

**Submission
No 36**

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

Organisation: Equal Voices

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Equal Voices Submission to

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

Equal Voices is the national network of LGBTIQ+ Christians and allies in Australia, founded in Sydney in early 2017. We wish to express our deep concerns about the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 [NSW] (the 'Bill'). We are very strongly committed to genuine religious freedom – indeed it is out very *raison d'être*. However we believe that this Bill would move New South Wales in a very different direction, fostering new levels of religious discrimination and making religious freedom more difficult for many people of faith, not least LGBTIQ+ people of many different faiths.

Observations regarding the Terms of Reference of the Joint Select Committee

(a) Existing rights and legal protections contained in the Anti-Discrimination Act 1977 (NSW) and other relevant NSW and Commonwealth legislation;

Equal Voices was founded in Sydney and has a strong NSW base. This arises from significant challenges to LGBTIQ+ Christians and allies in parts of NSW, not least in Sydney, and from valuable leadership offered by NSW based LGBTIQ+ Christians and allies due to the positive spirit of multi-cultural and multi-faith life made possible by existing NSW legislation. We are therefore alarmed by the Bill which appears to us to be highly repressive, making our own work and the life of our members far more difficult.

At the core of existing NSW and Commonwealth legislation is an intersectional commitment to balancing the different needs and rights of the wide variety of people within the State. This is in line with international standards of law, based on mutual rights and responsibilities. Genuine religious freedom sits within this shared framework, asking neither too little not too much for people of faith themselves. It recognises the huge diversity of religious viewpoints and mores within our contemporary society, including wide variety within particular Christian denominations and other faith groups themselves. It also affirms the value of the person against corporate powers and mob prejudices. In contrast, the Bill sets restricted conceptions of religious rights above other rights, privileging dominant majority viewpoints within certain religious groups over the needs of their more marginalised members as well as those of others of other faith and beyond the faith communities. We believe this therefore undermines NSW and Commonwealth legislation and harmony, and drives further divisive wedges between people of faith and no faith, and between people of faith within faith communities. LGBTIQ+ people of faith, and other more vulnerable people of faith, are also already highly pressed in many faith communities. The Bill provides a potential sword of discrimination to cause further violence and oppression.

Equal Voices knows only too well the repressive potential of influential religious forces in NSW. Such voices have a deleterious effect in Australia as a whole upon the full valuing of LGBTIQ+ people and aspects of community harmony and constructive conversation. In our view, the Bill represents only narrow sectional benefits to such interests, at the cost of others. It would diminish the freedom of expression of LGBTIQ+ people of faith, driving them deeper into the closet, or allowing the denial of essential rights of employment, health and other services.

Specifically, Equal Voices considers three areas of the Bill as especially concerning:

i. ***The reduction of protection against religious based prejudice***

We consider the attempt to allow greater scope for religious based prejudice against others to be destructive. We affirm the right of individuals to hold views which are reprehensible in the eyes of others, but the expression of such views needs to remain constrained to the degree allowed under current legislation. The proposed Bill goes much further than required to protect freedom of speech in balance with the rights of others. The Bill defines a 'religious activity' as,

...an activity motivated by a religious belief, but does not include any activity that would constitute an offence punishable by imprisonment under the law of New South Wales or the Commonwealth. (s 22K(1))

The threshold of definition for the activity 'motivated by religion' is that which does not amount to an 'offence punishable by imprisonment'. This means the Bill accepts as legitimate many forms of unreasonable and unfair activity simply on the basis that they are motivated by religion. This would cover forms of bullying, harassment and vilification which are not imprisonable offences. The Bill provides no protection for vilification on the grounds of religious belief or identity.

Members of Equal Voices experience verbal harassment and bullying across areas of public life. This account from one of our Sydney members illustrates how the Bill legitimises as lawful religious activity:

Today I was having coffee with another gay Christian friend in [*suburb*] and a man on the table next to us interrupted to ask about our views on "L, G, B transgender"... to which he replied that it was all a fad, and "you mustn't be reading the same bible and singing the same hymns". He talked over me, and cut me off and laughed with a man on another table who shouted "Amen". I was forced to walk out of a lovely conversation with my friend and out of the cafe because I couldn't stand hearing these harmful words, and I left in tears.¹

We also draw attention to the high levels of religious based phobia and aggression against LGBTIQ+ people, and continued difficulties experienced by Muslims, Jews and other minority groups.² Current legislation offers some protection and instead of reducing this as proposed in the Bill, greater awareness and education is required. An increasing number of NSW and Australian-wide organisations, including some faith bodies, are addressing this within their own life. Allowing employees of such bodies to contravene other anti-discrimination measures to affirm their religious prejudice works counter to this positive trend.

¹ Equal Voices submission to Commonwealth Attorney-General's Department, 'Exposure Draft of the Religious Discrimination Bill 2019' (2 October, 2019), 19.

