



16 December 2020

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020  
C/o Ms Elaine Schofield  
Director Committees  
Parliament of New South Wales

By email: [religiousfreedomsbill@parliament.nsw.gov.au](mailto:religiousfreedomsbill@parliament.nsw.gov.au)

Dear Committee Members,

**Inquiry into the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* – Additional Questions**

We refer to the additional questions sent to us on behalf of individual members of the Committee on 9 December 2020.

**Additional Question 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?**

No. We refer to our submission dated 21 August 2020 and our answers to questions on notice dated 20 November 2020, which provide detailed comments on the Bill.

**Additional Question 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?**

Section 22Z of the Bill potentially conflicts with section 54 of the Act.<sup>1</sup> It is hard to predict how a court or tribunal would resolve the potential conflict between these two sections. Section 54 of the Act only applies to conduct that is 'necessary' in order to comply with a requirement of any other Act or Regulation, and this has been interpreted narrowly.<sup>2</sup> The broad definition of 'religious activities' in section 22K of the Bill could also give

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<sup>1</sup> See page 9 of our submission.

<sup>2</sup> See eg *Fittler v NSW Electoral Commission and anor* [2007] NSWADT 136 and *Fittler v New South Wales Electoral Commission and anor (No.2)* [2008] NSWADT 116 (18 April 2008).

discrimination protection to unlawful activities that are not offences punishable by imprisonment, notwithstanding section 54 of the Act.<sup>3</sup>

**Additional Question 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?**

The Bill does not generally fit the structure and intent of the remainder of the Act. Our submission provides a detailed analysis of how the Bill differs from the Act, what the many unacceptable points of difference are and how the Bill could be improved. The unacceptable points of difference include that the Bill creates new rights to *engage in* religious discrimination, whereas the current Act focuses on protecting NSW residents *from* unlawful discrimination on the basis of the existing protected attributes.

**Additional Question 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?**

The question seems to assume that the Bill is, more or less, a standard piece of discrimination legislation minus protection for religious vilification. This is not the case. The Bill is fundamentally different in character to existing discrimination legislation.

It is certainly surprising that the Bill does not offer protection for religious vilification. This surprising omission does not justify the Bill's other flaws.

**Additional Question 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?**

It is unclear to us where the quotes in the question come from. Our submission provides a detailed analysis of the Bill's flaws, which include, but extend well beyond, sections 22Z and 22M of the Bill.

Section 22Z of the Bill is fundamentally different from the Act's provisions for sexual harassment.

Section 22M of the Bill is fundamentally different from the Act's exemptions for religious schools and charities. Indeed, the Act's existing exemptions for religious schools and charities raise the question of why section 22M is needed.

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<sup>3</sup> See pages 5–6 of our submission.

Our submission does not specifically address the 'future belief' aspects of the Bill.

**Additional Question 6: If not by the Siracusa Principles how can any clash of gay and religious rights be reconciled in an Act such as this?**

Tensions between rights should generally be resolved in accordance with human rights law. Although we do not wish to make detailed comments with regard to the Siracusa Principles, we note that human rights law is a sophisticated body of law. There are many sources of human rights law that must be read in context.

**Additional Question 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?**

We do not agree that our submission or evidence has 'prioritised a concern about the beliefs and statements of born-again Christians that are integral to the spiritual faith and existence of these citizens'.

We are also not sure who Committee Members are referring to when speaking of 'the gay-Left community'. We are a community legal centre that specialises in discrimination law and we are strictly a non-partisan organisation.

**Additional Question 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?**

We do not ask questions of this nature during our recruitment process.

If we can be of further assistance to the Committee, please contact us at

[REDACTED]

Yours Faithfully  
KINGSFORD LEGAL CENTRE

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