

**Submission  
No 104**

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

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Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020  
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Dear Committee Members

**Submission to the Joint Select Committee on the Anti-Discrimination Amendment  
(Religious Freedoms and Equality) Bill 2020**

Thank you for the opportunity to make a submission on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020.

I make this submission in my personal capacity.

*22K Definitions*

The term 'religious beliefs' is defined as including a 'religious conviction, belief, opinion or affiliation'. To remove ambiguity, this definition should be amended to ensure that it also includes moral and political opinions. The current definition could be interpreted narrowly to refer to religious beliefs, doctrine and worship and exclude the expression of moral and political opinions based on that religion.

The definition of 'religious ethos organisation' has the limitation that it must be 'conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion'. The definition should be expanded to ensure that adequate protection is provided, which could be done through the inclusion of additional phrases such as 'based on' or 'established to promote'. For example, the provision could read '... conducted in accordance with, based on, or established to promote the doctrines, tenets, beliefs or teachings of a particular religion'.

*22N(4) – Definition of 'protected activity'*

The definition should be clarified to ensure that protection is extended to the expression of moral and political opinions that the individual considers are based on their religion.

*22N(7)(b), 22O and 22P – Protection for small businesses*

The current provision only refers to five employees which fails to adequately protect the many businesses that rely on multiple employees working less than full-time. It would be preferable to amend the provision so that it provides protection for businesses that employ up to five full-time employees or the equivalent.

The protection provided to small businesses in s 22N(7)(b) should also be extended to sections 22O and 22P.

#### *22S – Qualifying bodies*

The protection provided to individuals should be extended to protect religious organisations. Qualifying bodies can use their powers to refuse accreditation or to otherwise undermine the operation of religious schools, religious universities and other religious bodies with unpopular religious practices and convictions. See, for example, the decision of the Supreme Court of Canada in *Law Society of British Columbia v. Trinity Western University and Brayden Volkenant* [2018] 2 S.C.R. 293 and *Trinity Western University and Brayden Volkenant v. Law Society of Upper Canada* [2018] 2 S.C.R. 453. Briefly, these cases involved the Supreme Court of Canada upholding the lawfulness of a decision by law societies to deny accreditation to a Christian university due its requirement that students and staff members agree to a statement of religious principles including the impermissibility of sexual activity outside of a traditional marriage.

#### *22U - Exception—genuine occupational qualification*

This section is drafted in a way that creates the possibility of a tribunal or court preferring its view on whether the decision is 'required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction' over the view held by religious adherents. It is preferable to redraft the provision so that the protection is provided so long as the decision is made in accordance with the genuine religious beliefs of religious adherents.

#### *22V - Education*

It is unclear why the protection provided under s 22V(6) does not extend to subsections (1) and (2). A religious school established for a minority religious community would need the ability to preferentially admit students of that religion to operate effectively as a school for that religious community. Although this protection may be provided by s 22M it would be preferable to ensure that the protection is provided by extending s 22V(6) to cover subsections (1) and (2).


#### *Definition of private educational authority*

A 'private educational authority' in the Act is defined as 'a person or body administering a school, college, university or other institution at which education or training is provided, not being— (a) a school, college, university or other institution established under the Education Act 1990 (by the Minister administering that Act), the Technical and Further Education Commission Act 1990 or an Act of incorporation of a university, or (b) an agricultural college administered by the Minister for Agriculture'.

This definition should be amended to ensure that ethos based educational institutions (i.e. those founded on a religious or non-religious worldview or principle) are covered by this protection. The current definition, for example, may exclude from protection The University of Notre Dame Australia on the basis that it was established through an Act of incorporation of a university.

Thank you for your commitment to protecting religious individuals and organisations through this important amendment.

Yours faithfully

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Dr Greg Walsh