² See the recent report by the Australian Human Rights Commission & Victorian Equal Opportunity & Human Rights Commission, *Freedom of Religion in Australia: a focus on serious harms* (July 2020).

ii. ***The extension of powers of religious bodies to fire, and refuse services, where religion has no direct relevance to the tasks or services, not least when taxpayer funded***

Equal Voices supports the legitimate rights of religious bodies to self-determination in the appointment of ordained and other designated leaders involved with worship, internal order and faith formation. We encourage and work for genuine equality in all religious spheres. We recognise that the State and wider society cannot simply impose its own standards on religious bodies in such matters. The Bill covers religious bodies under the definition of 'religious ethos organisation' (s 22K(1)). The proposed ss 22N(9), 22S(5) and 22V(6) give such bodies a broad-ranging exception to discriminate in relation to employment if either a 'religious ethos organisation' or a 'body established to propagate religion under section 56'.

The general removal of protections from harmful discrimination in employment in religious bodies is unreasonable and unjustified. Equal Voices members have experienced discrimination in religious bodies. This account from one of our NSW members illustrates what form this can take:

Susan contract not renewed at an independent Christian school in Sydney*

The [religious] school Susan worked at in 2017 is a member of Christian Schools Australia. This school espouses conservative theological views on marriage, sexuality and gender. During the 2017 marriage postal survey, the school's Principal directed staff to advocate for a 'No' vote. In 2017 Susan, a qualified teacher, was working as a teacher's aide in an upper primary aged class. One student submitted a creative writing exercise that involved him falling in love with another boy. After reading the story, the boy's teacher ordered the boy to tear out and throw away the story because it was shameful. The boy was distraught by the teacher's actions. When Susan sought to support the boy her response prompted suspicion from colleagues and supervisors. Subsequently, this same boy suffered homophobic bullying. He was taunted by classmates for 'being gay' which led to acute mental health issues. As Susan continued to support the boy and report bullying incidents she came under increasing pressure to withdraw. The work environment became increasingly hostile and Susan left employment following non-renewal of contract, although the position was re-filled by another teacher's aide shortly thereafter.³

The proposed Bill protects this form of discrimination in employment by religious bodies.

The experience of shocking abuse perpetrated within religious organisations has also highlighted the necessity for greater transparency and accountability. Unless the State maintains the wider rights of all it risks becoming an enabler of fresh and continuing institutional abuse, not least towards LGBTIQ+ people.

Equal Voices therefore sees no legitimate justification for removing protections against discrimination in employment. Most roles within religious-based organisations, such as education and health providers, do not require reserved occupation status or rejection of individuals who may differ on some points of religious doctrine or practice. Particularly

³ Equal Voices submission to Commonwealth Senate Legal and Constitutional Affairs Committee, 'Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff' (21 January 2019), 7.

where such bodies are recipients of public funding, it is imperative that equality of opportunity, dignity and equality is maintained, and indeed strengthened. There are already too many cases known to Equal Voices of staff struggling within existing limits. The proposed Bill would only exacerbate and encourage witch hunts against others.

Equal Voices is also greatly concerned that the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* will strengthen the promotion of non-scientific based exclusionary approaches advocated by some leading religious bodies in NSW, including the trans-exclusionary policies of the Anglican Diocese of Sydney with its powerful and extensive range of public facing services. In contrast it affirms the good practice of many religious bodies within New South Wales, such as Uniting care organisations, which have sought to implement Rainbow Tick standards, and educational institutions such as Anglican schools within the dioceses of Newcastle and Grafton which are seek to reflect best practice. Such developments need greater support by the State of New South Wales not undermining. Equal Voices believes strongly that Christian bodies seeking to care for others must in particular model the teaching and example of Jesus which is based on love for neighbour, irrespective of race or religious outlook. The Gospel of Matthew chapter 25 is especially clear that care for the suffering and marginalised is central to religious service, without any distinction of moral character or belief. Equal Voices consequently fails to understand how, in addition to wider secular rights, the NSW Parliament could consider extending exclusionary powers, based on religious discrimination, to faith groups.

iii. ***The way in which this Bill puts religious law above other legislation***

In addition to the pressing issues of care for others above, of particular concern in the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* is the pitting of the rights of a very narrow idea of religious 'freedom' against wider and much more substantial rights, including the religious rights of life and expression of other people of faith. Equal Voices believes there is no justification in mainstream legal standards for such priority. We also strongly reject the idea of a hierarchy of rights which this Bill would create.

