



TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

Advice | Information | Referral | Advocacy

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31 January 2020

Human Rights Unit
Integrity Law Branch
Integrity and Security Division
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

By email to FoRConsultation@ag.gov.au

Dear Madam or Sir,

Submission of the Top End Women's Legal Service – Religious Freedom Bills; Second Exposure Drafts

The Top End Women's Legal Service Inc. (**TEWLS**) welcomes the opportunity to make a submission to the Religious Freedom Bills; Second Exposure Drafts (**the Bills**).

Our submission will be focused on our experience of and expertise in assisting women across the Top End of the Northern Territory (**NT**) in respect of tenancy and safe and secure housing. We note that our client group includes Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women at risk of and/or experiencing domestic and family violence.

In October 2019, the Northern Territory Women's Legal Services (**NTWLS**), a coalition of the three women's legal services in the NT, being TEWLS, the Katherine Women's Legal Service and the Central Australian Women's Legal Service, made submission to the first exposure drafts of the Bills. We expressed our concerns regarding the first exposure drafts of the Bills, particularly with respect to the possible impacts upon women in the NT. For your reference and by way of grounding this submission, we **enclose** a copy of the NTWLS' submission to the first exposure drafts of the Bills.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We provide high quality, responsive, and culturally appropriate free legal advice, information, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area and targeted outreach services include Darwin, Palmerston, the Royal Darwin Hospital, Dawn House Women's Shelter, six Indigenous communities in the Greater Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre. We provide advice and representation services for civil and family law

matters, with the most frequently requested areas of assistance being family law, domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

TEWLS primarily deliver services to women at risk of or experiencing domestic and family violence, where a large number of our clients do not speak English as their main language. An even greater number of our clients seek legal assistance whilst experiencing financial disadvantage.

Our submission

I Not fit for purpose – the Bills place groups at risk, particularly women

In reviewing the Bills, it is TEWLS' submission that the Bills will remove existing discrimination protections to accommodate persons' religious beliefs, particularly putting women's access to healthcare and remote/rural service provision at risk. Notably, should they be passed in their current form, the impacts of the Bills would encompass most areas of public and private life, leaving groups vulnerable when trying to participate in employment, education and accessing / the provision of goods and services.

II Response to the Bills

In reviewing the Bill, we provide response to key components as follows;

A *Statements of belief*

TEWLS reiterates the concerns of the NTWLS that the proposed statements of belief provisions would serve to facilitate an unsavoury irony for anti-discrimination legislation to allow for discrimination.¹ The proposed statements of belief provisions would make lawful statements of religious belief made in good faith that offend, humiliate or intimidate women, or people with a disability, or LGBTIQ+ community members, regardless of current respective state or territory anti-discrimination legislation protections. In our submission, the proposals represent views contrary to that of previous anti-discrimination protections, where the objects of same legislation were to prioritise the impacts of persons experiencing discrimination, as opposed to the views of those perpetrating discrimination.

Further, noting the amendments to the "religious bodies" definition,² with religious charities to be identified as a religious body regardless of their involvement in commercial activities, it is our submission that this clause will put some of the most vulnerable in our community at risk. In the NT, a large portion of social services, including counselling and support work, are provided by religious charities. Should the Bills be passed, these same charities would consequently be able to advise their clients that according to some religious texts, women are to be considered as less than men,³ and that their clients should uphold these views in their day-to-day lives.

B *Health care provisions*

As noted in the NTWLS' submission to the first exposure draft, the proposed health care provisions in the Bills are of critical importance to our client base. In response to the Bills and the changes made prior to the release of the second exposure drafts, TEWLS opposes the

¹ Religious Discrimination Bill 2019, s 42.

² As above n 1, ss 11(5).

³ See generally Equality Australia factsheet, "Religious Discrimination Bill 2019 – In Focus: Women".

inclusion of the new catch-all category of “health service”.⁴ This catch-all will allow persons in the practice of health professions, including medical, midwifery, nursing, pharmacy and psychology, to refuse treatment in religious grounds where they object to treatment such as a contraception, abortion, and fertility treatments. The impact of this catch-all will likely be that health professions operating in rural and remote settings can effectively bar women from accessing critical services, as there will be no alternative. In our experience servicing clients in remote Indigenous communities in the NT, this will be particularly felt in a community context, where there is often only one health clinic in a viable radius, and almost no accessible private or public transport (noting difficulties with maintaining vehicles in rural and remote communities).

TEWLS submits that the health care provisions be removed from the Bills as a matter of urgency, where adviser health impacts are likely to follow should the Bills be passed in their current form. In our submission, access to healthcare should not be compromised to prioritise personal religious views.

