

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

Organisation: Uniting Church Synod of NSW and ACT

Date Received: 21 August 2020

August 21, 2020

The Hon. Gabrielle Upton
Chairperson
NSW Parliament Joint Select Committee
Parliament House
6 Macquarie Street
Sydney NSW 2000

Dear Ms Upton

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

As Moderator of the Uniting Church in Australia, Synod of NSW and the ACT, I thank you for the opportunity to make this submission on behalf of our church to the NSW Parliament's Joint Select Committee regarding the Anti-Discrimination Amendment (Religious Freedoms and Equity) Bill 2020.

The Uniting Church

The Uniting Church was the first church to be created in and of Australia and we are proudly Australian. Our congregations reflect the multicultural face of our country and we embrace people from across the globe.

The Uniting Church is one of the largest Christian denominations in Australia. We are present in Australia's largest cities, its regional centres and its smaller and more remote towns. We are one of the largest non-government providers of community services in Australia through our main community services arm, Uniting, and also through parish missions and other congregationally based community programs.

The Synod of NSW and the ACT is the council which has responsibility for oversight, direction and administration of the Church's worship, witness and service in the state of New South Wales and the Australian Capital Territory (ACT). The Synod works to strengthen the faith, life and mission of more than five hundred Uniting Church congregations and fourteen presbyteries (the district councils) within NSW and the ACT.

The Uniting Church describes itself as a "justice oriented" Church,¹ and has a long history of support for human rights. In its Statement to the Nation made at its Inaugural Assembly in 1977, the church affirmed the rights of all people and committed itself to oppose all forms of discrimination which infringe basic rights and freedoms.² The Church's engagement with human rights issues in Australia is steeped in our concern for the rights of vulnerable groups in our society. Our commitment comes from our belief that all people are created in the image of God and are loved and valued by God.³

Our focus in this submission

The Uniting Church Synod of NSW and the ACT commends the NSW Parliament's concern to provide proper legislative protection to prevent discrimination on religious grounds and uphold freedom of religion. We understand that while there is a mosaic of laws nationally that afford such protection, there is no current law in NSW that specifically prohibits discrimination on the basis of religious belief.⁴ At the same time, and in a world environment of heightened discord and division across national, racial, and religious lines, we are cautious about any legislation that could be perceived to favour one group of rights over another, or one form of religious belief over another, and thus undermine, even inadvertently, the tolerant and inclusive society we are striving to create.

The Uniting Church at a national level (Assembly) has made a number of previous statements regarding religious freedom and human rights, arising from triennial Assembly meetings, as well as in submissions to governments made by the UCA National Assembly Office. A listing of some of those statements and submissions can be found in Appendix 1. This submission draws heavily from those previous statements in shaping our comments to the Joint Select Committee, particularly the most recent submissions to the Federal Government's Religions Freedom Bills (2019, 2020). Our focus in this submission will be on identifying some key principles that we as a church believe should shape and inform our response to religious freedoms in the context of wider human rights. We will also identify some potential concerns we have regarding the proposed amendments to anti-discrimination law in NSW.

Principles that inform our approach to religious freedom

The Uniting Church is aware of the sometimes acrimonious public commentary that has attended discussion about religious rights in our national community in the recent past. We are acutely conscious of the tension which can sometimes be found between the right to practice religion, including the right to discriminate in some cases, and the right for all people to live lives of dignity and equality under the law, free from discrimination. In the difficult task of seeking to resolve this tension we affirm the following principles.

A holistic approach to human rights

We view the right to religious freedom as an important element in the protection of all human rights by law nationally. As a result, the consistent position of the Uniting Church has been, and continues to be, that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.⁵

Maintaining a cohesive society that upholds the rights of all

Fundamental to the Uniting Church's approach towards its own religious freedoms is that such freedoms are never to be only self-serving but rather ought to be directed towards the Church's continuing commitment to the flourishing of the whole community, and all groups

within it, as part of a richly diverse but cohesive society. The Uniting Church considers there may be some need and a credible argument for strengthening legislative protection for religious freedom in NSW. We note the absence of legislation in NSW that explicitly provides such protection, and the existence of such legislation in all states and territories apart from South Australia. However, we strongly urge that any such provisions must enable and in no way diminish, mutual respect, freedom from discrimination and enjoyment of the human rights of everyone in NSW.

Protection of the vulnerable

In previous submissions on this subject, the Uniting Church has been particularly concerned to ensure that any legislated religious freedoms are not simply the prerogative of those (generally Christian) religious organisations who are most largely represented in society, but also that the religious freedoms of minority communities are strongly upheld. In his second reading speech in presenting this Bill to the NSW Parliament, the Hon. Mark Latham asserted that, ‘Yet now the fastest growing form of discrimination in our society is against people of religious faith, especially Christians’. That has not generally been the experience of our Uniting Church members and congregations in NSW. In our relationships with diverse groups in the wider community and through our network of community services, we are aware that it is those in various minority communities and religious groups who are subject most consistently to discrimination and endure the greatest harm from discrimination.

