

**Submission
No 64**

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

Organisation: NSW Gay and Lesbian Rights Lobby

Date Received: 21 August 2020

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

21 August 2020



**Gay & Lesbian
Rights Lobby**

About the NSW Gay and Lesbian Rights Lobby

The GLRL has a proud history. We are the peak organisation representing the rights of gay and lesbian people. We advocate on behalf of the gay and lesbian community and their families, as well as joining advocacy efforts of our partners and allies across the LGBTIQ community.

We work closely with bisexual, transgender and intersex organisations, and all Members of Parliament to advance the rights of our communities in NSW. The GLRL has been in continuous existence since 1988, but the origins of our organisation date back to the 1970s and the efforts to decriminalise homosexual acts and to provide phone counselling support to community members impacted by bigotry.

The GLRL has established strong ties to the community, consulting with our members and hearing their stories, many of them describing incidents of violence, discrimination and hatred. In the past 31 years, our community-based organisation has been composed of volunteers with lived experience of this bigotry. We draw on our history of bearing witness to those stories in making this report.

A full list of our advocacy efforts is published on our website and in our annual reports.

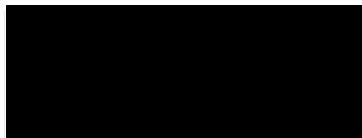
Any questions are welcome and can be directed to 

Stay proud,

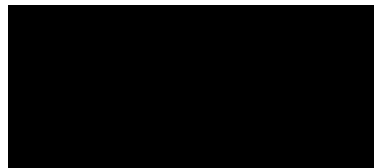
Co-Convenors,

NSW Gay and Lesbian Rights Lobby,

Audrey Marsh



Jack Whitney



Proposed Legislation

The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 should be understood in the context of the Anti-Discrimination Amendment (Complaint Handling) Bill 2020, introduced by Mr Latham in February 2020 and the Education Legislation Amendment (Parental Rights) Bill 2020, introduced by Mr Latham in August 2020.

The combination of these three bills represents a piecemeal approach to anti-discrimination law reform, which considers the perspectives of only some in the NSW community. As a combination, this reform package would:

1. Amend the operation of the Anti-Discrimination Board, introducing impractical decision-making requirements for the President and limiting the scope of matters which can be considered by the Board.
2. Prohibiting educators or counsellors from supporting trans and gender diverse young people and threatens the employment of educators or counsellors who affirm trans and gender diverse young people.
3. Require schools to take a 'both sides' approach to teaching about issues such as vaccination, World War 2 or evolution.
4. Allow bodies which define themselves as religious to challenge government programs and policies (subject of this Bill).
5. Limit the ability of government and non-government employers to respond to religiously-motivated behaviour from an employee which hurts or vilifies others (subject of this Bill).
6. Allow bodies which define themselves as religious to discriminate in employment, service delivery or education, even if it is a publicly funded position or program (subject of the Bill).
7. Protect religious behaviour, even in circumstances in which it is unlawful (subject of this Bill).
8. Prioritise freedom of religion over other human rights (subject of this Bill)¹.

Like many other stakeholders, NSW GLRL believes that the *Anti-Discrimination Act 1977* requires review. This piece of legislation is now 43 years old and requires a detailed review to best serve the many communities it aims to protect. However, this Bill and the two similarly motivated Bills introduced by Mr Latham do not represent a best practice review of older legislation. This review should be undertaken instead by a body such as the NSW Law Reform Commission, with the mandate and ability to gather feedback from practitioners, community members and experts in formulating recommendations.

¹ Equality Australia 2020, One Nation Bill Factsheet <equalityaustralia.org.au/resources/onenationbillfactsheet/>

Impact on LGBTIQ People

This Bill will significantly harm protections afforded to LGBTIQ people in NSW. While NSW GLRL represents members of the LGBTIQ community, we understand this Bill will also have detrimental impacts on women, divorced and unmarried people, and people of faith.

It is well-accepted that LGBTIQ people have high rates of bullying and discrimination. The Australian Human Rights Commission, under then Human Rights Commissioner Tim Wilson, noted the following from a survey undertaken:

- 56% of respondents said they felt poorly protected by their state or territory anti-discrimination legislation.
- 72% of respondents had experienced violence, harassment or bullying on the basis of their sexual orientation, gender identity or intersex status.
- 45% of respondents had been excluded from participation in an organisation, event or activity on the basis of their sexual orientation, gender identity or intersex status
- 24% of respondents had been refused a service on the basis of their sexual orientation, gender identity or intersex status.
- 62% of respondents had felt they wanted to, but felt unable to disclose their sexual orientation in the workplace.²

The Bill being considered by the Committee will not seek to balance the rights of LGBTIQ people and people of faith, as Mr Latham suggests in his second reading speech, but will instead further entrench discriminatory practices against LGBTIQ people.

While other bodies are best placed to provide a considered reflection on the legal substance of the Bill, NSW GLRL spoke to members and allies of our community to understand what impact the proposed changes would have on them and people that they love. Below are highlighted quotes reflecting the impact on LGBTIQ.

