



# HARMONY ALLIANCE

MIGRANT & REFUGEE WOMEN FOR CHANGE

Parliamentary Joint Committee on Human Rights  
Parliament House  
Canberra ACT 2600  
Via Email: [religionbills@aph.gov.au](mailto:religionbills@aph.gov.au)

## Submission into the Religious Discrimination Bill 2021 and related bills

21 December 2021

### Introduction

Harmony Alliance: Migrant and Refugee Women for Change is one of the six National Women's Alliances supported by the Australian Government to promote the views of all Australian women and to ensure their voices are heard in decision-making processes. Harmony Alliance's purpose is to provide a national inclusive and informed voice on the multiplicity of issues impacting on experiences and outcomes of migrant and refugee women, and to enable opportunities for women from migrant and refugee backgrounds to directly engage in driving positive change.

The Harmony Alliance membership comprises over 140 organisations and individuals representing and/or working for the advancement and inclusion of migrant and refugee women. 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.

Harmony Alliance welcomes the opportunity to make a submission to the third draft of the *Religious Discrimination Bill 2021* (the Bill) and related bills. In our submission to the second consultation on the Religious Discrimination Bill, we urged the Government to remove the section giving precedence to health practitioners' religious beliefs over women's access to sexual and reproductive health care.<sup>1</sup> We welcome the removal of section 8(6)<sup>2</sup> in the previous draft, which would have had detrimental effects on migrant and refugee women's access to sexual and reproductive health care.

The proposed Religious Discrimination Bill concerns us as an 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, human rights and the agency of women. While the Bill will potentially negatively impact all women, it is the complex combination and intersecting forms of discrimination that create further barriers for migrant and refugee women and girls.

We support protections from religious discrimination. However, the right to manifest one's belief should not infringe upon or supersede the rights or freedom of others, including the rights to healthcare, mental and physical wellbeing and equal opportunities to work and study. While acknowledging the diversity of opinions within our membership, Harmony Alliance's

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<sup>1</sup> Harmony Alliance (2020), Submission to the second consultation on Religious Discrimination Bill <http://harmonyalliance.org.au/wp-content/uploads/2020/04/Religious-Discrimination-Bill-submission.pdf>

<sup>2</sup> Section 8(6) of the second draft released in early 2020 would permit health practitioners refuse to provide health care because of a religious belief held by the health practitioner. See Religious Discrimination Bills – Second Exposure Drafts <https://www.ag.gov.au/rights-and-protections/consultations/religious-discrimination-bills-second-exposure-drafts>

view is that the current draft of the Religious Discrimination Bill infringes upon the principles of integrity and fundamental human rights. The Bill creates a hierarchy of rights where religious freedom carries more weight than other rights and freedoms. It places the rights of religious persons and organisations (including publicly funded bodies) above the fundamental rights of individuals to health, safety, wellbeing and equal opportunity. In allowing persons and institutions to discriminate on the basis of their religious beliefs, the Bill will negatively impact the rights and freedoms of all persons in Australia, particularly migrant and refugee women, including transwomen and non-binary people.

### **Protecting ‘statements of belief’ will give space for discrimination**

Section 12(1) of the Bill explicitly states that statements of belief do not constitute discrimination under various Commonwealth, state and territory anti-discrimination laws unless they are malicious or would ‘threaten, intimidate, harass or vilify a person or group’.<sup>3</sup> A statement of belief is a statement of a religious belief held by a person that is made in good faith and that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of their religion.<sup>4</sup> A statement of belief can also be a statement of belief by a person who does not hold a religious belief that is made in good faith.<sup>5</sup>

Section 12 has the capacity to protect people making sexist, racist, ableist and other discriminatory statements if it meets the above test of a statement of belief. There is potential for statements of religious beliefs to be harmful even if they are not malicious, threatening, intimidating, harassing or vilifying. For example, a statement that women should submit to and serve their husbands, or that women in unmarried relationships are living in sin, would not fall under any of the above categories and hence would not constitute discrimination. However, such statements of religious belief can negatively impact the integrity, physical and mental health, access to justice and even the safety of women from migrant and refugee backgrounds.

Public or private statements of religious belief can be used by those in positions of power (including employers, religious leaders, health practitioners, etc.) to manipulate and emotionally abuse vulnerable people, including migrant and refugee women. 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 wellbeing. Similarly, an employer may be able to express the view that women should not hold leadership positions, as their role is subservient to men, creating an environment where women are not supported to advance their careers. While a health practitioner can no longer refuse to provide medical services under this Bill,<sup>6</sup> they could still express their views on a woman’s lifestyle and choices, which could prevent women from accessing needed health care.

In protecting such statements of belief and expressly overriding anti-discrimination laws including the *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth), this Bill has the potential to create a culture where it becomes more acceptable to express offensive, harmful and derogatory views towards women and where there is limited redress against such statements. It can be difficult to determine whether a statement is not made in good faith and/or is malicious, threatening, intimidating, harassing or vilifying (and hence will not be protected religious speech) as opposed to a statement made in good faith that may nonetheless be harmful, insulting or offensive (that will be protected religious speech). This uncertainty will create an environment where migrant and refugee women feel more reluctant to speak up about their experiences because they recognise that religious speech has been

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<sup>3</sup> Religious Discrimination Bill 2021, s 12(2)

<sup>4</sup> Religious Discrimination Bill 2021, s 5(1).

