

**Submission
No 75**

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

Organisation: New South Wales Teachers Federation (NSWTF)

Date Received: 21 August 2020



New South Wales Teachers Federation

a branch of the Australian Education Union
AEU NSW Teachers Federation Branch ABN 86 600 150 697



21 August 2020

In reply please quote: 529/2020/SC/ja

The Hon. Gabrielle Upton, MP
Chair,
Joint Select Committee on the
Anti-Discrimination Amendment
(Religious Freedoms and Equality) Bill 2020

By Email: ReligiousFreedomsBill@parliament.nsw.gov.au

Dear Ms Upton,

Re: NSW Teachers Federation Submission - Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

Please find attached a submission from the Australian Education Union New South Wales Teachers Federation Branch (Federation) in relation to the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*.

Yours sincerely



John Dixon
General Secretary

Attachment



**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

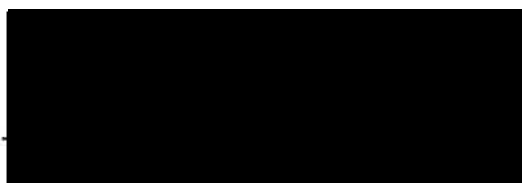
SUBMISSION TO

JOINT SELECT COMMITTEE

ON

THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY)

Authorised by



**John Dixon
General Secretary
AEU NSW Teachers Federation Branch**

21 Aug 2020

SUBMISSION

Introduction

The Australian Education Union NSW Teachers Federation Branch (Federation) represents school teachers in New South Wales public pre-schools, infants, primary and secondary schools, Schools for Specific Purposes and teachers working in consultant/advisory positions. Teachers in TAFE are also represented by Federation. The current financial membership totals over 61,000 practising teachers and student teacher members.

Federation is of the opinion that this bill should be defeated as it would have the effect of placing the right to religious beliefs and the right to live according to religious beliefs above other rights. The bill proposes to give new privileges to people of faith, while overriding existing protections from discrimination for others.

To place one aspect of discrimination or rights above all others is contrary to the aims of the current Anti-Discrimination legalisation. This legislation states that it is *An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons.*

Therefore, if the aim of the act is 'to promote equality of opportunity', then it is contradictory to this aim to provide a section which effectively excludes religious organisations from current Anti-Discrimination Legislation.

22M Religious ethos organisations taken not to discriminate in certain circumstances

(1) For the purposes of this Part, a religious ethos organisation is taken not to discriminate against another person on the ground of the person's religious beliefs or religious activities by engaging in conduct if the organisation genuinely believes the conduct—

(a) is consistent with the doctrines, tenets, beliefs or teachings of the religion of the organisation, or

(b) is required because of the religious susceptibilities of the adherents of the religion of the organisation, or

(c) furthers or aids the organisation in acting in accordance with the doctrines, tenets, beliefs or teachings of the religion of the organisation.

As well as providing enabling legislation for religious ethos organisations to be able to act with impunity within their belief systems, it also moves to restrict the ability of educational institutions, including all Department of Education Schools and TAFE NSW Colleges to uphold the secular nature of public educations by imposing the section:

22V Education

(1) It is unlawful for an educational authority to discriminate against a person on the ground of religious beliefs or religious activities —

(a) by refusing or failing to accept the person's application for admission as a student, or

(b) in the terms on which it is prepared to admit the person as a student.

Section 22M allows the actions taken by a religious ethos organisation not to be deemed as discrimination so long as they claim such actions or statements are in accordance with their beliefs, but a secular school requiring that students agree to demonstrate respect to the beliefs, religion or sexuality of all other students could be said to be in contravention of section 22V(1)(b).

At the overwhelming majority of Department of Education schools in NSW, students are expected to wear uniform. Depending on the local community, schools may adopt accommodations for those who wish to be modest, cover their head for religious purposes or identify as a different gender to that assigned to them at birth. All students are expected to show respect for one another and learn alongside each other. Students are expected to show respect to each other regardless of their beliefs and what school uniform options they choose to wear. Such expectations are reasonable and entirely consistent with the secular status of public education in New South Wales, not to mention reflective of a modern, respectful and multicultural society. It is of significant concern that even such basic standards of propriety and appropriate behaviour could be brought into question if refusal to follow them is on the basis of religious belief.

Adherence to a particular religion, or having any religion whatsoever, is not a condition for enrolling a student in a Department of Education school. A student, regardless of religious or cultural background is expected to abide by school expectations including Student Behaviour Policies. Students may have strong religious beliefs but this does not excuse them from exhibiting behaviours or making comments which may physically or psychologically harm other students. As written, 22V(1)(b) could restrict the rights of a public school to intervene where a student with strong religious beliefs engages in anti-Christian, Islamophobic, Anti- Semitic, Homophobic, Transphobic or other discriminatory statements or actions.

