

**Submission  
No 62**

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

**Organisation:** Australian Association of Social Workers (AASW)

**Date Received:** 21 August 2020

# Submission to Joint Select Committee on the Anti- Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

AUGUST 2020



**AASW**

.....  
Australian Association  
of Social Workers

**Enquiries regarding this submission can be directed to:**

Jane Berkeley  
Manager, AASW NSW Branch

[REDACTED]  
[REDACTED]

Charles Chu  
AASW Social Policy & Advocacy Officer

[REDACTED]  
[REDACTED]

# The Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, discrimination, and matters that influence people's quality of life.

## The social work profession

Social work is a tertiary qualified profession recognised internationally that pursues social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

## Our submission

The AASW welcomes the opportunity to provide a response to the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020. Social work as a profession is well-placed to respond as our practice is underpinned by three values: respect for persons, social justice, and professional integrity. These principles reflect our unwavering commitment to human rights and our respect for the diversity, including religious diversity, of those we work with. Social workers' engagement with people covers the full complexity of human experience and this includes the spiritual dimension.

As a signatory to the International Covenant on Civil and Political Rights (ICCPR), Australia already has several anti-discrimination laws in place; laws that are in place to protect people on the grounds of sex, disability status, and age, amongst others. Whilst we agree in principle with the need for religious beliefs, or lack thereof, to be free from discrimination, it is not clear how this Anti-Discrimination Amendment will interact with the existing legislations. Currently, laws in some states and territories, including New South Wales do not adequately provide this protection. All Australians should be free to practise religion if they choose to, and these choices should not impact their ability to engage in public life. **This same protection should be granted to other communities.**

Therefore, the AASW is concerned that, in the guise of protecting religious freedom, this bill could result in some forms of discrimination against minority groups, in particular, LGBTIQ people. Anti-discrimination laws and community attitudes have changed over past decades to reduce discrimination against minority groups and marginalised people. The AASW believes that these gains have improved the quality of life for many people and that they should be protected.

## Our Position

**The AASW opposes this Bill. It is the overall recommendation of the AASW that the implementation of this Bill ceases until federally the Australian Law Reform Commission (ALRC) has completed their review, and state laws can be consistent and in line with national legislation.**

This submission will comment on the following specific sections and provide recommendations as to how the NSW government can employ other existing anti-discrimination safeguards **without passing this Bill:**

- Definition of 'religious activities' – Section 22K
- Exception for 'religious ethos organisations' to discriminate – Section 22M
- Qualifying body – Section 22S
- The performance of functions under State programs – Section 22Z

## Recommendation

- That S.22K, S.22M, S.22S and S.22Z be removed from the Bill
- That a review of the *Anti-Discrimination Act 1977* (NSW) be undertaken in its entirety through an external body, such as Anti-discrimination NSW, and be conducted with community and allow for public submissions
- That the NSW government consider a Charter of Human Rights or a Human Rights Act that is in line with other jurisdictions, including Victoria and Queensland
- That *Anti-Discrimination Act 1977* (NSW) be amended to use conventional discrimination protections for faith-based communities, which would protect the ability for people to express their faith by requiring any restrictions on religious expression at work, school and in the provision of goods and services to be reasonable.

- That the *Anti-Discrimination Act 1977* (NSW) be amended to include conventional discrimination protections for healthcare workers with religious beliefs, but not at the expense of the patients' healthcare needs.

## Definition of 'religious activities' – Section 22K

The sections on the definition of “religious activities” as currently written have the potential to impact on the people social workers work with. The AASW submits that the Bill's attempt to define religious activities, whether the scope is broad or narrow, is problematic in practice. Social workers provide support to employees whose mental health has been compromised by discrimination they have experienced in the workplace and stress of living under a discriminatory culture. Some of our members are providing these mental health services to employees under Employee Assistance Programs (EAP). As a profession we know that workplace culture impacts on mental health. Social workers who work with vulnerable people can attest to the damage inflicted by expressions of discriminatory belief even when phrased in terms of a religious conviction. Social workers know the importance of professionalism, empathy and discretion from all staff, not just those in direct service delivery. For instance, the unchecked statement of belief made by a receptionist in a service for people in a state of crisis can be just as damaging as an intentional religious slur.

