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## OUR WATCH

# SUBMISSION ON RELIGIOUS FREEDOM BILLS – SECOND EXPOSURE DRAFTS

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January 2020

## About Our Watch

Our Watch is an independent, not for profit organisation established by the the Commonwealth and Victorian Governments in 2013. Since establishment, all States and Territories have become members of Our Watch.

Our vision is shared with the *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan), namely an Australian community free from violence against women and their children.

The specific mandate of Our Watch is to focus on the primary *prevention* of violence against women and their children. We aim to provide national leadership to drive change in the social norms, structures, attitudes and practices that underpin, drive and support violence against women and their children. Our Watch has four key areas of work:

1. Design and deliver public campaigns that engage and educate individuals and the community
2. Promote a sustained and constructive public conversation
3. Enable organisations, networks and communities to effect change
4. Influence public policy, systems and institutions.

## About this submission

### Our evidence base

Our Watch's submission on the second exposure drafts of the Religious Freedom Bills draws on two key national frameworks for the primary prevention of violence against women - *Change the story* and *Changing the picture*. Further information about these resources is included below.

[\*Change the story: a shared framework for the primary prevention of violence against women\*](#) was developed by Our Watch in partnership with Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, and launched in November 2015. *Change the story* was developed following a significant review of the international evidence on what drives and contributes to the prevalence of violence against women. It was also informed by an extensive national consultation process, involving over 400 diverse stakeholders from across civil society and all levels of government. This enabled the *Change the story* framework to draw on existing practice-based knowledge and expertise as well as available research. Based on this evidence, the framework presents an explanatory model of violence against women, and a coherent conceptual approach to its prevention – one that prescribes actions that are explicitly aligned with and designed to address the underlying drivers of this violence.

*Change the story* adopts the United Nations' Declaration on the Elimination of Violence against Women (1993) definition of violence against women, describes violence against women as a fundamental violation of human rights, and points to Australia's obligation under international law to prevent this violence. The human rights-based imperative to end violence, and the human rights principles of collaboration, participation and ensuring equality of outcomes for all, inform every aspect of the framework.

*Change the story* has been integrated into the Third and [Fourth Action Plans](#) of the National Plan to Reduce Violence against Women and their Children, endorsed by all Australian governments through COAG in October 2016 and August 2019 respectively.

The specific intersections relevant to understanding and preventing violence against Aboriginal and Torres Strait Islander women in particular are outlined in [Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children](#). This resource was produced by Our Watch and based on significant research, consultation and collaboration with Aboriginal and Torres Strait Islander people including an Advisory Group. Aiming to support national efforts to prevent violence against Aboriginal and Torres Strait Islander women and their children, *Changing the picture* sets out a model for understanding the specific intersecting drivers of this violence.

*Changing the picture* takes a human rights-based approach, drawing on the UN Declaration on the Rights of Indigenous Peoples; work by the Special Rapporteur on the Rights of Indigenous Peoples, Special Rapporteur on Violence against Women and CEDAW committee; and resolutions by the UN Human Rights Council.

## Our analysis and issues of concern

This submission analyses the *Religious Discrimination Bill* with the specific aim of ascertaining its implications for gender equality, the protection of women's human rights, and the prevention of violence against women. It raises a number of general and specific issues of concern.

## Summary of recommendations

Based on our analysis, and as explained in detail in the body of this submission, Our Watch recommends that:

1. section 42 is removed from the *Religious Discrimination Bill*
2. sections 8(6) and 8(7) and related clauses are removed from the *Religious Discrimination Bill*
3. the Government reviews the impact of section 11 of the Draft Religious Discrimination Bill for its potential impact on access to support for women who have experienced violence.
4. section 8(3) and related clauses are removed from the *Religious Discrimination Bill*
5. section 32 is removed from the *Religious Discrimination Bill*
6. specific provisions prohibiting vilification, harassment, and incitement to violence on the basis of religion are included in the *Religious Discrimination Bill*.

