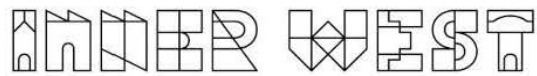


**Submission
No 33**

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

Organisation: Inner West Council

Date Received: 20 August 2020



Inner West Council Submission to Parliament of NSW Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

Inner West Council resolved at its meeting of 11 August 2020 to make a submission regarding the proposed Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020. Council supports fair and equal discrimination laws that unite, rather than divide, the community, and endorses Equality Australia's *Freedom from Discrimination Statement*, including that "every Australian deserves protection from discrimination, no matter who they are, what they believe, or whom they love".¹

Council holds concerns regarding unbalanced provisions in the Bill that threaten safe and inclusive workplaces, schools, universities, and services and requests that such provisions be removed.

The Inner West embraces, celebrates, respects and values difference by building awareness and appreciation of our diversity. Council is concerned that the Bill has potential to adversely impact on the rights of this diverse community, including the rights of LGBTIQ+ people, women, people with disability, multicultural communities, people of faith and others. Council recognises the intersectionality that exists between these and other groups in our community: the rights of any of these groups can't be considered in isolation from one another.

The Inner West's LGBTIQ community, one of the largest in the nation, has already lived through the bruising and divisive marriage equality debate. Any legislative changes that expose this vulnerable group to further trauma from homophobic and transphobic voices in the media and Parliament should not be countenanced. Our community simply cannot afford for the disproportionately high mental and physical health challenges experienced by this community to be exacerbated.

Council is concerned about several elements contained in the Bill:

Religious rights above other rights

The effect of this Bill is that the rights of all people to be protected from discrimination, including those of faith, are being traded off by a desire to further strengthen religious freedom. If there is a case that some religious rights in NSW need to be clarified, the preferencing of rights to religious freedom over all other rights is a clumsy and fundamentally unfair, untested and unacceptable way of approaching this.

Expanding the right to discriminate

Section 22M of the draft Bill enables "religious ethos organisations" to discriminate on the grounds of religious beliefs or religious activities if they genuinely believe their

¹ Equality Australia <https://equalityaustralia.org.au/rdb-state-ment/>

conduct is “consistent with the doctrine, tenants, beliefs or teachings of the religion of the organisation or; is required because of the religious susceptibilities of the adherents of the religion of the organisation or; further aids the relevant organisation in acting in accordance with the doctrines, tenants, beliefs or teachings of the religion of their organisation”². The Bill defines “religious ethos organisation” broadly to include private educational authorities, charities and any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a religion. It will allow discrimination against a person on religious grounds in education, employment and service delivery, even in cases where services are publicly funded. As noted in the Legislative Review Digest No.15 “the Bill may protect behaviour from certain educational authorities, charities etc. that is currently deemed to be discriminatory and unlawful under the Act”³

The notion that the NSW Anti-Discrimination Act 1977 would be improved by expanding the ability of an organisation to discriminate seems at odds with the purpose of this legislation. This is a regressive Bill, out of step with progressive community values that have evolved in the decades since this legislation was first introduced and potentially negatively impacts on very many people.

Religion overrides government rules.

Section 22Z ⁴enables faith-based organisations and organisations that describe themselves as religious to be able to challenge NSW government laws, programs, policies, contracts and decisions which allegedly contradict their interpretation of their religion.

No consequences and no redress for harmful conduct

Section 22N (3)-(5) ⁵will make it very difficult for employers to prevent or sanction behaviour when their employees or members use their religion to hurt others when they are outside the work environment. While employees will not be permitted to cause “direct and material financial detriment” or directly criticise an employer, employers will not have recourse or redress for any boycott, withdrawal of sponsorship or other corporate support that occurs because of the employee’s activities.

Without an ability to respond to offensive or harmful conduct, employers, educators and professional and licencing bodies will have difficulty in creating safe, inclusive workplace cultures and meet shareholder, customer or community expectations. Ability of employers to enter into employment contracts and enforce codes of conduct would be limited by this Section of the Bill.

This provision essentially contributes to the breakdown of the social compact with no boundary able to be drawn around hateful speech.

²<https://www.parliament.nsw.gov.au/bill/files/3736/First%20Print.pdf>

³ <https://www.parliament.nsw.gov.au/ladocs/digests/647/Legislation%20Review%20Digest%20-%202%20June%202020.pdf> page iv

⁴ <https://www.parliament.nsw.gov.au/bill/files/3736/First%20Print.pdf> p.12

⁵ <https://www.parliament.nsw.gov.au/bill/files/3736/First%20Print.pdf> p.6-7

Religion above the law - loose definitions

The loose definitions contained in the Bill would create protection for a wide range of activities and practices which may vilify others or breach civil obligations, under the guise of a range of religious belief. Activities defined as religious in the Bill may include an activity motivated by a religious belief; and religious beliefs are defined as having (or not having) a religious conviction, belief, opinion or affiliation.

The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 stands in clear conflict with Inner West Council's support for fair and equal discrimination laws that unite rather than divide the community. It's particularly dangerous and unwelcome during the time of COVID-19 when our focus should be on strengthening community connections and fostering kindness rather than division.

Contact for submission

The above submission is made on behalf of Inner West Council by Michael Daly, Acting Director City Living, Inner West Council. Michael Daly may be contacted on

[REDACTED]