It is contrary to the aim of the Anti-Discrimination Act to place the rights of one student to voice their beliefs over the rights of other students to have access to a safe, non-judgemental and secular education.

Section 22V continues, giving students the right to proselytise and to engage in any behaviour short of offences punishable by imprisonment under the guise of their faith so long as it occurs outside of class room hours. In these circumstances schools are prevented from taking any action in relation to the student with very scant exceptions, as follows:

- (3) Without limiting subsections (1) and (2), it is unlawful for an educational authority to –*
 - (a) restrict, limit, prohibit or otherwise prevent a student from engaging in a protected activity, or*
 - (b) punish or sanction a student:*
 - (i) for engaging in a protected activity, or*
 - (ii) because an associate of the student engaged in a protected activity.*

- (4) In subsection (3), protected activity means:*

- (a) a religious activity performed by a student or their associate that:*
 - (i) occurs at a time other than when the person is receiving education and at a place other than the person's place of education, and*
- (ii) does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the educational authority.*

This does not allow a school or college to take any action against a student on grounds of damage to the school's reputation or image in the community, unless the school is a religious ethos organisation, including faith based schools, which are exempted under 22V(6). Again, the rights of religious schools and organisations are placed above other organisations, including public, secular schools and TAFEs.

Consider the following hypothetical example, a student from a NSW Department of Education school, chose to participate in a rally or demonstration against the building of a new mosque in their community. Like any other citizen, the student has the right to form an opinion on this matter, however they make the decision to place a video on social media where they identify themselves as a student at the school and make statements to the effect that many of their classmates agreed that Muslims are not welcome in the local community. This video is then shared widely through local community Facebook pages and many people from the community are led to believe that the school is opposed the mosque.

This student has taken their religious viewpoint and inaccurately created the perception that their personal view is shared by their school and, by implication, perhaps the Department of Education and NSW Government. Under section 22V, unless the public high school stands to lose money by this action, the school can take no sanction against the student.

In an alternative hypothetical example, a student from a faith based school chooses to participate in activities around the Sydney Gay and Lesbian Mardi Gras. They are interviewed by a blogger and in doing so name their school. This video goes viral and the school is named in the mainstream media. Under the exemptions in section 22V(6) and the fact that conduct is not discriminatory if it is "*consistent with doctrines, tenets beliefs or teachings of the religion of the organisation*" as outlined in section 22M, the school could take action against this student.

Section 22R of the proposed bill also has the capacity to reduce the right of Federation as an Industrial Organisation to expect that our members follow our Code of Ethics¹. The Ethics expected of our members includes the expectations that:

7. *Members should zealously guard civil liberties and support colleagues in those rights.*
8. *Members should foster the spirit of co-operation among students and co-operate with parents, employers and community groups in the advancement of pupils.*

The Federation has teachers of all religions represented in its membership and there is an understanding that members will act in accordance with these expectations. It is another example of the significant flaws in this bill, which if passed would impact on an Industrial Organisation's ability to make decisions in relation to its members.

Many regional towns across NSW have local Pride Events, where members of the local community, whether LGBTIQ or allies, come together to celebrate and show support for LGBTIQ people. In some towns this includes activities such as a public parade, picnic or markets that are promoted within and around the local area. Federation members have participated in these events by marching behind Federation banners in parades, and hosting stalls. Such action

¹¹¹ <https://www.nswtf.org.au/about/ethics>

demonstrates Federation's support for the civil and human rights of our LGBTIQ teachers and students and strengthens relationships with the wider community.

As proposed, Section 22R would undermine the right of Federation to make decisions about the level of support it provides to members who are subject to complaints or allegations relating to discriminatory behaviour towards other teachers, staff or students which occurs based on their religious ethos.

In the proposed amendment to Section 126, the bill also places the rights to discriminate of grounds of religion, above other rights. Section 126 allows the President of the Anti-Discrimination Board to provide exemptions from the existing Anti-Discrimination legislation. These exemptions are made by the President and most often are to allow Businesses or Government Departments to advertise designated positions. Federation has supported the Department of Education in requesting exemptions for Aboriginal Identified positions. These are published publically with reasons provided.² By amending Section 126 to read *Other than for Part 2B, the President*, this amendment expressly excludes such exemptions being applied in relation to discrimination on grounds of religion which the Federation views as an illogical and dangerous situation to be put into effect.

Conclusion

Federation opposes this bill as it aims to place the right to religious belief and observance above other civil and human rights. The proposed bill is contrary to the aims and intentions of the current Anti-Discrimination Act and so should be defeated in its entirety.

22

https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_exemptions/exemptions_126.aspx