## Introduction

### Primary prevention of violence against women: the evidence

Primary prevention of violence against women requires changing the social conditions that drive this violence, and that continue to excuse, justify or even support it. Individual behaviour change may be the intended result of prevention strategies, but such change cannot be achieved prior to, or in isolation from, a broader change in the underlying social, cultural and structural drivers of this violence, and this change needs to occur among communities, organisations and across society as a whole. A primary prevention approach works across the whole population to address the attitudes, practices and power differentials that drive violence against women; it reaches people where they live, work, learn and play in order to address the drivers of violence and promote gender equity. It includes not only community-facing programs, campaigns and activities, but also political and institutional strategies, including public policy, legislation and regulation in order to shift the social structures that enable, drive or effectively condone this violence.

The *National Plan to Reduce Violence against Women and their Children (2010-2022)* includes a focus on primary prevention. The most recent and final action plan (*Fourth Action Plan: 2019-2022*) stresses that primary prevention is key and clearly highlights the need to address gender inequality in order to stop violence against women.

*Change the story* identifies the underlying **gendered drivers** that drive high rates of violence against women. These are:

- Condoning of violence against women
- Men's control of decision-making and limits to women's independence in public life and relationships
- Rigid gender roles and stereotyped constructions of masculinity and femininity
- Male peer relations that emphasise aggression and disrespect towards women

It also identifies a number of **reinforcing factors**, namely:

- Condoning of violence in general
- Experience of, and exposure to, violence
- Weakening of pro-social behaviour, especially harmful use of alcohol
- Socio-economic inequality and discrimination
- Backlash factors (when male dominance, power or status is challenged)

*Changing the picture* builds on this evidence and identifies the underlying drivers of violence against Aboriginal and Torres Strait Islander women in particular as:

- Ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people, families and communities
- Ongoing impacts of colonisation for non-Indigenous people and society
- Gendered factors (including the gendered drivers of violence against women identified in *Change the story*, as well as additional gendered drivers of violence against Aboriginal and Torres Strait Islander women and their children)

In 2017 Our Watch published a literature review on primary prevention of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) people, which found that the social context of discrimination, violence and abuse against LGBTI people contributes significantly to family violence against them:

*Negative and discriminatory societal attitudes, norms, and behaviours (historical and contemporary) towards LGBTI people ultimately influence and to some degree, justify and condone family violence against LGBTI people, including by LGBTI perpetrators.<sup>1</sup>*

The literature review recommends taking a human rights approach, and calls for “[o]ngoing legislative reform to remove lawful grounds for discrimination against LGBTI people, and to remove all barriers that prevent or hinder people from LGBTI communities from accessing publicly-funded services, including family violence services.”

### Anti-discrimination and human rights protections in Australia

Discrimination against women is one manifestation of gender inequality that adversely impacts women, and can drive violence against women. Insufficient protection against discrimination can contribute to the condoning of violence against women, it can limit women’s independence, and it can reinforce rigid gender stereotypes and disrespect towards women. Further, many women experience multiple forms of discrimination, often in ways that are inseparable from gender and sex discrimination. This contributes to higher rates of violence against these women, as well as driving specific kinds of violence. For example, women with disability often have more barriers to independence and greater limits on their decision-making than women without disability, which increases the likelihood of violence against women with disability.

Consequently, anti-discrimination measures are an important mechanism to help achieve gender equality. Federally, the *Sex Discrimination Act 1984* (Cth) is a key measure in Australia’s implementation of the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). Other anti-discrimination legislation, including the *Racial Discrimination Act 1975*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* include significant protections against discrimination and other human rights violations, including violence.

Discrimination in a range of forms, not limited to sex discrimination, contributes to violence against women:

*The probability of violence against women is higher when the consequences of gender inequality intersect with the impact of other forms of inequality and discrimination, such as racism, discrimination against people with disabilities or discrimination on the basis of sexual orientation or gender identity. Any factor that, in addition to the gendered drivers outlined above, reduces or limits women’s access to resources, the social and economic power they hold, or the perceived worth of*

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<sup>1</sup> Our Watch (2017) *Primary prevention of family violence against people from LGBTI communities: An analysis of existing research*, Melbourne: Australia, p. 5.

