

Tabled, by leave,

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ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS VILIFICATION) BILL 2023

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Anti-Discrimination Amendment (Religious Vilification) Bill 2023 amends the *Anti-Discrimination Act 1977* (the **Act**) to introduce a civil prohibition on religious vilification, consistent with existing vilification provisions in the Act.

The reforms in the Bill are intended to cover a gap in vilification legislation, to ensure it applies to the ground of religion. The law currently applies to vilification based on 'ethno-religious origin', through the ground of racial vilification in the Act. This element was intended to apply to particular religions, but it has proven to be difficult to apply in practice, has been narrowly interpreted by the courts, and does not apply to all religions or religious circumstances. Because of this, specific laws on religious vilification are required to ensure appropriate coverage. This is a current issue, as stakeholders have raised concerns about hatred and abuse directed at people in NSW because of their religion. The Bill provides a clear prohibition and access to remedies in relation to religious vilification.

The Bill will make it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person, or groups of persons, because of their religious belief, affiliation or activity.

A person will be able to lodge a complaint with the President of the Anti-Discrimination Board, in accordance with the existing complaints provisions in the Act. This enables potential access to a range of remedies for the complainant, including a conciliated outcome, or, if referred to the NSW Civil and Administrative Tribunal, orders including damages, and requiring the publishing of a retraction and/or apology.

The exceptions to the prohibition are intended to ensure an appropriate balance with freedom of expression and freedom of religion. The prohibition will not apply to (1) a fair report of a public act (2) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege in proceedings for defamation or (3) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest.

Objectives: What is the policy's objective couched in terms of the public interest?

Vilification laws are intended to enable people to live free from hostility and violence. People should be free to live their lives without others encouraging hatred towards them because of their background, relationships or beliefs. Religion is an issue that is fundamental to the lives and identities of many people, and prohibitions on religious vilification have a basis in international law, for example the prohibition on advocacy of religious hatred in the International Covenant on Civil and Political Rights. By ensuring that vilification protections apply effectively to all religious beliefs, affiliations and activities, the Bill will help ensure people in NSW are free to maintain and practice their religious views without fear.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Bill introduces a civil prohibition on religious discrimination, which cannot be achieved outside of legislative amendment. The reforms in the Bill are necessary to provide recourse to people who may have experienced religious vilification. As described above, existing vilification laws apply to vilification on the basis of 'ethno-religious origin', but this coverage is only partial and specific provisions are required to effectively achieve the goal of prohibiting religious vilification. This goal cannot be achieved outside of legislative amendment.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The benefit of introducing an explicit civil prohibition on religious vilification is that the current partial coverage of religion by vilification laws will be made complete, and people will have full access to recourse. The provisions in the Bill are consistent with the existing vilification provisions in the Act.

The alternative - retaining the status quo partial coverage of religious vilification through the existing grounds requires no legislative changes, but means that protection applies inconsistently to people and religions. The status quo also requires decision makers to consider difficult factual scenarios in order to attempt to apply the current provisions to religion.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence three months after the date of assent. This will enable sufficient time for the agencies that will receive and manage complaints under the reforms (Anti-Discrimination NSW and the NSW Civil and Administrative Tribunal) to prepare processes to enable these functions.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Government consulted with a range of stakeholders on the Bill, including religious and faith organisations, legal stakeholders and community and advocacy organisations. Most stakeholders consulted were supportive of the reforms in the Bill, particularly religious organisations, who strongly supported the intent of the Bill.

Agencies within Government such as Anti-Discrimination NSW, the NSW Civil and Administrative Tribunal, Multicultural NSW, the Department of Premier and Cabinet and NSW Treasury were also consulted, and supported the reforms.