Definition of 'religious activities'

NSW GLRL is concerned with the broad definition in the Bill of 'religious ethos organisations' and religious activity amounting to discrimination which is permitted under the Bill under s22K. 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. The formulation of relevant definitions in this Bill however, would allow any organisation which contends their behaviour is motivated by religious beliefs to discriminate against another group - including commercial bodies.

NSW GLRL believe this would result in unacceptable impacts for the LGBTIQ community. For example, the implementation of the *Marriage Act 1961 (Cth)* may be

² Australian Human Rights Commission 2015, 'Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights', National Consultation Report <<http://www.humanrights.gov.au/sogii>>

impacted by the Bill. This Bill would allow discrimination well beyond the refusal to marry same sex couples as a celebrant, but also include the power to refuse to cater or photograph weddings or allow people to actively teach against same-sex marriage in public institutions, despite the fact that it is contrary to the federal law.

Preventing employers from taking actions against employees who use religion privately to hurt other

We understand that the Bill would see employers or licencing bodies be unable to take action against employees or professionals who privately engage in discriminatory religious practices. This could see no action taken against employees who make homophobic or transphobic comments on lunch breaks or social media.

We asked our members how situations like this would impact their lives or the lives of people they love. They told us:

This would make me feel unsafe in my workplace. I am currently very out in my workplace but this would make me reconsider my choice and probably make me afraid to speak about my partner or let my colleagues know anything about my private life.

Georgia (26), lesbian

This makes me feel insecure about my rights at work, since the Bill would essentially make it legal for people at work to discriminate against me if their behaviour was related to their religion.

Eva (37), queer

It would be awful. Already as a LGBTQ person I am not confident around people and already fear what they are thinking about me, without having to worry that they are actually permitted to say things aloud ... This could be stuff we hear everyday in our places of work, where we have to spend 40+ hours every week, and nothing could be done to stop it. The damage it would do to my mental health and wellbeing of our community is unthinkable.

Nicki (47), queer

This would be devastating and risk impacting myself and many people I love. Everyone has the right to feel safe at work.

Rosie (29), bisexual

I work for a Catholic organisation that is compassionate and believes in the dignity of all people. They employ currently some staff who are gay and these people are valued no less than everyone, because they are no less than everyone else. Imagine if this employer didn't hold this view and these people were discriminated against...

Anonymous (55), mother

As the mother of three beautiful children I want them all to feel safe and valued in their workplaces. But every time my daughter starts a new job I am concerned about how her colleagues will react when they find out about her sexuality.

Cindy (54), mother of a lesbian daughter

Employees aren't permitted to make racist jokes and comments, why would this be acceptable for LGBTIQ+ prejudices?

Jacs (37), queer

Conversion therapy

NSW GLRL is particularly concerned that s22S could undermine health service delivery and ethical standards of practice for frontline staff and clinicians. NSW GLRL hold serious concerns that this would allow instances where doctors or other healthcare professionals could advocate conversion therapy practices for LGBTIQ people, which are known to seriously harm the wellbeing of community members. Under this Bill advocacy of this harmful practice could not result in any disciplinary action from a qualifying body or employer. Without cultural changes, education and appropriate legislative tools to end the practice of conversion therapy, LGBTIQ remain vulnerable to this dangerous practice.

Expanding religious exemptions for education, employment and service delivery

We understand the Bill will expand the existing exemptions under the *Anti-Discrimination Act 1977* and will allow religious organisations to discriminate against people on the basis of religion, sex, sexuality, gender identity or marital status - even if the position or service is publicly funded. This could create a range of unacceptable impacts, for instance where a Catholic school may not allow a Muslim student wear a hijab or a religious hospital refuses to hire an LGBTIQ identifying doctor.

NSW GLRL is concerned about the definition of 'religious ethos organisations' under s22M to include faith-based community sector organisations. The inclusion of community service organisations under this umbrella is not warranted and mischaracterises the community sector, who provide a public benevolent service in support of marginalised communities, such as LGBTIQ individuals. S22M also negates the fact that many of these services tender for tax-payer money, and are aware there is a public expectation that they respond to all people without discrimination.

We asked our members how situations like this would impact their lives or the lives of people they love. They told us:

This would impact people like me because it would limit the organisations I could work for. I would not feel comfortable working for any organisation which could legally fire me on the basis of my sexuality. I don't believe that any organisation should be able to fire people on this basis.

Eva (37), queer

My best friend is a teacher in the Catholic school system. He is great at this job and has specialised skills in his chosen teaching area, however because he is gay, he could be fired from his job at any time. I am a social worker and many organisations providing social services to the public are faith based. They also get government funding. If I worked for any of those religious based organisations they would be able to fire me at any time. This reduces the amount of places where I am able to seek work as I don't want to live with the threat of being fired at any time.

Jacs (37), queer

I have LGBTQ friends who are teachers, I have LGBTQ friends with children, I have friends with LGBTQ children. To think of living in a country where these people can just be fired or expelled is disgusting.