*some groups – such as Aboriginal and Torres Strait Islander women, lesbians or transgender people, or women with disabilities – increases the probability of violence against them.<sup>2</sup>*

Governments have obligations not only to protect against discrimination, but also to ensure that government actions do not breach human rights, as well as obligations to take positive actions to fulfil human rights.

Our Watch supports calls for comprehensive national human rights legislation, such as an Australian Human Rights Act. Such legislation is crucial to effectively implementing Australia's obligations under international human rights instruments and to holding government to account. National legislation of this kind needs to be one aspect of a broader, comprehensive policy approach to address and prevent human rights breaches.

## General concerns with the Bill

Our Watch considers the draft *Religious Discrimination Bill* to over-reach in the rights and anti-discrimination exemptions that it grants to religious bodies, and to forms of religious expression, while simultaneously providing insufficient protections to people who are harmed by religious discrimination.

In its current form, the draft Bill will make it more difficult to progress gender equality, and will result in curtailments to women exercising their rights. The Draft Bill includes provisions which, if enacted, will result in unequal opportunities and outcomes, particularly for women. Further, the Draft Bill will make it more difficult to promote gender equality in a number of key settings, including healthcare, social services, workplaces, and education. These settings are named in the national prevention framework as arenas in which specific work is needed to promote gender equality and prevent violence against women.<sup>3</sup>

By overriding a number of other anti-discrimination provisions, Our Watch is concerned that the draft Bill would, if enacted, result in reduced protections for people affected by a range of types of discrimination. As noted above, this is likely to increase the probability of violence against women who face both gender inequality and other intersecting forms of discrimination, inequality and injustice.

## Specific concerns and recommendations

### Statements of belief

As outlined above, anti-discrimination laws are an important mechanism to achieve gender equality. Our Watch is concerned about section 42 of the draft *Religious Discrimination Bill* which states that

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<sup>2</sup> Our Watch, VicHealth & ANROWS (2015) *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Melbourne: Australia, p. 31.

<sup>3</sup> Our Watch, VicHealth & ANROWS (2015) *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Melbourne: Australia, pp. 38-40.

‘statements of belief’ do not constitute discrimination for the purposes of any anti-discrimination law. The inclusion of this section undermines federal, State and Territory anti-discrimination laws which protect from discrimination on the basis of other attributes including sex, gender, race, age, sexuality and disability and are based on Australia’s international human rights obligations.

We do not believe that the inclusion of the exception in section 42(2) is adequate to protect people who may be subject to discriminatory statements, as statements that do not meet this threshold can still cause harm and there is lack of clarity about which statements will be subject to these exceptions.

We have provided further information below about how section 42 could specifically undermine women’s access to healthcare and initiatives in workplaces aimed at promoting gender equality, diversity and inclusion.

**Recommendation 1: Our Watch recommends that section 42 is removed from the *Religious Discrimination Bill*.**

## Access to healthcare

Non-discriminatory access to healthcare is crucial for progress on gender equality and preventing violence against women. The *Convention on the Elimination of All Forms of Discrimination Against Women* includes a commitment that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on the basis of equality of men and women, access to health care services, including those related to family planning.<sup>4</sup> A general recommendation on the Convention further elaborates that if health service providers refuse to perform reproductive health services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.<sup>5</sup>

Our Watch is concerned about the potential for the *Religious Discrimination Bill* to impede access to healthcare including sexual and reproductive healthcare; healthcare for lesbian, bisexual, trans and intersex women and people; healthcare for women with disabilities; and healthcare for migrant and refugee women.

The changes from the first exposure draft do not address the significant concerns on this issue raised in the consultation period. Sections 8(6) and 8(7) of the draft *Religious Discrimination Bill* are complex, confusing, and have the potential to undermine policy directives by State and Territory governments and professional guidelines that seek to protect patients from being adversely affected by conscientious objection laws (for example, by requiring a healthcare professional to disclose their objection and/or refer the patient to a professional who will deliver the service).

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<sup>4</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Article 12(1).

