

**Submission  
No 78**

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

**Organisation:** Australian Christian Lobby

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# Submission:

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

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AUSTRALIAN CHRISTIAN LOBBY

### About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 170,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

[acl.org.au](http://acl.org.au)

To the Joint Select Committee  
on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020  
[ReligiousFreedoms@parliament.nsw.gov.au](mailto:ReligiousFreedoms@parliament.nsw.gov.au)

## **RE INQUIRY INTO THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOM AND EQUALITY) BILL 2020**

### **1. INTRODUCTION**

The Australian Christian Lobby welcomes the opportunity to make submissions on the Anti-Discrimination Amendment (Religious Freedoms and equality) Bill 2020 (“the **Bill**”).

Freedom of religion lies at the core of all human rights and freedoms. Everyone has the right to freedom of thought, conscience and religion and freedom. This applies whether alone or in community with others and in public or private. Everyone has the right to manifest their religion or belief in teaching, practice, worship, and observance.

It is time for the NSW Parliament to enact laws to prevent discrimination against people based on their religious belief or religious activities. Currently there is no protection for NSW people of faith from religious discrimination.

### **2. EXECUTIVE SUMMARY**

The ACL supports this Bill.

The objectives of the Bill are valid and appropriate to give religious freedom similar protections from discrimination that other protected rights have enjoyed in NSW for many years under the Anti-Discrimination Act (1977). Such a bill is long overdue, has been repeatedly recommended by various government reviews, including the 2018 Ruddock Review. This will bring NSW into line with almost every other State and Territory in Australia.

The Bill is consistent with the draft Federal Religious Discrimination Bill (2019) (“**RDB**”) and in many cases provides a simpler, more efficient and better-balanced framework for protection of religious belief and activity than the RDB.

The ACL makes the following key points about the Bill:

- (1) Definitions of religious belief and activity are well defined and consistent with international law.
- (2) The inserted objects clause is a clear statement of obligations under international law. The objects could be improved to note the equal status of all human rights;
- (3) The Bill gives more robust and efficient protections for the right of free speech than the RDB.
- (4) The express removal of secondary boycotts and removal of sponsorship from what constitutes financial hardship is a key beneficial difference from the RDB;
- (5) The Bill gives stronger and more clearly expressed protection to religious schools, charities, and organisations than the RDB;
- (6) Government is not exempted from application of the Bill, which is of fundamental importance.

Overall, the objects of the Bill are valid, and the Bill effectively provides appropriate protection from discrimination based on religious belief and activity.

The ACL notes that this Bill merely levels the playing field for religious rights in comparison to other protected rights. It is a small and modest step towards protection of fundamental freedoms of religion, thought, speech, conscience and expression which require more than just protection against discrimination.

NSW is one of the only two States in Australia that does not protect its citizens from religious discrimination.

### **3. CONTENT OF THE BILL: THE TERMS ARE APPROPRIATE**

The Terms of the Bill are appropriate and proportionate for securing protection of religious belief and activity from discrimination.

#### **3.1. The Objects Clause**

The ACL welcomes the insertion of the objects clause as a new section 3 of the Act. This insertion implements the Ruddock Review recommendation number three:

##### **Recommendation 3**

Commonwealth, State and Territory governments should consider the use of objects, purposes or other interpretive clauses in anti-discrimination legislation to reflect the equal status in international law of all human rights, including freedom of religion.

By ensuring that courts have regard to the international instruments as an interpretive guide the new clause 3 encourages all human rights to be given equal status in NSW.

The ACL welcomes the addition of this objects clause and suggests that further to its inclusion the clause should explicitly state that all human rights are to be given equal status.

### **Consistency and Comparison with the RDB**

While the ACL welcomes the Federal Government's efforts to implement protections for religious freedom at the federal level with the RDB, it has identified some fundamental flaws with the RDB that this Bill will address more appropriately, without bringing its provisions out of step with the RDB or other State and Territory legislation.

**The Definition of Religious Belief.** The NSW Bill has a simpler definition of religious belief. Clause 22KA expressly relies upon the jurisprudence of the Australian High Court in the *Scientology Case*.<sup>1</sup>

This subjective test of genuine belief is to be preferred to that in the RDB because it is consistent with Australian and international jurisprudence and it avoids the courts having to arbitrate in matters of religion, which they are not qualified to do.

A clear example of this problem is the case of *Christian Youth Camps v Cobaw* in Victoria<sup>2</sup> where a religious organisation was required to convince the Courts, using expert evidence, of the substance and nature of its religious beliefs. Despite Christian Youth Camps leading extensive evidence about their religious purposes and doctrine, the court determined its own interpretation of the application of that doctrine rather than taking the youth camp's word on their faith in practice. Courts are not theologians. While *Cobaw* was not a religious discrimination case, it highlights the time and expense that can be spent on having to prove religious belief.

