

Reply of Professor Michael Quinlan and Professor A. Keith Thompson to questions on Notice posed by the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

We refer to questions on notice put to us during our appearance at the public hearing of the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Committee). This response is made in our personal capacities and on the same basis as our Submission to the Committee.

Would additional language in the Bill make it clear that judges deciding cases which engage the new law, are not to adjudicate about matters of religious belief or practice or the sincerity of those beliefs and practices? If so, what further language would you propose to achieve that goal?

We recommend that the following further words be inserted in section 22KA after the existing text:

For the purposes of this Act, a religious ethos organisation is conducted in accordance with the doctrine, tenets, beliefs or teachings of a particular religion if they are set out in its constitutional documents and/or published either in signage readily visible on its premises and/or on any website it uses from time to time.

If this further provision were inserted into section 22KA, we do not think section 22V would require amendment.

Do we think the Bill as drafted, invites religious organisations to take action against a government, department or officer where it was unsuccessful in an application for government funding or in a tender to do government work?

No, we do not think this Bill invites religious organisation to take action against government and in answering this question we have had particular regard for Member Jenny Leong's question about the 2019 Program Guidelines for the Community Building Partnerships scheme. In that regard, we observe that on p4, the Guidelines specifically allow religious organisations to participate but make clear that they must be incorporated to do so. We also observe that the Guidelines are expressed in neutral inclusive language in which we cannot detect any direct or indirect discriminatory intent.

We note that the Program Guidelines include the below criteria:

Eligible projects will be assessed against four equally weighted program criteria:

1. Enhancing facilities — the project develops a vibrant, sustainable and inclusive community through the enhancement or construction of community infrastructure.
2. Meeting community needs — the project supports activities and services needed by local communities.
3. Increasing community participation — the project encourages participation in activities or services needed by a broad section of the community.
4. The organisation's capacity — the applicant has the capacity to deliver the project on time and within scope.

This criteria ought not be interpreted as excluding religious ethos organisations from participating in the program recognising that many religious ethos organisation may be unable to permit some usages of their premises. For example, surely the community and the NSW Government would not expect or require:

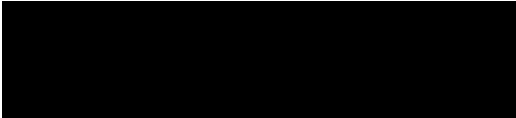
- organisations within the Islamic or Jewish faith traditions with doctrines governing food preparation and diet, to rent premises to be used for the preparation of pork particularly if doing so would result in the kitchens of the premises being unable to be used to prepare or serve kosher or halal foods in the future;
 - organisations with pacifist doctrines such as the Jehovah's Witnesses to rent premises for the use in military training;
 - organisations with religious doctrines in relation to psychiatry such as the Church of Scientology to rent premises for usage for a psychiatrists' convention;
 - training in blood transfusion techniques to be provided on the grounds of Jehovah's Witnesses institutions;
 - organisations within the Catholic tradition to rent premises to provide training in or to advocate for the use of artificial contraception or euthanasia contrary to the doctrines of that Church or to host a Black Mass;
- should that organisation consider that it is unable for religious reasons to do so.

Many other specific examples could be provided but it would not be useful to endeavour to set out every permissible exclusion as religious traditions are very variable. These sorts of differences are part of our community and ought not prejudice government against making grants. Any such approach would in our view be contrary to diversity and the inclusion of religious people and religious ethos organisations in our community. However, and as we observed when we made our oral submissions on Friday October 23rd, it is not possible to dissuade anyone from initiating litigation. There are many litigants who have used existing anti-discrimination laws in Australia as a sword despite the contrary intent of the legislatures which framed those laws.

The best that any government can do to avoid litigation, is to use neutral inclusive language and to frame policy documentation in a form intended to avoid both direct and indirect

discrimination as we perceive is your purpose with these Community Building Partnership Program Guidelines. However, it may be helpful to provide some examples, such as those set out above, in the Guidelines so that it is clear that religious ethos organisations are not excluded from the program if they have some limits on the general availability on the accessibility of their premises consequence on their religious ethos.

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9 November 2020