



Gay & Lesbian Rights Lobby

AUSTRALIAN GOVERNMENT

ATTORNEY GENERAL

**Submission on the Religious Discrimination Bill 2019
(Second Exposure Draft)**

January 31st, 2020.



Gay & Lesbian Rights Lobby

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About The Gay & Lesbian Rights Lobby

The New South Wales Gay and Lesbian Rights Lobby (NSWGLRL) has a proud history. We are the peak organisation representing the gay and lesbian rights. 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 LGBTI community. We work closely with bisexual, transgender and intersex organisations, and all Members of Parliament to advance the rights of our communities in NSW. NSWGLRL 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.

NSWGLRL 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 comprised of volunteers with lived experience of this bigotry. We draw on our history of bearing witness to those stories in making this submission.

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



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Introduction and contact

The NSW Gay and Lesbian Rights Lobby (NSWGLRL) has lost faith in this process. We will not support any 'Religious Freedom' Bill from this Government.

Despite being an active and constructive partner during the initial consultation process, our concerns weren't heard, and we are now faced with proposed 'Religious Freedom' Bills that are worse than before. NSWGLRL sought to work constructively with the Government around the first exposure draft of the Bill. This was because we were concerned that (if successful) the Bill would adversely impact LGBTI communities. After receiving our submissions, the second exposure draft from the Government has failed to respond to our biggest concerns.

The proposed Bills will dramatically erode the rights of LGBTI people, people with disability, women and children. They lower the bar for public order and safety, and limit access to healthcare. They reduce our right to use public facilities and diminish our children's access to education. They legalise bigotry against LGBTI marriages.

After such an alarming and disheartening process that failed to take our legitimate concerns seriously, NSWGLRL announced it will not support any 'Religious Freedom' Bill from this Government. But we do still support measures which aim to eliminate discrimination against people of faith and those who are not religious. 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, and we are concerned this is not the case for the LGBTI community. These issues could be resolved through conventional anti-discrimination protections, rather than a "positive discrimination" approach as we see with the current Bills.

The Religious Discrimination Bill's first exposure draft had issues expanding from expelling children from religious schools who may hold different beliefs, making it harder for people to access healthcare, to the noted absence of a LGBTI Human Rights Commissioner. The New South Wales Gay and Lesbian Rights Lobby holds the view that the Religious Discrimination Bill's second exposure draft has even more issues. This will be outlined in the following issues:

1. it is vague and dangerous in scope,
2. it enables discrimination,
3. it privileges religious views over patient health needs and,
4. it entrenches double standards in the law.

In line with our submission, any questions are welcome and can be directed to Jack Whitney Convenor of NSWGLRL, on 0411 387 913 and convenor@glrl.org.au.

Jack Whitney
Convenor, NSW Gay and Lesbian Rights Lobby



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The Issues

1. The Bill is vague and dangerous in scope

The Lobby refers lawmakers and advisers to the [submission](#) of the National Secular Lobby which, along with other public submissions, provides a detailed outline of the problems with how religious bodies and statements of belief are defined under the proposed legislation.

There are concerns that if this proposed legislation is passed into law it walks down a dangerous path where defining a belief, whether the scope is broad or narrow, is problematic. Indeed, it not only divides society by segregating religion and LGBTI, but also down religious and non-religious lines, and “mainstream” and “non-mainstream” lines. Furthermore, enabling a legal structure that permits religious bodies to prospectively determine what may constitute a religious act, belief etc., by redrafting those articles of faith at any time, and at the expense of other state and federal discrimination laws, is an unprecedented and dangerous legal construction.

Indeed, by defining and dividing religion, this legalisation does the exact opposite of the aims. If it does want to create an Australia where its citizens, “regardless of their religious belief or activity”, can “participate fully” and are “entitled to the equal and effective protection of the law”, we recommend:

Recommendation 1

Redraft all provisions which define religious belief, and ensure that the Bill is consistent with the International Covenant on Civil and Political Rights, whereby no conduct is protected, authorised or permitted where it is contrary to ‘public safety, order, health or morals or the fundamental rights and freedoms of others’.

2. It enables discrimination and normalises bigotry

It is well-accepted that LGBTIQ people are more likely to face discrimination, vilification, and violence. It is therefore of concern that both the first and second exposure drafts have a dangerous and frightening clause to normalise religious bigotry, previously in Section 41, and now in Section 42.

Section 42 proposes to exempt certain ‘statements of belief’ from all Commonwealth, State and Territory antidiscrimination protections, provided that they do not “threaten” or “seriously intimidate”. The NSWGLRL is concerned this will mean that intimidation – provided it’s not serious – will be protected under law. This dangerous aspect of the Bill is further compounded by the scope of what constitutes a religious belief. Given that there is a broad range of possible views and acts that may constitute a religion, and therefore a ‘statement of belief’ of a religion, then it follows that a very broad range of intimidating behaviour may now be protected. The Lobby does not support this proposal and rejects the grounds on which it has been argued for by the government.

