such as equality before the law.



ADDITIONAL CONCERNS

- A Freedom of Religion Commissioner has been retained however there is no LGBTIQ+ Commissioner. The LGBTIQ+ community is the only group protected under federal anti-discrimination legislation without a dedicated Commissioner at the Australian Human Rights Commission
- Unnecessary amendments to the Charities Act 2013 (Cth) supposedly clarifying charities with 'traditional views on marriage' are not disqualified from being charities and have not been removed
- Unnecessary amendments to provide further exemptions for religious schools in the Marriage Act 1961 (Cth) have not been removed

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