As noted above, the Bill proposes to exempt 'religious ethos organisations' (among other religious bodies) from being subject to discrimination law. At the same time, it places other employers which are not religious at heightened risk of claims of discrimination. In Division 2, ss22N – 22T, the Bill makes it unlawful for a wide range of bodies to discriminate 'on the ground of religious beliefs or religious activities'. However, the Bill makes otherwise reasonable and lawful activities by employers or employer-related bodies potentially unlawful. For example, in s 22S(1) the Bill proposes to make a 'qualifying body' unable to refuse, confer, renew or extend the authorisation or qualification of a person if the ground involves religious beliefs or activities. This provides no assessment of the reasonableness of the activity involved. In Victoria, a General Practitioner at a medical practice put up a sign on the practice which refused to consult for, or prescribe certain medications involving contraception, IVF and

abortion. This kind of behaviour should be reviewable without fear of discrimination claims by the relevant medical bodies.⁴

In another case the Medical Board of Australia took action to suspend the registration of a Victorian medical practitioner over his social media activity.⁵ The Medical Board found that the practitioner has been long publishing denigrating and demeaning comments on social media. These comments have often focused on those who provide pregnancy terminations, those who treat gender dysphoria and those who identify as LGBTIQ. These comments have, in the view of the Board, amounted to endorsements of violence and even capital punishment. The Medical Board should not be at risk of claims of discrimination for safeguarding the interests of the wider medical profession and the public.

Equal Voices particularly challenges the way in which the Bill gives greater power to some people at the expense of others. Granting extra exclusionary powers to religious groups would only be possible by reducing the rights and opportunities of religious minorities, such as many LGBTIQA+ Christians, within those very groups. Those who particularly need the support of the State to uphold their life and expression would instead find the State empowering their persecutors and enabling their abuse.

Equal Voices believes that faith groups have vital contributions to make to the health and growth of New South Wales. However the Bill threatens to create conflicts where there these do not, or need not, exist. It also threatens to implicate the State of NSW in matters where it does not have religious competency to judge between competing religious conceptions of understanding and practice. For how is it possible for secular authorities to adjudicate on controversial issues within faith communities and organisations themselves? Why would the State open itself to such debates and likely litigation? Equal Voices believes there is no groundswell of demand to justify opening such a Pandora's box. Rather New South Wales should build upon its considered mutually constructed network of existing checks and balances.

Equal Voices believes strongly in a multicultural, multi-faith society in which all are free to express their views and practices where they do not damage those of others. This is at the heart of the flourishing secular multi-faceted society which the State of New South Wales has sought to nurture. It offers a way forward between the two extremes of secularism and religious dominance. This Bill seeks to tilt legislation away from this healthy via media, enflaming religious culture wars rather than building fresh relationships and an environment which draws on all that is good in different faith and other quarters.

(b) The recommendations relevant to NSW from the Expert Panel Report: Religious Freedom Review (2018)

⁴ Olivia Lambert, 'Absolutely appalling': Outrage over medical centre's 'concerning' message to patients' Yahoo News Australia (30 January 2020) < <https://au.news.yahoo.com/torquay-doctor-refuses-contraception-abortion-treatments-052045132.html> >.

⁵ Kok v Medical Board of Australia (Review and Regulation) [2020] VCAT 405.

Equal Voices considers that the Expert Panel's Report does not constitute a basis for the validity of the Bill. As we and others made clear in our submission to the Religious Freedom Review, religious freedom is not a single concept agreed by all people of faith, even in a single Christian denomination, never mind by society as a whole. As the uncertain process of the Federal Government's religious discrimination proposals shows clearly, the recommendations of the Expert Panel consequently remain highly contested and unresolved. It would be unwise therefore for the NSW Parliament to proceed with the Bill on this basis.

(c) The interaction between Commonwealth and NSW anti-discrimination laws and the desirability of consistency between those laws, including consideration of:

- i) The draft Religious Discrimination Bill 2019 (Commonwealth)**
- (ii) The Australian Law Reform Commission's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation.**

(i) Equal Voices considers that the difficulties of attempts to proceed with the draft Religious Discrimination Bill 2019 (Cth) underlines the need for Australian Parliaments to step back from enabling further repressive powers for religious bodies. In our view, the proposed Bill is highly problematic and represents a significant setback to many hard-pressed minority groups and people of all faith outlooks, and sexual and gender identities. It would consequently be corrosive for the NSW Parliament to seek to act independently, in a more reactionary manner, before the Commonwealth has reflected further and Australians have come to a more mature and settled standpoint. In its submission to the *Expert Panel Report: Religious Freedom Review (2018)* Equal Voices joined those calling for exploration of alternative ways forward, including the possibilities of an Australian Charter of Rights. It is certainly time we halted not enhanced recent religious culture wars.

(ii) It is also highly disappointing that there has been such postponement of the Australian Law Reform Commission's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation. Without such informed attention to the balance of religious and other rights, it is risky to make fresh law. For even if the Bill were to have valid elements, it would be highly premature to act whilst the wider national debate is so uncertain and highly contested. It seems even more extraordinary to Equal Voices that any thought of proceeding should be considered at a time of unprecedented state, national and international health and economic crisis. It would be much better that the NSW Parliament devote itself to ways in which it can bring its residents together, to learn and benefit from each other's different faith and other gifts.

Recommendations

1. That no change is made to NSW law to reduce protection against religious based prejudice
2. The no extension is made to grant extra powers to religious bodies to fire, and refuse services, not least when activities are taxpayer funded or supported
3. That religious law is not placed above other rights legislation in the manner this Bill promotes
4. That the NSW Parliament resists calls to tamper with religious rights during a time of wider legislative review and health crisis

