

**Submission
No 25**

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

Organisation: Catholic Women's League Australia – New South Wales Inc

Date Received: 19 August 2020



Catholic Women's League Australia - New South Wales Inc

Do not be afraid, I will help you.
(Isaiah 41:13)

19th August 2020

The Catholic Women's League in NSW (**CWL-NSW Inc**) is pleased to provide a submission to the Joint Select Committee on the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (Bill)*.

The Catholic Women's League in New South Wales

Catholic Women's League has been present in New South Wales for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1000 active members in the eight Catholic dioceses in New South Wales.

Our organisation fosters the spiritual, cultural, intellectual, and social development of women and promotes the role of lay women in the mission of the Church.

This submission is made on behalf of CWL-NSW and endorsed by Catholic Women's League Australia Inc. (**CWLA**), the national peak body representing the League's six-member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

Introduction

Our members are daughters, sisters, aunts, mothers, grandmothers and even great-grandmothers who believe that a society is best served by allowing space for religious belief to flourish, and by protecting families who wish to raise their children in the practice and beliefs of their faith tradition. We believe that Australia is enriched by the presence of religious believers, many of whom – including members of CWL NSW – regularly undertake charitable works as part of their religious activities.

CWL NSW's members are becoming increasingly concerned about how increasing hostility towards religion and people of faith impact on themselves and their families, making the protection of religious freedom a more pressing matter for governments.

The need for protections for religious belief in New South Wales

It is troubling that New South Wales does not provide protection for 'religious belief or activity' under its anti-discrimination laws. Our anti-discrimination laws rightly provide protection against unjust discrimination in areas such as disability, marital status, age, race, sex, sexual orientation, and gender

identity, but does not offer equal protections for those who are marginalised because of their religious belief.

This has long been the case, despite several inquiries in recent years clearly acknowledging this lack of equal treatment and recommending that the anti-discrimination laws in New South Wales be changed to address this imbalance.

Most recently, the Expert Panel on Religious Freedom, which was convened in late 2017 following the redefinition of marriage, recommended that the laws in New South Wales be changed. Recommendation 16 of the Expert Panel's report reads:

“New South Wales and South Australia should amend their anti-discrimination laws to render it unlawful to discriminate on the basis of a person’s ‘religious belief or activity’ including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for the appropriate exceptions and exemptions, including for religious bodies, religious schools and charities.”

More than two years have passed since the Expert Panel's report was finalised, but the New South Wales parliament has not implemented this recommendation, nor has the federal parliament offered any protections for religious believers. This is despite an increasing number of incidents of people of faith being discriminated against for expressing their religious beliefs in public.

We submit that it is unreasonable to ask people of faith in New South Wales to wait any longer for this to be rectified.

Contents of the Bill

Definition of ‘religious ethos organisation’

CWL NSW is a registered charity, but our branches are not. CWL NSW appreciates the definition of ‘religious ethos organisation’ is broad enough to incorporate structures of organisations like our own, which are conducted in accordance with the doctrines, tenets, beliefs, and teachings of the Catholic faith.

Section 22M - Religious ethos organisations taken not to discriminate in certain circumstances

The right of individuals to establish religious organisations, and for those organisations to act in accordance with its beliefs is an expression of the right to freedom of thought, conscience and religion, as well as the freedom of association provided for in international human rights instruments. This is what is often referred to as ‘positive’ religious freedoms, while the right to be protected against discrimination is known as ‘negative’ religious freedom.

We consider section 22M to be well-drafted, because it includes the “appropriate exceptions and exemptions, including for religious bodies, religious schools and charities” referred to in Recommendation 16 of the Expert Panel's report, while rightly acknowledging that it is not discrimination for these bodies to act in accordance with their beliefs. Instead, allowing religious organisations to operate in accordance with their beliefs is a necessary aspect of religious freedom.

When other sections of the Bill are read in the light of section 22M, it is clear this Bill strikes an appropriate balance between the protection of individuals against discrimination, ie negative religious freedom, and the need to allow people of faith the space to act in accordance with their beliefs, ie positive religious freedom.

Section 22N – Discrimination against applicants and employees (when read alongside Section 22M - Religious ethos organisations taken not to discriminate in certain circumstances)

We consider the protection from discrimination against applicants and employees on the basis of religious belief or activity – inside or outside of the workplace – to be essential for the protection of religious believers.

A number of our members have expressed concerns about their own employment, or the employment of their children or grandchildren who seek to express their religious beliefs publicly, including on social media. While the Israel Folau sacking made headlines, there are other occurrences of this that do not receive the same amount of attention or support.

Often, an employer does not need to actively discriminate against a person for their religious beliefs: they simply need to pressure employees to comply with certain progressive causes to create an environment hostile for people of faith. For example, during the same-sex marriage campaign, many organisations publicly expressed their support for the redefinition of marriage, without consulting employees of faith, nor considering how taking such a stance might affect them. We have heard many stories from our members and others of ‘self-censorship’ by people of faith, out of fear that they would be ostracised for expressing their views.

