



NSW Legislative Council Hansard

Anti-Discrimination Amendment (Religious Tolerance) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 15 September 2005.

Second Reading

The Hon. PETER BREEN [4.21 p.m.]: I move:

That this bill be now read a second time.

I express my gratitude to the House for allowing me the opportunity to introduce the Anti-Discrimination Amendment (Religious Tolerance) Bill. Thirty years ago, in October 1975, the Commonwealth Racial Discrimination Act became law, implementing the United Nations Convention on the Elimination of all Forms of Racial Discrimination, which Australia had signed in 1966 but had not ratified. The Racial Discrimination Act marked the official end of the White Australia Policy, and multiculturalism became the basis for migrant settlement and social and cultural policy.

Gough Whitlam dismantled the Immigration Department, which he described as outmoded, outdated and "incurably racist". As Immigration Minister, Al Grassby famously pointed out that Jesus Christ would have had the "greatest possible trouble" entering Australia on racial grounds at the time of the White Australia Policy. Following the 1975 Commonwealth race law, the States enacted complementary anti-discrimination legislation, including, in New South Wales, the Anti-Discrimination Act 1977. Premier Wran introduced the bill into the Legislative Assembly of this Parliament on 23 November 1976 with these words:

The protection of fundamental rights and freedoms of the individual is of paramount importance to governments. The principle that all human beings are born equal, have a right to be treated with equal dignity, and the right to expect equal treatment in society is a principle firmly upheld by my Government.

Mr Wran continued:

One of the greatest contributions to world unrest is the conflict of people of different races, the intolerance that has prevented the peaceful coexistence of people of different nationalities and the prejudices that have blighted their mutual respect as human beings, each for the other. These intolerances and prejudices are reflected today in confrontations taking place in different parts of the world. This bill is an attempt, as far as legislation can, to end intolerance, prejudice and discrimination in our community.

Included in the Wran Government's anti-discrimination legislation were prohibitions against discrimination on the grounds of religion, race, sex, and marital status. It was landmark legislation and changed the way many people thought about discrimination. Unfortunately, the prohibition against discrimination on the ground of religious conviction was removed from the bill by a Government amendment in this House. Cardinal Gilroy and Archbishop Gough had successfully lobbied Premier Wran to the effect that religious freedom includes the right to say as you please about other people based on their religious belief.

I indicate to the House that my bill does not attempt to reintroduce religion as a ground for prohibiting discrimination under the Anti-Discrimination Act. The prohibition of discrimination on religious grounds raises some distinctive considerations, which may be more appropriately dealt with in a separate bill and in a separate debate. The need for anti-vilification provisions seems to me a greater urgency at this time, given the current wave of abuse and hate speech that incites violence towards Muslim Australians. My bill would make religious vilification unlawful, and vilification that incites violence an offence under the Anti-Discrimination Act which would attract the same penalties as racial vilification and sexual vilification.

Some of the issues relating to the operation of the 1977 anti-discrimination legislation were highlighted in a report to this House dated August 1992 by the Hon. James Samios. Mr Samios was a member of the Liberal Party and did more than any other conservative politician to bring the Liberal Party out of the bleak house of the White Australia Policy and into the new world of multiculturalism and racial integration.

The Hon. John Ryan: Which party abolished the White Australia Policy? It was the Liberal Party!

The Hon. PETER BREEN: The White Australia Policy was abolished under the Whitlam Government and finally implemented by Mr Fraser and the Coalition.

The Hon. Charlie Lynn: What did Arthur Caldwell say about Mr Wong?

The Hon. PETER BREEN: Whatever may be the truth about the White Australia Policy, the fact is that Mr

Samios was a very important activist in multiculturalism and cultural integration.

The Hon. Duncan Gay: I do not think he would like to be called an "activist".

