

**Submission
No 29**

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

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To secure religious language and speech rights

In the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 [NSW]

Schedule 1 Amendment of Anti-Discrimination Act 1977 No 48

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August 20, 2020

This submission addresses Terms of Reference No. 3 (b) regarding the recommendations relevant to NSW from the Expert Panel Report: Religious Freedom Review (2018); viz.,

- 1.394 The Panel also takes the view that anti-discrimination laws in ...
New South Wales should be amended so as to include religion as a protected attribute.
- Recommendation 16

New South Wales ... should amend their anti-discrimination laws to render it unlawful to discriminate on the basis of a person's 'religious belief or activity' including on the basis that a person does not hold any religious belief.

Recommendation of this Submission:

That the proposed Amendment be further amended as indicated in red print below:

[2] Part 2B

Insert after Part 2A—

Part 2B Discrimination on the ground of religious beliefs or religious activities

Division 1 General

22K Definitions

(1) In this Part—

religious activities includes **engaging in free speech in one’s own religious language as well as** engaging in **other** religious activity, including an activity motivated by a religious belief, but does not include any activity that would constitute an offence punishable by imprisonment under the law of New South Wales or the Commonwealth.

Rationale:

Religious language and speech that express basic concepts of what is good and and what is evil, what is virtue and what is sin, what is right and what is wrong, must not be restricted, banned or punished as “discriminatory”.

Introduction

Construction of sound human rights legislation to secure freedoms and equality must examine the philosophical basis of the original four freedoms and the equality principle. We must examine in particular whether or not this philosophical basis is still being respected by State legislatures and judiciaries in Australia.

Each principle of application for the human rights set out in the *Universal Declaration of Human Rights* was explored and debated thoroughly by international delegates including our Australian delegates before being set down for posterity. Human rights principles were first “recognised” in the *Declaration* and then codified in binding international law in the subsequent UN *Conventions*. Any re-interpretation of the *Conventions* that claim to de-recognise freedom of religion and seeks to outlaw use of the religious language of fundamental tenets of faith as ‘discriminatory’, is invalid. It would be a complete nonsense: for such a re-interpretation would represent a rupture with the foundation principles the *Covenants* have been entrusted to codify.

Regrettably today, in some States, anti-discrimination laws are attempting to introduce and enforce suppression of religious speech that anti-religious bigots claim to be ‘offensive’. It is wrong to employ coercive discrimination charges against public use of traditional religious concepts and language that cannot in conscience accommodate newly coined rights such as ‘gender transitioning’, ‘same-sex marriage’ and elective abortion encroach unacceptably on the original right to religious freedom. These new laws are being drafted, implemented and designed to operate in practice in a positivist legal milieu that adheres to the philosophy of

utilitarianism. These new 'rights' eschew the true deontological basis of modern international human rights law founded on the *Universal Declaration* norms that were identified as natural law rights recognized through reason as inalienable, as inherent in every human being without exception, applicable across time and cultures.

It seems to me that to the extent that our legislative and judicial authorities engage in expanding these norms in such a way as to radically change foundational human rights norms in the process, then, of logical necessity, the founding principles of modern international human rights law are being undermined. For example, in expanding the right to life norm to include a putative right to abortion, they delete the inalienable right to life of the unborn child in the process. In requiring doctors to perform or to outsource abortions on these tiniest patients, they retract the doctor's right and freedom to hold a religious and/or conscientious belief without threat of punishment. They are engaged not simply in superficial *expansion* of recognized rights but in *deletion* of recognized rights, replacing the right to life of the unborn child with a woman's right to abortion. They are engaged also in replacing every child's right to be raised and cared for in as far as possible by the child's own mother and father, with a contrarian new 'right' for same sex-couples to marry and to found intentionally through artificial acquisition motherless and fatherless families.

Increasingly, legislatures are introducing laws aimed at coercing religious affiliation to conform to new pieties. Raw power plays are being used to delete common law values that upheld traditional rights, and freedoms that protected the most vulnerable and maintained the common good. It exploits the confusing flux of radical new aberrations to replace these tried and true protections with faulty novel theoretical values tossed up by virulent new ideologies which trespass grievously against the most vulnerable, especially the children.

