

# *Religious Discrimination Bill 2019 Exposure Draft*

## **AFAO Submission**

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## Australian Federation of AIDS Organisations

The Australian Federation of AIDS Organisations (AFAO) is the national federation for the HIV community response in Australia. AFAO works to end HIV transmission and reduce its impact on communities in Australia, Asia and the Pacific. AFAO's members are the AIDS Councils in each state and territory; the National Association of People with HIV Australia (NAPWHA); the Australian Injecting & Illicit Drug Users League (AIVL); Anwernekenhe National HIV Alliance (ANA); and Scarlet Alliance, Australian Sex Workers Association. AFAO's affiliate member organisations – spanning community, research and clinical workforce – share AFAO's values and support the work we do.

The Australian Federation of AIDS Organisations (AFAO) welcomes the opportunity to provide feedback on the *Religious Discrimination Bill 2019 Exposure Draft (the Bill)*.

## Executive Summary

AFAO is deeply concerned that the provisions in the Bill will prioritise the religious beliefs of healthcare workers over the healthcare needs of marginalised individuals and communities who are living with or at increased risk of HIV and who require sensitive and specialist health services. Our concerns are that:

1. the Bill privileges religious expression to the exclusion of other beliefs.
2. this privilege creates a tension between Australia's pursuit of public health objectives to reduce HIV transmission, through significant federal government investment in new technologies such as PrEP and effective HIV treatment, and the refusal of health services based on religious belief.
3. in practice, the Bill will place Australia's domestic and international obligations, to leave *no one behind* in our endeavour to end HIV transmission, in jeopardy.

AFAO endorses Equality Australia's legal analysis and, in particular, their recommendation to delete sections 8 (3) – (6) and 41 of the Bill and to substantially amend section 10 of the Bill.

## The Australian Federation of AIDS Organisations

AFAO is the national federation for the HIV community response. We are recognised nationally and globally for the leadership and expertise we provide. Through advocacy, policy and health promotion, we champion awareness, understanding and proactivity around HIV prevention, education, support and research. AFAO provides a voice for communities affected by HIV and leads the national conversation on HIV.

In Australia, communities most affected by HIV include gay and bisexual men, transgender and gender diverse people, people with HIV, Aboriginal and Torres Strait Islander people, sex workers, people who use drugs, people from or who travel to high prevalence countries, and people in custodial settings. Our membership includes organisations who represent these communities in each state and territory in Australia, and affiliate member organisations – spanning community, research, public health and clinical workforce – who share AFAO's values and support the work we do.

We advocate for a strong and bold vision to prevent HIV and its impacts, and work with governments, clinicians, researchers and the community to achieve that vision.

## HIV Policy Context

Australia is a signatory nation of the United Nations Political Declaration on HIV/AIDS. This declaration commits nations to the goal of ending the HIV epidemic by 2030.<sup>1</sup> The Australian Government has acted upon the declaration through a bold new *National HIV Strategy 2018-2022* to virtually eliminate HIV in Australia by 2022.<sup>2</sup> In advance of the Federal election, the federal Liberal National Coalition committed to meeting this ambitious goal by having 95% of

<sup>1</sup> UNIADS. Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 [Internet]. New York City: United Nations, 2016 [cited 30 Sept 2019]. Report No.: A/RES/70/266 Available from: <https://www.unaids.org/en/resources/documents/2016/2016-political-declaration-HIV-AIDS>

<sup>2</sup> Department of Health. Eighth National HIV Strategy 2018-2022 [Internet]. Canberra: Department of Health, 2018 [cited 30 Sept 2019]; Available from: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1//File/HIV-Eight-Nat-Strategy-2018-22.pdf>

people living with HIV diagnosed, 95% of people diagnosed with HIV accessing treatment and 95% of people on HIV treatment having an undetectable viral load.<sup>3</sup>

The *National HIV Strategy* codifies Australia's international obligations to end the global HIV epidemic by setting the framework and direction for Australia's domestic HIV response. The Strategy sets ambitious targets to reduce HIV transmission and increase the percentage of people with HIV on antiretroviral treatment.<sup>3</sup> The Strategy prioritises eight populations who together carry the greatest burden of HIV or who experience heightened vulnerability to transmission. These populations include:

- people with HIV
- gay and bisexual men
- trans and gender diverse people
- people who inject drugs
- sex workers
- Aboriginal and Torres Strait Islander people
- culturally and linguistically diverse people from high HIV prevalence countries.

The Strategy has multi-partisan support and is endorsed by the Federal and all state and territory Ministers for Health.