<sup>5</sup> Committee on the Elimination of Discrimination against Women (20th session, 1999). General Recommendation No 24: Article 12 of the Convention (women and health), paragraph 11. Accessed: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_4738\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf)

Healthcare is a critical setting to prevent and respond to violence against women. The 2016 Personal Safety Survey demonstrated that, after friends and family members, women experiencing violence from a current or previous partner are most likely to seek support from a General Practitioner or other health care professional.<sup>6</sup> Health professionals are employed by a range of services, including community health services, private practices, and Aboriginal and Torres Strait Islander Community Controlled Health Organisations. Provisions in sections 8(3), 8(4) and 8(5) that would enable health practitioners to make ‘statements of belief’ and limit employer and professional body conduct rules would deter many women from reporting violence and seeking support from health professionals.

Our Watch is also concerned that provisions in section 11 to enable religious bodies to “act in accordance with their faith” would enable many providers of support services to women experiencing violence – many of which are religious bodies – to discriminate in the provision of services. This will have an adverse impact, potentially making women more unsafe by, for example, permitting religious bodies that provide support services to preference clients of the same faith or to preference conduct that is in accordance with their religious faith. In many regions women do not have a choice of support provider, and must access support from a religious body. This is also likely to have a detrimental impact on women feeling safe and welcome to report and seek support for violence they have experienced.

These restrictions on health and other services would have significantly greater adverse impacts on particular groups of women who already face significant barriers to accessing healthcare, further limiting their choice, or preventing access to services at all. Aboriginal and Torres Strait Islander women, migrant and refugee women, lesbian, bisexual, transgender and intersex women and people, and women in remote and rural areas would face particularly restricted options that could undermine their safety, welfare and/or health.

We also hold concerns that sections 42(1) would permit healthcare professionals to make discriminatory ‘statements of belief’ which impact on their patient’s right to healthcare, including access and feelings of safety in healthcare settings. This section privileges a healthcare professional’s personal religious views over the health needs of their patients.

**Recommendation 2: Our Watch recommends that sections 8(6) and 8(7) and related clauses are removed from the *Religious Discrimination Bill*.**

**Recommendation 3: Our Watch recommends that the Government reviews the impact of section 11 of the Draft *Religious Discrimination Bill* for its potential impact on access to support for women who have experienced violence.**

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<sup>6</sup> Australian Bureau of Statistics (2017) 4906.0 – *Personal Safety, Australia 2016*, Table 17.3 & Table 18.3, available at: <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02016?OpenDocument>



## Employment

Our Watch is deeply concerned about the impact of the proposed *Religious Discrimination Bill* on cultural change efforts in workplaces including primary prevention of violence against women initiatives and diversity and inclusion programs.

Workplaces are a key setting for work contributing to the primary prevention of violence against women. Workplaces need to take active steps to promote and normalise gender equality and challenge sexism and discrimination because:<sup>7</sup>

- Violence, harassment sexism occurs in workplaces. Workplaces have a responsibility to ensure all staff are safe in the workplace and an interest in minimising legal risks in relation to equal opportunity, discrimination and harassment.
- Violence that occurs at home or in the community can also have impacts at work. Workplaces need to understand and appropriately respond to violence that is experienced by employees outside of work, such as family violence.
- Workplace structures and cultures influence gender inequality. Every workplace conversation, policy and action can either reinforce or challenge gender inequality and the attitudes, norms and practices that drive violence against women.

Through an organisational change process, workplaces can create an environment where women are not only safe but also respected, valued and treated as equals at work, at home and in their communities.

Diversity and inclusion programs are an important complement to primary prevention initiatives in workplaces, in order to address the different forms of disadvantage, discrimination and inequality that many women experience, which intersect with their experiences of gender inequality. These programs can support efforts to address sexism, racism, ableism, homophobia and transphobia and to develop more inclusive workplaces for all employees. Reducing discrimination and inequality more broadly will contribute to preventing violence against all women.

The draft Bill includes restrictions in section 8(3) on employers imposing conduct rules that “would have the effect of restricting or preventing an employee of the employer from making a statement of belief other than in the course of the employee’s employment” unless it is required to avoid “unjustifiable financial hardship to the employer”. There are some circumstances in which it is appropriate for employers to impose conduct rules that extend beyond the course of the employee’s employment, for example when conduct rules can increase the safety and inclusion of other staff within the workplace, or impact on whether people engaging with the organisation to receive goods or services feel that they will be safe and free from discrimination when doing so. Further, the imposition of a test relating to the financial hardship of large employers is at odds with the objects of anti-discrimination laws which aim to protect individuals from harm.