Indoctrination of children in new gender theories and perverse sexual mores that contradict the tenets of their parents' religion or beliefs is contrary to Article 18 (4) of the *International Covenant on Civil and Political Rights* (ICCPR):

The States Parties to the present Covenant undertake to have respect for the liberty of parents and...to ensure the religious and moral education of their children in conformity with their own convictions.

Crude new social norms should not be so hastily codified into anti-discrimination laws that empower ideologues to intimidate and to silence those who would publicly criticize and challenge these new social 'norms'. In times of turbulent social change under the heady influence of new ideologies, radical 'reformers' are using state law to coerce "new" 'rights' when it outlaws public dissent (branding as discrimination public expression of the language of traditional rights and freedoms that 'offends' against the sensibilities of the proponents of the 'new' ideologically correct language).

Ideologically driven interpretation of anti-discrimination legislation seeks in effect to purge the public square of the traditional freedoms of speech, conscience and association and to impose penalties on those who would uphold an individual's right to decline to adopt the new language of these newly-coined 'rights'.

(I) Every religious minority has its own language. There exists a language of faith, a language of morality that belongs to the realm of individual conscience, a language which the State may not seek to outlaw.

Free expression of conscientiously held tenets of faith and morals and the freedom to live, either alone or in community, according to these tenets may not be mischaracterised by any domestic law (State or Federal) as culpable discrimination against those who do not hold those beliefs. The language of 'marriage' as between one man and one woman and the religious beliefs and actions associated with this language of 'marriage' are not to be denigrated or outlawed as discrimination or hate speech or homophobic or sexist. ICCPR Article 27 does not permit laws that prohibit religious minorities from using their own language:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture.

ICCPR Article 27 has particular pertinence here in that "religious minorities...shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". This should rule inadmissible current vociferous attempts in some places to 'police' the biblically-based language of Christians and to deny them expression of the long-held beliefs that "marriage" can only be between one man and one woman and that certain homosexual practices are sinful, spiritually harmful or immoral. It should rule out also the proliferation of laws criminalizing the exercise of freedom of conscience and belief in protests outside abortion clinics where children are being exterminated 'lawfully' in their mothers' wombs.

(II) New rights language contradicts original concepts of protection for religious rights and other rights

We are regrettably in the throes of ideological revolution that has sought and to a point has succeeded in thrusting upon us a plethora of dubious “new” rights that are not consistent with the universally agreed rights established after World War II and upon which modern international law was built.

The tragedy for that first great international human rights initiative is that many judges (and the law schools of which they are a product) have never accepted or faithfully implemented and taught the Universal Declaration natural-law-based principles. Instead they adopted only superficially the language of human rights, gutted it of natural law principles, and then adapted the human rights language to their own faith in utilitarianism and then proceeded to exercise an authoritarianism based on positivist law and positivism. Today’s radical revolutionaries have bastardized genuine human rights language by miscogenating it with the “new” politically correct language of current popular ideologies. They have shattered the first principle of human rights “the unity of the human race” and agreed spinelessly to promote the priority rights of each new ideological fad as it comes along.

How can there be any appropriate justification for defection from human solidarity, from the fundamental human rights principle “the unity of the human race”? Why have unborn children at risk of procured abortion been abandoned by the law? Both judges and parliamentarians have fragmented human solidarity and divided up human rights into competing rights —women’s rights, gender rights, abortion rights, rights to IVF, sexual rights, homosexual rights, lesbian rights, bi-sexual rights, trans-gender rights etc.—they have assigned priority and imposed new language and new concepts according to the dominant ideology of the day. They have made a mockery of the fundamental right of every child to “appropriate legal protection before as well as after birth” (Convention on the Rights of the

Child) and have instead established by breaking with precedent that arbitrary deprivation of the life of a child before birth is 'lawful'. This has always been one of the egregious flaws in extending and establishing 'new' law as 'new' precedent—truth and right is only as true and as right as that first proposition before it was fashioned into precedent.

Phrases such as “marriage equality” and “abortion rights” borrow the language of human rights but betrays the fundamental principles and meaning of 'equality' and 'rights'.

Many courts around the world are mis-crafting and defacing genuine human rights in order to conform to a debased popular culture.

(III) Abandoning historically grounded intellectual rigour in favour of ideological correctness

We have arrived at legalized injustice: the imposition of ideological correctness on hitherto free expression of our religion or beliefs and the education of our children in the language of our religion or beliefs.

