

**Submission
No 53**

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

Organisation: Women's Legal Service NSW

Date Received: 21 August 2020

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Joint Select Committee on the Anti-Discrimination Amendment
(Religious Freedoms and Equality) Bill 2020
NSW Parliament
6 Macquarie Street
Sydney NSW 2000

By email: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Joint Select Committee,

Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

1. Women's Legal Service NSW (**WLS NSW**) thanks the Joint Select Committee for the opportunity to comment on the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Bill)*.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. We have read and endorse Equality Australia's submission to this inquiry.

Recommendations

4. In summary we recommend:
 - 4.1 That the NSW Parliament does not pass this Bill because it does not provide an appropriate balance between competing rights; and
 - 4.2 The Joint Select Committee recommends a comprehensive review of the *Anti-Discrimination Act 1977* (NSW), including considering the introduction of protections from discrimination on the basis of your religion and replacing or narrowing the current exceptions for religious organisations.

Balancing human rights

5. Human rights are universal, indivisible, interdependent and rarely absolute.
6. We support the right to live free from discrimination on the basis of your religion, but it must be balanced against other human rights. Any limitation on human rights must be a reasonable, necessary and proportionate means of achieving a legitimate purpose.



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7. WLS NSW operates from a feminist framework. We support a woman's right to autonomy and access to safe and affordable healthcare, including reproductive health care. We are concerned that the Bill may limit women's access to reproductive healthcare.
8. The United Nations Committee on the Elimination of Discrimination Against Women affirms,
“access to healthcare, including reproductive health care is a basic right under the Convention of the Elimination of all Forms of Discrimination against Women [compliance of which is] central to the health and wellbeing of women...It is discrimination for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative serious providers.”¹
9. The Bill may make it unlawful for a professional licencing body to discipline its members for conduct done on the basis of their religious beliefs. This includes imposing a requirement – such as a professional standard – with which a person refuses to comply because of their religious beliefs, if that requirement is not reasonable. Whether the professional standard is reasonable will be up for debate.
10. For example, it may be unlawful for the relevant disciplinary body to take action against a doctor who, on the basis of their religious belief, refuses to provide a woman with a prescription for the morning after pill and refuses to provide her with the name of an alternative health provider.
11. We are particularly concerned about the potential impact on women in regional, rural and remote areas should this Bill proceed. There are already significant barriers to accessing reproductive healthcare in rural, regional and remote areas of Australia and this Bill, if passed, could further curtail access to such services.
12. We are also concerned that should the Bill pass, the laws may be used to further discriminate against LGBTIQ+ people who are already very vulnerable to discrimination in our community.
13. This Bill does not provide the appropriate balance between competing rights and on this basis, we strongly submit that this Bill should not pass. We agree with the Australian Discrimination Law Experts Group when they say in their submission to this inquiry:

“The Bill is flawed as it privileges and prioritises religious belief and activity over other protected attributes, provides exceptions for a wide range of organisations in relation to a vast array of potentially unlawful conduct, and allows religious organisations to refuse to comply with, and avoid liability under, some existing NSW laws where they conflict with their own beliefs.”

Recommendation: That the NSW Parliament does not pass this Bill because it does not provide an appropriate balance between competing rights.

Comprehensive review of the Anti-Discrimination Act

14. The *Anti-Discrimination Act 1977 (NSW) (ADA)* is a very old statute and does not reflect more recent reforms to anti-discrimination laws in Australia and internationally.

¹ United Nations Committee on the Elimination of Discrimination against Women *General Recommendation No 24: Women and health* (1999) paragraphs 1, 2 and 11.

15. We therefore recommend a comprehensive review of the ADA. We submit that any review of the ADA should consider:
 - 15.1 introducing protections against discrimination on the basis of your religion; and
 - 15.2 removing or narrowing current exceptions for religious organisations.
16. Section 56 of the ADA deems lawful “*any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion*”.
17. WLS NSW endorsed the National Association of Community Legal Centre’s (**NACLC**) *Response to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper* (September 2011). Particularly relevant to this inquiry, we support the comments made in that submission about removing religious exemptions.²
18. Specifically, permanent exemptions compromise the rights of vulnerable groups already susceptible to discrimination, including women and LGBTIQ+ communities, by allowing the right of freedom of religion to prevail over other rights afforded to those individuals by international human rights law, such as the right to live free from discrimination.
19. We note that a vast range of public social and welfare services are managed by faith-based organisations, including aged-care, education, adoption services, employment assistance and child welfare. Religious organisations receive significant government funding to provide these essential services. By allowing publicly funded organisations to discriminate against certain groups, the Government sends a message that discrimination is acceptable in our community, which serves to further entrench systemic discrimination against vulnerable groups of people.
20. NACLC submitted that removing religious exemptions and introducing religion as a protected attribute would ensure that freedom of religion is not privileged over and above other rights but is still adequately protected.
21. Alternatively it was proposed that the scope of the exemption be limited to permit discrimination only when it is necessary to fulfil the inherent requirements of a position directly associated with the operation of that religion and should not be applicable to organisations or services in receipt of public funding.
22. The Commonwealth Government adopted this approach (in part) when they passed amendments to the *Sex Discrimination Act 1984* (Cth) prohibiting faith-based aged-care providers in receipt of Commonwealth funding from discriminating against anyone (except their employees).³

Recommendation: The Joint Select Committee recommends a comprehensive review of the *Anti-Discrimination Act 1977* (NSW), including considering the introduction of protections from discrimination on the basis of your religion and replacing or narrowing the current exceptions for religious organisations.

² National Association of Community Legal Centre, *Response to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, September 2011, pages 47-49.

³ *Sex Discrimination Act 1984* (Cth) section 37(2),

23. If you would like to discuss any aspect of this submission, please contact Kellie McDonald, Senior Solicitor or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW



Philippa Davis
Principal Solicitor