We are also concerned as to who can define an activity as affiliating to a religion. In existing federal anti-discrimination laws, the intent of discrimination is not relevant, instead it is how the behaviour is experienced by the affected person that determines discrimination.<sup>1</sup> By protecting statements of belief according to the alleged intention of the person who made them reverses this widely accepted basis of discrimination. The AASW believes this could create a dangerous precedent for vulnerable populations to lose their existing protections under federal laws in the interests of religious freedom. It might also enable a legal structure that permits religious bodies to prospectively determine what may constitute a religious activity that supersedes current federal anti-discrimination laws. For example, the implementation of the *Marriage Act 1961 (cth)* will be impacted by the Bill as it extends well beyond the refusal to legal marriages of same sex couples. The Bill endows people and groups who claim to have a 'religious-ethos' with an unchecked power to actively teach against same-sex marriage in public institutions, despite the fact that it is contrary to the federal law.

Therefore, we are concerned this will create a 'protected' group at the expense of those people who require the safeguards that existing anti-discrimination laws offer. The AASW recommends the NSW government ensure the Bill is consistent with the International Covenant on Civil and Political Rights so that all Australians, “regardless of their religious belief or activity”, can “participate fully” and are “entitled to the equal and effective protection of the law”.

---

<sup>1</sup> Human Rights Commission, 2008, section (d), <https://www.humanrights.gov.au/our-work/right-discrimination-free-workplace>, accessed 24 January 2020

## Recommendation

- That Section 22K be removed from this Bill
- That *Anti-Discrimination Act 1977* (NSW) be amended to use conventional discrimination protections for faith-based communities, which would protect the ability for people to express their faith by requiring any restrictions on religious expression at work, school and in the provision of goods and services to be reasonable.

## Exception for religious ethos organisations to discriminate – Section 22M

The AASW is concerned about the definition of ‘religious ethos organisations’ under S.22M to include faith-based community sector organisations. The inclusion of community service organisations under this umbrella is not warranted and represents a mischaracterisation of the community sector. These organisations employ thousands of workers, and currently recruit staff on the basis of a wide range of characteristics including qualifications, skills and experience.<sup>2</sup> Many of these are social workers who are highly qualified professionals supporting people who are experiencing homelessness, family violence, poor mental health or who are living with chronic illness or disability, amongst many other services. This bill has been promoted on the assumption that this sector would welcome the opportunity to discriminate against their own staff and those they work with who do not share their religious belief. This conversation however misjudges the underlying purpose of these organisations. Even organisations which began with an element of proselytization have evolved away from that narrow focus and now embrace equality and inclusion as fundamental elements of their response to human need.

This claim also under-estimates the seriousness and professionalism with which most community sector organisations and their staff approach their responsibility as recipients of government funding. In many instances faith-based community sector organisations have successfully tendered for tax-payer money to assist people with a particular need, and they take seriously the public expectation that they respond to all people without discrimination.

## Recommendation

- That Section 22M be removed from this Bill

## Qualifying body – Section 22S

The AASW is concerned that this Section undermines the delivery of professional services as it impedes the compliance to professional standards and codes of ethics. This Section prohibits any disciplinary action against the so-called ‘religious activities’ of a person registered by a qualifying

---

<sup>2</sup> Australian Charities and Not for Profit Commission 2017, ‘Economic contribution of the Australian charity sector’, <https://www.acnc.gov.au/sites/default/files/Download%20the%20report%20for%20Economic%20contribution%20of%20the%20Australian%20charity%20sector%20%5BPDF%202MB%5D.pdf>, accessed 22 January 2020

body. Since the definition of 'religious activities' is subject to the alleged intention of the person who undertook them, the AASW has grave concern whether this provision can be exploited by individuals who may frame unprofessional behaviour within the terms of religious freedom. It then potentially promotes unethical practices that may prioritise religious freedom over the human rights and dignity of service users.

