

SAGE's Response to the Second Exposure Draft and Amendments of the Proposed Australian Religious Discrimination Bill: December, 2019

Sex and Gender Education (SAGE) (Australia)

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In reading this document we refer to our two previous documents that we published, and were provided to the Attorney General's Office, on the proposed Religious Discrimination Bill and that this document needs to be read in coordination with those documents:

- [SAGE's Response to the Exposure Draft of the Proposed Australian Religious Discrimination Bill: December, 2019.](#)
- [Sex and Gender Education \(SAGE\) \(Australia\) Proposed Religious Discrimination Bill, SAGE Discussion Paper: 15 July, 2019.](#)

Since 2001 SAGE has campaigned for the human and legal rights and dignity of people of sex and/or gender diverse groups who may be intersex, sex non-specific, transexed, transsexual, transgendered, cross-dressers, androgynous, bigendered, gender fluid, without sex and/or gender identity, have atypical sex characteristics, and people with sex and gender culturally specific differences. Sex and/or gender diverse groups of people is an inclusive phrase and excludes no one who may be sex and/or gender diverse in any way.

The second exposure draft (SED), Australian Attorney General, 2019) of the proposed Religious Discrimination Bill suggests amendments to the first exposure draft (Australian Attorney Generals, 2019). Those amendments along with the problems with the first draft of the bill will create a range of problems and increased legal discrimination against sex and/or gender diverse groups of people.

Review of the Amendments Document, item by item (numbered). Please co-ordinate with the Amendments Document (Australian Attorney General, 2019, Explanatory Notes):

(1, SED) Altering all bills referred to will increase legal discrimination against sex and gender diverse groups of people, rolling back hard-fought-for human rights for these people. This would be out of line with the World Health Organization's recommendations:

“WHO is also a party to United Nations (UN)-wide efforts to end discrimination, including against people with minority gender identities and sexual orientations. In 2015, WHO signed a joint statement with 11 other UN bodies calling for an end to discrimination and violence against gender and sexual minorities, including in health-care-settings” (Office of the High Commissioner for Human Rights, 2015).

(2, SED) This section refers to consultation with an expert panel on religious freedom. However, there is no mention of any consultation with any expert panel on the human rights of sex and/or gender diverse groups of people. Neither has there been an impact study carried out on how this bill will affect the human rights of sex and/or gender diverse groups of people.

(3, SED) Refers to “freedom of religion: anti-discrimination law, charities law and marriage law.” Presently Australia has religious freedom and no religion is outlawed. The charities' laws are proposed for the common good of the Australian people and should not be perverted to allow any charity to be involved in discrimination against any sex and/or gender diverse groups of people. The Australian people clearly voted in a plebiscite in 2018 to allow full marriage rights to all Australia people without discrimination (Australian Attorney General, 2020).

(4, SED) It proposes that in the religious freedom bills “the right to freedom of religion is given appropriate weight in situations where it is in tension with other public policy considerations, including other human rights.” The proposed bill does not deliver this statement. In its first and second draft forms it gives higher rights to religious groups and people to discriminate against ordinary Australians and be exempt from our present and future discrimination laws that seek to protect sex and/or gender diverse groups of people.

(5, SED) The proposed bill suggests “Accordingly, this Bill amends federal anti-discrimination legislation to ensure that each Act has an objects clause which recognises the indivisibility and universality of all human rights, and their equal status in international law, and the principle that every person is free and equal in dignity and rights.” If such a bill actually recognised the indivisibility and universality of all human rights, it would not allow religious people or groups to discriminate against any sex and/or gender diverse groups of people, thereby setting a real social level playing field of human rights for all Australians.

(6, SED) This sections states, “Secondly, the freedom to manifest religion or belief is a fundamental aspect of the right to freedom of religion.” No such right is curtailed in any legal

way in Australia at this present time. There is a profound difference between having the right to believe in the supernatural and allowing people with such beliefs to publicly vilify and discriminate against sex and/or gender diverse groups of people. The first should never legally permit the second, otherwise Australia becomes a religious country for which the government has no mandate from its people or the Crown.

(7, SED) This states “this Bill makes amendments to the Charities Act and the Marriage Act to clarify the application of aspects of those Acts which may infringe upon the right to freedom of religion.” This is factually incorrect. Neither the Charities Act nor the Marriage Act infringe upon the right of religious people and groups to believe their supernatural beliefs. What those acts do, along with the suite of other laws, is protect the public from extreme religious beliefs, vilification, discrimination and social exclusion of minority groups and the general public, including sex and/or gender diverse groups of people.

