

Women with Disabilities ACT submission regarding the

Religious Discrimination Bill 2019 and Human Rights Legislation Amendment (Freedom of Religion) Bill 2019

Women with Disabilities ACT (WWDACT) would like to voice several concerns about the Bill's impact on women, girls, non-binary and feminine identifying people with disabilities (hereafter referred to as women*). WWDACT supports the protection of human rights inclusive of freedom of religion, however, the practical impact on discrimination protections for women* with disabilities has been overlooked in the considerations of these bills.

Impacts on service provision for women* with disabilities

The exemptions from discrimination that are provided in subsection 11 (5) may have impacts on service provision for women* with disabilities. The broad definition of 'religious bodies' which includes charities and 'other bodies' is likely to include a range of non-profit community services and support providers that are relied on by people with disabilities for essential activities of daily living. Services provided by these organisations could include in-home care, transport, day programs, housing and more, thereby granting them a high level of access to the client's life.

We note that several of the largest disability support providers in the country are religious organisations. In rural and remote areas, religious providers may be the only providers of support available to people with support needs. This means that support workers with religious beliefs that differ from those of the client, may be able to make statements which are offensive, demeaning or ignore the preferences of women* with disabilities, without recourse for the employer or the person receiving support.

Examples of such concerns includes

- A person with a guide dog being refused access to transport due to the driver's belief that dogs are unclean.¹
- A person being told by their support worker that their disability is 'God's Punishment'

Practically this means that women* with disabilities may struggle to find services that are accessible and inclusive and this will impact on their ability to be safe and independent. This is already a significant issue for many disabled women* due to other factors such as collapsing markets, particularly in rural and remote locations². There are thin markets for all types of service provision in disability care and aged care, so that a significant number of people are at risk of similar exclusion from services. In rural and remote areas this may disproportionately affect Aboriginal and Torres Strait Islander women*. The extent of this effect is therefore significant and widespread.

RECOMMENDATION 1: That the Bill be amended to add protection for disabled people accessing support services, including not-for-profits and Public Benevolent Institutions.

¹ <https://www.canberratimes.com.au/story/6427598/religious-freedom-bill-could-allow-discrimination-masked-as-belief/>

² Malbon, E., Carey, G. & Meltzer, A. Personalisation schemes in social care: are they growing social and health inequalities?. BMC Public Health 19, 805 (2019). <https://doi.org/10.1186/s12889-019-7168-4>

Impacts on healthcare for women* with disabilities

WWDACT has concerns about the impact of the ‘conscientious objection’ rules for healthcare providers. These rules appear to contradict the Australian Medical Association’s Position Statement on Conscientious Objection³ which places an obligation on practitioners to consider “The impact of a delay in treatment, and whether it might constitute a significant impediment.” This protects the human right of patients to health care, and without a similar provision in the legislation, it is possible that practitioners could refuse treatments which are required for the management of a patient’s day-to-day life.

We offer examples of our concerns below:

- Practitioners may object to prescribing necessary medications, such as painkillers, anti-depressants and anti-psychotics, on religious grounds, saying that suffering brings one closer to Jesus.⁴
- Practitioners who refuse to prescribe contraception on religious grounds may also refuse to prescribe such medications where they are necessary for the management of medical conditions, e.g. Endometriosis, Polycystic Ovarian Syndrome.

Women* with disabilities are often socially isolated and economically disadvantaged⁵, which restricts their choices in healthcare providers. The way this Bill expands the right of practitioners to object to certain medical treatments, will effectively reduce the number of practitioners and/or treatment options available to some women*, thus placing the right to religious expression above the right to healthcare. This contradicts the statement in the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019* regarding “the indivisibility and universality of human rights, and their equal status in international law”.

RECOMMENDATION 2: WWDACT recommends that the Bill be amended to meet the medical profession’s existing ethical standards for conscientious objection.

Discrimination as Defined in Section 42

WWDACT is concerned that section 42 “Statements of belief do not constitute discrimination etc.” privileges religious freedoms above the right to non-discrimination enshrined in the *Disability Discrimination Act 1992* and *Sex Discrimination Act 1984*, in conflict with the proposed amendments to those acts outlined in the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*.

Of particular concern is that subsection 2 only prohibits statements of belief which are demeaning or are likely to harass, threaten, seriously intimidate or vilify. This definition does not include inciting ridicule or contempt, which is included in several State Discrimination Acts. Statements disparaging women* with disabilities could potentially be protected under this legislation if it is part of a sincerely held religious belief, regardless of their consequences for mental health, wellbeing or

³ <https://ama.com.au/position-statement/conscientious-objection-2019>

⁴ <https://www.scripturecatholic.com/suffering/>

⁵ Gough, J. Contributing our voices! A summary of feedback from the Have Your Say! Forum with women with disabilities in the ACT. WWDACT (2015) <https://www.wwdact.org.au/wp-content/uploads/2018/04/Contributing-our-voices.pdf>

status in the community. Women* with disabilities are disproportionately subject to verbal abuse, ridicule and more due to the multiple disadvantage of disability and gender⁶. Discriminatory attitudes towards women* with disabilities contributes to the incidence of, and response to, violence and abuse against them⁷.

RECOMMENDATION 3: WWDACT recommends that section 42 is removed from the Bill.

Bills in Contradiction of the Convention on the Rights of Persons with Disabilities (CRPD) and Convention on the Elimination of Discrimination against Women (CEDAW)

Based on the examples above, we believe that this Bill allows discrimination in contradiction of the Convention on the Rights of People with Disabilities, Article 5 *“States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”* As it currently stands, this bill will reduce the legal protection against discrimination that people with disability are entitled to and may place religious rights above other rights.

Similarly, Article 2 of CEDAW calls on States Parties *“to adopt appropriate legislative and other measures ... prohibiting all discrimination against women.”* The right to discriminate using religious belief, particularly under Section 42, contradicts this article.

RECOMMENDATION 4: WWDACT recommends that the Bill be re-drafted to ensure it does not override existing discrimination protections.

RECOMMENDATION 5: WWDACT recommends that the Bill be re-drafted with consideration of all of Australia’s international human rights obligations under the CRPD and CEDAW.

Conclusion

WWDACT believes that the legislation in its current form is likely to privilege religious freedoms above the rights of women* with disabilities and have practical ramifications for their support services and health care. The legislation urgently needs to be amended to ensure that all human rights are held with equal importance throughout its entirety and to provide consistency with existing anti-discrimination legislation.

Sincerely,

C Moore

Chief Executive Officer, Women with Disabilities ACT

⁶An Overview of the Status of Women With Disabilities in Australia, Women with Disabilities Australia. <http://wwda.org.au/about/snapshot/>

⁷ Healey, L. Voices Against Violence Paper Two Current Issues in Understanding and Responding to Violence Against Women with Disabilities. Women with Disabilities Victoria. (2014) <https://www.wdv.org.au/wp-content/uploads/2018/10/Voices-Against-Violence-Paper-Two-Current-Issues-in-Understanding-and-Responding-to-Violence-Against-Women-with-Disabilitites-PDF-1.1MB-2.pdf>