

**Submission
No 108**

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

Organisation: Public Health Association of Australia (PHAA)

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Public Health Association
AUSTRALIA

**Submission on the
*Anti-Discrimination Amendment
(Religious Freedoms and Equality)
Bill 2020 (NSW)***

Contact for recipient:

Elaine Schofield,
Director, Committees

A: Parliament House, Sydney NSW 2000

E: ReligiousFreedomsBill@parliament.nsw.gov.au

T: (02) 9230 2226

Contact for PHAA:

Terry Slevin – Chief Executive Officer

A: 20 Napier Close, Deakin ACT 2600

E: phaa@phaa.net.au **T:** (02) 6285 2373

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Contents

Introduction	4
A society where harm is minimised	4
Potential harms caused by the Bill	5
Inconsistencies of the Bill with existing anti-discrimination laws	7
Impact of the Bill on public health emergencies	8
Conclusion	8
References	9



Public Health Association
AUSTRALIA

The **Public Health Association of Australia** (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of our Board, National Office, State and Territory Branches, Special Interest Groups and members.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

Our mission as the leading national organisation for public health representation, policy and advocacy, is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health. Members of the Association are committed to better health outcomes based on these principles.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health and wellbeing for all.

The reduction of social and health inequities should be an over-arching goal of national policy, and should be recognised as a key measure of our progress as a society. Public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Introduction

The PHAA welcomes the opportunity to provide input to the Committee's inquiry into the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* proposed by Mark Latham MLC.

In brief, the PHAA recommends that the Bill **NOT** be supported, because of the potential to perpetuate a range of harm, vilification and discrimination in our society. The Bill purports to be framed to assist people to exercise religious beliefs, but it fails to balance the complex competing issues involved.

The Bill also fails to adequately discern personal, not-harmful manifestations of religious views from actions allegedly justified by the holding of religious beliefs, which are actually harmful to other persons.

An equitable society where harm is minimised

PHAA approaches this legislation from the starting point that many people in our society experience discrimination, vilification, physical harm, and harm to mental health and wellbeing due to each individual's sexuality, gender, race, ethnicity and other personal attributes. This harmful situation is unacceptable and unnecessary in a fair and healthy society. It is appropriate that laws, as well as the practices of governments and workplaces, take steps to prevent and redress such harms and inequities.

Public Health as a field of practice is built on the premise of 'doing no harm', and this is the position we take in this submission.

The imposition of some of these harms are clearly driven by religious beliefs, or actions that have their origins in religious beliefs. The question thus inevitably arises: When may a particular harmful action, otherwise unlawful or contrary to practices adopted to promote fairness and wellbeing, be made permissible or socially acceptable by an assertion that it has its origins in religious belief? In short, when (if ever) does religious belief create a *privilege of exemption* from laws and practices to which all people are required to adhere?

A common human rights approach to such questions is to frame the issue as a balancing of rights. However, PHAA believes that in the interest of health equity in the community, any such balance must tilt powerfully in favour of preventing harmful actions. A notion that specific beliefs grant its holders a privilege to harm others is unacceptable and contrary to the freedom and safety which all members of our society should rightfully enjoy.

It should immediately be noted that the great majority of religious beliefs are not inherently harmful to other people; in fact, religion-based health and social services have played a role in reducing health inequity for marginalised populations. Most beliefs, and the practices they inspire, are personal matters of conscience, or actions taken in personal and private spaces, without having immediate impact on others. The principle of preventing harm does not extend to preventing the holding of private views away from the public domain, even if such views would be unwelcome in the lives and personal wellbeing of others were they promoted in public. Nor do non-threatening public displays of religious belief generally cause offence in the framework of an open, tolerant society. On the other hand, when expressions of religious belief involve denigration, rejection, vilification, or physical and/or mental health harm to others in an immediate way, we judge the situation very differently. Proximity to the safety and wellbeing of the 'victims' of harmful beliefs is part of the 'balancing of rights'.

We examine the present Bill with this human rights framing in mind. The supporting material for the Bill makes claims to be about protecting the profession of religious beliefs, including in public and workplace settings, and

in particular granting to the holders of religious beliefs immunity from legal, contractual, employment and other redresses that are today commonly imposed for the protection of others from harm. Unfortunately, we find this Bill does not strike a sound balance. Indeed, the Bill's fundamental conceptual flaw is that it speaks too easily of 'religious belief' in general, without pausing to consider whether any such belief, or actions arising from it, create effective harm to others.

