

**Submission
No 4**

ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Organisation: Rainbow Families NSW

Date Received: 14 August 2020



Hon. Gabrielle Upton, MP
Chair

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

Dear Hon Ms Upton MP,

Thank you for the opportunity to provide a submission to the Joint Select Committee on the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*.

As you would know, since the marriage equality plebiscite our families have been the target of a lot of negative community discussion.

We are deeply concerned that with this proposed legislation, and the more recently proposed Education Bills, One Nation will continue to put our kids at risk by enabling yet another toxic public debate about their families.

Our submission outlines the concerns we have with this legislation, broadly that:

- We oppose this Bill giving protection to religious activities which may be unlawful, such as religious activity that discriminates against, vilifies or harasses our families
- We strongly believe that protecting religious views and behaviour motivated by religion which discriminate against LGBTQ+ people will only serve to damage the broader community.
- We don't believe prioritising freedom of religion above all other rights strikes an appropriate balance.
- We also question the extent to which the proposed amendments would provide equal protection to all religious faiths.
- Faith-based organisations can already discriminate against our families, even when receiving public funding. Rainbow Families NSW believes that these laws would increase discrimination against our community by giving organisations who define themselves as religious further rights to refuse services to our community.

Thank you again for the opportunity to provide this submission. For further information, please contact us on [REDACTED]

Yours sincerely,

Ashley Scott
Executive Officer
Rainbow Families



Who are we?

We have a vision of a community of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) families across Australia, where each family is included, respected and has value! Rainbow Families is the peak organisation supporting LGBTQ+ parents and their children. As a community organisation run by LGBTQ+ families, we act as a support network for parents and carers, their children as well as future parents and carers.

Our Mission

The mission of Rainbow Families is to build a community which fosters resiliency by connecting, supporting and empowering LGBTQ+ families.

What makes a Rainbow family?

A Rainbow family is a same-sex or LGBTQ+ parented family. At Rainbow Families, we define a Rainbow family as any lesbian, gay, bisexual, transgender or queer person who has a child or children; or is planning on having a child or children by way of donor insemination (known or unknown), surrogacy (altruistic or commercial), foster care, fostering to adoption, adoption (domestic or international), opposite sex relationship, co-parenting or other means.

What do we do?

We provide support and resources to members of the LGBTQ+ community so that they and their families can live their best and most colourful lives. We host events that connect LGBTQ+ families, particularly those that are feeling isolated because of social pressures, financial difficulty or where they live. We [advocate](#) on behalf of our community and are a strong and consistent voice for NSW LGBTQ+ families to address discrimination, raise awareness and promote acceptance. We collaborate with similar organisations from other states to push for change across the nation.

For the community, by the community

Rainbow Families is a volunteer-led organisation, providing a network of support to children and families within the NSW LGBTQ+ community.

A note on language

Language is a powerful tool for building inclusion (or exclusion) of families. The way we speak to each other creates a culture in which everyone can feel valued, respected (included), rather than undervalued, disrespected, and out of place (excluded). It's important to acknowledge that language is constantly evolving. We recognise that one label or description may not be able to capture the breadth of the LGBTQ+ community. Our intention has always been to be as succinct as we can, but inclusive of everyone.



Summary

To inform our submission we have drawn on responses from our community and research about the experience of LGBTQ+ people overseas evidence suggests that 'religious freedom' laws harm LGBTQ+ people and women. We raise four specific concerns with this bill:

We oppose this Bill giving protection to religious activities which may be unlawful, such as religious activity that discriminates against, vilifies or harasses our families

We strongly believe that protecting religious views and behaviour motivated by religion which discriminate against LGBTQ+ people will only serve to damage the broader community.

We don't believe prioritising freedom of religion above all other rights strikes an appropriate balance

We strongly believe that people shouldn't be discriminated against because of their religion, or no religion. However, prioritising religion above other human rights does not appropriately balance the need to protect our families from discrimination, harassment and vilification because of another person's religious belief.

We also question the extent to which the proposed amendments would provide equal protection to all religious faiths.