We appreciate too that section 22M, read in conjunction with this section of the Bill, still allows religious ethos organisations to make employment decisions based on their beliefs. It is important for the proper exercise of the right to freedom of religion that Catholic organisations like our own, the Catholic schools at which our children and grandchildren are educated, Catholic charities and other welfare services are run by people who profess the same belief.

This is especially important for religious schools. While parents are the primary educators of their children, Catholic schools work in partnership with parents and carers to ensure that the faith is passed on. Catholic schools are themselves small communities of faith and the maintenance of a faith community is only possible when a sufficient number of the staff uphold the Catholic faith, and do not speak or act in a contradictory fashion. It is not sufficient for this requirement to be limited to those in leadership roles or those whose task it is to teach religion as a subject: every teacher is a role model to students and critical in their development. While many teachers in Catholic schools are not Catholic, it is nonetheless important to parents who choose a Catholic education for their children that all teachers commit to upholding (and not opposing) the Catholic ethos at the school and in all other public actions.

Section 22P – Discrimination against contract workers

Over 30 per cent of the Australian workforce are casual and contract workers, and unless they are a casual worker with more than 12 months' service, they are not protected against discrimination by the *Fair Work Act 2009*.

Many young people, including children and grandchildren of CWL NSW members, are casual workers. Many more will be so in light of the rise in unemployment and underemployment due to the COVID-19 pandemic. These should not be any less protected in their employment simply because they do not have the same stability in their jobs as permanent employees: indeed, such a vulnerability should call for extra protections.

For this reason, we support the protection of contract workers in this section.

Section 22S – Qualifying bodies

We consider it necessary for qualifying bodies to be prohibited from discriminating on the basis of religious belief or activity. This is especially important in the area of health, where upholding religious beliefs sometimes means that certain treatments cannot be performed in good conscience (eg abortion, euthanasia, gender reassignment.)

We do not consider that a person's suitability to be registered as a health professional in their chosen field should depend on their willingness to participate in treatments that go against their beliefs, particularly when such treatments are not medically indicated. Many of us know medical students who are fearful that they will struggle to be registered as health practitioners because they are opposed to abortion. Others fear that their registration will come under additional scrutiny, simply because they are educated at a Catholic tertiary institution. These students would make wonderful doctors, nurses and other health care workers, because the Catholic understanding of the human person is based on the fact that each has inherent dignity that must be respected, which is a worthy starting point for any medical professional.

Registered and practicing doctors and nurses who have a conscientious objection to facilitating abortion, organising gender re-assignment surgery or puberty blockade and other non-therapeutic hormone preparations have a right not to use their training and experience to cause harm. Their commitment to graduating oaths and to their underpinning Hippocratic ethic requires legislative protection and respect. Failure to protect freedom of conscience and belief and freedom of religion is currently rendering these health professionals vulnerable to the de-registration nuanced in other legislation and in the Australian Health Practitioners Regulatory Agency proposed code of conduct. The valuable work and lifelong community contribution of these practitioners will be lost to NSW society if the protections offered in this Bill are not adopted. '

For this reason, we submit that the inclusion of this protection is welcome.

Section 22V – Education (when read alongside Section 22M - Religious ethos organisations taken not to discriminate in certain circumstances)

It is appropriate that students who are not attending a religious school or tertiary institution should not be treated differently in their education because of their religious beliefs.

However, it is good that when read in conjunction with section 22M, this section allows religious schools to prefer students of the faith of the school for enrolment and ensure that they are taught the faith of the school.

As mentioned above, Catholic schools are communities of faith that are sustained by having a sufficient number of staff professing that faith. However, it also requires a significant number of students who share the same beliefs, and with parents who are committed to allowing the school to educate children in the relevant faith and inculcate religious values in the students.

While Catholic schools can and do admit children of all faiths and none, if the school could not insist on preferencing Catholic students for enrolment, and educating students in the Catholic faith, then it would cease to be a ‘Catholic’ school in anything but name only.

Section 22W – Provision of goods and services

It is extraordinary that under New South Wales law, discrimination in the provision of goods and services on the basis of religious belief or activity is still permitted. This section would rectify what is an obvious gap in our anti-discrimination laws, and so is supported by CWL NSW.

Conclusion

CWL NSW members care about the progress of this Bill because we care about the common good, and the ability for families to grow in the practice of faith if that is their choice. We know from the many works in which CWL NSW members are involved that religious faith is not confined to Sunday worship, but, when lived authentically, permeates every part of our lives.

We want to stress the importance of swift action by the New South Wales parliament to ensure sufficient legislative protections are in place to ensure that people of faith are treated equally with all other citizens, and consider this Bill to be an appropriate way of ensuring that equal treatment.

Ann Pereira

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President