



Additional questions - Women's Electoral Lobby (WEL)

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. In your submission you state organisations in health, community services education and care sectors could more easily adopt exclusionary and discriminatory practices, can you expand on how you think this may occur and the impact it might have on people, particularly women, accessing these services?
3. 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
4. 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?
5. 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?
6. 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?
7. If not by the Siracusa Principles how can any clash of gay and religious rights be reconciled in an Act such as this?
8. 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?



PARLIAMENT OF NEW SOUTH WALES

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

9. 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?



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18 December 2020

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill

NSW Parliament

6 Macquarie St

Sydney NSW 2000

Dear Joint Select Committee,

Thank you for the opportunity to contribute to the Committee's work and to respond to questions arising from your deliberations.

Background

Women's Electoral Lobby, established in 1972, is a volunteer, member driven, independent, non-party political lobby group dedicated to creating a society where women's participation and their ability to fulfil their potential are unrestricted, acknowledged and respected and where women and men share equally in society's responsibilities and rewards.

WEL applies a feminist approach to all its work, from policy analysis and development to campaigning. WEL has developed a Feminist Policy Framework, which sets out the values which we use to measure fairness for women and fairness for society. WEL believes that good policies should address these indicators and work with governments at all levels to achieve better and fairer policy outcomes.

WEL believes that fair policies are those that:

1. Ensure the benefits and outcomes are fairly distributed between women and men, as well across different groups of women,
2. Value and reward fairly people's different skills, experiences and contributions,
3. Recognise the value of caring and supporting roles, whether paid or unpaid,
4. Recognise and rectify past and current inequalities between men and women, and
5. Enhance opportunities for women and men to take on equal rights and responsibilities in all aspects of society: politics, community, employment and social life.

The basis of this advice

WEL does not provide technical legal advice or analysis as a matter of course. Where our advocacy focus requires a specialist legal perspective, we try to work with feminist and expert allies. WEL believes that the provisions and implications of legislation should be as clear as possible and broadly accessible to citizens without specialist legal training¹.

¹ See DP2: PCO Plain language policy (NSW Parliamentary Counsel's Office, 1st Ed, May 2017).

We offer our responses from that perspective.

With regard to the draft Amendment, we are troubled by the significant degree of ambiguity and the absence of clarity the Bill is likely to present for both the ordinary citizen, employers and specialists, should it become law.

It is particularly difficult to predict the impact of such a far reaching piece of legislation on different groups of already vulnerable people covered by the existing Act. Given this risk we urge the Committee to exercise caution in making recommendations to the Parliament. As we advised in our Submission, we believe that the Act should be independently reviewed and the inclusion of religious discrimination protections be one reference for that review.

We respectfully note the wide range of responses and uncertainties the Bill has already attracted in considered and substantial submissions from both religious and secular legal and anti-discrimination expert groups, institutions and individuals and in the hearings.

WEL does not wish to make any further comments on the Bill other than those provided in the responses below.

Possibility that Religious Ethos Organisations could adopt exclusionary and discriminatory practices and impact on women accessing such services

In our Submission we identified concerns with the various ways in which the Bill explains religious belief and activity so 'as to encompass a broad range of cognitive processes, from 'conviction' and "belief extending through to 'opinions'. Similarly protections for religious activities or those motivated by religious belief are curtailed only by the exclusion of criminal activity with a prison sentence as a penalty.

An equally 'broad brush' approach applies to the definition of Religious Ethos Organisations which potentially include established religious charities and *'any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion'*².

WEL understands the current exceptions in the Anti –Discrimination Act but fears that the Bill's protections proposed for Religious Ethos Organizations could extend significantly beyond those already allowable under the Act.

From our reading of the Bill's section 22 M 'Religious Ethos Organisations taken not to discriminate in certain circumstances', it appears to us that Religious Ethos Organisations will be able to discriminate in their employment practices and services on the bases of such characteristics as gender, age, sexuality marital status and disability. They will also be able to discriminate on the basis of religious belief and activity should the Bill be passed.