Australia is a broadly open and tolerant society and that tolerance extends in broad terms to the holders of religious beliefs, and to the actions and practices that believers choose to follow in contexts which cause no harm or offence to others. Social norms and a 'live and let live' attitude of tolerance prevail. However, a keen social sense can also detect when some expressions of religious belief overstep the mark, are offensive and damaging to others, and threaten not merely a tearing of the general compact of tolerance, but actual harm to individuals or groups. This Bill does not adequately take that tension into account; in fact, the Bill essentially grants privileges to 'religious believers' to engage in otherwise illegal actions, or actions which would otherwise attract workplace or contractual sanctions. In short, under this Bill a subset of our society would be granted permission to cause harm to others, particularly those who are already marginalised and disadvantaged due to their personal attributes. Herein lies the fundamental problem of this Bill.

The Bill would also, by granting legal privilege to some, tear at the general culture of equal tolerance which is essential to our society. Resentment against such privilege is sure to result. In addition, events have shown that a small number of persons of strongly held views would be very likely to continue to 'push the envelope' in establishing their extended privilege to do harm to others. This likelihood of imposing one set of beliefs to discriminate against others, PHAA feels strongly, is an inappropriate addition to our law.

The current law does not attempt to change the beliefs of individuals who, based on those beliefs, disapprove of, disdain or denigrate other persons for their personal attributes. Left alone and manifested in private, such regrettable views may do little observable immediate harm (although their propagation should not be encouraged). The law however, and the culture and practice of workplaces and other public domains, must operate to make the public and workplace realms safe and welcoming for all persons regardless of personal attributes and beliefs. This broad (if imperfect) current legal position is continually evolving towards a more tolerant culture. The Bill would disturb that legal order and culture, and in fact operate to damage it.

Taking all these considerations into account, PHAA strongly recommends that this Bill should not be enacted.

Potential harms caused by the Bill

There are two primary areas in which the Bill may cause harm to individuals through: (1) legalising harmful acts against vulnerable populations and others who do not live in accordance with an individual's religious beliefs, and (2) restricting access to healthcare and health education. These areas are discussed below.

Harm to vulnerable populations

Lesbian, gay, bisexual, transgender, intersex, queer, asexual, and other sexuality and gender minorities (LGBTIQA+) people

We know from research in both Australian and international contexts that LGBTIQA+ individuals are subject to more frequent discrimination, abuse, and traumatic experiences compared to their cisgender and heterosexual peers.(1-5) There is an established association between these traumatic events and the mental

health of LGBTIQ+ individuals. LGBTIQ+ individuals experience poorer mental health and elevated rates of suicidality compared to the general population, and this is in large part due to discrimination, structural inequities and stigma.(6, 7) Unchecked and increased religion-based discrimination against LGBTIQ+ individuals, for example by denying them regular sexual health testing, would worsen their health status.

Women

Reproductive coercion, and domestic and family violence, constitutes a violation of women's human rights. These include, but are not limited to, women not being treated as equals and not allowed to make choices about their reproductive health such as planning if and when they become pregnant. Some health care professionals may condone levels of domestic violence towards women on the basis that women should be subservient to men and be punished for their behaviour under the veil of religious beliefs.

People with disability

People with disability are often denied the information, education and support they need to make informed decisions about contraception, family planning and parenthood. People with disability often face discrimination, for instance, from service providers who assume that a person with disability is non-sexual, or not capable of having a relationship or parenting.(8) We are concerned that the current barriers experienced by people with disability seeking to access reproductive and sexual health services may be compounded by the Bill.

Young people

Many young people experience discrimination in accessing healthcare simply due to their age, or additionally due to belonging to a marginalised group. In NSW, young people who are competent to consent to healthcare can access health services independently, generally from the age of 14. However, judgemental attitudes by health professionals can act as a barrier to young people accessing the healthcare they need. Further, young people lack an awareness of health services and often require active support to access and navigate the services they need.(9) By invoking their religious rights a health care professional could advocate for abstinence which will lower the age of sexual initiation and increase rates of unplanned pregnancy in these age groups.

People from culturally and linguistically diverse backgrounds

Maximising reproductive and sexual health outcomes for all groups in a multicultural community requires a combination of mainstream services that are responsive to cultural diversity, and specially designated services that meet the needs of particular groups, including the promotion of health literacy for vulnerable migrants (people who have recently arrived from a non-English speaking country).(10) Supporting healthcare clinicians therefore need to proactively facilitate discussions about reproductive and sexual health with their clients and create awareness of referral pathways to health services, not hinder access.(10)

Restrictions of access to healthcare and health education

LGBTIQ+ Australians already experience barriers to obtaining healthcare that is inclusive of their identities. Passing this Bill could enable healthcare providers to abstain from providing healthcare to individuals whose identity does not align with the provider's personal religious beliefs.

Religious organisations and individuals may inhibit access to reproductive and sexual healthcare and other health services. It is the responsibility of government to provide equitable health services. We are deeply concerned that access to reproductive and sexual health services could be seriously affected by the Bill. These include contraception, prevention, testing of sexually transmitted infections, provision of PreP (pre-exposure prophylaxis for the prevention of HIV infection), pregnancy-related services including pregnancy options

counselling, abortion services, and gender-affirming care such as hormone or surgical treatment for transgender individuals.

