

The Hon Gabrielle Upton MP
Committee Chair
Joint Select Committee on the Anti-Discrimination
Amendment (Religious Freedoms and
Equality Bill) 2020
Parliament of NSW
6 Macquarie Street, Sydney, NSW 2000

Dear Ms Upton

Question on notice regarding industrial organisations

I thank you for the opportunity to appear before the Committee to provide evidence on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (**the Private Member's Bill**) and refer to a question on notice from Ms Jenny Leong MP.

Ms Leong asked for comments relating to the submission from the Anti-Discrimination Board NSW, which considers there could be confusion if an industrial organisation is identified or chooses to identify as a religious ethos organisation.

Under section 4 of the *Anti-Discrimination Act 1977 (ADA)*, an industrial organisation means an industrial organisation within the meaning of the *Industrial Relations Act 1996 (IRA)* or an organisation registered under the *Industrial Relations Act 1988 (Cth)* (superseded by the *Fair Work (Registered Organisations) Act 2009*). The IRA defines an industrial organisation as an industrial organisation of employees or employers. Under the *Fair Work (Registered Organisations) Act 2009*, a federally registrable association of employees, of employers, or enterprise association may register as a registered organisation. I note that there may be further interactions between the *Fair Work Act 2009 (Cth)* and the Private Member's Bill that I have not been able to consider in this response.

Under proposed section 22K of the Private Member's Bill, a religious ethos organisation includes a private educational authority, a charity registered with the Australian Charities and Not-for-profits Commission, or any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion. This definition is broader than existing section 56 of the ADA which is limited to an act or practice of a body established to propagate religion that conforms to the doctrines of a particular religion.

Under proposed section 22R of the Private Member's Bill, an industrial organisation is prohibited from discriminating against members and potential members of the industrial organisation on the ground of religious beliefs or activities.

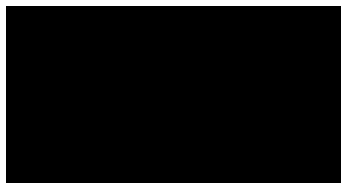
Proposed section 22M of the Private Member's Bill provides that a religious ethos organisation is taken not to discriminate against another person on the ground of the person's religious beliefs or religious activities by engaging in conduct if the organisation genuinely believes the conduct:

- is consistent with the doctrines, tenets, beliefs or teachings of the religion of the organisation, or
- is required because of the religious susceptibilities of the adherents of the religion of the organisation, or
- furthers or aids the organisation in acting in accordance with the doctrines, tenets, beliefs or teachings of the religion of the organisation.

It may be that an industrial organisation that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a religion, such as where it is an organisation of employees of certain religious organisations, could be considered a religious ethos organisation for the purposes of section 22M. In that case, it is not clear how the prohibition on discrimination on religious grounds in proposed section 22R and the exception from discrimination in proposed section 22M would interrelate.

However, an industrial organisation that is not a religious ethos organisation would be prohibited from religious discrimination by proposed section 22R.

Yours sincerely



Paul McKnight
Deputy Secretary
Law Reform and Legal Services