We are concerned that the exemption allowing employers to discriminate regarding religious clothing and symbols is also more likely to impact on non-Christian faiths, particularly Islam.

Faith-based organisations can already discriminate against our families, even when receiving public funding, and these laws would increase that discrimination.

Existing exemptions have enabled religious organisations running schools to refuse to hire or to dismiss employees based on their sexuality as well as refusing enrolment to children who have same-sex parents. These new laws would increase the number of organisations who can discriminate against our families.

In recent times, the provision of out of home care and adoption services have been outsourced to non-government organisations, many of which are faith-based. These organisations are allowed to discriminate against prospective foster and adoptive families because one or more parents are LGBTQ+. These new laws would increase the number of services discriminating against prospective parents.

This discrimination is an unwarranted intrusion into privacy of LGBTQ+ people and their families and potentially damaging to the mental health of an already vulnerable group.

Rainbow Families NSW believes that these laws would increase discrimination against our community by giving organisations who define themselves as religious further rights to refuse services to our community.



Rainbow Families NSW response to the Inquiry

Rainbow Families NSW is the peak group for LGBTQ+ families in NSW.

The recent census tells us that more rainbow families live in NSW than other parts of Australia. This proposed legislation, therefore, would have a large impact on our families.

International evidence suggests that 'religious freedom' laws harm LGBTIQ+ people and women

Under this proposed legislation, LGBTQ+ people could be discriminated against on religious grounds, and international evidence shows that this is harmful.

A recent study from Human Rights Watch (US), shows the harm that can be done by laws that permit people to infringe on the rights of LGBT individuals and their families to uphold their own religious or moral beliefs.

Researchers interviewed 112 LGBT people, service providers, and advocates, about the discrimination that LGBT people have faced due to 'religious freedom' laws in the U.S. The researchers found that:

*Some laws enable and embolden businesses and service providers to refuse to serve LGBT people, compelling LGBT people to invest additional time, money, and energy to find willing providers; others simply give up on obtaining the goods or services they need. **More insidiously, they give LGBT people reason to expect discrimination before it even occurs, and to take extra precautions or avoid scenarios where they might face hostility out of self-preservation.***

... Such legislation immediately endangers LGBT rights. By allowing people to elevate their prejudices above fairness and equality, it also threatens the broader principle that people should not be refused goods and services solely because of who they are.

What's more, the researchers argued that such laws:

...send a signal that the state governments enacting them accept and even embrace the dangerous and harmful notion that discrimination against LGBT people is a legitimate demand of both conscience and religion.



According to the ACLU 'religious freedoms' are also being used to discriminate against women:

In health care, we are seeing hospitals, insurance companies, pharmacies, and other health care entities discriminate against women by denying basic care—such as birth control, emergency contraception, and abortion—in the name of religion....

In employment, we have seen a recent spate of cases in which religiously affiliated schools have fired women for getting pregnant while single or for using IVF. These cases are suggestive of a past when women were routinely pushed out of the workplace because of pregnancy.

We oppose this Bill giving protection to religious activities which may be unlawful, such as religious activity that discriminates against, vilifies or harasses our families

In NSW, LGBTQ+ people have limited protections under anti-discrimination laws, but this proposed legislation would erode those limited protections.

Our families experience direct and indirect discrimination each and every day as illustrated by the following quotes from our community:

I have been verbally and physically attacked due to my sexual orientation. The people seeking to pass these exemptions to anti-discrimination laws have very little idea what it is like to be attacked in this manner and just how dangerous the laws they are proposing are to the mental health of members of the LGBTIQ community.

....

As an ally, I have not. But a very great number of my friends have. I became very active as an advocate for LGBTQI inclusion at my daughter's school last year, because the LGBTQI families were too nervous to. They were afraid that their children would become greater targets among other children, and that their children's success at the school would be compromised if they were seen as



the 'those parents who complain'. I have conducted research into this issue, with a survey answered by over 340 parents, (Rainbows in Schools Survey) and the issue above is reported commonly by other parents. This horrifies me. That a group is fearful to advocate for their own inclusion, because they fear that being seen to do so will lead to further exclusion. This is the effect of discrimination and exclusion, and it must be fought at all levels, in the strongest possible ways.

