

**Submission
No 35**

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

Name: Mr John Kennedy

Date Received: 20 August 2020

Submission to: - JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

I agree and support the objectives set down for the Joint Committee set up to examine the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, as far as they go.

The issues I am concerned about are as follows: -

- Businesses should have the right to refuse to enter into contracts with people or other entities where the subject of the business deal involves them coming into conflict with their religious beliefs. For example, making a wedding cake for a same sex marriage couple.
- People and other entities (churches, associated religious groups) should be able to espouse their beliefs without fear of having claims of discrimination made against them (e.g. the recent Falou case).
- Religious groups which conduct schools should be able to refuse employment or dismiss staff members who act contrary to their religious beliefs giving students bad example in terms of their religious beliefs.
- Medical personnel including doctors, nurses and associated personnel should be able to refuse to carry out or cooperate in treatments which involve them acting contrary to their religious beliefs (e.g. abortion contraception, sex change operations and such like). Refusal to provide treatment or advice should not be regarded as discriminatory conduct.

However, the list of objectives does not include the protection of parents right to have the final say on whether their children should attend any course touching matters relating to religious belief (for example sex education courses). Any act which denies parents this right is discrimination. The bill does not contain a clause which would protect this right of parents.

This had always been a fundamental right of parents, until recently when the Safe Schools movement was introduced to Australian schools. If this issue is not dealt with by the Committee and the legislation, then a basic religious right will have been ignored and the bill will not be covering entire area of religious freedom issues. I ask that an objective

covering this issue be included in the terms of reference of the joint committee.

The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill seeks to amend the Anti-Discrimination Act 1977 with the following objectives: -

- (a) to establish principles of the Act for the purpose of reconciling conflicting human rights and anti-discrimination provisions, using international conventions and other instruments,
- (b) to define religious beliefs and activities in a comprehensive and contemporary way, making religious freedoms and the fair treatment of believers and non-believers possible,
- (c) to prohibit discrimination on the ground of a person's religious beliefs or religious activities in work and other areas, so that religion has protections equal to other forms of discrimination in NSW,
- (d) to prohibit discrimination against people who do not have any religious conviction, belief, opinion or affiliation,
- (e) to provide that a religious ethos organisation is taken not to discriminate on the ground of religious beliefs or religious activities by engaging in certain conduct because of the doctrines, tenets, beliefs or teachings of the religion of the organisation, so as to recognise that religion is integral to the existence and purpose of these organisations; and that religious and associational freedoms are fundamental to a free and democratic society.
- (f) to make it unlawful for an employer, qualifying body or educational authority to restrict, limit, prohibit or otherwise prevent people from engaging in a protected activity, or to punish or sanction them for doing so, or for their associates doing so,
- (g) to ensure the provisions of the Bill extend to discrimination concerning applicants and employees, commission agents, contract workers, partnerships, industrial organisations, qualifying bodies, employment agencies, education, goods and services, accommodation, registered clubs and State laws and programs, and

(h) to limit exceptions to this part of the Act to those specified, such as for religious ethos organisations and genuine occupational qualifications, rather than encouraging tribunal activism.

The objectives of the Commonwealth Bill are: -

14 (1) The objects of this Act are:

- (a) to eliminate, so far as is possible, discrimination against persons on the ground of religious belief or activity in a range of areas of public life; and
- (b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of religious belief or activity; and
- (c) to ensure that people can, consistently with Australia's obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief.

(2) In giving effect to the objects of this Act, regard is to be had to:

- (a) the indivisibility and universality of human rights, and their 3 equal status in international law; and
- (b) the principle that every person is free and equal in dignity 5 and rights.

In regard to whether the state act should conform with the objectives of the Federal legislation, I think that the objectives in the NSW state bill are more detailed and informative than those in the Commonwealth bill. Both sets of objectives cover basically the same areas. Both bills objectives do not include the right of parents to have the final say on whether their children should attend classes that deal with matters of religions which includes morality. It would be better for the Commonwealth bill to incorporate those in the NSW bill that the other way around.

I understand that the Federal Government will be conferring with all state governments on this legislation. The Federal legislation will override any state provisions if the two legislations are in conflict. The Human Rights Commission has responded to the Federal bill (e.g. the right not to employ or dismiss teachers whose lifestyle and conduct conflict with a school's religious beliefs). If some of the Commission's recommendations are accepted, the federal bill may therefore be quite

different to the NSW government bill in the end and clauses in the state final legislation which are in conflict with clauses in the Commonwealth legislation will be overridden by it.

However, the Joint Committee and the state parliament should proceed with legislation which it believes is the correct balance of rights and not therefore agree to conform to the Commonwealth bill, merely for the sake of conformity . The Joint Committee should include in its objectives the right of parents to have the final say on whether their children attend any course touching matters relating to religious belief.