C Religious bodies exempt from religious discrimination

TEWLS reiterates the concerns of the NTWLS regarding the Bill’s proposal that religious bodies be exempt from religious discrimination. In the NT context, the impacts of this proposal will be similar to that outlined in Part A of the submission, where an employee of a religious body, such as a support service, could discriminate against a person accessing the same service. In our submission, the Bills undercut current protections against religious discrimination, as opposed to strengthening same protections.

Further, noting the information provided in the NTWLS submission in relation to the make-up of the NT in respect of support services, TEWLS opposes amendments to the Bills that provide that religious bodies are expressly able to give priority to persons that share their religion. In the NT, and in respect of support services, these amendments could plausibly give rise to a situation where a deserving client is unable to access a service, such as a homelessness service, because they do not share the religion of the charitable service provider.

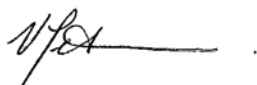
Conclusion

We appreciate the opportunity to make this submission and affirm our support for ongoing policy and legal development for women in the NT.

Should you wish to discuss this submission further, please contact TEWLS by phone on (08) 8982 3000 or email to admin@tewls.org.au

Yours faithfully,

TOP END WOMEN’S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

Enclosed

NTWLS Submission dated 1 October 2019

⁴ As above n 1, s 5.

1 October 2019

Human Rights Unit
Integrity Law Branch
Integrity and Security Division
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

By email to ForConsultation@ag.gov.au

Dear Madam or Sir,

Submission of the Northern Territory Women's Legal Services – Religious Freedom Bills (Cth)

The three Northern Territory Women's Legal Services (**NTWLS**) welcome the opportunity to make a submission to the Commonwealth Attorney-General's Department's package of legislative reforms on religious freedom, being; the Religious Discrimination Bill 2019 (**the Bill**); the Religious Discrimination (Consequential Amendments) Bill 2019; and the Human Rights Legislation Amendment (Freedom of Religion) Bill 2019.

We write this submission to express our concerns about the Bill and accompanying proposed legislation, particularly with respect to the possible impacts upon women in the Northern Territory (**NT**). Our submission will highlight concerns identified within the available timeframe for response, where we note that the Bill and accompanying legislation propose significant reform for comment within a comparatively small period of time.

About NTWLS

The NTWLS comprise the three women's legal services in the NT; the Central Australian Women's Legal Service (**CAWLS**), the Katherine Women's Legal Service (**KWLS**), and the Top End Women's Legal Service (**TEWLS**). Our shared vision is a community within which women enjoy and are entitled to legal and social justice.

The NTWLS are part of a national network of community legal centres specialising in women's legal issues and focused on the advancement of women's rights. Our services provide free and confidential legal information, advice, representation and advocacy to women across the Central Australian, Barkly, Katherine and Top End regions. We primarily deliver services to women experiencing or at risk of experiencing domestic and family violence, with corresponding legal issues including family law, housing and tenancy, consumer law, credit

and debt, sexual assault, discrimination, compensation for victims of crime, and child protection. Almost all women we assist experience financial disadvantage.

Our submission

Our submission will be focused on our experience of and expertise in assisting women across the NT, including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds.

I Statements of belief

NTWLS express concern regarding the proposed statements of belief provisions in that the proposed legislation would enable statements to be made (in good faith and based on religious belief) that offend, humiliate and intimidate our client base. NTWLS submit that the threshold set out in the exceptions (i.e., for malicious statements and those that vilify or incite hatred) are too high. NTWLS has concerns that this could potentially result in bigoted views being ventilated in the public discourse without any protections for groups that are harmed by such statements where such statements do not meet the high threshold set out in the exceptions.

In our submission, the addition of such provisions would also serve to foster an unsavoury irony. The Bill is purported to be anti-discrimination legislation, yet in application, it enables certain groups of people to be discriminative. It is our submission that religious organisations, individuals and religions themselves should not be exempt from discrimination. In legislating that these groups are exempt and by mandating that these proposed laws are to override existing discrimination protections for other groups,¹ an implication is created that religion itself is discriminative. NTWLS advocates for legislation that balances all human rights concerns as opposed to preferencing one group over another.

II Health care provisions

Of particular importance to our client base, NTWLS expresses concern that the proposed sub-sections 8(5) and 8(6) of the Bill may disproportionately detriment women in regional and remote locations, including the NT, due to the limited availability of other health care options. Appointments with doctors, psychologists and medical specialists are notoriously inaccessible in the NT, including in both the major regional centres and in remote communities. In our experience, medical appointments are disproportionately expensive compared to other, more populous locations in Australia, the waiting lists are large for general practitioners and if you are lucky enough that a specialist resides in the NT for the health service that you require, then a waiting list is likely to be no less than three months. This is if you live in Darwin. For women more remotely isolated, in towns such as Katherine and Alice Springs or in Aboriginal communities in the Barkly or Central Australia regions, the state of being able to access health-care options is far more dire.