The Hon. PETER BREEN: He was an activist. He was very active in that area. In his report, Mr Samios identified the problem that certain kinds of vilification were religious rather than racial, and he recommended amending the Anti-Discrimination Act to include the term "ethno-religious" in the definition of "race". The report says:

Muslim women, in particular, experience more racial violence and intimidation than Muslim men because the women are physically different by wearing the hijab or Muslim women scarfs. Strictly speaking, derogatory remarks on the basis of the headgear might be said to be religious rather than racial vilification. It is certainly impossible to identify Muslims with one nationality, Islam being the world's biggest single religion.

Apart from the Samios inquiry report, the New South Wales Law Reform Commission received from the Attorney General a reference to inquire into the scope and operation of the Anti-Discrimination Act 1977. In a comprehensive submission to the Law Reform Commission entitled "Balancing the Act", the New South Wales Anti Discrimination Board argued that religion raises separate issues related to freedom of belief and expression that are different from those of race, even though religion is a strong and even a defining element in some cultures. In other words, the board did not consider it appropriate to include religion with the ground of race in anti-discrimination legislation. The board said, in effect, that the Samios idea of including "ethno-religious" in the definition of "race" was to be applauded in its intention, but unlikely to prove effective in preventing religious vilification.

History has proved that the board was right, and the New South Wales Anti-Discrimination Act has not been successful in preventing religious vilification. When David Oldfield published his Muslim hate web site it was left to the Victorian Anti-Discrimination Board to bring him into line. The New South Wales Anti-Discrimination Board could do nothing, even though the web site was hosted in New South Wales

When Mosman resident Mike Barclay wrote, "Jews make fantastic lampshades" on a billboard outside his Spit Road home, New South Wales laws were again shown to be completely ineffective to curb religious vilification. Despite complaints to numerous government agencies, including the Anti-Discrimination Board, none of the authorities could act because of the deficiencies in New South Wales law. I should note in passing that religious vilification of this kind is illegal in Tasmania, Victoria and Queensland, with New South Wales the proverbial lame duck on the east coast of Australia when it comes to protecting minority religious groups.

The Greiner Coalition Government made some important amendments to the Anti-Discrimination Act in 1994 when Attorney General John Hannaford introduced the Anti-Discrimination (Amendment) Bill into this House. Homosexual vilification was outlawed, as was discrimination based on certain forms of disability in the areas of employment and accommodation. Vilification of people suffering with the HIV-AIDS virus was also outlawed. On the issue of religious vilification, the bill introduced the Samios concept of ethno-religious origin in the definition of "race".

The Government sent mixed messages with the provision. In this place Mr Hannaford said that the extension of the Anti-Discrimination Act to ethno-religious groups "will not extend to discrimination on the ground of religion". Yet he also said that the effect of the amendment "is to clarify that ethno-religious groups such as Jews, Muslims and Sikhs have access to the racial vilification and discrimination provisions of the Act". In the event, the 1994 amendments to the Act did not provide an avenue for relief in New South Wales for people subjected to religious vilification. The rationale for religious tolerance laws, or anti-vilification laws as they are sometimes known, is to be found in the 1981 United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. Article 1.2 provides:

No-one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

Even though Australia is a signatory to the international instrument, a question arises about its enforceability until religious tolerance is incorporated into local law by statutory amendment. Despite this peculiarity in our legal system, I think it is fair to say that the principle of religious tolerance stands alone as an ethical and moral precept. It is wrong to vilify people and incite hatred towards them because of their religious belief, on the basis of the dignity and respect they are entitled to expect as fellow human beings. In religious terms, I am talking about the good neighbour principle: do unto others as you would have them do unto you. Just as it would be morally and ethically repugnant to torture a person because of something they believe, it is also a fact that vilification and hate speech are offensive from a moral and ethical perspective. Torture is not restricted to body blows. The reason we have laws prohibiting religious vilification is simply to recognise the ethical and moral principles that underpin a civilized society.