Legislatures and judiciaries succumbing to the new ideologies are now set on removing freedoms and coercing conformity to reconfiguration of old vices into new 'virtue'. Old vices are now to be forcibly 'celebrated', elevated and honoured as the new 'sacred' above critical examination and beyond rational appraisal—in fact, it has become the Radical Left's fraudulent replacement for genuine natural law. It has borrowed the inherent, inalienable characteristics of the natural law, and declared these 'truths' such as the right to abortion and the right to same-sex marriage, the right of same sex couples to “have” children (*i.e.* to found motherless and fatherless families) to be self-evident and intuitively grasped by all people of

good will. It insists with legal impunity that all those who disagree or reject these “new truths” are evil religious ‘nuts’, hate-filled homophobes, bigots , extremists and right-wing fascists.

The legislation of thought reform, the revoking of freedom of speech, religion and belief are enabling a totalitarian imposition of social engineering all in the name of tolerance , freedom and the ‘new’ replacement human rights. In the *Universal Declaration of Human Rights* and related human rights instruments, the clear right of men and women to marry and to found a family is logically consistent with the clear right of the child to know and be cared for by his/her mother and father. But the clarity of these truths is deliberately obfuscated through the incongruous introduction of a pseudo-right of men and men, and women and women , to marry and to found a motherless or a fatherless family. As an unjust and not unintended consequence, this ‘new’ right destroys a child’s right, in as far as possible, to know and be cared for by the child’s mother and father (Convention on the Rights of the Child) .

Similarly, with so-called right to abortion which is directly contrary to the duty of States Parties to provide protection for every human being against arbitrary deprivation of life. An exaggerated sexual freedom has led to a dysfunctional culture that undermines morality and public order.

(IV) Respecting the non-derogable status of the human right to freedom of religion

Under international human rights law, there is a universally agreed set of non-derogable principles upon which ‘lawful’ encroachment cannot be justified. The human right to freedom of religion or belief belongs to this category.

Religious rights and freedoms have been accepted and recognised by the international community of States as peremptory norms, as *jus cogens* in nature by virtue of their presence in the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR). It is the universal nature of non-derogable human rights that States Parties to the *ICCPR* may not derogate from them, not even “in times of national emergency”. Article 4 of the *ICCPR* establishes religious freedom as a non-derogable right. It guarantees a rightful immunity from coercion of interior and/or exterior acts contrary to conscience or belief.

Indeed, no domestic human rights legislature can withdraw legal protection of a non-derogable right.

States Parties to the *ICCPR* are obliged to reject any part of domestic law that purports to authorise the abuse of the non-derogable human rights set out in the Universal Declaration Article 18 and the *ICCPR* Articles 18 and 27 or the removal of legal protection for “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”.

Regrettably, all domestic ‘anti-discrimination legislation’ directed towards imposing constraints on religious and conscience freedoms are also in contravention of ICCPR Article 5 (1):

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.

Genuine human rights advocates must reject the current campaigns around the world that have been mounted by ideologically driven groups to pressure persons of faith, their Churches, their teaching establishments and their hospitals into apostatising their beliefs on such serious moral issues as the immorality of practices such as sodomy and the immorality of performing elective abortions. Doctors must not be coerced against their conscience to perform abortions or to refer an innocent unborn child to another doctor who will carry out the lethal procedure on the defenceless child. Teachers must not be coerced into teaching children ideological theories of sexuality and practices that offend against their conscience and moral beliefs. Such campaigns are fundamentally in contravention of the object and purpose of the Convention. They seek to destroy non-derogable rights and freedoms and to limit them to a greater extent than is provided for in the present Covenant.

**(V) Inherent human rights may not be down-graded to government granted
“exceptions”**

In this respect, it has been totally invalid for some States to introduce legislation that pretends to necessitate the down-grading of the universal, inherent and inalienable religious rights fundamental to every human being to a mere “exception” granted graciously (and perhaps temporarily) to certain institutions by an incumbent government.

The 'cotton wool' of exemptions is toxic, not protective. Fundamental human rights and freedoms are not to be reduced to mere exemptions.

Where new laws have been introduced that suddenly require religious institutions and/or religious individuals still practising their beliefs which were consistent with all the basic

principles of human rights law back in 1948 to be awarded an exemption in order to express their religious convictions today, then the new laws are unjust and must be revised.

