



Anti-Discrimination
New South Wales

11 December 2020

Mr Ben Foxe
Committee Manager
Parliament House
6 Macquarie Street
Sydney NSW 2000

By Email: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Ben,

Please see my responses to the Questions on Notice received during the 16 November 2020 hearing into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Bill).

Please note question 1 & 2 should be treated as **confidential** due to the mention of Mr Burns & Mr Folau.

Question 1 (Page 2):

The Hon. MARK LATHAM: **[Part 1]** *“What are you saying there? You are actually saying that you are happy to have a bill enacted against religious discrimination if you personally get to decide what will not be an acceptable form of religious belief **[Part 2]** and when you say “archaic and outdated” religious texts, are you not referring to the Bible? **[Part 3]** Does that not explain the reason why you accepted the complaint against Israel Folau [Inaudible] and also enabled Garry Burns [Inaudible]?”*

Response:

- **[Part 1]** ADNSW is broadly supportive of a protection against religious discrimination. However, 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 and it does not make determinations.
- **[Part 2]** ADNSW is not specifically referring to the Bible and the reference to “archaic and outdated” interpretations of religious texts must be read in the context of the submission.
- **[Part 3]** As stated in my reply, I consider myself unable to discuss this complaint or any other individual complaint in a public forum. Furthermore, this matter seems to be outside the terms of reference of the Committee.

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Question 2 (Page 2-3):

The Hon. MARK LATHAM: *"I took Dr Bennett to the remarkable statement on page 7 of her submission, which basically says she is in favour of an Act against religious discrimination as long as she can define what is in the text of the mainstream beliefs of the religion and wants to rule out archaic and outdated interpretations of religious texts, which I take to mean the Bible, which explains why I was saying that Israel Folau should never have had that complaint accepted against him by Garry Burns under section 56 of the Act. How can we take any of this to be a credible submission from an organisation that says it wants to define what is acceptable or mainstream beliefs of a religion?"*

Response:

- I reiterate that this is not an accurate characterisation of the point made in ADNSW's submission. As stated above, 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 and it does not make determinations.

Question 3 (Page 3):

Ms JENNY LEONG: **[Part 1]** *"The first part was in relation to point 5.8 of your submission, so the practical operation of this bill and how it would create contradictions between religious protections and the other protected attributes in the bill."* **[Part 2]** *"The second was in relation to the risks around industrial organisations being identified as religious ethos organisations."*

Response:

- **[Part 1]** Please refer to point 5.8 of ADNSW's submission. As outlined in the submission, ADNSW is concerned about the uncertainty that would arise in attempting to conciliate matters where one set of circumstances could constitute discrimination and simultaneously be a protected activity on the ground of religious belief.
- **[Part2]** This question was answered in hearing.

Question 4 (Page 5):

Ms TANIA MIHAILUK: *"Is this consistent with your understanding of the recognition of religious organisations internationally? Do you have any insight in that regard, Dr Bennett, or not?"*

Response:

- ADNSW has not undertaken a study on the rights of religious organisations under international law, and therefore, cannot provide any insight. ADNSW does not have the resources to undertake a study on this scale.

Question 5 (Page 6):

Ms ROBYN PRESTON: *"Regarding that comment, what do you feel is the best way forward to include religious beliefs as a way of being considered for rights of a person?" ... "Yes, it was just an expansion of your comments and going forward, looking at the protection of people's rights in a range of areas, how then do you go forward with religious beliefs and look at that protection. That was my comment."*

Response:

- It is not the role of ADNSW to undertake law reform. This would require detailed research and analysis and resources which ADNSW does not possess, and accordingly, ADNSW cannot express a view on a matter of this complexity.
- As referred to in point 3 of ADNSW's submission, it is important to consider the Bill in the wider context of protection of religious freedoms in Australian jurisdictions. This includes reviews that have already been concluded (including the federal government's Religious Freedom Review (the Ruddock review)), and others that are ongoing (including the Australian Law Reform Commission's Inquiry into the Framework of Religious Exemptions in Anti-discrimination Legislation and the federal government's exposure drafts of a package of legislation on religious freedom).
- ADNSW considers that allowing these Commonwealth processes to conclude would enable their results to inform the NSW government for future law reform in this area. ADNSW also suggests that religious protections in other state and territory jurisdictions might be considered in any approach to law reform and also in the interests of national consistency.