Section 22Z, 'State Laws and Programs' could enable Religious Ethos Organisations to refuse to implement services contracted from Government and to discriminate amongst the recipients of such services.

Footnote 1 (cont) 5. *In the legislative context, the principles of plain language aim for clarity in the language of legislation, in the structure of the legal ideas contained in legislation, and in the physical layout and presentation of legislation. The use of plain language in legislation is intended to remove barriers to communication and so make the law more accessible. 6. Legislation should be able to be understood with a minimum of effort by its users.*

²Part 2B Division 1 22k Definitions

Religious controlled and affiliated charities on contract from government already dominate the delivery of a wide range of care related services in NSW, have a significant presence in health and deliver a high proportion of aged care services. Contracted services include homelessness services, children's services, domestic violence services, disability services, mental health services, alcohol and addiction services.

Low paid women employees predominate in the workforces of these larger care and community service oriented charities.

Should the Bill become law it is likely that a number of such faith based charities will seek REO status and possible that other less established religious faith groups will seek to enter the field. There is potential that REOs could seek to 'bake in' specific beliefs and conduct for all employees as a condition of employment, beyond the leadership and management of the REO. We offer a hypothetical scenario below.

Catholic Healthcare already recommends a Code of Ethical Standards to employees in its facilities.³ The Code is admirable in many ways, but explicitly excludes provision of most methods of contraception and most terminations, except where a women's life is endangered and then with some constraints. While many employees in Catholic public hospitals are unaware of this document, should such public hospitals achieve Religious Ethos Organisation status, adherence to the Code in terms of belief and conduct could become a condition of employment, as an expression of the doctrines, tenets, beliefs or teachings of the public hospital.

From our reading it is also possible that members of faith communities who are health and medical practitioners could seek to constitute themselves as REOs to gain further protection from the conscientious objection constraints in medical and health codes and in the Abortion Law Reform Act. This could significantly constrain already limited reproductive health services in rural and regional NSW, with a major impact on women.

Possible impact of Section 54 of the Anti-Discrimination Act in relation to compliance with the Abortion Law reform Act and other Acts

One of WEL'S major considerations in our submission was the possible impact of the Bill on the 'Conscientious Objection' Clause in Section 9(3) in the Abortion Law Reform Act. As we argued in our submission, the Act sets limits on practitioners' exercise of Conscientious Objection by requiring referral to a non-objecting practitioner or provision of equivalent information compiled by the NSW Department of Health.

WEL is aware that some health practitioners who are members of faith communities advocate for an unfettered right to exercise conscientious objection and that that right be extended to institutions such as hospitals.⁴

³ Code of Ethical Standards for Catholic Health and Aged Care Services in Australia:Part II, Section 2.5 'Sterilization and Contraception' and Section 2.23 'Abortion'

<https://www.cha.org.au/images/resources/Code%20of%20ethics-full%20copy.pdf>

⁴ Catholic Health Australia Submission to the Religious Freedom Review page 2, Feb 2018

CHA recommends that Australian laws be modelled on section 4 of the Abortion Act 1967 (UK) which reads: "No person shall be under any duty, whether legal or contractual, to perform or participate in any act authorised by this Act to which the person has a conscientious objection." Finally, CHA members submit that the right to conscientiously object should also be specifically stated to vest in the hospital, health service or other institutional or corporate body as the provision of abortion procedures is in contradiction to The Code of

The consequences for an objecting medical or health practitioner of failing to comply with the Abortion Law Reform Act's requirement to provide a patient with Department of Health information on alternative non-objecting doctors or practices, would be unlikely to involve a criminal conviction. It is therefore possible that conscientiously objecting medical and other health practitioners could seek religious discrimination as a defence against such a complaint, despite the provisions of Section 54 of the Act.