(8, SED) This states “amendments in this Bill recognise that the law must protect the reasonable ability for such faith-based charities to manifest their faith and express their religious beliefs, without threat to their charitable status.” Charities are an integral part of society, adding to the social fabric and wellbeing of those they benefit. Charitable status is, however, a tax exemption status and a government should never give a tax exemption to charities that are involved in vilification, discrimination and social exclusion of minority groups and the general public, including sex and/or gender diverse groups of people, whether they be religious charities or otherwise. That would be a breach of Australia’s human rights commitments, as Australia was one of the original signatories to the Universal Declaration of Human Rights in 1948, and promised that each person should have fundamental freedoms and to live their lives with dignity (Australian Government, Department of Foreign Affairs and Trading, 2020).

(9, SED) This states “The solemnisation of marriage has particular significance for people of faith and can be an important way in which faith is manifested.” Marriage is a legal contract in the laws of Australia and a recognition of people’s commitment to each other. It is not the exclusive possession of people and groups in cults with extreme religious beliefs, with what are in reality scientifically, unprovable supernatural imaginations. These could include various mythological incarnations, godheads, divinations, saviours, pixies, fairies and endless fantastic subjective mental incarnations. Persons from sex and/or gender diverse groups from outside and inside those cults should not experience shunning, vilification, discrimination, ostracisation and incited violence. Australian law should protect the rights of all persons equally and not give special rights to extremely aggressive people in cults above the average citizen, in marriage or otherwise.

(10, SED) The 2018 review into religious freedom in Australia was clearly a move by the Turnbull government to court religious votes. At the time there were no restrictions on any religion in Australia (Australian Government, 2018).

(11, SED) The 2017 review panel on religious freedom did not include laypeople who were from sex and/or gender diverse groups, religious or atheist who might be affected by any changes (Australian Government, 2018). Therefore in hindsight a review that leads to the damage of citizen's human rights that did not include those citizens can be said to be unbalanced.

(12, SED) It cannot be said that the right to enjoyment of religion has been damaged by the marriage plebiscite legalising marriage equality. Marriage equality levels the social playing field and reduces discrimination of sex and/or gender diverse groups of people by extreme religious bodies and cults that sought to damage their human rights.

(13, SED) The religious freedom review did not include an impact study of any changes that might be made to protect religious beliefs on vulnerable sex and/or gender diverse groups of people.

(14, SED) The religious freedom review did not recommend or see the need for a stand-alone religious freedom bill, which the Morrison government is now trying to push on the Australian people, not having had that in their public election promise. In fact, Prime Minister Morrison made the opposite public promise to allow all politicians to have a conscience vote to wipe away further discrimination against sex and/or gender diverse groups of people (Kaziol, 2018). Therefore, what was privately promised by the Morrison campaign – which may have been made to extreme religious groups and cults, including his own Pentecostal Church and Hillsong, the church of his friend Brian Houston – may have been the opposite to what he was telling the public. So, it appears that the push for this religious freedom bill is really to appease extreme religious groups, including his own church for voting for him in the election.

(15, SED) The religious freedom review failed to commission an impact study on the detrimental effects on sex and/or gender diverse people of its recommendations for changes in the laws to allow religious discrimination. Therefore, it put the rights to execute extreme religious prejudicial, violent and discriminatory actions against sex and/or gender diverse groups above common Australian human rights and failed to consider the ramifications of its recommendations (Australian Government, 2018).

(16, SED) Freedom of extreme religion should not equal freedom to discriminate and harm, as it then becomes contrary to human rights. Marriage is neither traditional nor non-traditional but simply has no legal value other than a contract in law. Any ascribed religious interpretation should comply with common human rights laws for all ordinary non-religious people. The term

Ordained Minister of Religion is common English and can be bought off the internet for less than \$100 therefore it has no exclusive rights of use and would be impossible to police.

(17, SED) Religion or religious belief are anomalous codes of life that should not be used to govern a country like Australia that pegs itself as a secular democracy. Religious beliefs and actions should be subject to anti-discrimination common law, not common law subject to religious beliefs as Australia is not officially a religious country.

