

**Submission
No 110**

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

Organisation: Fellowship of Independent Evangelical Churches (FIEC)

Date Received: 21 August 2020



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

1. The submission at a glance

- This is a submission from a peak body representing the interests of 51 churches (21 of which are in NSW).
- Drawn from the actual experiences of members churches, the submission provides evidence of systemic discrimination against churches who seek to meet in public schools.
- FIEC supports the Bill and urges the Joint Select Committee to recommend speedy passage through the New South Wales Parliament.
- We acknowledge that the Religious Discrimination Bill (2019) is still before the Commonwealth Parliament, however, in our view, there is little prospect that the Bill will be scheduled for debate in the current Parliament.
- The submission concurs with and incorporates material from the submission made by the Anglican Church Diocese of Sydney.

2. About the Fellowship of Independent Evangelical Churches (FIEC)

FIEC is a fellowship of 41 independent evangelical churches in Australia. The goal of FIEC is to establish new churches in areas where there is a need. Most FIEC either meet in public schools or started in one. FIEC fears that without reasonable access to public schools, new churches will have nowhere to meet, and communities will be deprived of the opportunity to express their faith. Although the official policy of the Department of Education is supportive of community access to schools¹ this submission shows that there is active discrimination against churches.

¹ NSW Department of Education policy statement on community use of schools. Schools are valuable community assets which should be available for community use, when not required for school purposes. <https://policies.education.nsw.gov.au/policy-library/policies/community-use-of-school-facilities#:~:text=Community%20Use%20of%20School%20Facilities%20Policy%20statement,and%20review.%20...%206%20Policy%20contact%20officer.%20>

3. Terms of Reference

The Terms of Reference for the Joint Select Committee are to : “inquire and report into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, including whether the objectives of the bill are valid and (if so) whether the terms of the bill are appropriate for securing its objectives”, having regard to

- (a) Existing rights and legal protections contained in the Anti-Discrimination Act 1977 (NSW) and other relevant NSW and Commonwealth legislation.
- (b) The recommendations relevant to NSW from the Expert Panel Report: Religious Freedom Review (2018).
- (c) The interaction between Commonwealth and NSW anti-discrimination laws and the desirability of consistency between those laws, including consideration of the Exposure Draft of the Religious Discrimination Bill 2019 (Cth) and the ALRC review into the Framework of Religious Exemptions in Anti-discrimination Legislation.

4. Discrimination against churches in new South Wales

In NSW there are around 150 churches using public schools for their regular Sunday meetings. In the absence of protective legislation, many of these churches will be increasingly subjected to restrictions from teaching orthodox doctrine.

Evidence is emerging that existing and newly formed churches and other faith groups are being refused or restricted access to public schools because of their beliefs.

This note gives examples of two cases of discrimination against churches in NSW.

In 2018 and 2019 the Lakes Evangelical Church has been directed not to teach its accepted doctrine under pain of expulsion from school property. In November 2017, Dr David Cullen, College Principal of the Tuggerah Lakes Secondary College, upheld a determination that orthodox bible teaching at the Lakes Evangelical Church:

“was not consistent with the values of Public Education and the requirements of the Community Use of School Facilities Agreement (“Agreement”), between Tuggerah Lakes Secondary College Berkeley Vale Campus and The Lakes Church.”

In August 2019 the Taree West Public School rejected a request by The Coast Evangelical Church at Forster for use of the school hall for church services. The school P&C rejected the application as:

- *The school wanted to be inclusive of all groups, and all religions*
- *And that granting usage would be seen as endorsing one particular group.*

5. Church teaching a breach of values

The NSW Department of Education appears to have given schools legal advice to the effect that that mainstream Christian teaching on homosexuality and the biblical view of marriage is not consistent with the *Values in New South Wales public schools (2004)* because it can be viewed as promoting prejudice and discrimination towards homosexuality. The Department refuses to release the legal advice on the basis that it is subject to legal profession privilege.

6. Values in NSW public schools ²

The Policy document cited in the determination consists of nine core values³ all of which mainstream churches endorse. Indeed, the core values are said to be “common to a range of secular and religious world-views and are found in most cultures”

To conclude that conventional Christian teaching breaches the FAIRNESS value is to stretch that value beyond reason in contradiction to the RESPECT value which calls for “accepting the right of others to hold different or opposing views”

7. The Religious Discrimination Bill 2019

Following the Ruddock Report, which was released in late 2018, the Commonwealth Attorney-General released exposure drafts of a package of Federal Bills designed to improve religious freedom protections under Australian law.

