



### Additional questions – Women's Legal Service

1. Following the questions asked by members of the committee during the public hearings, is there any additional information you would like to share or further clarification you would like to provide?
2. Given the impact of section 54 of the NSW Anti-Discrimination Act 1977 do you acknowledge that, if enacted, the proposed Bill cannot render unlawful compliance with any other NSW Act, regulation or by-law, including the 2019 Abortion Act, existing health legislation, the COVID health orders, domestic violence laws, sexual abuse laws, NSW Crimes Act, the Local Government Act, business regulations, consumer protection, education statutes and industrial relations laws
3. Do you agree with submissions from the Australian National Imams Council, the Anglican Archbishop of Sydney and the Catholic Archdiocese of Sydney that the Bill generally fits the structure and intent of the remainder of the NSW Anti-Discrimination Act? If not, what is the unacceptable point of difference you have identified?
4. Given that the Bill – unlike other parts of the Act for HIV/AIDS, Homosexual, Transgender and Racial Vilification – offers no protections for Religious Vilification, do you acknowledge that these other attributes are afforded stronger protections than those proposed in the Bill? If not, why?
5. Given that s22Z of the Bill is similar to the provisions for Sexual Harassment in the existing Act and non-government schools and charities are already exempted (re s.22M) and the existing Disability provisions cover 'Future Belief', how can your argument of 'special treatment' or a 'hierarchy of protections' for religion be sustained?
6. If not by the Siracusa Principles how can any clash of gay and religious rights be reconciled in an Act such as this?
7. Why has your submission/evidence to the Committee prioritised a concern about the beliefs and statements of born-again Christians that are integral to the spiritual faith and existence of these citizens? If all human rights are equal, as they should be, isn't it time for the gay-Left community to learn to tolerate the different beliefs, values and moral code of law-abiding born-again Christians and indeed where any illegality might exist, vice versa?
8. Would your organisation refuse employment to someone who:
  - a. opposes same-sex marriage and supports traditional marriage?
  - b. believes in the literal teachings of the Bible?
9. Noting the serious potential physical injuries facing women competing against trans women (biological men) in women's sports, does Women's Legal Service NSW support the



PARLIAMENT OF NEW SOUTH WALES

JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

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participation of trans women (biological men) in women's sports, both one-on-one and team?

16 December 2020

Joint Select Committee on the Anti-Discrimination Amendment  
(Religious Freedoms and Equality) Bill 2020  
NSW Parliament  
6 Macquarie Street  
Sydney NSW 2000

By email: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Joint Select Committee,

***Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020***

1. Women's Legal Service NSW (**WLS NSW**) thanks the Joint Select Committee for the opportunity to respond to additional questions provided to us on 9 December 2020.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.

**Question 1 – Additional information**

3. WLS NSW does not wish to provide any additional information, other than our response to the additional questions below.

**Question 2 – Section 54**

4. Section 54 of the *Anti-Discrimination Act 1977* (NSW) (**ADA**) does not require a health practitioner to comply with section 9(3) of the *Abortion Law Reform Act 2019* (NSW). It is defence to discriminatory conduct where the alleged discriminator's conduct was necessary to comply with a requirement of the Act, regulation, by-law or order.
5. If disciplinary action is taken against a health practitioner for failing to comply with section 9(3), the disciplinary body cannot rely on section 54, as it is a defence available to the *discriminator*. The broad definition of 'religious activities' may shield the health practitioner from disciplinary action if their actions are based on religious beliefs.



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### Question 3 – The Bill fits the structure of the Act

6. We do not agree that the Bill fits the structure and intent of the remainder of the ADA. The Bill privileges and prioritises the right to religious belief and activity over other protected attributes in the ADA.
7. The definition of 'religious activities' deems lawful activity that is otherwise unlawful, unless the penalty is imprisonment.<sup>1</sup> No other laws within the Act allow people with protected attributes to commit otherwise unlawful behaviour.
8. The definition of 'protected activity' does not appear in the Act in relation to any other protected attributes.<sup>2</sup> It privileges and prioritises the right of religious belief and activity over other rights, for example, the right to feel safe at work.
9. For example, a worker who identifies as Christian could send a worker who identifies as a lesbian, an email outside of work hours saying, "You're going to hell". This could have a detrimental impact on the lesbian worker's productivity at work and her psychological wellbeing. Her employer may not be able to fulfil their obligations under section 19 of the *Work Health and Safety Act 2011* to ensure that their workers are not exposed to health and safety risks arising from work because the Christian worker's behaviour was a 'protected activity'.
10. The Bill gives religious organisations additional rights that are not afforded to any other organisations in the Act:
  - 10.1 legal standing to make religious discrimination complaints;<sup>3</sup>
  - 10.2 the right to challenge NSW government programs, policies, contracts and decisions;<sup>4</sup>
  - 10.3 in some circumstances, the right to refuse their services.<sup>5</sup>

### Question 4 – Vilification

11. We do not agree that the protected attributes of HIV/AIDS, homosexuality, transgender status and race are afforded stronger protections than those proposed in the Bill.
12. We believe the Bill privileges and prioritises the right to religious belief and activity over other protected attributes in the Bill, as we outlined in response to Question 3.
13. We support the introduction of protections prohibiting a person from inciting hatred against others on the basis of their religious beliefs.

### Question 5 – Section 22Z

14. We believe the Bill privileges and prioritises the right to religious belief and activity over other protected attributes in the Bill, as we outlined in response to Question 3.

<sup>1</sup> Section 22K, *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (NSW).

<sup>2</sup> Section 22N(4)(a)(i), *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (NSW).

<sup>3</sup> Section 22Z(2), *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (NSW).

<sup>4</sup> Section 22Z(1) and (2), *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (NSW).

<sup>5</sup> Sections 22K and 22M, *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (NSW).

**Question 6 – Resolving a conflict between rights**

15. The ADA is a very old statute and does not reflect more recent reforms to anti-discrimination laws in Australia and internationally. We therefore recommend a comprehensive review of the ADA to consider the best way to resolve any conflict between competing rights. We submit that any review of the ADA should consider:

- 15.1 introducing protections against discrimination on the basis of your religion; and
- 15.2 removing or narrowing current exceptions for religious organisations.

**Question 7 – The rights of born-again Christians**

16. Our submission did not make reference to born-again Christians. We are primarily concerned that the Bill may limit women's access to reproductive healthcare, as we explain in response to Question 2 above.

**Question 8 – Refusing employment**

- 17. WLS NSW would not refuse employment to someone who opposes same-sex marriage and/or believes in the literal teachings of the Bible.
- 18. WLS NSW aims to achieve a harmonious workplace and recognises the right of all people to be treated with dignity and respect.
- 19. WLS NSW recognises the right of all people to work in an environment that is free from unlawful discrimination, harassment, bullying or victimisation.

**Question 9 – Trans women in sport**

- 20. We refer to the evidence we gave in the hearing on 5 November 2020, p 9. WLS NSW does not practice in the area of sport law and does not have the expertise to form a position on this issue.
- 21. We recommend you approach organisations with the relevant expertise in this area, such as the NSW Gender Centre, for their opinion on this matter.
- 22. If you would like to discuss any aspect of this submission, please contact Kellie McDonald, Senior Solicitor or Liz Snell, Law Reform and Policy Coordinator on [REDACTED]

Yours faithfully,

**Women's Legal Service NSW**

[REDACTED]  
Philippa Davis  
Principal Solicitor