For example, the AASW is aware of an absence of laws banning gay conversion therapy in NSW. Where LGBTIQ people seeking guidance, counselling and casework services may be taken advantage of by "health practitioners" via such unethical practices as conversion therapy, which would encourage "lifestyle changes" on the basis of religious belief. This behaviour would be protected under such a Bill and create barriers for qualifying bodies to instill best practices and to avoid discrimination or psychological harm.

As such, the AASW has concerns that this will impact marginalised and vulnerable communities as they seek support services, given that this section can be used to protect individuals who use unethical practices. The AASW will refer to the submissions of the NSW Gay and Lesbian Rights Lobby and Equality Australia on this issue further.

We are particularly disappointed at the Bill's explanatory note suggesting that the 'national accreditation body for social workers' can easily stop an eligible social worker from receiving their accreditation solely based on an online comment. **This claim is not evidence-based and underestimates our endeavour to ensure the high quality of service delivery across the sectors that support the most vulnerable people in our society.** For social workers, the AASW actively promotes professionalism and empathy through a [robust ethical complaint mechanism](#) and the development of the [Code of Ethics](#) and [practice standards](#) documents that underpin the professional services delivered by AASW members.

### **Recommendation**

- That Section 22S be removed from the Bill

## **The performance of functions under State programs – Section 22Z**

The AASW has grave concerns regarding the impacts of this Bill on the most marginalised people in our society who are reliant upon services provided by public institutions. We are worried that this Section provides a dangerous precedent where religious views are prioritised over the health of service users in hospital, government health services, and schools. Without the protection of the rights of workers, students and vulnerable communities who are employed, enrolled or interact with such organisations, or who rely on government-funded services delivered by these organisations, this Section provides an expansive new personal discrimination power for individual workers in public services. This is likely to eventually limit the services available for marginalised populations in our public institutions. For example, these powers, if given to healthcare workers, can greatly reduce LGBTIQ Australians' access to essential health services by allowing discrimination on the basis of personal religious belief. It will also deny access to people who live in regional, remote or



rural areas where there is only one provider and for whom traveling to cities to other practitioners would be costly and prohibitive. Therefore, our members are concerned that marginalised groups, such as the LGBTIQ community, women and people seeking asylum, will have limited access to publicly funded health services due to the right of refusal of service by health practitioners on personal religious grounds.

### **Recommendation**

- That Section 22Z be removed from the Bill
- That the *Anti-Discrimination Act 1977* (NSW) be amended to include conventional discrimination protections for healthcare workers with religious beliefs, but not at the expense of patients' healthcare needs

### **Conclusion**

In summary, the AASW opposes this Bill. It is the overall position of the AASW that the implementation of this Bill ceases until the Australian Law Reform Commission has completed their review and the NSW government resolves the lack of civil protection through other existing anti-discrimination safeguards.

It is important to note that the AASW is not opposed to protections for faith-based communities. However, protections should reflect conventional discrimination protections for faith-based communities, which would protect the ability for people to express their faith by requiring any restrictions on religious expression at work, school and in the provision of goods and services to be reasonable. We also support a national approach which facilitates greater opportunity for community consultation on this matter.

Finally, we refer the NSW government to the International Covenant on Civil and Political Rights when considering further actions to protect all Australians under the principles of human rights, equality, and justice.



© Australian Association of Social  
Workers

Level 7, 14-20 Blackwood Street  
NORTH MELBOURNE VIC 3051

PO Box 2008  
ROYAL MELBOURNE HOSPITAL VIC  
3050

P: 03 9320 1027  
E: [socialpolicy@asw.asn.au](mailto:socialpolicy@asw.asn.au)  
[www.aasw.asn.au](http://www.aasw.asn.au)

ACN 008 576 010  
ABN 93 008 576 010



**AASW**  
Australian Association  
of Social Workers

[www.aasw.asn.au](http://www.aasw.asn.au)