The general approach taken by the Commonwealth was to replicate the existing pattern of anti-discrimination provisions in national laws but to add elements specific to religious freedom. According to a well-respected legal academic, Neil Foster (Associate Professor of Law at the University of Newcastle), The Commonwealth Religious Discrimination Bill will make it

² Policy Document (PD/2005/0131/V01, implemented on 25/03/2004 and updated on 09/05/2014)

³ INTEGRITY: Being consistently honest and trustworthy.

EXCELLENCE: Striving for the highest personal achievement in all aspects of schooling and individual and community action, work and life-long learning.

RESPECT: Having regard for yourself and others, lawful and just authority and diversity within Australian society and accepting the right of others to hold different or opposing views.

RESPONSIBILITY: Being accountable for your individual and community's actions towards yourself, others, and the environment.

COOPERATION: Working together to achieve common goals, providing support to others and engaging in peaceful resolution of conflict.

PARTICIPATION: Being a proactive and productive individual and group member, having pride in and contributing to the social and economic wealth of the community and the nation.

CARE: Concern for the wellbeing of yourself and others, demonstrating empathy and acting with compassion.

FAIRNESS: Being committed to the principles of social justice and opposing prejudice, dishonesty, and injustice.

DEMOCRACY: Accepting and promoting the rights, freedoms, and responsibilities of being an Australian citizen.

unlawful to discriminate against others based on their religious belief or activity. It allows religious bodies, however, to continue to operate in accordance with their beliefs. It also tries to provide some general protection to “statements of belief” that might be attacked as discrimination.

This, according to Foster, will plug a “gap” in the Commonwealth legislation dealing with discrimination, which until now has not covered this area. As well as a gap in the Commonwealth law on the area, currently NSW and SA residents also have had little recourse where they have been subjected to detrimental treatment based on their religious beliefs.

A concern noted by Foster is that the definition of “religious belief or activity” in cl 5(1) refers to “engaging in **lawful** religious activity” a very broad definition which would allow a State or Territory government, or even a local Council, to ban certain activities which might be regarded as core religious behaviour. Simply using the broad category of “unlawful” will potentially undermine the protection of religious freedom under Federal law. More attention needs to be paid to precisely what forms of “unlawful” activity should not be regarded as protected by the law. It may be more honest to remove the qualification “unlawful” altogether, to openly acknowledge that some religiously inspired acts are not protected, and work on drawing up guidelines for these.

Foster notes that to some extent this work has been done in relation to “religious **speech**” under cl 27(2) already, excluding from protection the advocacy of the commission of a “serious offence” involving harm. A similar provision may be needed defining the sort of “unlawful” activity that would not be protected.

8. Why the need for State laws?

- Clause C of the Terms of Reference implicitly asks whether the Bill should go ahead in New South Wales in view of the proposed Commonwealth legislation.
- FIEC notes that there is little prospect of the Commonwealth Bill reaching the floor of Parliament during the current term, and a fair chance that it will never be debated.
- Even if there was Commonwealth legislation, the Attorney- General signalled that it would not override state laws and thus may not be effective in the circumstances described in paragraph 3 above.

9. What is wrong with existing anti-discrimination laws in NSW?

The need for reform of law in New South Wales was set out clearly in 8 of the recommendations of the Ruddock Review and are needed with or without Commonwealth laws. As noted in the submission of the Anglican Diocese of Sydney: More than 20 years ago, the New South Wales Law

Reform Commission recommended the inclusion of religion as a protected attribute in anti-discrimination legislation.⁴

10. Submission from the Anglican Diocese of Sydney

The Anglican submission makes the further point that “NSW and South Australia are the only two States that do not protect their citizens from discrimination based on religious belief. The Anti-Discrimination Act 1977 (NSW) prohibits discrimination based on race, including ‘ethno-religious’ origin, but this only protects a small subset of people of faith (e.g., Jewish, and Sikh people). The Equal Opportunity Act 1984 (SA) prohibits discrimination based on ‘religious appearance or dress’ in work or study only.⁵

11. Conclusion

FIEC and other Churches are unfairly being found to be in breach of Community Use of Schools obligations in a damaging way. Efforts to resolve the matter using the established process have not been successful. Secretive advice from the Department of Education, will unless it is overturned, give near unfettered discretion to school principals to control the teaching of Churches meeting in schools.

Rules, values, and commitments are reasonable requirements for users of school properties. However, fairness and objectivity must be applied to dispute resolution.

As there is no realistic likelihood of Commonwealth law, New South Wales should proceed with the Religious Freedoms & Equality) Bill 2020.

FIEC is prepared to provide any further information you may require and to provide oral evidence to the Joint Select Committee.

Fellowship of Independent Evangelical Churches

PO Box 5170, Lyneham ACT 2602

www.fiec.org.au / info@fiec.org.au

⁴ <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-92.pdf>

⁵ Section 85T(7).