The Bill may limit the provision of comprehensive sexuality education to school students. Comprehensive sexuality education is a crucial and effective early intervention strategy for ensuring the reproductive and sexual health and wellbeing of young people and to create healthy relationships throughout their lives.(11, 12). If religious schools decide that comprehensive sexuality education is inconsistent with their religion, or teachers from non-religious schools decide not to teach comprehensive sexuality education for religious reasons, students' needs will not be met, including students belonging to diverse groups such as those with disability, sexuality and gender diverse and culturally diverse backgrounds.

Inconsistencies of the proposed Bill with Commonwealth and International anti-discrimination approaches

Aside from greatly the likelihood of harms as described in the previous section, the proposed Bill is inconsistent with Commonwealth anti-discrimination approaches.

Point 3(c) of the terms of reference for the committee considering the Bill expresses a desire for consistency between NSW anti-discrimination laws and Commonwealth anti-discrimination laws, including the draft *Religious Discrimination Bill 2019* (Cth). Section 27 of the latter Bill states that it would not be unlawful to discriminate on the basis of religious beliefs if those beliefs cause harm, as defined by the Commonwealth Criminal Code. In Section 146.1 of the Commonwealth Criminal Code, the definition of harm includes harm to a person's mental health, beyond that which is reasonably acceptable as incidental to social interaction or life in the community.

The harms to vulnerable populations described in the previous section, which would be enabled by either the Commonwealth Bill or the proposed NSW Bill 2020, are certainly beyond that which is reasonably acceptable as incidental to social interaction and life in the community.

The proposed Bill is also inconsistent with international principles of anti-discrimination. The proposed Bill rejects the current position (2019) of the United Nations High Commissioner for Human Rights, which states that:

"States are obliged to respect, protect and fulfil the human rights of all persons within their jurisdiction, including LGBTI persons. These obligations extend to refraining from interference in the enjoyment of rights; preventing abuses by State agencies and officials, private corporations and individuals; monitoring, investigating and combating such abuses when they occur; and providing remedy to victims. States must also proactively tackle barriers to the enjoyment of human rights, including violence and discriminatory attitudes and practices. In this context, States should take steps to address stigma and prejudice, including through education, training and public information campaigns." (p.9)(13)

It follows that, contrary to the argument made by the Bill's sponsor, the enactment of the Bill would likely create conflict, not consistency, with international law on this subject.

Impact of the Bill on public health emergencies

PHAA raises another consideration, which is the potential of the Bill to undermine the public health of the community during situations of pandemic or similar emergencies.

At present, the state public health legislation allows for the issuing of public health orders in emergency situations. The framework for such orders is carefully constrained, requires evidence before making declarations, and features systems of democratic accountability and fairness. Such orders have been used in recent months to an unprecedented scale in our country, limiting the movements of people, the opening of workplaces, social and religious gatherings, and mandating precautions such as social distancing and, in some situations, mask wearing. This structure of legal orders has proved essential to the general wellbeing of the community. The integrity of the public health regulation system must be carefully maintained.

PHAA is concerned that the legal privileges created by this Bill might extend to granting some individuals the right to defy such orders for religious reasons, with potentially serious health consequences for themselves and all others with whom they interact.

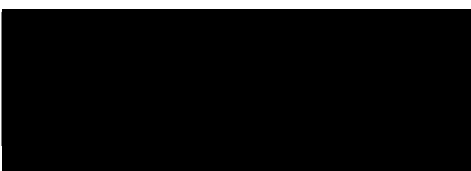
Even if the Bill is found not to operate to that legal effect, as noted above this debate is characterised by a small number of people who show a willingness to push the boundaries through sensational attempts to defy laws and make points about their own attitude to their religious beliefs. Such a public debate is hardly to be encouraged while people are dying daily from the impacts of the pandemic, and public health controls are essential to protecting the whole community and require collective action and responsibility for each other. Governments and community leaders are urging the public to act with responsibility and maturity, and striving daily to minimise irresponsible breaches of the current health orders.

Put simply, we do not need a needless, divisive debate about religion-based privileges during this time of pandemic. That vital practical need presents yet another basis to reject adoption of this Bill by the State Parliament.

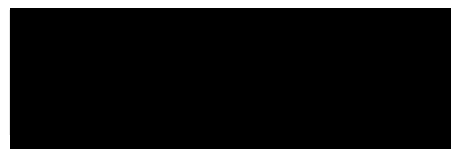
Conclusion

For the reasons given above, PHAA strongly recommends the Bill should not be supported.

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.



Terry Slevin
Chief Executive
Public Health Association of Australia



Patrick Harris
Branch President
PHAA New South Wales Branch

21 August 2020

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