...

I work for a religious school and am therefore required to be closeted at work. In order to have children, I needed to have a "beard" - a fake significant other of the opposite sex to avoid losing my job.

...

Recently our son received discriminatory behaviour directed at him at his primary school due to the postal vote. An extreme Christian family made my sons life a living hell during the debate. We had to ask the director to give the school advice on how to handle matter. The director was great. But the head of school was not. The boy who was bullying our son even threatened to shoot him. How is that religious freedom.? It's not and it's not ok.

...

A few years ago we were refused service by a cafe in a rural area because we were a Rainbow family. More relevantly, last year, our son was enrolled in a Martial arts program for children with disabilities (autism) and while not acknowledging their prejudice directly, they made it very clear that they catered for heterosexual families who had very traditional gender norms for 'mummy and daddy'. Despite repeated attempts by us to have a dialogue with them about their approach and the fact that my son felt automatically excluded because of his two mums and his "lack" of



a dad, the organisation refused to address our concerns but merely denied them. We eventually had to remove him from the class. It is additionally unfortunate because he has more limited options to find activities that cater for children with disabilities.

We strongly believe that protecting religious views and behaviour motivated by religion which discriminate against LGBTQ+ people will only serve to damage the broader community.

We don't believe prioritising freedom of religion above all other rights strikes an appropriate balance

Under section 3, this proposed legislation goes prioritises 'freedom of religion' above all other rights and freedoms when applying NSW's anti-discrimination laws.

By asking that decision makers must give "fundamental regard" to any limitations on religious belief or activity, this legislation would give precedence to religion above other human rights, which is not proportionate, and would be detrimental to our families.

The bill goes further than protecting people from being discriminated against on the grounds of religion. The concept of 'protected activity' provides a positive a right to engage in behaviour that serves to discriminate on other grounds. Hurtful and damaging conduct is legitimised under the cover of religious expression.

We strongly believe that people shouldn't be discriminated against because of their religion, or no religion.

However, prioritising religion above other human rights does not appropriately balance the need to protect our families from discrimination, harassment and vilification because of another person's religious belief.



We question the extent to which the proposed amendments would provide equal protection to all religious faiths.

Proposed 22M provides exemptions for religious organisations to discriminate against people of other faiths if they are not in keeping with those upheld by the organisation. Given that the majority of providers of services are Catholic, Anglican and other Christian denominations, this provision would disproportionately benefit those organisations and have a disproportionately negative impact on persons of non-mainstream and marginalised faiths. Given the range of services delivered by mainstream religions, the potential impact on the life of a person of other faiths is significant.

We are concerned that the exemption allowing employers to discriminate regarding religious clothing and symbols is also more likely to impact on non-Christian faiths, particularly Islam.

Faith-based organisations can already discriminate against our families, even when receiving public funding, and these laws would increase that discrimination.

It's unfair that they are legally able to discriminate. LGBTQ+ people can have faith and share most of the values of religious organisations. We can work for organisations without contradicting the values of the organisation. Our sexual identity isn't the only aspect of who we are.

Existing exemptions to NSW anti-discrimination law already allow religious organisations to discriminate against our families.

Religious exceptions or exemptions are special privileges given to religious organisations that allow them to deny services to, fire or refuse to hire lesbian, gay, bisexual and transgender people (although it's not just the LGBT community who are the targets, with discrimination also permitted on the basis of sex, marital or relationship status and some other attributes).

Existing exemptions have a big impact on our community through schools and welfare services and employment.

The scope of the proposed amendments has the potential to cause considerable damage to the LGBTQ+ community. Definitions of religious activity and religious belief set out in the proposed 22K are unnecessarily broad, as is the concept of 'religious ethos organisations' which in addition to private schools and charities, includes any body that upholds the doctrines, tenets, beliefs or teachings of a particular religion. The reach of the bill extends to commercial operations that



provide a comprehensive range of services to the public, often supported by public funds. Organisations should not be protected at the expense of human rights of individuals.

