

**Submission
No 6**

**ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND
EQUALITY) BILL 2020**

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Joint Select Committee on the Anti-Discrimination Amendment
(Religious Freedoms and Equality) Bill 2020
Parliament of New South Wales
Parliament House
6 Macquarie Street
Sydney, NSW 2000

17 August 2020

Dear Members of the Committee,

Re: Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

Thank you for the opportunity to make a submission about the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*. I have not commented on the Bill in its entirety, only on the general proposal to add 'religion' as a protected attribute to the *Anti-Discrimination Act 1977* (NSW).

I support the proposal to prohibit discrimination on the basis of religion in employment and non-employment.

People in New South Wales are currently not protected from discrimination on the basis of their religion or their choice not to practice a religion. This is surprising considering that the state was one of the first Australian jurisdictions to pass anti-discrimination legislation and because every other state and territory has added 'religion' as a protected attribute over the last four decades.

Protection from discrimination on the basis of religion (including having a religious belief and expressing that belief) is a fundamental human right. Religious discrimination is protected by Article 2 of the *United Nations Declaration of Human Rights*, Article 26 of the *International Covenant on Civil and Political Rights*, Article 9 of the *European Convention on Human Rights* and by domestic laws in Britain,¹ Northern Ireland,² Ireland,³ Canada,⁴ New Zealand⁵ and South Africa.⁶

Anti-discrimination laws in every Australian state and territory explicitly prohibit religious discrimination except for New South Wales and South Australia (although South Australia does prohibit discrimination on the basis of 'religious appearance or dress'⁷). For many attributes, the fact that a local law does not prohibit discrimination is not a problem because federal anti-discrimination laws operate in parallel, and they usually provide an avenue for redress if the state or territory law does not.

This is not the case for religion. Federal law provides a very limited protection. The *Australian Human Rights Commission Act 1986* (Cth) only offers protection to employees who are discriminated against on the basis of religion, but the Australian Human Rights Commission can only conduct an inquiry and attempt to conciliate claims. If conciliation is not successful, a report can be prepared.⁸ No cause of action follows for the employee. This is not satisfactory for the people of New South Wales.

Federal industrial relations law is not very helpful either. Section 351 of the *Fair Work Act 2009* (Cth) prohibits religious discrimination at work but it contains an exception which says that it will not apply if the conduct is not unlawful under any

¹ *Equality Act 2010* s 4.

² *The Fair Employment and Treatment (Northern Ireland) Order 1998*.

³ *Employment Equality Act 1998* s 6(2)(e); *Equal Status Act 2000* s 3(2)(e)

⁴ *Human Rights Act 1985* s 3). Freedom of religion is also protected in the Canadian Charter of Rights and Freedoms.

⁵ *Human Rights Act 1993* s 21(1)(d).

⁶ *Constitution of the Republic of South Africa 1996* s 9(3).

⁷ *Equal Opportunity Act 1984* (SA), s 85T(7).

⁸ Sections 11(1)(f), 32A.

anti-discrimination law which is in force where the conduct takes place.⁹ This means that an employee who is discriminated against on the basis of their religion in New South Wales has no remedy available under the *Fair Work Act 2009* (Cth) unless they are terminated, in which case they can use the narrower provision in s 772, which only applies to termination. The employee has only 21 days from their termination to lodge a claim at the Fair Work Commission.¹⁰

Only employees who are terminated on the basis of their religion can seek redress under the *Fair Work Act 2009* (Cth). Employees who are demoted, denied a promotion, or another benefit or opportunity, have no recourse. Determining whether or not an employee can utilise the *Fair Work Act 2009* (Cth) is not always simple and may well require legal advice. An employee will need to obtain that legal advice promptly due to the Act's strict timelines. Most people who experience discrimination, whether in the workplace or not, will not have access to legal representation; they will have to navigate the system on their own. Again, this leaves the people of New South Wales in a less than satisfactory position.

Prohibiting discrimination on the basis of religion would be a landmark in the development of the state's anti-discrimination law and I support its inclusion.

Yours sincerely,
Dominique Allen

⁹ Section 351(2)(a).

¹⁰ Section 774.