There is grave deficiency in much of the current ideological group think. Rejection of natural law rules, defiance of logic and consistency, the complete apostasy from natural law based morality has led to flawed and faulty conclusions.

It is historical fact that the whole architecture of modern international human rights law is deontologically based on human rights principles that are permanent and immutable. Human rights protection was created most carefully to ensure a holistic unity. Withdrawal of legal protection of religious and conscience freedoms and destruction of these human rights recognised by the *Universal Declaration* is not permissible—under any circumstances. This is made clear in Article 30:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

Article 30 (which became Article 5(1) in the ICCPR) is an explicit prohibition of revisionist interpretation aimed at the destruction of any of the rights recognised in the Declaration. Recognised human rights to freedom of religion and conscience may not be removed or destroyed on the grounds that they constitute ‘offensive or harmful discrimination’.

Charles Malik called this last article of the Universal Declaration “the article of inner consistency”:

“...it states that nothing should flow from this Declaration that can contradict or nullify its effect. Thus no person aiming at the destruction of the fundamental rights can take cover under any of the freedoms granted by this Declaration...”¹

There is absolutely no basis in these international human rights instruments for derogation from upholding fundamental religious rights and freedoms by extremely arbitrary introduction of ‘additional’ and ill-defined legal prohibitions against ‘sexual orientation and gender identity discrimination’ or against public protest of abortion. Nor is there any sound or universally accepted legal basis for unilateral ‘extension of protections against relationship discrimination to same-sex couples in any area of public life’. In fact such a radically revisionist misinterpretation introducing such an esoteric extension of the grounds for protection from discrimination in ICCPR Article 4 is invalid.

(VI) Anti-discrimination legislation must conform to the inalienability principle regarding religious freedoms

¹ Malik, Charles, “International Bill of Human Rights”, *United Nations Bulletin*, July, 1948.

The right to exercise one's religious beliefs freely is one of the equal and inalienable rights of all members of the human family. No one may destroy that right, nor deprive any human being of that right, nor transfer that right, nor renounce it—that's what *inalienable* means.

And when the *International Bill of Rights* goes on to say that *it is essential...that human rights should be protected by the rule of law*, it is clear that no one may remove the human right to express and to practice one's faith from the protection provided by the rule of law. The term "no one" means no sovereign State, no legislature, no judiciary and no popular vote—none of these has the authority to de-recognise the human rights of any individual human being or any selected group of human beings.

Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even under the guise of eliminating alleged new dubiously defined forms of 'discrimination' against women's 'abortion rights' or against 'same-sex marriage rights or children's "right" to access 'transgender surgery' without advice from their parents or pastors.

The Inter-American Court has discerned:

The meaning of the word "laws" in the context of a system for the protection of human rights cannot be disassociated from the nature and origin of that system.²

The nature and origin of the modern system for the protection of human rights is to be found in the very first and singularly important affirmation in all three foundational human rights instruments of the International Bill of Rights:

² "The Word 'Laws' in Article 30 of the American Convention on Human Rights", Advisory Opinion OC-6/86, May 9, 1986, Inter-American Court of Human Rights, (Series A), No. 6 (1986). para. 21.

...in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

At the foundation of modern international human rights law is this recognition that “the equal and inalienable rights of all members of the human family” cannot be legitimately restricted through arbitrary exercise of governmental power or even through arbitrary exercise of the majority’s democratic will.

It is vital that this Amendment should place strict limits on any future attempts by anti-religious zealots to tamper with the non-derogable right for every human being to use in public one’s own religious language without fear of arrest or litigation or penalties for alleged discrimination.

Conclusion:

Human rights indivisibility principle secures religious language and speech rights

Prioritizing anti-discrimination laws over laws protecting religious belief, speech and conscience is illicit. Legal protection of the inalienable rights of one set of human beings cannot be sacrificed to enhance the novel rights of another set. Religious rights and freedoms must not to be sacrificed to prioritize, for example, new anti-religious ‘rights’ such as a spurious right not to be ‘offended’ by other people’s religious expressions. The principle of indivisibility requires States to provide for all persons legal protection of *the right to freedom of thought, conscience and religion... 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.

The Religious Freedoms and Equality Bill is set to provide this and will do so more effectively if further provision is made in the Bill to secure specifically our religious language and speech rights.