

**Submission  
No 22**

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

**Organisation:** The Australian Family Association

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# THE AUSTRALIAN FAMILY ASSOCIATION

Submission to the [Joint Select Committee on the](#)

## **NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020**

The Australian Family Association welcomes the opportunity to make a Submission on the *NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (the Bill).

### **INTRODUCTION**

**THE AUSTRALIAN FAMILY ASSOCIATION** (the AFA) is a not-for-profit, voluntary, non-party political organisation concerned with strengthening and support of the family. Among its objectives are “to analyse laws and policies for their effect on the family ...” In pursuing these objectives, the AFA makes submissions to government inquiries on matters that have an impact on the family.

The protection of the religious freedom of those families with religious beliefs is therefore a matter within our objectives.

In pursuance of these aims and objectives the AFA has an interest in the matters raised by the Bill and makes the following comments.

### **PRELIMINARY COMMENTS**

The Bill is a positive and reasonable proposal to bring the NSW Anti-Discrimination Act into line with the antidiscrimination laws of all other states and territories (except for SA) in protecting freedom of religion from discrimination.

It also a positive response to the Ruddock Religious Freedom Review recommendation that NSW (and SA) should amend their anti-discrimination laws to make it unlawful to discriminate on the grounds of a person’s religious belief or activity.

This Submission does not address the interaction between Commonwealth and NSW anti-discrimination laws and the desirability of consistency between those laws. The draft federal Religious Discrimination Bill 2019 has not progressed beyond inquiry. It is still just a proposal. There is nothing definite the NSW Bill can be measured against for consistency. The NSW Bill has been introduced into parliament and debate should not be delayed waiting for the draft federal Bill to progress.

When a bill is introduced into the federal parliament then the matter of consistency of federal and state religious discrimination provisions can be addressed. And it is not only NSW religious discrimination law that would need to be examined against any federal legislation passed but also the religious discrimination laws of all the states and territories. This would require agreement between all the states and Territories to a collaborative effort to ensure consistency between all religious discrimination laws. This possible future process should not delay the NSW parliament progressing to a debate on the present Bill.

With regard to the referral of the religious exemptions in anti-discrimination law to the Australian Law Reform Commission, when the federal Bill is dealt with in the federal parliament and the ALRC has reported on its review of exemptions then if necessary the NSW provisions can be re-visited. This should not be a reason for the NSW parliament not to deal with the Bill before it when the present Inquiry is completed.

Further, Australia has an obligation to protect freedom of religion which is recognised in Article 18 of the International Convention on Civil and Political Rights (ICCPR) to which Australia is a signatory:

***Article 18***

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

There are some minor aspects of the Bill that warrant further consideration or amendment (see specific comments below). But it is the AFA's view that such a Bill a necessary initiative to protect religious freedom in NSW.

## PART ONE

### Some comments on specific provisions of the NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

1. Clause 22K (1) defines a “religious ethos organisation” as including:
  - (a) a private educational “authority” conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion. Does “authority” include a religious school?
  - (c) any “other” body conducted in accordance with the doctrines tenets etc of a particular religion. Does this mean other than an educational body? Will it include faith-based or religious schools?

To ensure faith-based schools come within the definition of “religious ethos organisation” and will be covered by the protections afforded by the Bill, should the words “including schools run in accordance with the doctrines, tenets, beliefs or teachings of a particular religion” be added to sub-clause (c) of the definition of “religious ethos organisation” in Clause 22K (1)?

2. Clause 22 M (1) – What “conduct” is covered by the sub-clause? Should the words “that may otherwise amount to discrimination” be inserted after the words “engaging in conduct” in the first paragraph?
3. Clause 22S (5) – Why are religious ethos organisations (and religious bodies) not exempt from the whole of this Clause? They are exempt from sub-clauses (2) – (4) anyway and sub-clause (2) refers to sub-clause (1) so they are exempt from that sub-clause as well. Why not just exempt these bodies from the whole of Clause 22S?
4. Clause 22V – Clause 22V (6) exempts religious ethos organisations from the operation of sub-clauses (3) – (5). But sub-clause (3) refers to sub-clauses (1) and (2) anyway. So aren’t such organisations exempt from the whole of Clause 22V?
5. Clauses 22W and 22X –There no exemption here for religious ethos organisations and bodies not to have to provide their facilities such as church/school halls, catering facilities for a purpose that would be contrary to the religious ethos of the organisation. Is this meant to be covered by the general provisions in Clause 22M? If so why are the “quasi” exemptions in Clauses 22N, S, V and X needed?

## PART TWO

### Some general comments on the NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

1. While acknowledging that the Bill is directed to discrimination on the grounds of religious beliefs there is the closely related issue of protection of other deeply held beliefs such as about humans being binary, male or female, based on biology. Could the Bill not extend protection from discrimination to those parents (and students) will oppose teaching fluid gender theory in schools and that you can change your sex (transition gender) because they believe sex is binary, based on biological science? Many people who would not describe themselves as religious believe that human beings are immutably binary, male or female, determined by biological reproductive function based on biological science. Can their rights be protected?

Should the definition of “religious belief or activity” include the belief that human beings are binary, male or female, determined according to biological reproductive function?

The definition of “religious belief or activity” could be amended by adding the following to Clause 22K: “(1) (c) having the belief that human beings are binary, male or female, according to biological reproductive function.”

2. Freedom of religion as recognised in the ICCPR includes the “the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.”

That Article also requires states parties to the Convention (which includes Australia) to “ ... undertake to have respect for th(is) liberty of parents...”.

The Bill does not provide protection for this “liberty” of *parents*, for example to opt their children out of any classes (gender fluid sex education or respectful relationships classes) if they teach ideas that conflict with their convictions.

Clause 22V (2) (b) may make it unlawful to refuse a *student’s* request to opt out of classes that conflict with their convictions if that refusal would amount to “subjecting the student to ... detriment” but does not respect the liberty of their parents to ensure their children are not taught ideas that conflict with their convictions.

Could a new Clause 22V (3) be inserted as follows?:

“(3) It is unlawful for an educational authority to discriminate against the parents of a student by refusing the student’s parents’ request for the student to opt out of classes that teach ideas or use materials that are not in conformity with the parents’ religious or moral convictions.”

## CONCLUSION:

The ABC *Australia Talks 2019* survey of more than 52,000 Australians about their attitudes, concerns and beliefs asked two questions that provide some insight into attitudes to religious discrimination.

One question asked if 'religion is important to you' and the results were that 50% claim religion is 'not important at all'; 20% 'not very important' (which means it is *a little* important); 16% answer religion is 'somewhat important' and 13% 'very important'.

On the surface this seems to indicate that only about 30% of Australians believe religion has some significance in their lives. Yet when asked if Australians are being discriminated against on the basis of religion 71% believe this is happening *at least* occasionally (30% *often*).

The 30% of survey respondents who personally find religion *at least* somewhat important could have, out of self-interest, claimed they are being discriminated against, but where does the other 41% come from? This group of *non-religious Australians* showed concern about discrimination against people on the basis of religion. The Bill is a proposal to protect against religious discrimination and these survey results would seem to indicate that protection from such discrimination would be supported by even many non-religious people who can see such discrimination is occurring.

The AFA supports the Bill. It meets the requirement for Australian law to protect religious freedom. There is some evidence it would be supported by the majority of people - whether they identify as religious or not – who believe there is discrimination against people with religious beliefs.