

**Submission
No 127**

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

Organisation: NSW Ecumenical Council

Date Received: 27 August 2020

Position Paper on Religious Freedom

A submission regarding the “Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020” from the majority of members of the Executive Committee of the NSW Ecumenical Council, recognising that it does not necessarily reflect the views of all member churches, some of which will have made their own submissions.

SYNOPSIS

The New South Wales Ecumenical Council (NSWEC), a council of sixteen churches, offers this submission to the NSW Parliament on the issue of religious freedom. It is a submission that seeks to place the securing of religious rights in the context of securing all human rights within a civil and democratic society.

This submission is being made in response to the NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020.

The submission recognises Australia as a pluralistic society where the separation of Church and State has led to a generally cohesive and flourishing society, for both secular and religious people, but it also acknowledges the reasons why currently there is a perception that religious freedoms have been eroded, with many religious bodies now advocating for religious protections in law.

The NSWEC is submitting this Paper in the conviction that the Church’s concerns cannot be confined to its own situation and interests; its focus cannot be inward-looking, seeking its own welfare. The Church is to be outward-looking, bringing its faith to address the current realities of this society, in order that a civil, democratic, just and equitable society may be built and secured.

Nor should those of a religious persuasion be able to make derogatory or hateful statements towards others, or justify exclusion or discrimination on religious grounds. This would be an anathema to the tenets of most of the world’s religions. Yet small-mindedness can exist everywhere, including in religious communities. Expressions of disgust, hatred, contempt or severe ridicule towards others should not be able to be justified and have impunity on the grounds that they are expressions of religious faith, even if they are commonly held tenets of belief by some parts of a religious community.

A more comprehensive approach to all human rights, including the rights to freedom of religion, is a Charter of Human Rights, which would explicitly outline what the Government is required to do to protect and uphold and promote the rights affirmed by the Charter, and would be a means of securing a society in which everyone is included, thereby building a more civil society.

Position Paper on Religious Freedom

Rationale

“As people of faith we are concerned about the rights and freedoms that are essential to a civil, democratic society, that recognises and honours the dignity of every person. If the Church is to be, as Christ calls it to be, a beacon for grace, truth and reconciliation, it cannot live in a ghetto designed only for self-preservation and self-congratulation”. (The Reverend Dr Ray Williamson OAM, President of the NSWEC)

“A Christian hankering after prestige and power is not something [new]. Nor is it in any way peculiar to Australia. It runs like a dark thread through the long and chequered history of the church. ... The craving for power and prestige is natural. It should never surprise us. Even when it’s wearing the trappings of religion.

“[The] gospel invites us to think some revolutionary thoughts. To disentangle ourselves from worldly notions of power and prestige, and to rediscover serving, caring, as the name of the game”. (The Reverend David Gill AM)¹

These quotations capture the rationale for this submission: the Christian community, the Church, is not seeking power and prestige for itself, but is seeking to place religious rights in the context of advocating for all human rights to be secured within a civil and democratic society.

Purpose of the Position Paper

The NSW Ecumenical Council is comprised of sixteen member churches within NSW/ACT and is one of six state ecumenical bodies affiliated with the National Council of Churches in Australia. In the spirit of the rationale above, as a council of churches, the NSWEC is submitting this Position Paper as an expression of a Christian perspective in the current debate about religious freedom in the NSW Parliament.

The Situation in NSW

Australia is a pluralistic society where the separation of Church and State has led to a generally cohesive and flourishing society, for both secular and religious people, but despite this there is a perception that religious freedoms have been eroded.

¹ Quoted from a sermon prepared by the Reverend David Gill for the Killara Uniting Church on the 22nd Sunday after Pentecost (21st October 2018), for which the Gospel passage was Mark 10.35-45. David Gill is a retired Uniting Church Minister of the Word, a former General Secretary, Uniting Church in Australia, 1980-88, and a former General Secretary, Australian Council of Churches/National Council of Churches in Australia, 1988-2001.

Against that perception, however, the Ruddock Review confirmed that Christians and other major religious groups in Australia suffer very little religious discrimination and almost no persecution. Whilst his report deals with Australia as a whole, in our view his comments also reflect the realities in NSW.

The Report stated that:

... as a whole, Australians generally enjoy religious freedom.

Most stakeholders of faith acknowledged that, by and large, they have been free to observe their religious beliefs. Those from faiths that face persecution overseas were particularly vocal in acknowledging the relative safety that Australia affords people of different faiths.

Part of the reason for that safety is the separation of church/synagogue/mosque/temple and state. This separation is due to the provisions of Section 116 of the Australian Constitution which states that:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.²

Though there is some confusion regarding the provisions and application of Section 116 of the Constitution due to these prohibitions applying to the Commonwealth and not to the States, nonetheless these constitutional prohibitions have led to an harmonious relationship between religious bodies and the state. From the inception of the colony in NSW, there have been significant efforts not to import religious feuds from overseas, whether between the Irish and English, Roman Catholicism and Anglicanism and otherwise. This has involved playing down, rather than playing up religious differences. In our view it would be best to continue to downplay rather than to highlight religious differences in the community and provide a platform for some to foment division.