Question 6 (Page 6):

Mr GURMESH SINGH: "I was going to ask the very same question about what you saw as a potential way forward, but I will change tack a little bit. Do you think that the ethno-religious provisions in the current bill are adequate to cover the religious beliefs?"... "for instance, the Islamic religion covers such a broad geographical area from Southeast Asia to the Middle East—"

Response:

- Please refer to point 2 of ADNSW's submission where potential areas for reform are outlined. ADNSW considers that the addition of religious belief as a protected ground under the *Anti-Discrimination Act 1977* (the Act) as well as clarity on which groups are protected under "ethno-religious origin" are potential areas for reform. Neither ADNSW, nor I as President, can draft legislation or make these determinations.

Question 7 (Page 7):

Mr JIHAD DIB: [Part 1] "I am happy for you to take the next question on notice. It relates specifically to people of the Islamic faith. If there are some examples of where people of the Islamic faith have brought something to the ADA and basically there was nothing in terms of the Anti-Discrimination Act that could protect them in any way. So somebody has brought a complaint and in the end there was nothing that could be done; there was no cover." [Part 2] "Also, this came from someone else's submission, but in terms of the statistics in relation to the number of complaints that were brought and were then either abandoned or withdrawn, there was about 37 per cent or so, which is quite a large number. Do we ask for a reason why people withdraw, or do they just sort of fall off the wagon?"

Response:

- **[Part 1]** ADNSW does not require people to who make enquiries to provide this kind of information. Accordingly, ADNSW does not systematically collect this kind of demographic data. Under the Act, ADNSW deals with complaints made on the ground of race discrimination, including ethno-religion. Where a complaint is made solely on the basis of religion, ADNSW refers people to the Australian Human Rights Commission (AHRC). ADNSW currently uses an old and outdated records management system to record complaints made

under the Act, which presents challenges in extracting and analysing complaint data. Therefore, I am unable to provide further information.

- **[Part 2]** ADNSW does not interrogate complainants about why they abandon or withdraw their complaints.
- Complaints are withdrawn for reasons that include:
 - the complaint is not covered by the Act
 - they may be satisfied with the respondent's response
 - they may lack support for the complaint
 - they may be unable to provide the information we have requested
 - they may lack confidence that the respondent will provide a satisfactory response.
- Complaints are considered abandoned under s. 92C of the Act if the complainant does not respond to requests for information; there is no indication that they intend to proceed with the complaint; or if contact is lost with the complainant. A complaint may be reopened under s. 92C in certain circumstances.

Question 8 (Page 7):

Mr GREG DONNELLY: *"Dr Bennett, notwithstanding the current construction of the Anti-Discrimination Act in New South Wales and the fact that it does not contain a provision with respect to religious discrimination per se, are there people who contact the ADNSW and raise matters of religious discrimination thinking that the body is the body to come to to deal with such matters?" "in a general sense, surely as president, in terms of feedback you get from the people who take calls and complaints, there must be a sense that there are in fact, or not, as the case may be, people contacting the body and raising issues about religious discrimination."*

Response:

- ADNSW does receive enquiries and complaints that relate to religion and discrimination on that ground which fall outside of the current provisions of the Act. Please see available statistics below for such enquiries and complaints received by ADNSW:

In 2019-20, **27 enquiries** and **4 complaints** related to religion and fell outside the current coverage of the Act.
In 2018-19, **32 enquiries** and **3 complaints** related to religion and fell outside of the current coverage of the Act.
In 2017-18, **31 enquiries** and **3 complaints** related to religion and fell outside of the current coverage of the Act.
- ADNSW also receives enquiries and complaints recorded under the statutory ground of race, which includes the sub ground of "ethno-religious origin" and ethno-religious vilification. Please see available statistics below for such enquiries and complaints received by ADNSW:

In 2019- 20, **43 enquiries** and **14 complaints** were received.

In 2018-19, **42 enquires** and **13 complaints** were received.

In 2017-18, **33 enquiries** and **8 complaints** were received.

Question 9 (Page 8):

Mr SCOTT FARLOW: *"Dr Bennett, I am wondering, with the criticisms in terms of religious belief, whether Anti-Discrimination NSW has any suggestions as to what would constitute a better definition of religious belief?"*

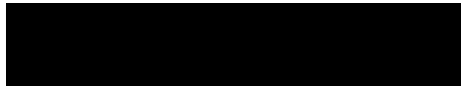
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Response:

- ADNSW would itself refer to the jurisprudence and to academic texts which explore this topic.
- The Ruddock review points to the approaches of four justices of the High Court in *Church of the New Faith v Commissioner of Pay-Roll Tax*¹ to a legal understanding of the meaning of, and indicia of 'religion'.² This reasoning has been applied in a number of cases.



Dr Annabelle Bennett AC SC

President

Anti-Discrimination NSW

¹ (1983) 154 CLR 120.

² [Religious Freedom Review – Report of the Expert Panel](#), 18 May 2018, pp. 34 – 35.

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