

By email: FoRConsultation@ag.gov.au

31 January 2020

Submission to the Attorney-General on the Second Exposure Draft of the Religious Freedom Bills

1. JobWatch Inc (**JobWatch**) refers to the submission on the first draft of the religious freedom bills, dated 2 October 2019, which is annexed to this submission (**Annexure A**).
2. We note that the period for making submissions on the second exposure drafts of the religious freedom bills (being between 10 December 2019 and 31 January 2020) coincides with the Christmas and New Year holiday period when many organisations close down and many people are on leave. This is unfortunate as it will undoubtedly limit the quantity and quality of submissions on these important issues for Australians. Genuine and meaningful consultation on these bills has, in our respectful view, been compromised.
3. We acknowledge that several changes have been made since the first exposure draft. However, we remain concerned that the current draft bills do not achieve the necessary balance between protection from discrimination on the ground of religion and possible harm that may be caused to people in the name of one's religious beliefs or opinions. The balance is still tipped too far in favour of protecting the "rights" of people (including religious bodies) to express and/or act in accordance with their religious beliefs or activities.
4. JobWatch endorses the submission of **Redfern Legal Centre** (dated 31 January 2020) to the extent that it is relevant to employment.
5. In the employment context, we are strongly opposed to the notion that religious bodies may give preference to people who share the bodies' same religious beliefs.
6. Moreover, as previously noted, we are concerned about the way in which "statements of belief" are protected and do not constitute unlawful discrimination. Our concerns in this regard have not been addressed in the second exposure draft of the bills. We urge the Government to reconsider and remove Part 4 of the Religious Discrimination Bill.

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.

Employment Rights Information for Workers



Please do not hesitate to contact Gabrielle Marchetti by telephone on 03 9662 9458 or by email at gabriellem@jobwatch.org.au for further comment.

Yours faithfully,

A handwritten signature in blue ink that reads "G Marchetti".

Gabrielle Marchetti
Principal Lawyer
JobWatch Inc

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Annexure A

2 October 2019

Submission to the Attorney-General on the Religious Freedom Bills

About JobWatch

1. JobWatch Inc (**JobWatch**) is an independent, not-for-profit, employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It provides assistance to Victorian, Queensland and Tasmanian workers regarding their rights at work. JobWatch is a member of the Federation of Community Legal Centres (Victoria) and is funded by Victoria Legal Aid, the Office of the Fair Work Ombudsman and the Victorian and Federal Governments.
2. JobWatch was established in 1980 and is the only service of its type in Victoria. It is funded to deliver four key services, which are as follows:
 - a) A free and confidential telephone information service which provides information and referrals to Victorian, Tasmanian and Queensland workers;
 - b) Community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers and community groups;
 - c) A casework legal practice which provides advice and representation to vulnerable and disadvantaged workers; and
 - d) Law reform work, with a view to promoting workplace justice and equity for all workers.
3. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone service. To date we have collected more than 200,000 caller records with each record usually canvassing multiple workplace problems, including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time.
4. In the 2018-19 financial year, JobWatch's telephone service responded to over 16,000 calls and assisted over 12,000 callers. The majority of our callers have nowhere else to turn to for assistance as they are not union members and they cannot afford private lawyers.

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The proposed Religious Freedom Bills

5. Given the nature of JobWatch's work, the focus our submission is on how the Bills might impact on workers, particularly the most vulnerable and disadvantaged.
6. We agree with Redfern Legal Centre's observations, made on page 3 of its submission, in so far as they relate to employment; namely, that the reforms:
 - *create a broad exception for religious bodies undertaking conduct that is in accordance with their religious beliefs, including in employment..., even if that conduct would otherwise be discriminatory. The effect is to privilege a 'right' of religious freedom for religious bodies over the rights of individuals to be free from religious and other forms of discrimination;*
 - *protect individuals who make 'statements of belief' in accordance with their religious views, even if those statements offend, humiliate, intimidate, insult or ridicule others, and limit the ability of individuals at the receiving end of those statements from successfully making anti-discrimination complaints or adverse action claims; [and]*
 - *make it more difficult for employers, particularly large employers, to impose codes of conduct that prevent employees from making offensive, humiliating, intimidating, insulting or ridiculing statements of belief both outside work and at work. At the same time the reforms make it easier for employers to make statements of belief that offend, humiliate, intimidate, insult or ridicule their employees.*
7. We further agree with Redfern Legal Centre's recommendations that:
 - The reforms as currently drafted should not be introduced to Parliament in October 2019;
 - The reforms as currently drafted should not be passed; and
 - The public consultation period on the reforms should be extended by at least 3 months to allow meaningful considerations of the reforms and consultation with those in the community who are likely to be most affected.
8. In addition to the above, JobWatch further notes the following:


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- a. The *Religious Discrimination Bill 2019* (**the Bill**) should be renamed so as not be misleading. The Bill allows for insulting and offensive behaviours in the name of religion. It essentially tips the balance in favour of freedom of speech over freedom from discrimination.
- b. In the area of employment, there should be no blanket exemptions that authorize discrimination on the basis of religion but, rather, there should be one single test that allows for discrimination only where an employee or a prospective employee cannot perform the inherent requirements of a particular job.
- c. There are serious flaws with the way in which “statements of belief” are protected. We are very concerned that statements which would currently be discriminatory under our existing laws (including sex discrimination laws, race discrimination laws, the *Fair Work Act 2009* etc) would no longer be unlawful if the Bill were passed in its current form. Accordingly, we call for the protections that have been created for “statements of belief” to be removed.
- d. At the very least, we recommend that “employer conduct rules”, which are designed to restrict or prevent employees from making “statements of belief” outside of work hours, should not be deemed to be unreasonable unless employers can prove that compliance with the rule is necessary to avoid “unjustifiable financial hardship” to the employer.
- e. Section 9 of the Bill provides that where conduct is engaged in for two or more reasons and one of the reasons is the person’s religious belief or activity, the conduct will be taken to be engaged in because of the religious belief or activity, regardless of whether or not that is in fact the dominant or a substantial reason. This is unsatisfactory and should be reconsidered.

If you have any questions regarding any aspect of this submission, or if you would like some practical examples of how JobWatch’s callers and clients might be adversely impacted by the Religious Freedom Bills, please contact Gabrielle Marchetti by telephone on 03 9662 9458 or by email at gabriellem@jobwatch.org.au.

Yours faithfully,



Gabrielle Marchetti
Principal Lawyer
JobWatch Inc

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With the invaluable insights of JobWatch's 2019 interns

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