There have been nine inquiries, plus other reports, regarding religious freedoms in Australia over recent decades. In 2012, when the Gillard Government tried to consolidate all the federal anti-discrimination laws and include religion as a ‘protected attribute’, some churches and other religious groups argued – as they also had done previously – against religion being protected in law.

In recent times, however, the situation has changed: the issue of religious freedom quite obviously has become a ‘contested space’, many religious bodies have now changed their position and are advocating for religious protections in law.

How did we get here?

Broadly speaking, there has been a discernible change in the context in which religious bodies find themselves, especially in the aftermath of the Royal Commission into Institutional Responses to Child Sexual Abuses. As David Gill observed, “most churches

²https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Freedomofreligion/Interim_Report/section?id=committees%2freportjnt%2f024110%2f25178

are suffering from a sort of institutional post-traumatic stress disorder. In recent times, they have experienced a loss of prestige ..., a loss of power ..., a loss of privilege”.³

There are several identifiable factors that have led some to perceive a need for a NSW Act to prevent discrimination against those with particular religious views, for instance:

- Many religious organisations, especially, but not only, Christian organisations, feel under threat due to the scale of sexual abuse found by the Royal Commission to have existed within Christian and other religious communities. As a result of the findings of the Royal Commission, there has been a ‘community backlash’ and greater distrust of Christian churches and organisations than existed in the past. This has found expression in community questioning of the place of Christian and other religious organisations in society.
- The Australian Marriage Law Postal Survey and subsequent legislation allowing for same-sex marriages. Almost two-thirds of Australians supported this change, but a significant proportion of the Australian population, particularly conservative religious groups, have perceived it as a diminution of ‘traditional values’.
- The Safe Schools Programme. This was introduced to help create safer and more inclusive environments for same sex attracted, intersex and gender diverse students, staff, and families, but perceived by many as actively advocating promiscuity.
- The rise of militant Islam in the Middle East. This has given the increasing proportion of Australian residents who are Christians and whose countries of origin are in the Middle East cause to perceive the threat of militant Islam impacting on Australian society.
- the situation that arose in relation to Israel Folau.

Other perceived factors include secularization, consumerism, and militant atheism.

Proposed Response

The NSWEC strongly endorses the view of retired Bishop George Browning of the Anglican Diocese of Canberra/Goulburn that:

“People of faith should not request or be granted privileges or favours that are not available to those without faith, or to those of a particular faith, or that are in competition with others’ rights”.⁴

This is precisely the problem with such legislation: people of faith would be granted special dispensations from having to obey the law that the general population has to obey just because they claim they have particular religious views; people of faith would, in effect, be given the “right to discriminate” in some, fairly broadly defined, circumstances.

³ David Gill, op. cit.

⁴ George Browning, <http://georgebrowning.com.au> The Right Reverend Dr George Browning is a former Bishop of the Anglican Diocese of Canberra-Goulburn, 1993-2008.

Having such a 'right' is morally objectionable and would be likely to set back, by decades, protections against discrimination against women and advances made in acceptance of gay, lesbian and transgender people. This is because it is most likely in those two areas that some religious people would like to be able to discriminate against others with impunity.

In the International Covenant on Civil and Political Rights, religious freedom is not expressed as a narrow exception to the principle of non-discrimination. Rather, the ICCPR "expresses a positive right to freedom of religion and conscience and permits only such 'limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.'"

The present Anti-Discrimination Act, 1977 (NSW) contains a careful balance in its provisions that provides some exemptions for religious organisations in relation to particular issues. These are sufficient to protect the rights of those people professing a religion without trampling on the rights of others with whom they may disagree. It is not necessary to extend such exemptions and defences. They represent an appropriate way of dealing with such issues in a pluralistic society. They have served NSW well for an extended period.

It is telling that the examples in the notes to the Bill as "Examples of Legislative Coverage" are hypothetical. We are not aware of real issues of religious discrimination that are hampering people of faith walking their journeys of faith in NSW. It is a credit to the degree of tolerance in our society that we do not cavil with Muslim women wearing the hijab in public (unlike France, for example), we do not object to people wearing crosses to work and similar insignia of faith. Long may it be so!

The Bill also refers to organisations with a 'religious ethos'. The vagueness of that term would be fertile ground for divisions and conflicts between people and organisations.

There is much to be said for the Australian ethic of the "fair go" for all that helps bind us all as one community. To highlight matters of faith as a discrimen would be unhelpful at a time we should be trying to build cohesion and mutual understanding and respect of all people in society. There is much work still to be done in this regard, but it is best done quietly, without fuss and without compulsion and enabling parties to bring legal action against each other.