Indeed, this Bill in its second exposure draft normalises bigotry, and will increase the legal privilege granted to some parts of society over others. The NSWGLRL is deeply concerned the passing of the Religious Discrimination Bill will negatively impact marginalised communities and evidence little to improving protections for faith-based communities.

Alongside enabling discrimination, we are concerned this exposure draft significantly undermines the human rights for LGBTI Australians. Indeed, there is a ‘Freedom of Religion’ Commissioner but not one for LGBTI Australians. This is of concern given that the ‘Religious Freedom Review’ did not support a Freedom of Religion Commissioner, and it raises questions about the role of each of the Human Rights Commissioners. Certainly, if a new Commissioner is



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to be introduced for 'Religious Freedoms' – above and beyond the role of existing Commissioners – then certainly there is a strong evidentiary basis for introducing a new Human Rights Commissioner for LGBTI Australians. Indeed, we would like to refer Members of Parliament to the submission made by the Australian Human Rights Commission that warns that elements of the Bill are inconsistent with international human rights law.

The NSWGLRL is also concerned that this Bill would create an environment where children would be expelled from faith-based schools and it leaves public schools in a vague position (Section 11). As we said in our submission for the first draft, Australia has an education system and syllabus that encourages children to think independently and critically about the world. Given religious education systems also receive taxpayer funds our concerns are compounded as it permits a taxpayer funded service to exclude some of those same taxpayers and their children based on religious ideology. We are aware that faith-based schools in some states and territories enjoy the legal privilege to do this already, but they don't enjoy the privilege to expel after the point of children being admitted into the school. This Bill proposes to change this. This change is not supported. The status quo is preferred (right to deny before admission) notwithstanding the flaws already highlighted.

Recommendation 2

Remove Section 42 from the Bill. The NSWGLRL holds the view that protecting one community at the expense of another's does not create a socially cohesive society. We implore you to redraft the Bill 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 good and services to be reasonable.

Recommendation 3

Create a dedicated LGBTI Commissioner for LGBTI Australians.

Recommendation 4

Remove sections 11, 32 (8)-(11), 33(2)-(5) and 33(2)-(5), or have a significant redraft where there are improved mechanisms that protect 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.

3. It privileges religious views over patients' health

The NSWGLRL believes that subsections 8(6)-(7) and 32(7) are dangerous expansive new personal discrimination powers. These powers, given to healthcare workers, greatly reduces LGBTI Australians' access to essential health services. Our consultation has shown great concern in how a large cohort of taxpayers, including the LGBTI community, will have limited access to publicly funded health services due to the right of refusal of service by health practitioners on personal religious grounds.

Given that faith-based services in health, aged care and education benefit from public funding, the LGBTI community will be financing their own discrimination in society through their own taxes.

This amendment is unacceptable and contradicts any claims within the Bill's Objects and elsewhere that this proposed legislation will help ensure 'equality.'

Recommendation 5

Remove subsections 8(6)-(7) and 32(7) and redraft the Bill to include conventional discrimination protections for healthcare workers with religious beliefs, but not at the expense of patients healthcare needs.



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4. It entrenches double standards in the law.

It is the view of the NSWGLRL that the Religious Discrimination Bill is an unworkable piece of legislation which cannot operate in conjunction with already existing legislation, law and international human rights. As a piece of legislation, it privileges religious beliefs above other rights in existing laws, most notably anti-discrimination law. There are other laws that are impacted, and we refer Members of Parliament to the submissions by Equality Australia that provide a more detailed analysis.

The NSWGLRL will draw your attention to the Marriage Act 1961, as it will be impacted by the Bill as it extends “positive discrimination” well beyond the refusal to legal marriages of same sex couples. This second draft would permit religious groups to teach against marriage of same sex couples in schools, hospitals, and public institutions, despite it being law.

The types of clauses proposed in the draft Bills were rejected by parliament when the Marriage Act was amended in 2017.

By proposing these exemptions, the Government is normalising and weaponising bigotry. Indeed, it fundamentally goes against its own aims. Specifically, of creating an Australia where its citizens and communities, “regardless of their religious belief or activity”, can “participate fully” and are “entitled to the equal and effective protection of the law”. These exceptions will deliberately and adversely impact our community, their families and children.

Recommendation 6

In addition to compliance with the aforementioned recommendations, the Bill be redrafted with consideration of its impacts on existing legislation, following existing conventional anti-discrimination laws.

Finally

The forms of discriminations LGBTI Australian’s have experienced, solely by being LGBTI, are vast and wide. A fair and decent civil society removes discrimination. It does not give powers to discriminate. Indeed, the ‘Religious Freedom’ Bills is actually a dangerous privilege afforded, which exempts individuals from anti-discrimination laws - laws that are there to protect the public from being discriminated against.

Therefore, in making this submission the NSWGLRL seeks to highlight our position that this proposed legislation is not only dangerous, it fundamentally goes against its own aims. Specifically, of creating an Australia where its citizens and communities, “regardless of their religious belief or activity”, can “participate fully” and are “entitled to the equal and effective protection of the law”. **In fact, it severely undermines it.**