<sup>5</sup> Religious Discrimination Bill 2021, s 5(1).

<sup>6</sup> Compared to section 8(6) of the second draft.

privileged over their right to live free from discrimination. This will further disadvantage migrant and refugee women, who already face multiple intersecting forms of discrimination.

### **‘Preferencing’ in recruitment causes additional barriers to employment**

Migrant and refugee women already face a range of barriers to employment. While migration pathways lead to differences in employment experiences, many barriers are frequently experienced by this cohort.<sup>7</sup> Low English proficiency, limited education and skills, challenges associated with skills and qualification recognition from overseas, minimal Australian work experience and caring responsibilities are just some of these common experiences. Additionally, migrant and refugee women have a higher unemployment rate than both women born in Australia and male migrants and refugees.<sup>8</sup>

The proposed bill encourages direct and indirect discrimination against migrant and refugee women in employment. Section 39(2) outlines exemptions to unlawful discrimination. It states that an employer can discriminate against an employee if they are unable to carry out the ‘inherent requirements’ of the employment due to their religious beliefs. However, the term ‘inherent requirements’ is not defined and provides scope for employers to define tasks that are contrary to an individual’s religious or cultural beliefs as ‘inherent requirements’ even if they do not pertain to the core business of the employing institution. This clause will disproportionately disadvantage migrant and refugee women by allowing employers to use religious or cultural beliefs as a barrier to employment. As an example, employers may refuse work to migrant and refugee women based on their religious clothing obligations, citing specific attributes of physical presentation as ‘inherent requirements’ of the job. This may put migrant and refugee women in a situation where they are forced to choose between their job, which enables financial security and independence, and their religious or cultural beliefs.

Further, religious hospitals, aged care facilities, accommodation providers and disability service providers will be able to make faith-based employment decisions without it being considered discrimination, provided it is done in good faith and is in accordance with their religious doctrines and a publicly available policy.<sup>9</sup> Similarly, section 7 provides that religious bodies (including faith-based educational institutions and faith-based charities) do not discriminate if they, in good faith, make employment decisions in accordance with their religious beliefs, including preferencing people of the same religion as the religious body. An educational institution must also have a publicly available policy setting this out.

There is no provision for persons of other faiths who are able to fulfil the ‘inherent requirements’ of the job in these cases, meaning that people of other religious beliefs may be discriminated against even if their proposed role does not pertain to the core business of the employing institution. For example, a person may be 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 already limited employment opportunities, particularly migrant and refugee women. 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>7</sup> Segrave, M., Wickes, R. & Keel, C. (2021). Migrant and Refugee Women in Australia: The Safety and Security Survey. Monash University.

<sup>8</sup> 11.2 % of recently arrived female migrants who are permanent residents are unemployed compared to 7 % for their male counterparts and 4.4 % for Australian born women, see Australian Bureau of Statistics, ‘Characteristics of recent migrants’, (2019), <https://www.abs.gov.au/statistics/people/people-and-communities/characteristics-recent-migrants/latest-release>

<sup>9</sup> Religious Discrimination Bill 2021, ss 9 and 19.

## **Girls' right to education will be jeopardised**

The proposed bill will additionally jeopardise migrant and refugee women's right to education. Section 7 allows religious schools to require students to 'practice that religion, if such a requirement is necessary to avoid injury to the religious susceptibilities of people of that religion'. In effect, this would 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 backgrounds of different faith groups at risk of missing out on education, as there are fewer schools to choose from. Further, some families of migrant and refugee backgrounds may prefer all-girls schools for a range of reasons and these are often run by religious bodies.

Requiring students to adhere to a particular faith in order to attend school means that migrant and refugee young women of different faith groups may have to compromise on their access and quality of education, risk being unfairly discriminated against based on their faith or be put in situations where they must act in a way that is contrary to their faith so that they can access quality education.

We reiterate our view that any religious body, including schools, receiving any amount of public funding, should not be allowed to discriminate against any person.

## **Recommendations**

Harmony Alliance does not support the Bills in their current form. To protect migrant and refugee women's physical and mental wellbeing, right to education and employment and right to be free from discrimination, we recommend, as a minimum, the following:

- The exceptions to the statements of belief, listed in section 12(2) of the Religious Discrimination Bill, that do constitute discrimination should also be extended to include hateful, manipulative and commanding statements concerning other individuals or groups of people.
- The exception to unlawful discrimination as outlined in section 39 of the Religious Discrimination Bill concerning employment should be accompanied by a more explicit definition of 'inherent requirements' and adequate safeguards to prevent racist or sexist attitudes, prejudice and bias from passing as inherent requirements of a job.
- Sections 7 to 9 in the Religious Discrimination Bill should be amended so that they no longer allow publicly funded bodies to discriminate against people on various grounds.

## **Contact Information:**

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