



Additional questions – Equal Voices

Question 1. Given the impact of section 54 of the NSW Anti-Discrimination Act 1977 do you acknowledge that, if enacted, the proposed Bill cannot render unlawful compliance with any other NSW Act, regulation or by-law, including the 2019 Abortion Act, existing health legislation, the COVID health orders, domestic violence laws, sexual abuse laws, NSW Crimes Act, the Local Government Act, business regulations, consumer protection, education statutes and industrial relations laws?

Answer 1: No. The opinion expressed in Question 1 about the effect of the proposed Bill is rejected by leading legal authorities. We refer you to the submission by the Australian Discrimination Law Experts Group (ADLEG), whose members are among Australia’s leading legal authorities on discrimination law. On page nine the ADLEG submission [Submission 34] states that: section 22K definition of ‘religious activity’ excludes ‘any activity that would constitute an offence punishable by imprisonment under the law of New South Wales or the Commonwealth’. This means that unlawful criminal acts with punishment below the level of imprisonment can still be protected, and endorsed, as lawful religious activities under the ADA; employers, goods and service providers, education providers and accommodation providers would not be able to treat an individual differently based upon them committing such criminal offences where they are religiously-motivated. This also means that various different breaches of non-criminal laws can be sanctioned as lawful religious activities under the ADA and thereby protected from adverse treatment from an employer, education provider, goods and service provider or accommodation provider: whether that be harassment, bullying, breaches of contract, tortious acts such as assault, battery or negligence, or breaches of consumer or corporations laws.

The submission by ADLEG on the question of whether the proposed Bill permits conduct that is currently unlawful to be justified on account on religious grounds is supported by Anti-Discrimination NSW (AD NSW). In its submission, AD NSW states that:

archaic and out-dated interpretations of religious texts could be used to justify conduct that is currently unlawful. For example, under this provision a registered religious charity may decide to refuse to provide social welfare services to a single unwed woman with children. AD NSW concludes that section 22Z ‘may also conflict with the current provisions in section 54 of the Act’ [Submission No. 55, p.11].

Question 2. Do you agree with submissions from the Australian National Imams Council, the Anglican Archbishop of Sydney and the Catholic Archdiocese of Sydney that the Bill generally fits the structure and intent of the remainder of the NSW Anti-Discrimination Act? If not, what is the unacceptable point of difference you have identified?

Answer 2: We consider there are many points of difference between the proposed Bill and the remainder of the NSW Anti-Discrimination Act. Leading legal authorities agree. For example, while AD NSW supports the inclusion of religion as a protected ground under the Act, it finds the proposed Bill to be contrary in purpose to the ‘beneficial’ purpose of anti-discrimination law. The proposed Bill is contrary to beneficial purposes by proposing to weaken existing protections for those who experience discrimination. As Christians we regard this effect as entirely opposite to the message of the gospel and all that Jesus embodies, with its central emphasis on love for neighbours and care for



the suffering, the marginalised and the excluded, regardless of the religious character or beliefs of those found to be in need of care [Gospel of Matthew, chapter 25].

Question 3. Given that the Bill – unlike other parts of the Act for HIV/AIDS, Homosexual, Transgender and Racial Vilification – offers no protections for Religious Vilification, do you acknowledge that these other attributes are afforded stronger protections than those proposed in the Bill? If not, why?

Answer 3: The purported comparison is meaningless. We note that threats against individuals on the grounds of race and ethno-religious status are covered by the NSW ADA and other NSW law, as the Department of Communities and Justice states:

The ADA contains a number of provisions that make it a civil contravention to publicly incite hatred towards, serious contempt for, or severe ridicule of a person on particular grounds, including race. As discussed above, race includes a person's ethno-religious origin. However, these civil protections in the ADA do not extend to religious vilification.

Section 93Z of the Crimes Act 1900 (NSW) makes it a criminal offence to publicly threaten or incite violence towards a person on a number of grounds, including specific religious belief or affiliation. It prescribes a maximum penalty of 3 years imprisonment and/or 100 penalty units. Further, it clarifies that it is not necessary to adduce evidence of the state of mind of any other person apart from the accused, including evidence that another person has acted as a result of the accused's alleged vilifying conduct [Department of Communities and Justice, Submission No. 45, p. 8].

