



Anti-Discrimination  
New South Wales

19 January 2021

Ms Elaine Schofield  
Director Committees  
Parliament House  
6 Macquarie Street  
Sydney NSW 2000

By Email: [ReligiousFreedomBill@parliament.nsw.gov.au](mailto:ReligiousFreedomBill@parliament.nsw.gov.au)

Dear Elaine,

Thank you for providing these additional questions on 21 December 2020 in relation to the hearing into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Bill).

I would like to preface my response by highlighting that many of the questions include assumptions of fact which are not correct or substantiated, contain premises that are incorrect and use adjectives that are inappropriate. In my responses I do not reference each of these occurrences, however, this should not be taken as acceptance of them; to the contrary, I reject them. Furthermore, I reject the aspersions cast on Anti-Discrimination NSW (ADNSW) and/or its staff and on myself.

Please see my responses below:

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, education statutes and industrial relations laws?*
  - ADNSW administers the *Anti-Discrimination Act 1977* (ADA) and does not administer any other laws referred to in this question. I note that the question refers to all of the laws of NSW and that, by use of the word 'including', it is not limited even to the extensive legislation specified. In my opinion, it is not appropriate or feasible for this question to be answered in this context by the President of the Anti-Discrimination Board.
  - ADNSW outlined its concerns relating to the potential conflict between s. 54 of the ADA and s. 22Z of the Bill, and its broader concerns about s. 22Z, in its submission (see section 5.7.3).

[adbcontact@justice.nsw.gov.au](mailto:adbcontact@justice.nsw.gov.au) | PO Box W213, Parramatta Westfield NSW 2150

Phone: 02 9268 5555 | Free call: 1800 670 812

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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?*
  - The broad structure of the proposed Bill follows the existing structure of the ADA. However, in its submission, ADNSW has outlined significant concerns about how religious freedoms and protection from religious discrimination are set out in the proposed Bill. Please refer to ADNSW's submission for further detail.
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?*
  - There are existing protections in the ADA for vilification on the grounds of race, homosexuality, transgender status and HIV/AIDS. The ADA also provides protection against ethno-religious vilification.
4. *Given that s22Z 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 any argument of 'special treatment' or a 'hierarchy of protections' for religion be sustained?*
  - This question contains assumptions and statements that are not precise and does not allow for an answer. The question also elides sections of the ADA and misstates their statutory effect.
  - ADNSW's submission (at 5.3) outlines its concerns with the broad definition of religious belief in s. 22KB of the Bill which includes 'future belief'. This definition appears to mirror language from the ADA disability discrimination provisions (s. 49A), however ADNSW is concerned about how 'future belief' could be determined in court or tribunal hearings. For further details please refer to ADNSW's submission.
  - In addition, the question referring to 'any argument' cannot be addressed.
  - Please refer to section 5.7.3 of ADNSW's submission which outlines ADNSW's concerns with s. 22Z of the Bill.
5. *If not by the Siracusa Principles how can any clash of gay and religious rights be reconciled in an Act such as this?*
  - The role of the President of the Anti-Discrimination Board and ADNSW is to administer an Act as promulgated by the Parliament, and practically to conciliate between parties to a complaint. It is not appropriate or feasible to answer this hypothetical academic question in this forum.

- Please refer to ADNSW’s submission in relation to ADNSW’s concerns about the inclusion of international human rights instruments in the Bill (see 5.1 of ADNSW’s submission and answers to questions previously given in hearing on 16 November 2020).
6. *As part of the Ruddock Review, did Ms Bennett recommend for the use of the Siracusa Principles in a NSW Bill prohibiting discrimination on the grounds of religious belief and is this still her position?*
- The recommendations of the Ruddock Review speak for themselves. I reiterate that I am not responding to this inquiry as a member of the Ruddock Review but in my role as the President of the Anti-Discrimination Board.
7. *Given the importance of the ADB’s complaints-handling process, which can and has wrecked lives, why does Ms Bennett allow this to be administered by clerical staff?*
- ADNSW administers the complaints process impartially as set out in the ADA with appropriate delegations.
8. *What sort of hillbilly outfit is the ADB when clerks look after the complaints-handling and decent computer records are not kept? If discrimination laws are so important, shouldn’t the people of NSW expect a much higher standard of service and professionalism from this organisation?*
- I specifically reject the premises and aspersions in this question. As stated in question 7, ADNSW administers the complaints process impartially as set out in the ADA with appropriate delegations. I reiterate my message in ADNSW’s 2019 – 2020 Annual Report that ADNSW staff are highly skilled and professional in fulfilling the tasks delegated to them.
  - ADNSW has previously advised the Committee into the Anti-Discrimination Amendment (Complaint Handling) Bill 2020 that its database has limitations in terms of the kind of information it can record relating to complaints. Please refer to my previous responses. If these are not available, please notify ADNSW.
9. *When at page 7 of its submission the ADB refers to the need for religious beliefs and activity to “accord with the current, accepted or mainstream beliefs” what exactly are these beliefs and how is the ADB in a position to determine them?*
- ADNSW’s submission outlines its concerns with the definitions contained in s. 22K of the Bill and the difficulties that would arise for both ADNSW and the community in establishing what would be a religious belief under the proposed legislation. ADNSW does not make decisions of that nature.
  - Consideration of relevant beliefs and activity would take place in the context of the complaint. ADNSW would refer to the submissions of the parties and, where helpful and appropriate, to jurisprudence and to academic texts which explore the topic, which would in turn be shared with the parties for the purpose of conciliation.

10. *When at page 7 of its submission the ADB refers to the unacceptability of “archaic and outdated interpretations of religious texts” what texts and passages does it have in mind?*
- ADNSW was not referring to particular texts or passages. In many religions, interpretations of texts may change over time.
11. *How can the ADB at page 10 of its submission argue that religion is not relevant to “provision of welfare” in NSW when millions of citizens have benefited from the delivery of faith-based welfare services over centuries in our State? Will the ADB now withdraw its statement?*
- There is no dispute that faith-based welfare service organisations provide services to the benefit of the community.
  - ADNSW's submission outlines its concerns that the exceptions as set out in 22U of the Bill are overly complicated and may cause confusion (see section 5.6.4 of ADNSW’s submission).
12. *How can the ADB fairly and independently administer a Religious Anti-Discrimination law in NSW when it has such a clear bias against Christianity and The Bible in particular?*
- Please refer to the introduction of this document. I specifically reject the premise of this question.



Dr Annabelle Bennett AC SC FAA

President

Anti-Discrimination NSW

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