The opportunities and challenges for Australia's HIV response are articulated in the guiding principles in the Strategy. These highlight the need for:

- equitable access to healthcare services and medicines
- the delivery of culturally appropriate and high-quality services across Australia
- effective partnerships characterised by consultation, cooperative effort, empowerment, respectful dialogues and appropriate resourcing.

### ***HIV in Australia***

Australia's HIV response is internationally recognised for its success in sustaining a national HIV incidence that is lower than comparable high-income countries.<sup>4</sup> Central to this success is the partnership between the Australian Government, state and territory governments, communities, researchers and clinicians.

In Australia, HIV is largely transmitted through sexual contact. The majority of people living with HIV in Australia are gay and bisexual men, reflecting the success of efforts by this community in stemming the broader flow of the epidemic. While rates of HIV among this population are declining, subpopulations of gay men, such as newly arrived Asian born and bisexual men, are emergent communities where HIV notifications are rising.<sup>5</sup>

Low rates of HIV among some priority populations – sex workers and people who inject drugs – have been achieved through community-driven policies and initiatives that create and sustain safe, inclusive and culturally appropriate clinical and community healthcare settings.

<sup>3</sup> Liberal Victoria. Liberal National Commit to 95-95-95 UNAIDS Targets 5 Years Early [Internet]. Melbourne: Liberal Victoria, 2018 [cited 30 Sept 2019]; Available from: <https://vic.liberal.org.au/News/2018-10-24/liberal-nationals-commit-to-95-95-95-un aids-target-5-years-early>

<sup>4</sup> The Kirby Institute. HIV, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Reports 2017 [Internet]. Sydney: University of New South Wales, 2017 [cited 30 Sept 2019]; Available from: [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SERP\\_Annual-Surveillance-Report-2017\\_compressed.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SERP_Annual-Surveillance-Report-2017_compressed.pdf)

<sup>5</sup> The Kirby Institute. HIV, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Reports 2018 [Internet]. Sydney: University of New South Wales, 2018 [cited 30 Sept 2019]; Available from: [https://kirby.unsw.edu.au/sites/default/files/kirby/report/KI\\_Annual-Surveillance-Report-2018.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/KI_Annual-Surveillance-Report-2018.pdf).

Rates of HIV transmission among Aboriginal and Torres Strait Islander people, people newly arrived in Australia and trans and gender diverse people are stable or increasing. Considerable efforts are being made to ensure these communities, along with gay and bisexual men, have access to health services across Australia that are culturally sensitive, non-judgemental and free from discrimination.

### ***The critical role of sensitive and inclusive healthcare in Australia's HIV response***

As noted above, the guiding principles of the *National HIV Strategy* highlight access to safe, inclusive and sensitive healthcare as essential to Australia's response to HIV. Significant investment from federal, state and territory governments has enabled world's best practice healthcare across the prevention, testing and treatment continuum. These efforts ensure priority populations can access services for routine screening, Pharmaceutical Benefits Scheme-subsidised prevention tools such as Pre-Exposure Prophylaxis (PrEP)<sup>6</sup> and HIV treatment<sup>7</sup> and Post Exposure Prophylaxis (PEP)<sup>8</sup>, which is funded by state and territory governments.

Non-inclusive and insensitive healthcare is a barrier to service access. Experiences of insensitive healthcare reinforce internalised shame and homophobia, stigma and discrimination. These experiences are associated with reduced engagement with healthcare, or a reluctance in patients to disclose characteristics such as sexual orientation, gender and sexual practices in a medical consultation for fear of being judged against the expectations of a healthcare worker's religious beliefs.<sup>9 10 11</sup> In the context of HIV this means less frequent testing among priority populations, increased undiagnosed HIV and people eligible for PrEP not commencing or continuing PrEP.

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AFAO is deeply concerned that the provisions in the Bill will prioritise the religious beliefs of healthcare workers over the healthcare needs of marginalised individuals and communities, many of whom are at increased risk of HIV and require sensitive and specialist health services. Healthcare workers have played a leading role in supporting efforts to address HIV. Biomedical prevention technologies such as treatment as prevention,<sup>12</sup> PEP and PrEP have magnified the critical role of healthcare workers in supporting the use of these tools among priority populations.