To say of a group of believers "They should all be shot" has a chilling effect on believers who hear or read about the remark, even if it is not directed at them personally. As the Anti-Discrimination Board points out, such a

remark may release tension and anger in the person who makes it, but the effect on believers can be devastating. And as a believer myself, I feel personally wounded when I hear remarks of that kind, regardless of whether the remarks are directed at my faith or the faith of another. Another reason for legislating religious tolerance laws is to deal with the tension that exists between secularists and believers. The Anti-Discrimination Board says this is a good enough reason on its own to amend the Anti-Discrimination Act. I agree with that sentiment. Believers can work themselves into a frenzy over interfaith initiatives, but such initiatives do nothing to promote acceptance and tolerance from secularists. We live in a secular State, not a religious one, and the purpose of religious tolerance laws is to indicate where the boundaries of criticism should be drawn.

Importantly, my bill protects secularists and people of no belief from religious zealots, in the same way that it protects believers from intolerant atheists and agnostics. Respecting the rights of non-believers is no less important than recognising the sensitivities of believers. Many people of good will fear God-botherers, blaming them for wars, pestilence and other human catastrophes. I have a brother-in-law who firmly believes that all religious people are quite mad, and suffer from delusional thinking and possibly a genetic disorder. I need to respect my brother-in-law's belief, to be tolerant of his opinions, and to entertain the possibility that he may have some valid reasons for holding his belief, even if those reasons are not sufficient for me to agree with him. In practical terms, we enjoy a tolerant and harmonious relationship even though our respective positions on the religion question are diametrically opposed. Both of us remain open to the possibility that we may be wrong, and hopefully we would be willing to consider evidence of the opposite view to the one we hold. But under my bill, my brother-in-law would have to be cautious about the manner and language he uses when expressing his contempt for religion, particularly if he expressed it in public, given that his expression might cause unwarranted harm to people of religious beliefs by inciting hatred towards them, serious contempt for them, or severe ridicule of them.

The first meaning of "tolerance" in the *Oxford Dictionary* is the action or practice of enduring pain or hardship. The second, and more relevant, meaning of "tolerance" is described as "the disposition to be patient with or indulgent to the opinions or practices of others; freedom from bigotry or undue severity in judging the conduct of others; forbearance; catholicity of spirit". It is in this sense of "catholicity of spirit" that I introduce the Anti-Discrimination Amendment (Religious Tolerance) Bill. I do not ask people to abandon or compromise their own beliefs, but simply to allow others the space and opportunity to practice their religion free from vilification. Some beliefs may appear to stand in direct contradiction to my own beliefs, and yet that is hardly a good reason to deny the right of others to freely hold those beliefs.

Curiously, the two most important cases on the meaning of religion and religious freedom dealt with by the High Court involved controversial religions. *The Church of the New Faith v The Commissioner for Payroll Tax* (1983) recognised Scientology as a religion, while the Jehovah's Witnesses case (1943) is authority for the proposition that the religious freedom provision in the Commonwealth Constitution was intended to protect minority religions and not the religion of the majority. There are circumstances in which mainstream Christians might be vilified. I note that the Hon. David Clarke has been on the receiving end of some thinly disguised hate speech over the last couple of weeks. I look forward to hearing the Hon. David Clarke's contribution to the debate, and I would like to assure him that the protections offered by my bill extend to the adherents of all religious beliefs and to people of no religion.

The Anti-Discrimination Board has received complaints from committed Christians as well as people of minority faiths vilified by those contemptuous of the concept and practice of religion. Ironically, the more self-righteous that mainstream religions become in a secular society, the more likely it is that they too will need the protection of anti-discrimination laws. The Hon. David Clarke would be one of the strongest supporters of my bill if he thought about it. In the three months since I gave notice of the bill I have received a truckload of hate mail from well-meaning Christians who believe that Jesus Christ is the answer to the problem of human existence and that everybody else is on the road to perdition. One charming correspondent said I was doing the work of Satan by promoting religious tolerance laws. These good people often quote Jesus Christ as saying "Nobody comes to the Father except through me." This text is taken from the fourth Gospel written by the Apostle John a generation after the death of Jesus. The words do not appear in the other three Gospels, and their meaning, as interpreted by my correspondents, is contradicted by other writers, such as the Apostle Peter.

