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COMMUNITY SERVICES

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## **ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020– Diversity ACT Community Services**

### Diversity ACT Community Services

Diversity ACT Community Services (Diversity ACT) is a community based registered charity, run by volunteers that provides a service hub, social worker, support networks, groups and community resources to assist the LGBTIQ+ community of the ACT Region, including Queanbeyan, Goulburn, Yass and Cooma. We welcome this opportunity to contribute to the discussion around the Anti-Discrimination (Religious Freedoms and Equality) Bill 2020.

### Background (The Westar Institute<sup>1</sup> and Uniting Network<sup>2</sup>).

The New Testament of the Christian Bible does not contain an explicit reference to homosexuality. There is no word nor phrase in the New Testament that should be translated into English as “homosexual” or “homosexuality.” The paucity of references to homosexuality in the New Testament suggests that it was not a matter of major concern either for Jesus or for the early Christian movement.

The Anti-Discrimination (Religious Freedoms and Equality Bill appears to be based on the Old Testament of the Christian Bible which has limited applicability in the modern era where humans strive for tolerance of species variation.

The recent, ongoing bushfires and the COVID-19 crisis show the decency and humanity of the average Australia. The heart of the nation is on show and it points to an inclusive, giving, informed and caring Australia. This legislation is aimed at pleasing a tiny minority of Australians, who take their values from Old Testament settings, who appear to struggle with change and difference, who

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<sup>1</sup> <https://www.westarinstitute.org/resources/the-fourth-r/what-the-new-testament-says-about-homosexuality/>

<sup>2</sup> <https://www.unitingnetworkaustralia.org.au/wp-content/uploads/2019/06/02-Human-Sexuality-in-Biblical-Perspectives.pdf>

seem to need to exercise some level of unwanted and unwarranted control over the actions of others and place value on their personal judgment above the dignity of difference.

### Focus of the Proposed Legislation

Diversity ACT considers that any provisions for religious freedom or protection from discrimination should be driven by an overriding focus on enabling and maintaining a society which encourages mutual respect and is free from discrimination for everyone. There should be no winners and losers when it comes to the protection of human rights in Australia.

We view the right to religious freedom as an important element in the protection of all human rights by law nationally. As a result, the position of Diversity ACT is that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.

Diversity ACT is concerned that this legislation does not adequately achieve the balance between competing rights. We are concerned that the legislation leans too heavily in favour of religious freedom over other rights. Diversity ACT is deeply concerned that the protections afforded to the most vulnerable members of our society are at risk of being diminished by this legislation.

We are concerned that this legislation may result in unnecessary cost to the average NSW resident through possible duplication of existing legislation, regulation and spurious law suits.

### Coverage of the Legislation

The LGBTIQ+ community has members of many different faiths and spiritualities, and we are concerned to ensure that any legislated religious freedoms are not simply the prerogative of the followers of major faiths. We note that there is no mention of Indigenous spirituality in the Explanatory Notes. This is in stark contrast to the 13 references to the Abrahamic faiths.

Hereafter we wish to raise areas of concern that we have with the Bill. We will address these concerns by addressing examples from the Explanatory Memo (EM), other stakeholders and our members about what people would be allowed to say or do if the bill passes.

### Religion over-riding government rules (Section 22Z)

Section 22Z states:

(1) It is unlawful for a person to discriminate against another person on the ground of religious beliefs or religious activities— (a) in the course of performing any function under a State law or for the purposes of a State program, or (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.

(2) Without limiting subsection (1), a person is taken to discriminate against a religious ethos organisation on the ground of religious beliefs or religious activities if the person requires a religious ethos organisation to engage in conduct, including use of its property, in a manner which is contrary to the doctrines, tenets, beliefs or teachings of that organisation— (a) in the course of performing any function under a State law or for the purposes of a State program, or (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program

We are concerned that as currently written, this Bill allows for faith based organisations and commercial bodies which define themselves as religious to challenge NSW government programs, policies, contracts and decisions which contradict their particular religion. We note that under the current legislation, this provision only applies to protections against sexual harassment.

### NSW Anti-Discrimination Board Funding

If the proposed legislation comes into being, Diversity ACT would expect to see the NSW Government providing an appropriate increase in funding to the NSW Anti-Discrimination Board.

### Conclusion

In conclusion, Diversity ACT is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant on Civil and Political Rights<sup>3</sup>. Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination.

Diversity ACT is concerned that the Anti-Discrimination (Religious Freedoms and Equality) Bill 2020 does not achieve that balance and that vulnerable people in particular are likely to be adversely impacted should it be implemented in its current form.

As this discrimination bill is further developed Diversity ACT would welcome being consulted further.

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<sup>3</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>



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