<sup>6</sup> Pre-Exposure Prophylaxis (PrEP) is the use of HIV medication by an HIV negative person at risk of HIV. For more information see <https://www.afao.org.au/about-hiv/hiv-prevention/prep/>

<sup>7</sup> The use of HIV treatment by a person with HIV has the dual benefit of ensuring an individual remains healthy and well and also preventing the onward transmission of HIV. For more information see <https://www.afao.org.au/about-hiv/hiv-treatment/>

<sup>8</sup> Post-Exposure Prophylaxis (PEP) is a four week course of HIV medication commenced within seventy-two hours of an exposure to an episode of HIV risk. For more information see <https://www.afao.org.au/about-hiv/hiv-prevention/pep/>

<sup>9</sup> Leonard W, et al. Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians. Monograph Series Number 86 [Internet]. Melbourne: The Australian Research Centre in Sex, Health & Society, La Trobe University, 2012 [cited 30 Sept 2019]; Available from: [https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0020/180425/PrivateLives2Report.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0020/180425/PrivateLives2Report.pdf)

<sup>10</sup> Mooney-Somers J, Deacon RM, Scott P, Price K & Parkhill N. Women in contact with the Sydney LGBTQ communities: Report of the SWASH Lesbian, Bisexual and Queer Women's Health Survey 2014, 2016 [Internet]. Sydney: Sydney Health Ethics, University of Sydney, 2018 [cited 30 Sept 2019]; Available from: [https://www.acon.org.au/wp-content/uploads/2019/03/Sydney-SWASH-Report-2014-16-18\\_FA.pdf](https://www.acon.org.au/wp-content/uploads/2019/03/Sydney-SWASH-Report-2014-16-18_FA.pdf).

<sup>11</sup> Smith E, et al. From Blues to Rainbows: Mental health and wellbeing of gender diverse and transgender young people in Australia [Internet]. Melbourne: The Australian Research Centre, 2014 [cited 30 Sept 2019]; Available from:

[https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0007/598804/from-blues-to-rainbows-report-sep2014.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0007/598804/from-blues-to-rainbows-report-sep2014.pdf)

<sup>12</sup> Treatment as prevention is the use of HIV medication by an HIV positive person to prevent onward transmission of HIV. For more information see <https://www.afao.org.au/about-hiv/hiv-prevention/treatment-as-prevention/>

## **Conscientious Objection**

Sections 8(5) and (6) of the Bill enable healthcare professionals to refuse health services on the grounds of conscientious objection. These provisions allow doctors, nurses, pharmacists, psychologists and Aboriginal and Torres Straight health practitioners to refuse a range of services if the healthcare worker deems an attribute of an individual to be inconsistent with their religious beliefs.

AFAO is deeply concerned by the implications of sections 8(5) and (6). Under these proposed provisions, healthcare workers will be able to refuse consultations with gay or bisexual men on the grounds that sex between men, and same sex relationships are at odds with their religious views. These sections are at odds with the Strategy's goals to reduce HIV transmission and improve the quality of life for people with HIV.

The provisions as drafted mean a gay man at risk of HIV could be denied immediate access to prevention technologies, such as PrEP or PEP, because the doctor's religious beliefs do not recognise sexual relations between men and sex outside of marriage. A refusal to, or delay in, assessing this person needlessly exposes them to the anxiety associated with an HIV diagnosis, and the healthcare system to the lifetime treatment and medical costs associated with managing a person diagnosed with HIV.

Similarly, a trans, gender diverse or non-binary person may be denied access to healthcare on the grounds that the provider's religion does not recognise people who do not identify as male or female. The provision permits the denial of access to hormone therapy and other healthcare services, such as HIV and STI screening, leaving the individual at risk of poor health outcomes.

These examples highlight our deep concern with the Bill and the implications of the proposed reforms on Australia's public health investment in scaling up in PrEP coverage and treatment for people with HIV.

Studies show that lesbian, gay, bisexual and trans (LGBT) people delay seeking treatment out of a fear of discrimination or reduced quality of care and are more likely to be under-screened for a number of common health conditions.<sup>13</sup> Recent Australian research shows that 20.2% of gay or bisexual identifying men have not told their doctor about their sexuality, and 22.2% of these men who have never been tested for HIV are very concerned about the prospects of discussing their sex life with their doctor.<sup>14</sup> Central to achieving the goals of the Strategy is healthcare access that is inclusive and sensitive. When individuals feel safe to share personal information with their health care worker, the healthcare worker in turn can make informed decisions.

AFAO is concerned by the specific impacts of the provision:

- the direct effect of denial of healthcare on individuals through their experience of rejection
- the direct effect of denial of healthcare in inhibiting the person from accessing the care they sought
- the erasure of the assumption individuals rightly hold that they may expect healthcare to be provided in respectful and non-judgemental ways
- the chilling effect created when individuals must contemplate the potential for healthcare denial or judgement from a healthcare provider based on personal characteristics or their practices
- the diversionary effect of people orienting to healthcare providers who they believe will be non-judgemental when Australians should be entitled to primary and other health care in all settings.