Section 42(1) of the draft Bill could have a significant impact on the ability of employers to apply workplace policies to discriminatory statements made by employees during working hours, and to

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<sup>7</sup> Our Watch. Workplace Equality and Respect. ‘Workplace violence prevention – why do this work?’ Accessed: <https://workplace.ourwatch.org.au/why-do-this-work/>

undertake cultural change work to contribute to the primary prevention of violence against women and improving gender equality, diversity and inclusion within the organisation. This would have significant ramifications for national efforts to prevent violence against women through the *National Plan to Reduce Violence against Women* and initiatives such as the National Inquiry into Sexual Harassment in Australian Workplaces.

Additionally, section 42 could create barriers for employees in accessing leave entitlements including family and domestic violence leave and personal/carer's leave through the creation of a hostile environment. For example, a woman may not feel safe attempting to access family and domestic violence leave if she knows that her manager will make harmful statements about her experience of violence as an expression of their belief, or attempting to access carers' leave to care for her same-sex partner if she knows that her manager will express beliefs about same-sex relationships being unacceptable.

Section 32 of the draft *Religious Discrimination Bill* provides specific exceptions from the prohibition on religious discrimination in work including by some employers, employment agencies and qualifying bodies. Our Watch is concerned about the impacts that this provision will have for women's access to employment opportunities, particularly for those who are experiencing multiple forms of disadvantage and discrimination. This Section has the potential to allow for discrimination in employment of women who have a background of work in the sex industry, women who have terminated a pregnancy, people in same-sex relationships, trans people, divorced women and single mothers. Access to employment is crucial to strengthening women's economic security, independence and social and economic participation and decision-making in public life; all of which are important actions for progressing gender equality and preventing violence against women.

**Recommendation 4: Our Watch recommends that section 8(3) and related clauses are removed from the *Religious Discrimination Bill*.**

**Recommendation 5: Our Watch recommends that section 32 is removed from the *Religious Discrimination Bill***

## Gaps in federal anti-discrimination law

Federal anti-discrimination legislation provides limited protection for people of minority faiths from discrimination and harassment. Some religious groups have been designated as ethno-religious groups for the purpose of the *Racial Discrimination Act 1975* (Cth). However, these provisions do not apply to all people of minority faiths who are targeted for vilification and hate speech. Further, protections from vilification, harassment and discrimination in State and Territory anti-discrimination law are not consistent in all jurisdictions.

Muslims in Australia have consistently reported disproportionately high levels of discrimination compared to other faith groups.<sup>8</sup> Muslim women are disproportionately victimised, with 72% of

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<sup>8</sup> Markus, Andrew (2019) *Mapping Social Cohesion: The Scanlon Foundation Surveys*, Scanlon Foundation Research Institute, Monash University, Victoria, p. 61.

reported incidents over 2016-17 targeting women, and 71% of these incidents perpetrated by men.<sup>9</sup> The overwhelming majority (96%) of women who reported offline incidents of harassment were wearing a headscarf at the time of the incident.<sup>10</sup>

Because of the disproportionate violence targeting Muslim women, they are particularly adversely affected by current gaps in anti-discrimination law, and require improved legal protection from discrimination, harassment and vilification on the basis of their religion. The proposed Bill should include specific provisions to prohibit vilification, incitement to hatred, and harassment on the basis of religion. These provisions must specifically define vilification in terms of incitement to violence and hatred and display of vilifying materials, but should exclude genuine criticism of beliefs or offence to religious sentiments.

**Recommendation 6: Our Watch recommends that specific provisions prohibiting vilification, harassment, and incitement to violence on the basis of religion are included in the *Religious Discrimination Bill*.**

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<sup>9</sup> Iner, Derya (2019) *Islamophobia in Australia – II 2016-2017*, Charles Sturt University, Islamophobia Register Australia, Sydney.

<sup>10</sup> Iner, Derya (2019) *Ibid*.