The Hon. John Ryan: That is complete rubbish.

The Hon. PETER BREEN: It is not rubbish. Peter said that anyone—

The Hon. John Ryan: Peter contradicts John's Gospel. He says that no-one comes to the Father but through Jesus.

The Hon. PETER BREEN: Maybe you are the author of one of the emails I received. I certainly do not recognise a lot of the names. Scripture is nearly always ambiguous, and in my experience includes various layers of meaning. One cannot interpret scripture without taking into account the historical context of the writing and the text of the early translations, since all the original writings have been lost. It is a grave error to give literal interpretation to scriptural texts, regardless of whether they are the *Bible*, the *Koran* or the *Bhagavadgita*. Most

of my hate mail has been from Christians, telling me what the *Koran* says about mayhem and violence, but the *Bible* can be a very dangerous book when given literal interpretation. In Luke's Gospel, Jesus tells his followers to sell their cloaks and buy a sword. The apostle Matthew quotes Jesus as saying "I have come not to bring peace but a sword." In fact, the word "sword" appears 446 times in the *Bible* according to my concordance, and not once in the *Koran*.

People eager to criticise Islam and Islamic extremists will sometimes remove passages from the *Koran* and quote them out of context in order to justify their views. For example, one verse of the *Koran* says, "Slay them wherever you find them." This has been interpreted to mean Muslims may kill non-Muslims. In fact, the only time the *Koran* permits Muslims to fight is in self-defence and protecting the oppressed. Taken in context, the expression "slay them wherever you find them" means the prophet and his followers were permitted to fight the Meccans who attacked them. Other passages of the *Koran* are taken out of context and used to justify discrimination against women, for example, but various passages of the *Bible* can be used the same way. The adherents of different religions hurling scriptural abuse at one another do not serve their respective causes.

I said in my inaugural speech in this place that I am a dyed-in-the wool Catholic, but that the Catholic Church has not cornered the market on truth and wisdom. Nothing has changed. While the Vatican's position on sex, women and children is often a source of embarrassment, the church princes know an awful lot about God. They assure us that the God of Allah is the same God the Father of Abraham, Isaac and Jacob. In my experience, Catholics have no problem with the idea that Allah revealed to the Prophet Mohammed the text of the *Holy Koran*. And while it is true that a literal interpretation of the *Koran* may appear to deny some of the basic teachings of Christianity, such as the divinity of Jesus Christ, many so-called Christians say that Jesus was just an ordinary man, although I hasten to add that I am not one of them. What gives me much more grief than mainstream Islam is distorted, self-righteous and fundamentalist Christianity. My hate mail includes a letter from a woman named Kaia of Seven Hills who sent me 61 quotes from the *Koran*, which she says commands Muslims to fight or kill. Kaia also says that the first terrorist act in Australia should be followed by a government decree that all Muslims will be deported.

As a member of Parliament, I have had the privilege to attend a number of interfaith forums organised by Bishop Manning of Parramatta and Keysar Trad of the Lakemba Mosque. These are truly inspirational events and they provide ample evidence that religious tolerance is not incompatible with deep faith, whether as Christians or Muslims. On one or two occasions there have been tensions at the forums between so-called orthodox groups and extremists. Scriptural slanging matches have degenerated into yelling and screaming and name-calling, none of which could be described as hate speech or vilification. People are entitled to disagree with each other and express forceful contrary opinions.