Clarity and complementarity with existing legislation

As commentators have noted, there is currently a patchwork of state and federal and state laws across Australia that provide protection against religious discrimination.⁴ Any new legislative provisions to protect against religious discrimination should avoid unnecessary complexity and should be complimentary to, and not inconsistent with, existing provisions. As noted above any new legislation should not have the effect of diminishing protections against other forms of discrimination. The onus is on those presenting the new legislation to demonstrate that it provides additional significant benefits in protecting religious freedoms without eroding other existing rights.

Potential concerns regarding the legislation

Below we outline some potential concerns regarding the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, which are the corollary of the principles noted above.

- **Favouring religious freedoms over other rights:** The people of NSW should be able to enjoy freedom of thought, conscience, religion and belief, and existing state and Federal legislation does provide protection for that right. Despite the argument of proponents of the Bill that it addresses an existing gap, or imbalance, the Uniting Church is concerned that the legislation may contribute to a favouring of religious freedom over other rights.



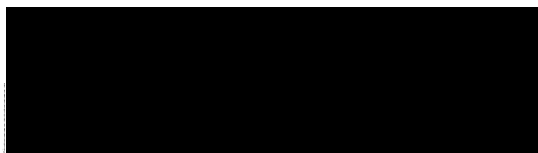
- Increasing complexity of existing legislation: The proposed legislation adds to the existing patchwork of state, territory and federal antidiscrimination laws in Australia. As a provider of health, community and education services the Synod of NSW and the ACT is concerned that this complexity could make it harder for employers and services to be clear about and meet their statutory obligations. Any additional complexity should not have the effect of obscuring or diminishing other rights. As noted above, there should be a demonstrable benefit of the legislation to offset any additional complexity it creates. It is not yet clear to the NSW.ACT Synod what the compelling benefit is of the proposed legislation.
- Favouring some religions or belief systems over others: While the Bill is framed to include a variety of religious beliefs, including those with no religious belief or affiliation, the emphasis of those presenting the Bill has been on discrimination against individuals and institutions within the Christian faith. The Uniting Church is concerned that the legislation could be seen to be favouring the freedom of some religions more than others and inadvertently embolden discrimination against minority religions and belief systems.

Conclusion

In conclusion, the Uniting Church is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant of Civil and Political Rights. Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination.

While there is a case that legislative protection of religious freedom in NSW could be strengthened, it is not the case that it is imperilled. It is not yet clear to the Uniting Church Synod of NSW and the ACT, that the possible benefits of the proposed legislation substantially outweigh the potential disadvantages of its introduction, some of which we have sought to identify above. As development of and discussion around this Bill continues, the Uniting Church would welcome being consulted further.

Yours sincerely,



Rev. Simon Hansford
Moderator
Uniting Church in Australia, Synod of NSW & ACT



References

¹ “In the light of this faith, we will live out our covenant as First and Second Peoples, our commitment to being a multicultural Church, oriented towards justice, and that engages constructively with ecumenical partners.” Assembly Strategic Plan 2017 – 2020. Available at <https://assembly.uca.org.au/about/strategicplan>

² Statement to the Nation, Inaugural Assembly June 1977. Available at <https://assembly.uca.org.au/resources/introduction/item/134-statement-to-the-nation-inaugural-assemblyjune-1977>

³ Uniting Church in Australia (2006) Dignity in Humanity: A Uniting Church Statement on Human Rights. Available at <https://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-inhumanity-a-uniting-church-statement-on-human-rights>

⁴ ABC News. Fact Check: Do Australians lack protection against religious discrimination? ABC Fact Check, Tuesday September 10, 2019. Available at: <https://www.abc.net.au/news/2019-09-10/fact-check-religious-freedom-laws/11455850>

⁵ Uniting Church in Australia (2014) Rights and Responsibilities: Submission to the Human Rights Commissioner’s Consultation, p6. Available at <https://www.unitingjustice.org.au/humanrights/submissions/item/981-rights-and-responsibilities>

Appendix 1

The UCA has made the following submissions and statements that are relevant to the topic of anti-discrimination and freedom of religion:

1977 – Statement to the Nation 2. 2000 October – Submission to Inquiry into, and Report on – Australia’s efforts to promote and protect Freedom of Belief

2006 – Dignity in Humanity: Recognising Christ in Every Person – A Uniting Church in Australia Statement on Human Rights

2009 March – Submission to the Australian Human Rights Commission – Freedom of Religion and Belief in the 21st Century

2014 November – Submission to the Human Rights Commissioner’s Consultation – Rights and Responsibilities

2015 October – Submission to the Australian Human Rights Commission – Religious Freedom Roundtable

2016 December – Submission to the Parliamentary Joint Committee on Human Rights – Inquiry into Freedom of Speech in Australia

2018 January - Submission to the Expert Panel on Religious Freedom – Submission to the Expert Panel on Religious Freedom

2019 October - Uniting Church in Australia. Religious Discrimination submission. UCA Assembly; Sydney. Available at: <https://www.ag.gov.au/sites/default/files/2020-03/Uniting%20Church%20in%20Australia.pdf>

2020 January - Uniting Church in Australia. Submission to the Attorney General’s Department. Religious Freedom Bills: Second Exposure Drafts. UCA Assembly; Sydney: 2020. Available at: <https://uniting.church/wp-content/uploads/2020/02/Uniting-Church-in-Australia-Religious-Freedom-Bills-Second-drafts-Submission-January-2020.pdf>