



New South Wales

# Anti-Discrimination Amendment (Religious Freedoms) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Anti-Discrimination Act 1977* as follows:

- (a) to prohibit discrimination on the ground of a person's religious beliefs or religious activities,
- (b) to prohibit public authorities and officials from subjecting faith-based entities to detrimental treatment on the ground of faith,
- (c) to provide that the Act does not affect:
  - (i) the appointment of persons by faith-based entities, the discharge of duties by chaplains or certain other acts or practices of faith-based entities, or
  - (ii) certain conduct by persons who hold the belief or conviction that marriage and family are based on the concept of the union between one man and one woman or that a person can only be one of 2 genders (that is, either male or female),
- (d) to make it clear that the proposed provisions about religion and faith do not give rise to any ground of complaint or appeal in relation to certain land-use planning decisions by local councils.

This Bill also amends the *Education Act 1990* to require that the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions is to be respected by the State and that beliefs and convictions about marriage or gender taught or espoused by a non-government school should not prejudice Ministerial decisions about financial assistance to the school.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Anti-Discrimination Act 1977 No 48**

**Schedule 1 [1]** inserts a definition of *faith-based entity*.

**Schedule 1 [2]** makes it clear that if an act is done for 2 or more reasons, and one of the reasons consists of subjecting a faith-based entity to unlawful detrimental treatment on the ground of faith then, for the purposes of the *Anti-Discrimination Act 1977*, the act is taken to be done for that reason.

**Schedule 1 [3]** inserts a new Part in the *Anti-Discrimination Act 1977* that makes it unlawful to discriminate against a person on the ground of the person's religious beliefs or religious activities in the circumstances described in the Part, which relate to work, education, the provision of goods and services, accommodation, and registered clubs. A contravention of the proposed Part may be the basis of a complaint under the Act.

The new Part generally follows the pattern established in the Act for the other forms of discrimination that are made unlawful by the Act's provisions. However, proposed section 38ZM sets out additional reasons for which the President of the Anti-Discrimination Board may decline a complaint on the ground of religious beliefs or religious activities, either because the complaint is deliberately contrived to create a basis for complaint or to attract criticism to any faith-based entity or because the complaint is otherwise a disingenuous, malicious or dishonest use of the protections provided by proposed Part 3B.

**Schedule 1 [4]** inserts a new Part that prohibits public authorities and officials from subjecting faith-based entities to detrimental treatment on the ground of faith in certain circumstances (namely the provision of government funding, dealing with applications for grants or the provision of goods and services by the government). A contravention of the proposed Part may be the basis of a complaint under the Act.

**Schedule 1 [5]** amends a provision that provides that nothing in the *Anti-Discrimination Act 1977* affects any obligation to comply with any other Act to make it clear that it includes any such obligation arising under legislation about public health, the protection of children and young persons or national security.

**Schedule 1 [6] and [7]** make it clear that the proposed Act does not affect the charitable status of a faith-based entity.

**Schedule 1 [8]–[10]** provide that the *Anti-Discrimination Act 1977* does not affect the appointment of persons by faith-based entities, the discharge of duties by chaplains of private educational authorities or certain other specified acts or practices of faith-based entities.

**Schedule 1 [11]** makes it clear that the amendments made by the proposed Act, and the rest of the *Anti-Discrimination Act 1977*, do not authorise violence, or advocating the use of violence, through any act that purports to be religiously motivated.

**Schedule 1 [12]** inserts provision that provides exemptions from the operation of the *Anti-Discrimination Act 1977* that arise because of:

- (a) the exercise of rights under Article 18 of the *International Covenant on Civil and Political Rights* to the extent that they relate to freedom of religion, and
- (b) beliefs or convictions that marriage and family are based on the concept of the union between one man and one woman, and
- (c) beliefs or convictions consistent with the gender binary.

**Schedule 1 [13]** provides that the amendments made by the proposed Act do not give rise to any cause of action, right to complain or right to appeal in relation to decisions made by a resolution of a local government council, being decisions about development applications or other matters concerning development of land for the purposes of a place of public worship.

**Schedule 1 [14]–[16]** make amendments to procedural requirements. Those amendments are consequential on the establishment of the new ground on which the President of the Anti-Discrimination Board may decline a complaint.

**Schedule 1 [17]** inserts savings and transitional provisions that make it clear that the proposed provisions relating to discrimination on the ground of a person’s religious beliefs or religious activities, or subjecting a faith-based entity to a detriment on the ground of faith, do not apply to acts occurring before the provisions come into force.

## **Schedule 2      Amendment of Education Act 1990 No 8**

**Schedule 2 [1]** modifies one of the principles of the *Education Act 1990* (namely that the education of a child is primarily the responsibility of the child’s parents), to ensure that the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions is to be respected by the State.

**Schedule 2 [2]** provides that, for the purposes of a provision that authorises the Minister to suspend, reduce or impose conditions on the provision of financial assistance to non-government schools that are “non-compliant”, a non-government school is not a non-compliant school on the grounds only that the school teaches a belief or conviction that marriage and family is based on the concept of a union between one man and one woman, selects as employees people who share that belief or conviction or is established or operated by a body that holds the belief or conviction.