

**Submission
No 16**

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

Organisation: Australian Professional Association for Trans Health(AusPATH)

Date Received: 15 August 2020

The Hon. Gabrielle Upton, MP
Chair, Joint Select Committee
on the Anti-Discrimination Amendment
(Religious Freedoms and Equality) Bill 2020

14 August 2020

Emailed: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Minister and Joint Select Committee

Re: AusPATH opposes the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW)

The Australian Professional Association for Trans Health (AusPATH) was established in 2009 and is the national peak body for professionals involved in the health, rights and well-being of all trans Australians throughout life. Trans people can be broadly defined as those who identify their gender (binary and non-binary) as different to what was presumed for them at birth. We have approximately 300 members who represent every state and territory of Australia, including in NSW and across a diverse array of health disciplines.

We are writing regarding the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW) ('the Bill') introduced by the Honourable Mark Latham MLC and member of the NSW One Nation Party. We are grateful for the opportunity to make a submission.

AusPATH strongly opposes the Bill to amend the Anti-Discrimination Act 1977 (NSW). This Bill would enable the mantle of religion to be used by individuals, organisations, and bodies to reject, discriminate against, and vilify others. This is fundamentally at odds with the intention behind the Anti-Discrimination Act.

Existing legislation in New South Wales already and expressly prohibits discrimination and vilification towards a person or group based on their religious beliefs. Anti-discrimination legislation is intended to ensure all people are treated equally and fairly, and the current legislation exists to protect some of this state's most vulnerable people, including trans people, who are protected on the grounds of *Transgender Status*.

The Bill before the parliament proposes to expand exemptions in the Anti-Discrimination Act 1977 (NSW), allowing faith-based schools, bodies and charities to discriminate against people. This means trans people would likely experience lawful discrimination related to employment, education, service delivery and access to healthcare; areas of life that are already highly stigmatising and discriminating for trans people.

The Bill could lead to professional health bodies being unable to investigate a medical practitioner who espouses discredited gender identity change efforts, or makes harmful statements about the health needs and experiences of trans people. This is incongruent with the commitments outlined in the *NSW State Health Plan: Towards 2021* of supporting healthier communities for all who live in NSW.

There is extensive evidence that practices undertaken in an attempt to change a person's gender identity to be more aligned with the gender expected for them at birth (known as conversion or reparative therapies) lack efficacy, are considered unethical and cause harm to people's health and well-being.

Denying or withholding care, on the grounds of religious opposition, is harmful and is not considered a neutral stance. Any individual, group or organisation that are protected in practices that deny a person the opportunity to express and affirm their gender identity and access support and medical intervention to improve their health and well-being should not be endorsed nor their practices condoned. This Bill seeks to allow health practitioners to conscientiously object to providing medically necessary and lifesaving gender affirming care to trans people.

It also means that an employer may be unable to engage in disciplinary action with a staff member (such as a teacher, paramedic or police officer) who expresses a faith based opinion about women, people with disability,

people of diverse sexualities or trans people, while at work but on a break, or while not at work, even if these actions do not accord with an organisation's culture or code of conduct.

Such changes to legislation will make fostering inclusive cultures or meeting broader community expectations about people equally and with respect, impossible.

The Bill does not consider the withdrawal of financial support to be a material or financial detriment. This means that should a leading figure engage in discriminatory public comments, and funders, donors and supporters withdraw their financial support in response, an employer would have no recourse. Similarly, if a sporting figure as an employee of a club was to engage in activities or statements, and sponsors withdrew their support, the club would have no ability to enforce their code of conduct.

The Bill seeks to protect criminal and unlawful acts that harm the health, wellbeing and lives of trans people, provided such acts are not imprisonable under law. This means that even if acts of harm breach contract, obligation or indeed legislation, individuals, corporations and bodies would be protected.

Further, The Bill proposes that any action taken under NSW law, and any NSW government contract, decision or policy could be challenged if it contradicts the religion of a person or organisation. This could include restrictions placed on religious gatherings to prevent the spread of COVID-19, and these restrictions could be challenged under this law.

This allowance also creates issues in tendering and grants programs, with religious organisations being able to challenge grant rounds that require funding to support trans communities as a condition of funding to be discriminatory. This model is unprecedented in New South Wales law and would mean that religion overrides the laws of this state.

If adopted, the One Nation Discrimination Bill would make NSW a place that is less inclusive and where discrimination would be allowed to occur.

The impact of this Bill is already being felt profoundly by the trans community in NSW and across Australia, and is further compounded by COVID-19. Preliminary results from a large national survey of trans Australians has revealed that during this time, trans people are experiencing severe distress, loneliness, family violence, suicidality, self-harm and high levels of unemployment. As our State grapples with the largest public health crisis in a generation, now is not the time for Parliament to divide our communities and pit groups against each other.

AusPATH Recommendation: *That Parliament reject the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW).*

We ask that the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 rejects this Bill completely. We are available to meet with you and your Office to discuss this matter further. You or your Office can contact us via info@auspath.org.

Sincerely,



Dr Fiona Bisshop MBBS FRACGP
President – AusPATH



Teddy Cook
Vice President - AusPATH