“Australia is a place where discrimination on the basis of a person's identity — including their religious identity — is unacceptable” (Australian Government, 2018).

It seems the Government is making contradictory statements. On the one hand it states discrimination on the grounds of a person's identity is unacceptable; and in the proposed bill it seeks to exonerate religious people and groups from culpability when they do discriminate against sex and/or gender diverse groups of people. This shows a clear incongruity in statements and policies.

People within the same religions also have varying religious views on sex, gender and sexuality and the bill will lead to situations where parties of the same religion can legally discriminate against another in that religion legally.

(18, SED) This states the intention that “the principle that every person is free and equal in dignity and rights” should be applied in law changes. However, if this were true, then religious people and bodies would not have the right to discriminate against sex and/or gender diverse groups of people.

(19, SED) Charities are meant for and to prosper the common good and should never have policies that discriminate and contravene human rights.

(20, SED) The Australian people clearly voted during the Marriage Equality plebiscite that marriage was not exclusively between a man and a woman and the Morrison government has no mandate from the people to reverse the recognition that all marriages are equal.

(21, SED) When religious schools receive public money or take advantage of tax exemptions, they should then comply to the anti-discrimination principles that are applicable to non-religious people, protecting students and teachers from religious discrimination.

(22 - 35 SED) The intention to alter these acts in order to discriminate on the grounds of religious prejudice and exclusion is not only an attack on sex and/or gender diverse groups of people but also on people who are of different sexual orientation, disabled, aged, of varied

marital status, of the same religion but of different viewpoint, of different religions, different races, different cultural beliefs, taking certain medications and have undergone certain surgeries.

Age Discrimination Act	<i>Age Discrimination Act 2004</i>
AHRC Act	<i>Australian Human Rights Commission Act 1986</i>
Commission	Australian Human Rights Commission
Charities Act	<i>Charities Act 2013</i>
Disability Discrimination Act	<i>Disability Discrimination Act 1992</i>
Marriage Act	<i>Marriage Act 1961</i>
Racial Discrimination Act	<i>Racial Discrimination Act 1975</i>
Religious Discrimination Bill	Religious Discrimination Bill 2019
Religious Freedom Review	Report of the Expert Panel into Religious Freedom
Sex Discrimination Act	<i>Sex Discrimination Act 1984</i>

Discussion

It is purported by the Attorney General that the Religious Discrimination Bill is designed to eliminate discrimination on the basis of religion and will include provisions of allowing religious bodies, service providers, charities, hospitals, healthcare professionals, aged care facilities and accommodation providers such as housing and retirement homes to preference members of their own faith to preserve their “religious ethos”. It also seeks to ensure that the exemption for religious institutions to allow discrimination in staffing extends to “public benevolent institutions”, such as the St Vincent de Paul Society.

Charities such as Saint Vincent de Paul have, however, highly criticised and publicly distanced themselves from the bill in its present (second exposure) form (Karp, 2019), stating it does not represent their religious beliefs at all. Like many other religious people, groups and bodies this organisation finds clauses that allow religious people and bodies to discriminate against sex and/or gender diverse groups of people abhorrent, discriminatory and unacceptable.

The second draft includes extending the right to discriminate based on religion to religious camps and conference centres – including against their prospective customers – provided they publish a policy explaining their ethos and rules. The change responds to the Sydney Anglican church’s complaint that the original bill would have forced them to rent campsites to Satanists.

The reality, however, is that the government is only considering recommendations by religious bodies and selective extremist religious bodies at that, and ignoring complaints and recommendations by minority groups, such as sex and/or gender diverse groups of people who will be adversely affected by the bill. Indeed, after the first exposure draft the Attorney General’s

office failed to return calls, have meetings and coordinate with those groups, ignoring their concerns, thereby displaying extreme bias and discrimination. Closely examining the first exposure and the second exposure of the bill it is clear that the only recommendations that the Attorney General's Office has paid attention to were those of religious extremist groups.

Prime Minister Morrison publicly met with religious leaders and was photographed with 14 of them, only two of which were female (Potts, 2019). He has also publicly made discriminatory statements about intersex and trans people on several occasions, clearly displaying intersexphobia, transphobia and homophobia (Martin, 2019) (Taylor, 2019) (McIlroy & Tillett, 2019), so it is clear the government is not impartial, as the Prime Minister promised he would be, on the issues of religious freedom but is in fact driven by religious extremism.

