



31 January 2020  
Attorney-General's Department

Via email: [FoRConsultation@ag.gov.au](mailto:FoRConsultation@ag.gov.au)

### **Submission to the second consultation on Religious Discrimination Bill**

We are one of six National Women's Alliances working to promote the views of all Australian women, to ensure our voices are heard in decision-making processes. *Harmony Alliance: Migrant and Refugee Women for Change* is a member-driven organisation, providing a platform for women from migrant and refugee backgrounds to advocate on issues that matter to us. We adopt a human rights-based approach in promoting the voice and participation of women from migrant and refugee backgrounds in Australian society. We acknowledge the diversity of experiences of women from migrant and refugee backgrounds and recognise the inherent value of each person, of all backgrounds, genders, ages, abilities, social standings, sexual orientations or religions. We promote the principles of dignity, equality, autonomy, non-discrimination and mutual respect.

The proposed religious discrimination bill concerns us as the alliance of a diverse cohort of migrant and refugee women with various religious affiliations. Migrant and Refugee women in Australia come from a range of different religious backgrounds and also include non-religious and/or ex-religious persons. Our concerns regarding the bill lie at the intersection of religious freedom and human rights and agency of women. As migrant and refugee women, we experience discrimination not only on the basis of our religious backgrounds, but more importantly due to an intersection of religious, ethnic, cultural, sexual, and gendered identities.

Whilst we support protections from religious discrimination in Australia, we also maintain that right to religious freedom should not infringe upon or supersede other established human rights including the rights to healthcare, mental and physical well-being, and equal opportunities to work and study. While acknowledging the diversity of opinions within our membership, the Alliance has come to agree on the position that the current draft of the religious discrimination bill infringes upon the principles of integrity and fundamental human rights. It establishes a hierarchy of rights and puts the rights of religious persons and organisations (including publicly funded bodies) above the fundamental rights to health, safety, well-being, and equal opportunity. The bill allows persons and institutions to discriminate on the basis of their religious beliefs. The Harmony Alliance strongly opposes the proposed legislation as it will negatively impact the rights and freedom of all persons in Australia. Below, we highlight our major concerns regarding the proposed bill, specifically in relation to migrant and refugee women, including those who identify as LGBTQI+ and therefore may experience additional barriers in the context of this bill:

#### **Access to Healthcare**

The proposed bill will undermine the human rights of migrant and refugee women by giving precedence to health practitioners' religious beliefs over women's right to access healthcare. Section 8(6) of the bill would permit health care professionals to "conscientiously object to providing or participating in a particular kind of health service because of a religious belief or activity held or engaged in by the health practitioner".

As per this clause, health professionals can refuse to provide contraception or abortion services, based on their religious beliefs, which will seriously impact the sexual and reproductive health of women. While the provisions under this clause posit that health professionals can only refuse to offer certain services rather than services to certain individuals or groups, a refusal of services relating to



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women's sexual and reproductive health will disproportionately—and potentially exclusively—impact a particular group of people, i.e., women in this case.

Migrant and refugee women already face significant challenges in accessing healthcare services due to language and communication barriers, lower levels of familiarity with the health system, family and community expectations, and complex eligibility requirements linked to their migration status<sup>1</sup>. The proposed bill will add another layer of inaccessibility to vital health services for migrant and refugee women.

Young migrant and refugee women also experience systemic barriers in accessing sexual and reproductive health services that clash with their families and communities' religious beliefs. The proposed bill will enhance the level of difficulty for them as they would have to navigate their health practitioners' religious beliefs as well. Women living in rural, regional, and remote areas will have further disadvantages due to the limited options of health services available in those areas.

## **Equitable employment opportunities**

The proposed bill will encourage direct and indirect discrimination against migrant and refugee women in job markets. Section 32 allows discrimination by employers, employment agencies, and qualifying bodies against a person “on the ground of the person’s religious belief or activity”, if the person is “unable to carry out the inherent requirements” of the work or profession sought because of the person’s religious belief or activity.

This exemption permits discrimination against an employee if they are unable to carry out the “inherent requirements” of the employment due to their religious beliefs. However, in doing so, the bill leaves open the possibility of employers making it an inherent requirement of a role to carry out tasks or various matters that go against their religious or cultural beliefs despite it not pertaining to core business of the employing institution.