<sup>13</sup> Leonard W, et al. Private Lives 2 [cited 30 Sept 2019]

<sup>14</sup> Hammoud M A, et al. Following Lives Undergoing Change (Flux) Study: Implementation and Baseline Prevalence of Drug Use in an Online Cohort Study of Gay and Bisexual Men in Australia. International Journal of Drug Policy 2017;41:41-50.

Additionally, the Bill also exposes healthcare providers to the risk of a discrimination claim on the grounds of religious expression. The effect of this provision will be to disincentivise healthcare clinics from promoting their practises as safe and inclusive spaces for lesbian, gay, bisexual, transgender and intersex (LGBTI) people, people living with HIV and others who experience marginalisation. Such action may be adopted to avoid a discrimination claim from a healthcare worker who refused to provide a service to an LGBTI person on the grounds their religion does not recognise LGBTI people. This outcome leaves people exposed to the increased costs of having to travel longer distances to access health services to obtain PrEP or PEP. In the case of PEP, time is of the essence as individuals exposed to HIV risk must commence medication within seventy-two hours of a risk episode. Delays in accessing services can lead to someone needlessly acquiring HIV. Similarly, with PrEP, an HIV negative person who is at risk of HIV needs to commence PrEP medication immediately. If a person eligible for PrEP is denied access to a health service, or referred to another practitioner or service provider, on the grounds of religious expression, the delay or denial of service prolongs the waiting period to commence PrEP and may discourage an individual from commencing PrEP. This period of time unnecessarily leaves a person at ongoing risk of HIV acquisition.

AFAO is also concerned that the conscientious objection provisions in combination with section 10 of the Bill will embolden religious organisations to assert their religious beliefs to the detriment of LGBTI people and people with HIV.

These outcomes contradict the Strategy, which highlights “equitable access to healthcare services, culturally appropriate services and respectful dialogue” as guiding principles.

### ***Overriding Discrimination Protections for ‘Statements of Belief’***

Section 41 of the Bill privileges ‘statements of belief’ over federal, state and territory discrimination protections. This provision empowers people to make statements that are only reasonably ‘in accordance’ with their religion.

The provision exposes marginalised people and communities at risk of HIV to unmediated public interrogation and commentary from statements of religious belief made by people. Influential leaders will have a licence to use the public domain as a platform to profile people with personal characteristics and life experiences they consider to be not recognised or disapproved of by their religion.

AFAO is very concerned that section 41 will be used by religious leaders, politicians and other high-profile individuals to perpetuate inaccurate and dangerous stereotypes about HIV and LGBTI people and communities for the purposes of galvanising community support behind a specific political or religious agenda as seen during the postal vote on marriage equality in 2017. In practice, this provision will counteract efforts to make public spaces, workplaces and other settings safe and inclusive for LGBTI people.

### ***HIV***

Throughout the HIV epidemic and, in particular, during the AIDS crisis in the 1980s and 1990s, HIV has been framed by some as a “punishment for sin and as a divine legitimation for proscriptions against homosexuality.”<sup>15</sup> Australia avoided the worst impacts of such framings because of the strength of the partnership between affected communities, government and clinical and social research.

Our concern is that section 41 creates an environment where these comments could be casually ventilated. The implication of this situation undermines federal state and territory government investment in health services to support the health and wellbeing of people with and affected by HIV. Such comments cast people with HIV as careless

<sup>15</sup> Kowalewski M & Kowalewski M. Religious constructions of the AIDS crisis. *Sociological Analysis* 1990;51(1):91-96

and dangerous when, in reality, people with HIV are pro-active in managing their health and the risk of onward transmission.<sup>16</sup> The impact of unsubstantiated and harmful comments made in the public domain reinforces HIV stigma and complicates efforts to make clinical settings more inclusive and sensitive for treatment initiation and adherence for people with HIV. Unsubstantiated and harmful comments about people living with HIV persist to this day in both the mainstream media and social media. Recent research has shown that the media is a common source of stigma, with 70% of participants in a national survey of people with HIV in 2016 reporting that they had experienced stigma or discrimination from the media within the previous 12 months (including nearly 40% who indicated this 'often' or 'always' occurred).<sup>17</sup> Extensive evidence indicates that stigma (both experienced and anticipated) acts as a barrier to seeking HIV-related healthcare.<sup>18,19,20</sup>

AFAO is concerned that the provision enables an individual to defend an inaccurate expression about people with HIV on the grounds the comment is consistent with their religious belief. There is compelling evidence to show that HIV stigma significantly affects the mental health of people with HIV.<sup>21</sup> In practice, section 41 is at odds with the Strategy target of improving the quality of life for people with HIV.