The complaint by the Anglican Church and the second exposure draft also gives rise to uncontrollable discrimination. Whilst they quote it would be unacceptable to let premises to Satanists, such open-ended, uncontrolled clauses in the bill could mean that discrimination could be extended to anyone; for example blue-eyed, one-legged, curly-haired people or those with certain medical conditions, provided the church publishes their policies. This makes a nonsense of Australia's anti-discrimination laws and will be unworkable.

There is a proposal that religious institutions will also be protected from discrimination claims when they take "actions that they might need to take to avoid injury to the religious susceptibilities of adherence of their faith". This is a free pass to religious people and bodies to flaunt the anti-discrimination laws and abuse human rights because they claim they believe in the supernatural but are unable to verify its existence. It is the "I believe you are a Martian defence", unprovable based on superstition, which is scientifically unprovable, legally unreliable, socially disruptive and creates an unequal society, where people who claim religious privilege will have more rights than anyone else.

This Coalition-driven bill has proposed adding an objects clause to all federal discrimination laws that "all human rights have equal status under international law", a change which sex and/or gender diverse advocates have warned is designed to undermine the right to non-discrimination. It will allow greater discrimination against sex and/or gender diverse groups of people.

The new bill will impose restrictions on qualifying bodies such as doctors, other health professionals and lawyers to practise, stipulating they cannot impose rules such as social media codes of conduct restricting statements of belief unless they are an "essential requirement" of the profession. Qualifying bodies and associations must be able to have behavioural guidelines for codes of conduct, including practitioners' public statements that reflect upon the ethos of the profession, associations and public's confidence in those professions. Religious discrimination and incitement of harassment and violence should be no exception.

Conscientious objection provisions would exclude some people from healthcare by overriding professional or employer obligations to treat certain patients. Healthcare practitioners funded by public money should never have the right to discriminate against any member of the public on the grounds of sex and/or gender diversity.

The bill will also narrow the ‘Folau clause’, meaning that employers will be prohibited from setting a rule that indirectly discriminates on religion only where the rule is “other than in the course of the employee’s employment”. Businesses must have the right in law to protect their brand which includes contracting the permissible behaviour of employees in public, including harassment by religious people and bodies. If this ability is restricted, they are unable to operate their equal opportunities guidelines, mandates and legal obligations. The Australian Chamber of Commerce and Industry has warned the bill would prevent business, and even government departments, setting policies designed to create safe and inclusive workplaces ([Koziol, 2019](#)). Companies finding Australian discrimination laws too difficult to deal with will move offshore.

The bill proposes the courts would be able to determine what is reasonable in accordance with the doctrines and tenets of a religion and that it will use the average person of the same religion as the test. Statistically an average person’s beliefs in the same religion is unquantifiable quantitatively.

Beliefs are qualitatively measured and no average could be measured. Courts must operate in accordance with the law and not be weighed down trying to determine undeterminable moral judgments based on superstitious beliefs.

It is clear this bill is driven by Australia’s religious lobby. The coalition government is clearly succumbing to the lobbying of extreme religious groups hoping for their block vote support at the next election. The proposed bill, with its exemption clauses, will be a violation of the human rights of groups who do not belong to that lobby. It will not comply with Australia’s commitment to the United Nation’s Human Rights Charter and policies.

The bill as it is proposed gives vilification rights and exemptions in law to people and bodies claiming religious beliefs. It allows them to publicly attack, vilify, demean, castigate and invoke violence against people from sex and/or gender diverse groups, claiming freedom of religious opinion and speech. Those assumptions that someone is from a sex and/or gender diverse group does not even need to be based on facts but simply speculation on the part of the religious person or body. This is unquestionably victimisation by uninformed assumption, sexism and genderism.

There has been no impact study carried out on behalf of the government into the possible damage to minority sex and/or gender diverse groups affected by this bill, who will suffer profound public rejection, religious exclusion, family disruption, legal disadvantage, service restriction,

accommodation exclusion, restricted access to healthcare in hospitals, clinics and care homes, increased homelessness, mental health issues, depression and higher suicide risks.

The majority of people from sex and/or gender diverse groups have been abused and oppressed by religious people and institutions during their lifetimes. We at SAGE collected statements from people from sex and/or gender diverse groups about the second exposure draft of the bill. Their names have been changed to protect their identity.