If the Anti-Discrimination Amendment (Religious Tolerance) Bill is to become law, it will require the leaders of the dominant religions who are all Christians to extend the hand of charity to other faiths and different belief systems. It will also be necessary for the majority Labor Government to reverse a policy not of the party but of the former Premier, Bob Carr. In what turned out to be one of his last speeches in this Parliament, Mr Carr said that while he was happy to promote interfaith harmony and convey respect to the great Islamic community of New South Wales, he did not want Muslims to have the benefit of laws protecting them from religious vilification. Mr Carr even had the audacity to quote from John Stuart Mill's essay *On Liberty* to make his argument that people should be free to say as they please in a democratic society. The very essence of Mills' essay is that the state has an obligation to place limits on citizens in circumstances where their actions and words are likely to cause harm to others. In his introduction to the essay, Mills said:

Like other tyrannies, the tyranny of the majority was at first, and still is vulgarly, held in dread, chiefly as operating through the acts of the public authorities.

Mr Carr often boasted that he was no sports fan, and perhaps that is the reason he missed the trend in sporting bodies such as the Australian Football League [AFL] to protect players from racial and religious vilification. The sporting bodies recognised that religious vilification can be even more harmful than racial vilification. In 1995, the year Bob Carr took on the Premier's job, the AFL introduced Rule 30, which incorporated a process of education, conciliation and potential sanctions for racial and religious vilification. The new policy provides as follows:

The AFL understands that religious and racial vilification of any sort is unacceptable, regardless of when or where such vilification occurs. The AFL has also recognised that it has an opportunity and responsibility to relate this important message to the public and raise community awareness that vilification at any level is unacceptable. The program involves all AFL players, coaching staff and administrators in an annual education program. This program has been supported by a public education program.

Other football codes have followed the AFL lead. The national code of conduct of the Australian Rugby League, for example, now provides that participants in the game of rugby league "should respect the rights, dignity and worth of every person regardless of their gender, ability or disability, sexual orientation, cultural background or religion". A few weeks ago I attended the Byron Bay Writers Festival where author, journalist and former rugby

union player Peter Fitzsimons reminded me that heroic football stars have been responsible for killing stone-dead various prejudices in the Australian sporting community. One was the St Kilda AFL player Nicky Winmar, who proudly lifted his football guernsey and pointed to his black skin in response to abusive racist taunts from Collingwood fans in 1993. Peter Fitzsimons nailed the significance of this event when he said:

Word went out to the back of Brewarrina that indigenous people had much to be proud of.

Another landmark incident in breaking down sporting prejudice occurred when rugby league footballer Ian Roberts outed himself as a homosexual. Peter Fitzsimons described Ian Roberts as the toughest footballer in any code in Australia who forced people to re-think their stereotypes about gay men. These footballers and other sporting heroes such as Cathy Freeman have encouraged aggrieved minorities to stand up against the evils of stereotyping and vilification. I contend that the passage of my bill could do the same for religious minorities instead of alienating them and pushing them to the margins of society and into the hands of extremists. On his last day in the job as Premier before he scuttled the ship of state, Bob Carr spent the afternoon at a bushland conference centre at Arcadia surrounded by schoolchildren. According to Andrew Clark in the *Sydney Morning Herald*, Mr Carr told the children:

Years from now, you might remember that a politician, on his last day in office urged you to be a leader.

The alternative, Mr Carr insisted, was to be a freeloader "only good for eating food and filling toilets". This is a bleak view of human existence by any standard and says much about the former Premier's lack of concern for human rights in the past 10 years—not to mention his failure to maintain the State's infrastructure. It takes empathy, compassion and respect for the dignity of the person to recognise the damage caused by religious and racial vilification. Bob Carr's idea of heaven is a warm, sunny day in Sydney by the sea, but for many people who are part of an ethnic or religious minority, heaven means freedom from oppression and a place where they are accepted for who they are. In his excellent biography of Bob Carr, Andrew West makes the point that there was a direct connection between Mr Carr's increasing popularity as Premier and his willingness to single out a particular ethnic group as being responsible for a wave of crime in Sydney. The lodestone of fear and prejudice Mr Carr so successfully tapped to achieve his political ends is best described in a letter to the *Daily Telegraph* published on 3 August 2005—Bob Carr's last day as Premier—from a man named Warner Russell from Thornleigh. Mr Russell wrote:

I presume new Premier Morris Iemma will pursue with the same vigour as Bob Carr the militant Islamic clerics who preached hatred and violence against our society, even though it may cause some concern among his Muslim constituents in the safe labour seat of Lakemba.