WEL is also concerned that, on a similar basis, the Bill could allow health practitioners with a religiously based conscientious objection to commonly used contraception to refuse prescriptions for contraception or a contraceptive treatment and refuse to provide patients with information on practitioners without such objections. The Code of Conduct of the Pharmacy Board of Australia requires pharmacists to:

'not use {conscientious objection} to impede access to treatments that are legal', and to 'not allow moral or religious views to deny patients or clients access to healthcare'⁵

The Bill could nevertheless allow health practitioners with a religious objection to contraception to refuse prescriptions for contraception or a contraceptive treatment and refuse to provide patients with information on practitioners without such objections.

Pharmacists in rural and regional NSW could refuse to stock common contraceptives, including the morning after pill, without providing advice on alternative suppliers. Medical practitioners could refuse contraception to single women and to young women. Education and advice about contraceptive options such as Long Acting Contraceptives could be impeded.

Consistency of the Bill with the structure and intent of the remainder of the NSW Anti-Discrimination Act

WEL understands that the Amendment to the Anti-Discrimination Act proposed in the Bill differs in substantial ways from the other protections afforded by the Act. Submissions from experts and practitioners in Anti-Discrimination Law describe these differences.

As an example, our submission argues that the creation of a novel entity - the Religious Ethos Organisation – able to claim protection from religious discrimination and to discriminate in employment and services – is a radical departure from Anti-Discrimination law both in Australia and internationally, in that discrimination is normally seen as suffered by persons.

We have argued in our submission that the Bill could significantly harm women through limiting access to reproductive services. In addition the Bill provides religiously based cover for currently unlawful gender based attacks made outside the workplace, and undermines other protections in the Act which help women who can suffer from discrimination on all grounds it currently covers.

Absence in the Bill of protections for Religious Vilification

WEL is not a legal professional organisation and can't comment in response to this question. Nevertheless in principle we would consider supporting a proposal to introduce protections for religious vilification, depending on the wording of any amendment.

Ethical Standards for Catholic Health and Aged Care Services in Australia (<https://cha.org.au/code-of-ethical-standards>).

⁵ Code of Conduct of the Pharmacy Board of Australia 2.4 f) and g) Decisions about Access to Care <https://www.pharmacyboard.gov.au/codes-guidelines/code-of-conduct.aspx>

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

WEL is not a legal expert organisation and made our submission on the basis of our experience in advocating for women's equality. WEL advocates on behalf of members and the broader community,' which can include lesbians and transwomen (who may also be women of faith), as well as men seeking equality for women and LGBTI+ people.

We do not accept that there is a clash between 'gay' and religious rights. For example since the late eighteenth century Enlightenment in the West, the project of achieving equality within marriage has been central to feminism and we were delighted to vigorously support the legislation establishing Marriage Equality as consistent with this tradition.

Issues relating to toleration of Born Again Christians

Neither the WEL submission nor our testimony at the hearing made reference to the very broad category of Born Again Christians. We understand that there is a very wide range of beliefs within all Christian denominations and different degrees of adherence to official and sanctioned doctrines across the spectrum of religious identities - Christian and non-Christian. ⁶

WEL supports an ethos of openness, care, tolerance and diversity. We made the point in our submission that a significant proportion of religious people are women and that both within their denominations and in their work may suffer discrimination across a diverse range of categories including: women of faith excluded from leadership and authoritative voice; people with disability; race; marital status and other characteristics. It is relevant in this regard that all the heads of denominations appearing at the Committee hearings were male.

WEL employment policies in relation to views on marriage and interpreting the Bible literally.

WEL is a voluntary, membership-based organisation. From time to time we employ support staff and our position descriptions and selection criteria relate to knowledge, experience and skills for the position. We do not take into account a candidate's religious belief, nor would an applicant be required to address this. Nevertheless an employee who applied to undertake work activities in pursuit of WEL's goal of gender equality would be assisted by seeing this goal (within or outside marriage) as just and achievable.

⁶ How Religious are Australians? Results from the 2018 Australian Community Survey by National Church Life Survey Research <https://www.ncls.org.au/news/how-religious-are-australians>