Despite recent successes in reducing HIV notifications among Australian born gay and bisexual men in inner urban areas like Melbourne and Sydney, considerable investment is needed in outer metropolitan areas in Australia's capital cities and in regional areas to develop clinical workforce capacity to identify HIV risk in patients, and among communities to access local services for regular HIV and sexual transmitted infections (STIs).

### **LGBTI people**

During the 2017 national postal survey on marriage equality, the LGBTI community was exposed to language and assertions that questioned their existence, their ability to raise children, and their equal place in society.<sup>22</sup> While there was some respectful debate during the campaign, personal religious views were used to as a pretext to overtly discriminate against members of the LGBTI community. In 2018, a national survey of men who have sex with men found that over 80% of participants had experienced stigma or discrimination in the previous twelve months, and over half (55%) reported stigma in the media.<sup>23</sup> Studies conducted immediately after the postal survey found exposure to

<sup>16</sup> Of 27, 545 people living with HIV in Australia in 2017, an estimated 89% were diagnosed by the end of 2017, 95% were accessing care and of those accessing care 87% were receiving HIV treatment, and of those on treatment 95% had an undetectable viral load. Kirby Institute. Annual surveillance report 2018 [cited 30 Sept 2019]

<sup>17</sup> Unpublished results from the Stigma Indicators Monitoring Project, Centre for Social Research in Health, UNSW Sydney, <https://www.arts.unsw.edu.au/centre-social-research-health/our-projects/stigma-indicators-monitoring-project>

<sup>18</sup> C Logie & T Gadalla. Meta-analysis of health and demographic correlates of stigma towards people living with HIV. *AIDS Care* 2009;21(6):742-753;

<sup>19</sup> S Gari, et al. Access to HIV/AIDS care: A systematic review of socio-cultural determinants in low and high income countries. *BMC Health Services Research* 2013;13(1):198

<sup>20</sup> I Katz et al. Impact of HIV-related stigma on treatment adherence: Systematic review and meta-synthesis. *J Int AIDS Society* 2013;16(3):18640 S2.

<sup>21</sup> 38% of participants had been treated differently by a healthcare worker on account of their HIV positive. Power J, et al. HIV Futures 9: Quality of Life Among People Living with HIV in Australia [Internet]. Monograph series number 116. Melbourne: The Australian Research Centre in Sex, Health and Society, La Trobe University, 2019 [cited 30 Sept 2019]; Available from:

[https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0009/1058625/HIV-Futures-9-Exec-Summary.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0009/1058625/HIV-Futures-9-Exec-Summary.pdf)

<sup>22</sup> <https://www.smh.com.au/politics/federal/qa-debate-flares-over-claims-samesex-marriage-will-lead-to-new-stolen-generation-20160301-gn6yg8.html>

<sup>23</sup> Centre for Social Research in Health. Stigma Indicators Monitoring Project: Men who have sex with men [Internet]. Sydney, Centre for Social Research in Health, UNSW, 2018 [cited 30 Sept 2019]; Available from:

<https://www.arts.unsw.edu.au/sites/default/files/documents/Stigma%20Indicators%20Summary%20HIV%20%2B%20MSM%202019.pdf>

the survey among LGBTI people was associated with increased levels of depression, anxiety and stress.<sup>24</sup> A substantial body of research has demonstrated that concerns about experiencing stigma from health workers is associated with men who have sex with men avoiding HIV testing and health care.<sup>25,26,27</sup>

Section 41 in the Bill allows people to express religious beliefs in the public domain based on their personal interpretation without taking responsibility for the implications of these comments on the health and wellbeing of people with HIV and LGBTI people.

<sup>24</sup> Calligeros, B. Q&A debate flares over claims same-sex marriage will lead to new 'stolen generation' [Internet]. Sydney Morning Herald 2016 Mar 1 [cited 30 Sept 2019]; Available from: <https://theconversation.com/new-research-reveals-how-the-marriage-equality-debate-damaged-lgbt-australians-mental-health-110277>

<sup>25</sup> E Arnold et al. Triple cursed': Racism, homophobia and HIV-related stigma are barriers to regular HIV testing, treatment adherence and disclosure among young Black gay men. *Culture, Health & Sexuality* 2014;16(6):710-722

<sup>26</sup> K Gamarel et al. Anticipated HIV stigma and delays in regular HIV testing behaviors among sexually-active young gay, bisexual, and other men who have sex with men and transgender women. *AIDS and Behavior* 2018;22(2):522-530

<sup>27</sup> D Price et al. Psychological threat avoidance as a barrier to HIV testing in gay/bisexual men. *J Behavioral Medicine* 2019;42(3):534-544.