Unemployment rates are already higher among migrant and refugee women—caused by structural barriers that limit their economic participation.<sup>2</sup> The above clause will disproportionately disadvantage migrant and refugee women by allowing employers to use religious or cultural beliefs as a barrier to employment. For example, employers or employment agencies could refuse work to migrant and refugee women based on their religious clothing choices, citing specific attributes of physical presentation as “inherent requirements” of the job.

Conversely, employers with specific religious beliefs or affiliations, including religious schools, charities, aged care, and other publicly funded institutions will be allowed “positive discrimination” by hiring persons of certain faiths only (sections 11 and 12). There are no provisions for persons of other faiths who are able to fulfill “inherent requirements” of the job in this case. For example, a person may be perfectly able to teach mathematics or provide caring services, without any bearing on the religious freedom or activities of the organisation. Such discrimination will be detrimental to those with limited employment opportunities—particularly migrant and refugee women—in Australia. The Harmony Alliance firmly holds that publicly funded institutions should not be allowed to discriminate against anyone on any grounds, and the principle of equal opportunity should prevail.

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<sup>1</sup> Multicultural Women's Health Australia (MCWH), 2016. *Sexual and Reproductive Health Data Report*.

<sup>2</sup> The unemployment rate for women who have migrated to Australia sits at 6.3 per cent compared with 5.4 per cent for all Australian women and migrant men, jumping to 6.7 per cent for women who speak a language other than English at home (ABS 2016 Census, for people aged between 20 and 74 years old).



### **Right to Education**

The proposed bill will further jeopardise migrant and refugee women's right to education. Sections 11 and 12 allow religious schools to prevent students of different faiths from enrolling. This would particularly impact access to education in rural and regional areas and put young women of migrant and refugee background of different faith groups at risk of missing out on education. All-girls schools in many areas, including regional and remote areas, are often run by religious bodies. Girls from migrant and refugee backgrounds with a preference for all-girls schools—based on higher success rates or other reasons—will be unfairly disadvantaged in their ability to access quality education. We would like to reiterate that any religious body—including schools—that receives public funding should not be allowed to discriminate against any person.

### **Statements of belief**

The proposed bill also poses risks to integrity and well-being of migrant and refugee women by legalising potentially harmful statements of belief. Section 42 states that statements of belief in themselves do not constitute discrimination unless they are meant to “harass, threaten, seriously intimidate or vilify another person or group of persons”.

There is potential for statements of religious beliefs to be harmful even if they do not come under any of the above offences. For example, a statement that women should submit to and serve their husbands, or that women in unmarried relationships are living in sin, do not fall under any of the above categories and hence would not constitute discrimination. However, such statements of religious belief can negatively impact integrity, physical and mental health, access to justice and even safety of women from migrant and refugee backgrounds.

For example, a woman who is told to serve her religious duty by being a submissive wife may not recognise or report domestic violence, which may be detrimental to her safety and well-being. Similarly, public or private statements of religious belief can be used by those in power (including employers, religious leaders, health practitioners, etc.) to manipulate and emotionally abuse vulnerable people, including migrant and refugee women.

### **Recommendations**

We do not support the religious discrimination bill in its current form. To bring it in line with principles of dignity, equality, autonomy, non-discrimination and mutual respect, we recommend that, as a minimum:

- Section 8 (6) of the religious discrimination bill be abandoned and the bill should explicitly state that religious beliefs shall not impact or interfere with access to medical and healthcare services for anyone.
- The exemptions listed in Section 32 concerning employment, partnerships, qualifying bodies, and employment agencies should be accompanied by a clearer definition of “inherent requirements” and adequate safeguards to prevent racist attitudes, prejudice, and bias from passing as inherent requirements of a job.
- Sections 11 and 12 should be completely removed from the bill as they allow publicly funded bodies to discriminate against people on various grounds.
- The exceptions to the statements of religious belief, listed in section 42, that *do* constitute discrimination should be expanded to include hateful, manipulative, and commanding statements concerning other individuals or groups of people.

### **Contact Information:**

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