Sandy: “My family are very religious. They call themselves pillars of their church. When, as a transsexual woman I transitioned to female 20 years ago, after extreme depression, my family stopped talking to me, disowned me, and got my parents to cut me out of their will. During the time I was homeless they never helped me. If any time I have to have contact with them they tell me I’m possessed by the devil. They are abusive and shout at me. I lost everything including my church and friends. At times I was homeless, had PTSD, was suicidal and I was rejected from a shelter run by religious people and had to sleep on the street. No government should give religious people the right to abuse others. We are human beings, not the punching bag for religious people’s aggression. Isn’t the law supposed to protect all people equally?”

MJ: “I am very afraid a lot of the time. I am intersex and have Klinefelter’s Syndrome. In other words, I have XXY chromones, I live as female but look quite masculine for a woman. I am often mistaken for a transgender person and have been physically attacked a few times which required me to go to hospital. The proposed bill would mean that health professionals could refuse to treat me because they assume I am less than 100% female. The last time I went to hospital when I got attacked, the department was run by a religious group. The doctor did not even know what Klinefelter’s was and tried to talk me into living as a man. I was completely traumatised for months. No one should be excluded from respectful healthcare because of other people’s ridiculous superstitions.”

Andrew: “I am a trans man aged 65. I transitioned 30 years ago. I live in housing run by a charity owned by a church. They did not know I was trans when I got the accommodation but since then, someone told them. If this bill allows religious people to exclude me from the accommodation, they own I would be homeless. I am terrified by this bill and can’t sleep at night for fear they will be able to demand I leave where I live. It’s wrong to allow religious people to single out people like me and exclude them from housing when they get money from the government to run their business and don’t pay taxes.”

Pax: “I don’t identify as male or female. It makes life difficult. I am 26 and live with my parents and have a little part-time job making sandwiches. I’m a very quiet person and keep myself to myself, never rude and try not to look people in the eye for fear they may start asking me personal questions I don’t want to answer, particularly when my genitals are none of their business. I can’t go out into the garden at home as the extremely religious people next door start

calling me names across the fence and telling me I am an insult to God. The police have been called but often don't turn up or say there is nothing they can do. The exemption clauses in the Religious Freedom Bill will mean I could be subject to more verbal attacks by religious people to the point I would probably commit suicide."

Hector: "I am a practising psychiatric nurse. I have lived in Australia for 17 years. Very few people know I am a trans man and transitioned from female to male in my country of origin before I emigrated. I teach at a religious university as well as practice. Whilst I appreciate the religious people may feel they need protection in the law from persecution, the reality is that people with sex and gender differences suffer a far higher level of persecution in their everyday life, often at the hands of religious people. If this bill allows religious people and institutions to treat sex and gender diverse people differently than ordinary people, it will increase the levels of trauma, mental illness and suicide in those populations."

This bill, with its exemption clauses, seeks to elevate the rights of religious people and bodies above those of ordinary citizens in what is a secular Australian society, creating an apartheid and double standard in society. It will no longer mean a separation of state and church, basically turning Australia into a religious country for which the government has no mandate from the public.

The members of SAGE support the principle that religious people should not be discriminated against but require the proposed legislation to not allow religious people or groups to discriminate against sex and/or gender diverse groups of people in any public space or provision of service, particularly when the aggressor is funded by public money, or receives any kind of tax exemption to run their organisations.

We call for:

- No exemption for religious people and bodies within the bill to discriminate against sex and gender diverse groups of people should be included.
- No religious organisations or religion-run bodies or entities that receive government money or tax exemptions should in any way be permitted to discriminate against sex and/or gender diverse groups of people in any form without losing those financial benefits.
- There should be no abilities for religious people or organisations to withhold service, education, employment, or refuse medical care or housing to persons on the grounds they may be from a sex and/or gender diverse group or people.

- All religious people and bodies should be required to comply to anti-discrimination law that applies to the general public, without exception.
- No present law, state or federal, that protects the human rights of sex and/or gender groups of people should be diminished or withdrawn when creating laws that protect religious people and organisations from discrimination.
- In the Sex Discrimination Act the clause that protects religious people and bodies when discriminating against sex, gender as sexuality diverse people needs to be removed.

This paper should be read in coordination with the recommendations made in SAGE's first two documents submitted to the Attorney General's Office on the proposed Religious Discrimination Bill.

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