Religious individuals and groups should be able to present what they believe and for it to be taken at face value, as long as that belief is genuine. Religious people are experts in what they believe, not courts. To the extent that those beliefs or activity are then not compatible with public policy, legitimate aims of society or competing rights, the Bill provides an appropriate framework for achieving a just outcome.

**The Definition of Lawful Religious Activity.** The definition in clause 22K (1) of the Bill is to be commended because it more clearly defines what constitutes activity that is motivated by religious belief in a manner that is more efficient than in the RDB.

The Bill also clarifies that religious activity does not include conduct punishable by a term of imprisonment. This is an improvement on the RDB. This provides much clearer protection to religious schools and charities that uphold a traditional view of marriage, or for an aged care home that refuses to allow euthanasia on its premises in accordance with sincere religious beliefs.

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<sup>1</sup> *Church of the New Faith v Commissioner for Pay-Roll Tax (Vic)* [1983] HCA 40.

<sup>2</sup> *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75.

**Statements of Belief Outside the Workplace.** Clause 22N (3)-(9) provides protection for employees for the statements of belief that they make outside the workplace in a way that is clearer and more efficient than in the RDB.

The Bill would ensure that an employer or professional accreditation body could not dismiss or take other disciplinary action against an employee for a religious belief expressed on social media when it had nothing to do with the company for which they worked.

Workers should be able to freely express their religious views away from the workplace without fear.

**Secondary Boycotts.** The Bill recognises that secondary boycotts of businesses and loss of sponsorship are not a legitimate reason to allow an employer to discriminate on grounds of religious belief. This would prevent someone like Rugby Australia firing someone like Israel Folau because it feared its sponsors removing their monetary support.

This additional protection for statements made outside of the workplace in clause 22N (5) is more consistent and proportionate than the RDB in balancing the rights of the employee with the employer.

**Religious Ethos Organisations.** The RDB overly complicates the protection of religious bodies. The ACL welcomes the Bill's simplification of protections for religious bodies in clause 22M against claims of religious discrimination.

Religious ethos organisations like Christian Schools should be able to act in accordance with the doctrines or teachings of their own religion without someone of a different religion claiming religious discrimination.

A religious school may admit students of many different faiths or it may prefer students only of its own faith; but that discretion should be available to the school and the churches and parents who established the school.

This includes the ability of faith-based bodies to retain the freedom to recruit likeminded staff as ambassadors for their mission, without being sued for religious discrimination. This was an issue for Ballarat Christian College in Victoria in 2019<sup>3</sup> when one of their staff members differed on a point of religious doctrine and sued the school for discrimination. The Bill would provide clarity and protection for religious ethos organisations in those circumstances and would not require a Court to be an arbiter of theological disputes in these organisations.

Religious organisations must be able to publicly hire venues, run events and organise charities, schools and clubs in accordance with their ethos.

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<sup>3</sup> <https://australiawatch.com.au/ballarat-christian-college/>

This Bill gives more rational protections to religious ethos organisations than the RDB and simplifies the proposed protections. The ACL supports the better protection of religious organisations that operate in accordance with their doctrines, tenets and beliefs and the fact that this protection extends to organisations that undertake commercial activities.

**Prohibition of State Discrimination.** The Bill more adequately protects State employees than the RDB by ensuring that the State is covered by the prohibition against discrimination.

In particular, the rights of government employees to freedom of expression of their religious beliefs will be given appropriate protection. There is no reason that government employees like Jane should not also be protected when they voice their opinions on current topics in the workplace.<sup>4</sup> Jane spoke up in the workplace about her views on the same-sex-marriage debate during a watercooler discussion. Jane's colleagues reported to senior management that Jane's comments had made them feel unsafe and amounted to bullying. Jane currently has no protection under NSW law from her employer treating her unfairly for expressing her religious views in the same way and manner that other employees can express their views in their workplace.

#### **4. CONCLUDING REMARKS**

Religious people in NSW currently have no State protection of their right to express and manifest their religious beliefs. The Bill is a significant piece of amending legislation that will finally see people of faith accorded equal protection under NSW laws. It will do so in a way that is consistent with the RDB.

We look forward to working with the NSW Government and Members of Parliament to help facilitate legislation to protect people in NSW from religious discrimination.

Dan Flynn

Chief Political Officer

Australian Christian Lobby

21 August 2020

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<sup>4</sup> <https://australiawatch.com.au/jane/>