The mainstream Islamic community would want nothing less than his full support for Bob Carr's strong stand against the dangerous, fanatical elements in their community, many of whom he has probably met as their local MP.

I look forward to seeing him quickly take the lead in having these extremists in the Muslim community either prosecuted or expelled from Australia.

As anybody in public life who supports ethnic and religious minorities will attest, the majority of dangerous fanatics and extremists in Australia are not Muslims but profoundly ignorant and shameful Christians. They carry their Bibles in one hand and poison pens in the other, ready to strike out at anyone unwilling to share their path to eternal glory. These people whip themselves into a fervour of religious bigotry that inevitably degenerates into persecution of ethnic and religious minorities. Over the centuries, heretics, pagans, blacks, homosexuals, Jews, women and children have all felt the sword of God's wrath in the name of Christianity and I am deeply ashamed to see it happening again in Australia in this generation.

The Australian Football League decided to implement a policy to deal with religious and racial vilification because the league wanted to protect its indigenous players and keep them in the game. In the same way, the bill before the House seeks to protect the minority Muslim community in New South Wales from vilification and hate speech, to empower them as citizens and to recognise the important contribution they make to our multicultural society. The alternative to an inclusive society is one in which young people in particular are isolated and marginalised in their country of birth. We cannot stand by and allow young people who are our Muslim brothers and sisters to become scapegoats for the crimes of terrorists that are committed in the name of Islam.

If I condemn a person in a public forum based on their race or sexuality, a legion of people will be offended and take me to task. This is because anti-discrimination laws about race and sexuality have been in force for 30 years, and people have become educated about the rule of law. Condemnation of a person based on their religion, on the other hand, is wrongly interpreted as freedom of speech, defending the faith and a host of other misnomers. Moderate Islam is a mainstream religion based on a scholarly interpretation of the *Koran*. Self-declared Christians who label all Muslims as potential terrorists falsely use the name of God to spread hate in the community. By doing so, they are no less guilty of perverting Christianity than hateful Islamic extremists are

of perverting Islam.

Last week I heard Prime Minister John Howard say Muslim people have nothing to fear from his proposed anti-terror laws if they are law-abiding citizens. This statement is too cute by half, in my opinion, and fails to recognise that it is the Muslim community in general who stand at the pointy end of extra police powers. It is young Muslim men who are eyed with suspicion by lazy and sometimes incompetent investigators. It is the mothers, wives and sisters of these young Muslim men who are the targets of religious prejudice on the streets of Sydney. They are law-abiding citizens and yet these women bear the brunt of verbal and sometimes physical abuse every time the Government raises the bar on anti-terror laws as if they are somehow responsible for the unlawful acts of terrorists.

The Anti-Discrimination Amendment (Religious Tolerance) Bill affords legal protection to all people who are the victims of religiously inspired hate speech or vilification. It should not be seen as a limitation on free speech as the bill does not ban religious beliefs—even extreme and irrational ones—so long as those beliefs are held in good faith and they are not used to vilify or incite hatred towards people who hold other beliefs. The bill has nothing to do with the right and wrong of different belief systems. My own belief is not diminished because I recognise the right of others to hold different beliefs.

This week's *Catholic Weekly* includes an interview with Sister Professor Mary Boys, who is an expert on Christian-Jewish relations and the dialogue between Christianity and Islam. Professor Boys says that Christians must reach out to people of other faiths, particularly Muslims, who are frequently the object of hatred. I can think of no better way to reach out than to offer our Muslim brothers and sisters the legal protection of religious tolerance laws. It is my contention that people of all religious beliefs need the protection of anti-discrimination laws, not just for their own benefit, but for the benefit of everyone who considers that freedom of thought, conscience and belief is a basic right of all citizens that needs to be protected from the reach of tyrannical governments. I commend the bill to the House.