Schools

Existing exemptions have enabled religious organisations running schools refuse enrolment to children who have same-sex parents. These new laws would increase the number of organisations who can discriminate against our families.

We oppose discrimination against LGBTIQ+ people and our families, particularly in schools. Expelling children because of who they are, or refusing their enrolment because of who their parents are cannot be condoned.

When we asked our community about how these exemptions affected them, they shared some powerful and personal stories.

One community member told us about her experience of hiding who she was as a student. There is strong evidence that shows the link between hiding who you are, and depression and anxiety, which is being perpetuated in a system that tells children and young people that being open about their sexuality could see them removed from school.

The faith-based school I went to was completely discriminatory of LGBTI people. I could not have come out at this school without being ridiculed, suspended, or expelled.

Other community members highlighted these risks for students at school today:

I am disgusted that there is a push to be able to expel students identifying as not straight. I work in suicide intervention and we know that trans young people and those questioning are most at risk of suicide. It should be criminal to expel students. If it already works in faith based charities [in the NT] we have a really good way to demonstrate how such exemptions are not necessary.

We believe it is hypocritical that proposed 22V in the bill seeks to protect students from refusal of enrolment applications, refusal of access to a benefit or expulsion on the grounds of religious belief: legislative protection that has been sought and thus far denied for LGBTIQ+ students.

However, the bill goes even further. Along with employers and qualification bodies, educational bodies would be prohibited from preventing or restricting a student from engaging in a 'protected activity', or disciplining students who do.



22V would enable a students to engage in hurtful conduct towards other students without consequence under the cover of religious belief if it takes place when the child is not 'receiving an education' or 'at a place other than the person's place of education'. The reality is that social media has resulted in school life spilling into students' private lives such that it is not possible to separate the two. The explanatory memoranda attached to the bill makes it clear that use of social media would be protected activity for a person expressing a religious belief.

There are many ways in which students interact with each other outside of school: travel to and from school, sport and extra-curricular activities and within the general community. It is a particular expectation of many religious schools that their students attend sport activities on weekends and these activities have the imprimatur of the school administration.

In the absence of effective anti-bullying policy in schools, this leaves students who are LGBTQ+ or from families who are, vulnerable to serious mental health consequences. Legitimising the expression of homophobic sentiments in this way sends a damaging message to young adults and ill-prepares them for life beyond school.

Employment

Existing exemptions have also enabled religious organisations running schools and other service providers to refuse to hire or to dismiss employees based on their sexuality or relationship status.

Being discriminated against on the basis of their sexuality, gender status or relationships impacts staff at schools who must hide who they are for fear of losing their job. Recent Australian research tells us that being able to be out at work, has important benefits for organisations and individuals, which these schools would be missing out on.

I previously worked as part of the executive team in a faith based school where I was never comfortable to share about my relationship. I lasted 6 months as I felt so stifled in the role. I have looked into applying at other faith based schools and the application form at one asked for your husband's name and occupation and church references.

Living with a constant fear that you could lose your job weighs heavily on some:

I have been supported by so many wonderful colleagues while working at Catholic schools, but have always known, and felt threatened by the knowledge that, I could be sacked at any time due to my sexuality.



I've had to be closeted since my employment as a teacher in a Catholic School. My closest work colleagues and friends know I'm gay but I'm acutely aware that I could lose my job if I were outed. This became very difficult when I was going through the process of having children. I needed to appear to be straight in order to not lose my job.

Many members of our community are also religious themselves, and have grown up and been educated in faith-communities. They want to continue in the same tradition, but also provide role models to young LGBTIQ+ people:

I grew up attending faith based schools... These students need to see the more compassionate, kinder face of Catholicism. There are many LGBTIQ students in these school, students struggling with the same things I've struggled through, I want to make sure that these students are subjected to blind bigotry or discrimination in whatever capacity I can.