Nicki (47), queer

I would feel that I would have to go back in the closet. I probably would have to lie about my private life and keep to myself and not mix so much with my colleagues. So it would lead to increased social isolation and fear. My work performance would definitely be impacted.

Peter (62), gay

This would limit my potential employment opportunities and possibly leave me unable to find work and support myself financially. I would feel uncomfortable to be myself at work, due to fear that if my sexuality was known may be fired.

Alice (25), queer

Allowing religious organisations to challenge government programs, decisions or policies

NSW GLRL understands that the Bill will give exemptions for 'religious ethos organisations' to discriminate under s22M and will enable under s22Z for religious organisations to challenge government decisions or policies where they contradict their religious ethos. This would allow religious bodies to challenge executive orders from the government and challenge contracts which require them to deliver services to all members of the community, if they wanted to exclude LGBTIQ people.

NSW GLRL hold serious concerns that this Bill will impact marginalised communities who rely upon services provided by public institutions. This section provides a dangerous precedent in which religious views are prioritised over equality in service delivery to LGBTIQ people in schools, health services and other government programs. It is clear that this section will allow those motivated by religion to challenge programs and thereby eventually limit the provision of services to LGBTIQ people. These powers could easily be used to challenge same-sex foster programs, equality in healthcare provision and school programs which support LGBTIQ children.

We asked our members how situations like this would impact their lives or the lives of people they love. They told us:

It would be reprehensible to think that HIV services would be affected. These programs are indispensable in having stopped the spread of HIV. Also school students in senior high school should be allowed to have frank and open discussions on gender and sexuality issues.

Peter (62), gay

This is terrible and would have an affect on the education, health or mental health of people I love.

Anonymous (52)

The NSW Government must provide the services that all NSW citizens need. These services must be designed on the basis of the best public policy, not the narrow and possibly conflicting interests of religious organisations. My daughter deserves health, social, education, employment, planning and other policies that best serve her needs.

Cindy (54), mother of a lesbian daughter

... We need to strengthen public programs that reinforce tolerance and non-discrimination not weaken them. The sort of thinking in this bill will only increase divisions in our society, including between religions, which is bad. If my religion includes a belief that women shouldn't drive cars can I challenge a driver education program that is open to young women? This sort of stuff can have unintended consequences and be dangerous for our society.

Jon (54), father of a lesbian daughter

As a child protection worker I've worked in faith based organisations that refuse to accept LGBTIQ+ carers for kids in care. There are some children who come into care because they identify as LGBTIQ+ and their parents refuse to have them live in the family home. These children should have access to carers who understand their specific struggles and needs. This can not occur if there are no queer carers.

Canada already has a foster care agency for queer kids in care, so they can be matched with appropriate queer carers. Australia is already behind on this issue and this will put us further behind. These children have a right to be with carers who understand their needs.

Jacs (37), queer

I directly receive services because of being LGBTIQ - services which have changed my life. I actually just really can't imagine not receiving these services. It would be detrimental.

Roi (19), gay

Recommendation and Conclusion

Our submission has sought to highlight the concerns of some members of the LGBTIQ community. The sample of quotes provided throughout this submission show the real world impacts legislation of this kind will have. There are real people whose work, education and health will be impacted by this proposed legislation.

*These changes would make me feel **unwelcome** and **uncertain** about living in Australia as a queer woman and **fear** for the future of the LGBTIQ community. It would not only **hurt** LGBTIQ people but create **tension** between different religions, cultures and communities, leading to a **divided** nation and **unchecked** discrimination. Growing up queer is **difficult** enough, even in a country that is relatively safe and accepting. If these changes take place I fear for the young Australians who are going to grow up in a **hostile** and openly **hateful** environment.*

NSW GLRL member, 25

This is a piecemeal approach to amending anti-discrimination law in NSW, preferencing only one perspective and not considering the many competing interests at play in these laws. These are complex issues and not ones that should be remedied with harmful laws such as that proposed in this Bill and others recently introduced by Mr Latham.

NSW GLRL ask that this Bill not proceed and that the Committee recommend instead that the NSW Law Reform Commission conduct a full and proper review of the Anti-Discrimination Act 1977.

NSW GLRL are not opposed to protections for faith-based communities. However, this Bill does not strike the right balance in achieving this goal. Instead, it has the ability to pit different communities of faith against each other and undermine the rights of other marginalised groups such as the LGBTIQ community.

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 good and services to be reasonable. The development of a modern approach to anti-discrimination law in NSW should involve the entire community, including all communities of faith, women, LGBTIQ people and culturally and linguistically diverse communities to ensure the many consequences, intended or unintended, of this Bill are not repeated.

We commend to the Committee, the substantive legal submissions of organisations such as Equality Australia. Thank you for the opportunity to submit to this Joint Select Committee. We hope the voices of LGBTIQ members highlighted in our submission prove useful in your deliberations. We would be happy to expand upon this submission at any time.