We also note that rather than adding protection against vilification, the proposed Bill proposes to *remove* protections where the perpetrator has a religious motive. The submission by Associate Professor Luke Beck notes that the Explanatory Memorandum to the Bill gives an example of this permission to vilify on religious grounds:

Example 5 on page 8 of the Explanatory Memorandum seems to envisage protecting government-funded disability services providers who make comments like "homosexuality is a disorder", "women should not be in positions of leadership over men" or "disability is a punishment for sin" to clients from losing their contracts [Luke Beck, Submission No. 20, p. 3].

Question 4. Given that s 22Z of the Bill is similar to the provisions for Sexual Harassment in the existing Act and non-government schools and charities are already exempted (re s 22M) and the existing Disability provisions cover 'Future Belief', how can your argument of 'special treatment' or a 'hierarchy of protections' for religion be sustained?

Answer 4: Our argument on this point, as referenced in our evidence at the hearing, rests on the expert legal advice provided in, for example, the ADLEG Submission [Submission 34, p.23]:

The proposed section 22Z(2) provides explicit standing for religious ethos organisations to bring a claim of discrimination against other persons where such organisations are required to engage in conduct in a manner contrary to their religious doctrines in the course of performing a function under a State law or for the purposes of a State program. Furthermore, religious ethos organisations are implicitly granted standing under the Bill's general prohibitions on direct and indirect discrimination on the basis of religious belief and religious activity in proposed section 22L. 'Person' is not defined in the ADA or this Bill, meaning that under statutory interpretation principles the



definition of 'person' falls back to that found in the Interpretation Act 1987 (NSW) section 21: 'person includes an individual, a corporation and a body corporate or politic'. Owing to the inability of bodies corporate to be characterised in a manner pertaining to sex, race, age, disability or other protected attributes, the ADA currently allows only natural persons to bring a claim of discrimination; no other organisations which support or are tied to other protected attributes have standing to bring discrimination claims. This is the case without requiring specific definitions of 'person' to exclude bodies corporate, owing solely to the limited character that organisations can take in regard to those protected attributes. However, while bodies corporate cannot be of a sex or race character, they clearly can be of a religious character. As section 22L of the Bill provides that a person can discriminate against 'another person', this means that religious bodies corporate and other bodies with a religious character can bring claims for direct and indirect discrimination under the Bill, in addition to being able to bring claims under the section 22Z prohibition regarding State laws and programs. Human rights are expressly designed to protect innately human characteristics. This is also consistent with international approaches to the right to conscience and belief in article 18 of the International Covenant on Civil and Political Rights (ICCPR). As the Special Rapporteur has observed with respect to article 18 of the ICCPR, this is a right which is held by individuals. While bodies corporate and other organisations should, consistent with other prohibitions in the ADA, be prohibited from engaging in discriminatory conduct, such bodies should not be permitted to themselves bring a claim of discrimination.

As our evidence referenced, this would have the effect of increasing an already considerable imbalance of power between the larger, well-resourced 'establishment'-type religious institutions (with which many of our members are affiliated) and ordinary worshippers such as our members, who frequently find ourselves the targets of institutional exclusion or abuse.

Question 5. If not by the Siracusa Principles how can any clash of gay and religious rights be reconciled in an Act such as this?

Answer 5: The question is misinformed. The meaning and application of international human rights law is more comprehensive than a single interpretive statement. Jurisprudence, a range of international human rights documents, and international legal principles, are valuable starting points for reconciling areas of tension between rights.

Question 6. Why has your submission/evidence to the Committee prioritised a concern about the beliefs and statements of born-again Christians that are integral to the spiritual faith and existence of these citizens? If all human rights are equal, as they should be, isn't it time for the gay-Left community to learn to tolerate the different beliefs, values and moral code of law-abiding born-again Christians and indeed where any illegality might exist, vice versa?

Answer 6: We reject several assumptions and terms in this question. Generally, we observe that many of our members are in fact born-again Christians whose spiritual faith is integral to our existence. As LGBTIQ+ Christians we share core spiritual beliefs and practices with the wider Christian community. Furthermore, we reject the implied accusation of 'intolerance' in the question, and are deeply concerned at the question's references to 'law-abiding' and 'illegality', which in the present context are suggestive of disturbing and distressing attitudes towards members of our community on the part of the questioner.



Question 7. Would your organisation refuse employment to someone who:

1. opposes same-sex marriage and supports traditional marriage?
2. believes in the literal teachings of the Bible?

Answer 7: We do not currently have employees and cannot answer the specific hypothetical questions. In general we support the right of organisations to employ those who uphold the essential values and aims of their employer. It is an entirely different matter to engage in harmful and unnecessary discrimination against individuals, under the pretext of protecting an organisation's essential values and aims.