... I want to be there with the LGBTIQ+ students when change happens. I want them to have an ally nearby. I want them to see that LGBTIQ+ people can exist in a faith based organisation and that they can thrive and flourish.

The proposed legislation would enable a number of situations where employers who are 'religious ethos organisations' may discriminate against employees, including those of other faiths. As discussed above, members of the LGBTIQ+ community are already subjected to unwelcome intrusion into their private lives resulting from exemptions from anti-discrimination legislation enjoyed by religious organisations.

The privileging of 'protected activities' Under proposed 22N goes further in enabling employees to engage in conduct in their private life which is damaging to others, provided it can be linked to a religious belief. Any conduct is permitted that is not 'imprisonable' and therefore would override a range of regimes that exist to regulate employee behaviour such as codes of conduct, policies, guidelines and professional ethics. Provided that the employer is not directly criticised or suffers financial detriment, the employer has no recourse. The behaviour escapes sanction and over time becomes legitimised in the workplace and the community more broadly. We note that financial detriment excludes consumer boycotts and



sponsorship withdrawals, stifling the ability for businesses to respond to the legitimately expressed concerns of their customers.

Private conduct for the purpose of the bill does not mean conduct 'in private' it simply means that it is not carried out in the workplace or while the employee is engaged in duties. It would therefore not cover breaks off-site or travelling to or from work. Uniformed employees making damaging statements in these contexts could undermine confidence in important public institutions.

It is unrealistic and naïve to assume a clean separation of private and public in the lives of employees given the prevalence of social media. (We note that the explanatory memoranda for the bill contemplates that employees would be free to express their religious beliefs on social media.) Employees could potentially make highly damaging and hurtful statements about colleagues, customers, clients and community members which have broad reach, particularly if the employee has a public profile, and not be subjected to any consequences.

Welfare services

The exemptions also present barriers to LGBTQ+ people wanting to foster or adopt children.

In recent times, the provision of out of home care and adoption services have been outsourced to non-government organisations, many of which are faith-based. These organisations [are allowed to discriminate against prospective foster and adoptive families](#) because one or more parents are LGBTQ+ and organisations such as CatholicCare do this as a matter of practice. This erodes the right to adopt that LGBTQ people achieved in NSW a few years ago. It is also not in the best interests of a child in circumstances where that child has been placed with an LGBTQ+ family in a foster care arrangement to then be denied the stability of a permanent family should the family seek to adopt the child. Again, the use of vast amounts of public funding should carry with it an obligation on religious organisations to account for use of the funds in an equitable manner.

These new laws would increase the number of services discriminating against prospective parents. Furthermore, by allowing businesses to discriminate against LGBTQ families, it will also put children at risk as services may be denied to their families.

Rainbow Families NSW believes that these laws would increase discrimination against our community by giving organisations who define themselves as religious further rights to refuse services to our community.



OTHER ISSUES

The NSW *Anti-Discrimination Act 1977* does not protect bisexual people; does not have a stand-alone protected attribute covering people with intersex variations; and fails to protect non-binary trans people against mistreatment, because its definition of transgender is out-dated.

Rainbow Families is aware of at least one instance where a young person was being harassed and vilified for their bisexuality, and was unable to make a complaint of discrimination because the NSW *Anti-Discrimination Act 1977* is the only LGBTI anti-discrimination law in Australia that does not cover bisexual people.

This could be amended by adopting the *Sex Discrimination Act 1984* (Cth) definition of sexual orientation.

The NSW *Anti-Discrimination Act 1977* also fails to protect non-binary trans people because its definition of transgender is out-dated, and it does not have a stand-alone protected attribute covering people born with intersex variations.



Conclusion

We stand with other organisations in the community in questioning the introduction of such divisive legislation at a time of the COVID-19 public health crisis where community cohesion is vital. This bill is not about equality or inclusion, it is about using religious freedom as a pretext to undermine gains made in other areas of human rights, particularly with regard to sexual and gender diversity. That is of great concern to a community still bearing the scars of the damaging Commonwealth Government postal-survey same sex marriage campaign in which our relationships and families were under attack.