

**Submission
No 24**

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

Organisation: ACON

Date Received: 19 August 2020



19 August 2020

Mr Ben Foxe
Committee Manager
Joint Select Committee on The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020
Parliament House
6 Macquarie Street
Sydney NSW 2000

Sent by email: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Mr Foxe

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

We are writing on behalf of ACON, New South Wales' (NSW) leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders, to emphasise the threats to LGBTQ communities posed by proposed changes to the *Anti-Discrimination Act 1977*.

ACON strongly opposes the Bill to amend the Anti-Discrimination Act 1977 (NSW) introduced by Mark Latham, Member of the NSW Legislative Council and the One Nation party ('The Bill'). The Bill would allow people to use religion as an excuse to exclude, discriminate against others and, as such, is fundamentally at odds with the intention of the Anti-Discrimination Act.

Existing legislation in NSW prohibits inciting violence towards a person or group based on their religious beliefs, or vilifying others based on ethno-religious origin. Any anti-discrimination legislation should protect all people equally, and not provide wide ranging exceptions for individuals or organisations.

There are several key problems within the Bill, primarily that the Bill protects any genuine belief – or action motivated by a belief (provided those actions are not punishable by imprisonment). This means such acts or beliefs may be protected, even if they breach a contract or obligation. As access to health and allied health care services is mired with mistrust and experiences of discrimination and ill treatment for many in our communities, it is vital that such professional standards and obligations to provide care for all are upheld.

The Bill (Sections 22N(3)-(5), 22S(2)-(4) and 22V(3)-(5)) makes it difficult for an employer to respond to discriminatory conduct that occurs outside of occupational settings, provided that conduct is motivated by religious beliefs. This could lead to professional regulators in the healthcare industry being unable to investigate a social worker, doctor or psychologist who espouses discredited conversion practices outside

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of their work hours or makes harmful statements about the health needs of sexuality and gender diverse communities. This is true even when that individual is using their professional qualifications to support the credibility of those beliefs.

It also means that an employer in a trusted public service organisation may be unable to engage in disciplinary action against a staff member (such as a teacher, paramedic or police officer) who expresses a faith based opinion about women, people with disability or people of diverse sexualities and genders, while on a break, or on a public forum such as social media while not at work.

It is clear to ACON that such changes to legislation will make it near impossible to foster inclusive cultures or meet broader community expectations around treating people equally and with respect. Many of the organisations we work with through our Pride in Diversity and Pride in Sport programs have been striving to make change in these spaces, and the legislative framework in NSW must support these goals.

While some provisions have been made in the Bill to not protect activities or statements that cause a material financial detriment to an employer, the legislation does not consider withdrawal of financial support a material financial detriment. This means that should a leading figure in a not for profit engage in such remarks or activities on a personal social media account, and funders, donors and supporters consequentially withdraw their support and financial investment, the employer has no recourse under this law. Similarly, if a sporting figure as an employee of a club was to engage in activities or statements off the field, and sponsors withdrew their support, the club would have no ability to enforce their code of conduct – even where this was in contradiction of an employment contract or code of conduct.

The Bill (Section 22M) expands existing exemptions in anti-discrimination laws providing a broad exemption to faith based schools, businesses and charities to discriminate against people with different or no beliefs, even when providing taxpayer funded services, in cases where religion has no relevance to the employment. This is including in respect to existing students and employees. This exemption is in addition to already existing exemptions that allow faith-based organisations to discriminate against people on the basis of sex, sexuality and marital status.

The ability within the Bill to challenge the decisions of the NSW Government which an organisation or individual sees as discriminatory requires detailed consideration. Legislation does not allow any other group of people to make such a challenge except in the case of sexual harassment. Under proposed section 22Z, actions or functions undertaken by the government, or policies developed by the government could be challenged if they contradict the religious beliefs of a person or organisation. The recent public health crisis which has seen religious gatherings restricted to prevent the spread of COVID-19 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 sexuality and gender diverse communities as a condition of funding to be discriminatory. This model is unprecedented in NSW law and would mean that religion overrides the decisions, policies and programs of NSW.

Further, this section of the legislation gives self defined religious organisations the right to bring a complaint under laws that are designed to protect people. To offer human rights complaints to organisations (including potentially commercial operations) is of significant concern to ACON.

We wish, in this submission to support and endorse the submission of Equality Australia, who have consulted with a number of partner organisations, including ACON, and developed a cogent and sensible response that outlines the shortcomings of this Bill and outlines in greater detail the legal and legislative technicalities that are problematic.

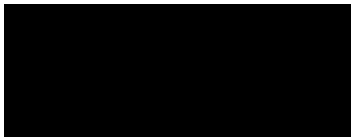
If adopted, the One Nation Discrimination Bill would make NSW a place that is less inclusive and where discrimination would be allowed to occur with the tacit approval of the NSW Parliament.

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

As the people in our State grapple with the largest public health and economic crisis in a generation, now is not the time for Parliament to subject our communities to an unnecessary and divisive ‘debate’ about whether to create a more unequal society, where we impose the rights and values of a few over others in what would be considered to be a retrograde step toward another form of historically condemned societal delineation.

If you wish to discuss this submission further, please feel free to contact ACON Chief Executive Officer, Nicolas Parkhill on [REDACTED]

Kind regards



Justin Koonin
President



Nicolas Parkhill
Chief Executive Officer