We are also concerned that if this Bill comes into force, such safeguards that exist for women like the referral clause in the *Termination of Pregnancy Law Reform Act 2017* (NT), being section 11(2)(a) of that legislation, may no longer be lawful. It is disheartening for our services

¹ Religious Discrimination Bill 2019, s 41.

that women who have fought and continue to fight for rights to control their own body continue to be overlooked. Australia should have legislation that promotes reproductive freedom and empowers women with the rights to make their own choices about their body. This Bill does the contrary; it prioritises a health practitioner's personal religious beliefs at the expense of women's medical needs. It prioritises one human right at the cost of another.

Case study – Judy's² story

TEWLS run a monthly civil law clinic in Belyuen, an Aboriginal community 128km by road from Darwin. In Belyuen, there is one health clinic. The next health clinic is in Berry Springs, over an hour drive away. The Belyuen health clinic serves the community of 170,³ as well as the wider Wagait Shire. The Wagait Shire has a population of 510.⁴ The Belyuen health clinic is only open on Wednesdays between 8am and 3pm, when the visiting doctor attends.

A woman of Aboriginal and Torres Strait Islander descent may be hesitant to visit a medical clinic for a number of cultural reasons, especially if the visiting doctor is male. These hesitations are compounded if she is visiting due to female health reasons, such as birth control or family planning.

By way of example, if Belyuen community resident Judy, a mother of four, builds up the courage to book a medical appointment in respect of her birth control and/or family planning services needs, she's already taken a big step. If, to Judy's good fortune, the visiting doctor has a free appointment that Wednesday, and between all her domestic, family and cultural responsibilities, Judy finds the time to attend the appointment at the medical clinic, but then because of the visiting doctor's religious beliefs, the doctor chooses not to assist her, Judy is likely to feel overwhelming discouragement. Further, the legislation proposed by the Bill would allow that doctor to tell Judy that birth control and/or family planning services are blasphemous and if she pursues either of these options, she will go to hell. In such a situation, Judy will feel shamed, helpless and deterred. She may lose trust in doctors and never seek medical treatment for this issue or other issues again, for herself or for other family.

III Religious bodies exempt from religious discrimination

NTWLS express particular concern regarding the proposed section 10 of the Bill in that it will likely have an unprecedented adverse effect on our client base. Many of the women we see experience a number of barriers, including homelessness, alcohol and drug dependence, domestic and family violence and mental illness. In turn, they depend on volunteer community services for assistance and we, in an aim to provide a more holistic model of help, refer them on to such community services. In the NT, these community services are typically services attached to a religious body, where services such as CatholicCare NT and Anglicare receive a substantial proportion of social services monies from governments, both Commonwealth and Territory.

² Not her real name.

³ This approximate population number was sourced from the following website:
<https://profile.id.com.au/rda-northern-territory/about?WebID=120>.

⁴ This approximate population number was sourced from the following website:
<https://profile.id.com.au/rda-northern-territory/about?WebID=240>.

In our submission, section 10 of the Bill will enable religious organisations and service providers to require all employees and volunteers to be of their specific denomination, and in turn, may require that all participants or clients adhere to that denomination's ethos. This section may further limit the availability of these much-needed community support services. As noted above, in the NT the services available to our clients are already disproportionate to the number of women seeking those services. As an example, our clients regularly resort to long grassing due to the unavailability of beds in homeless shelters. Of the homeless shelters available to women in the NT, a number of them are denominational organisations, and consequently would be captured under the proposed section 10 of the Bill. For a homosexual woman needing a place to stay, this Bill may therefore halve the options available to her, limiting her rights to shelter, to dignity, because of her sexual orientation. The Bill, in professing to be anti-discrimination legislation, enables her to be discriminated.

Further to the above, we note that the proposed section 10 of the Bill would counteract the awarding of government monies to such services, where for the majority, funding is given on the basis of providing essential services for all persons, as opposed to only those captured by a religious denomination. The provision will enable statements of religious belief made in good faith that offend, humiliate or intimidate women, or people with a disability, or LGBTIQ+ community members to be lawful, no matter what the respective state or territory legislation provides.

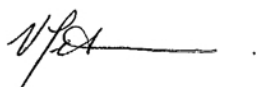
Conclusion

We note that there would be significant benefits in extending the consultation period for the Bill and corresponding legislation, where comment could be sought from and information given to the community on the proposed, wide-reaching, and arguably complex reforms.

We appreciate the opportunity to make this submission and to support ongoing policy and legal development for women in the NT. Should you wish to discuss this submission further, please contact the Top End Women's Legal Service by phone on (08) 8982 3000 or email to admin@tewls.org.au.

Yours faithfully,

NORTHERN TERRITORY WOMEN'S LEGAL SERVICES



Vanessa Lethlean
Managing Solicitor, TEWLS
On behalf of the NTWLS