



16 November 2020

To the members of the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

In my evidence I expressed the view that section 3 of the Bill has the consequence of preferencing religious rights over other rights. I was challenged on this point by the Honourable Mark Latham and took his question on notice.

I observe that my assertion is shared by others including the NSW Bar Association.

The Public Affairs Commission of the Anglican Church of Australia has observed that section 3 of the Bill has concentrated its attention on international instruments focussed on religious discrimination. This leads to a conclusion that the Bill preferences religious rights over other rights.

The Bill places a requirement on the Minister, Board, President, Tribunal and so far as possible to interpret the Act in a way that is compatible with the international instruments referred to in section 3 of the Bill.

Both the Anglican Diocese of Sydney and the Australian Discrimination Law Experts Group (ADLEG), among others, recommend a broader recognition of other international instruments. This would improve the Bill.

The NSW Parliament is assisted by previous reviews which have considered processes to protect people from religious discrimination. The Australian Law Reform Commission has stated, "International instruments cannot be used to 'override clear and valid provisions of Australian national law'. However, where a statute is ambiguous, courts will generally favour a construction that accords with Australia's international obligations."

Australia has benefitted from significant common law in Australia which addresses the difficulty in balancing the right to freedom from discrimination and the freedom to manifest religious belief (broadly defined). The Minister, Board, Board, President, Tribunal and Courts should be able to draw on that common law in their decision making as well as the international instruments. Section 3, in its current form, risks placing unnecessary restrictions on these decision-makers.

Bishop Peter Stuart
BISHOP OF NEWCASTLE