We have an Interfaith Commission of the NSW Ecumenical Council, that works hard to meet with those of other faiths for mutual understanding and respect and to look for ways for us all to work together so that we are a blessing to our communities and to manifest the values of kindness, acceptance and respect. It is that sort of work that should be well supported in the community, rather than a "right-based" approach that may encourage extremists to make extravagant claims.

There is a real danger in proceeding with this Bill that extremist parts of the faith communities of various religions will use it divisively and 'weaponise' religion in the service of other ideological goals. This would actually be inimical to the interests of

people of faith who are less ideologically driven and unhelpful to the “mainline” parts of each of the religious faith traditions as it would be likely to bring religion into disrepute.

Within each religious faith in NSW there are some individuals and organisations which can be very narrow in their thinking, casting a poor light on all adherents to that tradition and thus causing reputational damage. We should not give a platform for grandstanding to such individuals or organisations, whether grandstanding about the evils of homosexuality and excluding others on that basis or acting hatefully towards them because they are homosexual or supposedly taking a “principled” stand that women should not be in positions of leadership in various settings due to religious views that women are “subject to” the authority of men. We do not want to encourage, as former Senator Brandis put it: “the freedom to be a bigot”. A Bill such as this risks doing precisely that!

As Dr Keith Joseph observed, “religious talk that justifies racism or violence is outside the pale”. He went on to say in relation to the Israel Folau case that:

“It should also be noted that if Mr Folau is successful in his arguments regarding the immunity of expressions of religious viewpoints under contract law, then it could have interesting implications for religious institutions such as schools. They will be hard put to justify disciplining members of staff who publicly put forward religious viewpoints at variance with that of the institution: such staff members will just as surely assert their claim to religious freedom regardless of contractual obligations. Accordingly, I am not sure that the case of Israel Folau is the best case upon which to sort out these issues, especially as any resolution is going to be in the very limited field of contract law. This will give no protections or clarifications in the area of criminal law or other fields of civil litigation and I doubt that the moral issues are going to be much illuminated”.⁵ Altogether, it is the wrong case on which to focus in seeking a way to secure religious freedom.

It is often the case that various rights need to be considered together with other rights (eg the right to freedom of speech considered with the right to be free from verbal harassment and denigration). The existing protections offered by the Anti-Discrimination Act 1977 (NSW) are sufficient for that purpose and strike an appropriate and reasonable balance.

Consequently, we do not support the Religious Freedoms and Equality Bill that is currently before the NSW Parliament.

A Charter of Human Rights

It is important for the language to be shifted away from religious freedom to the freedom of thought, conscience and belief; but it is equally important to go further to advocate for an Australian Charter of Human Rights and NSW Charter of Rights. As Dr Keith Joseph said in his Presidential Address, “questions of freedom of speech in general, and freedom

⁵ The Right Revd Dr Keith Joseph is the Anglican Bishop of North Queensland. The quote is from his Presidential Address to the Diocesan Synod: <https://www.anglicanq.org/bishops/bulletin/265-bishop-s-bulletin-4-2019>

of religion in particular, do need to be clearly sorted out. We can no longer rely on the common law to deal with these issues and other human rights. The time has come for a Bill of Rights which provides legal force for the ethical issues that are at stake”.⁶

A NSW Charter of Rights could be a piece of parliamentary legislation, not a constitutional bill. There are a number of charters of Human rights already: in Victoria, ACT and Queensland (coming into effect very soon). They articulate our rights and Australia’s obligations to uphold them under the international human rights treaties and conventions that Australia has signed – by no means least, the obligation to protect the rights of all vulnerable people. A Charter of Rights would be developed by the NSW Parliament, like all other laws, and can be changed by the parliament. It would explicitly outline what the Government is required to do to protect and uphold and promote the rights affirmed by the Charter. It would be a means of securing a society in which everyone is included, thereby building a more civil society.

Conclusion

Rev Dr David Gill has given a profound reason why an ecumenical council of churches should be making a submission of this kind. “The pope has a wonderful title, ...*Servus Servorum Dei* – Servant of the Servants of God. It’s a good label, and not only for popes. It should be written into the job descriptions, carved into the desks, of all who are called to leadership in the church. A reminder ... that those who lead should do so not through domination but through service. Their authority is to be ministerial, not magisterial. They should be driven not by the love of power, but by the power of love. And not leaders only. Each and every one of us”.⁷

The great Hebrew prophets were radically insightful in their teaching. They were concerned with the most fundamental changes in society and how change could be achieved. They were disturbing. They did not leave room for complacency. Provocatively and imaginatively, they brought their religious traditions to speak to the contemporary realities of their society.

The community of Christian faith – the Church and every individual member – shares that prophetic heritage. Its concerns cannot be confined to its own situation and interests; its focus cannot be inward-looking, seeking its own welfare. It is to be outward-looking, bringing its faith to address the current realities of this society, in order that a civil, democratic, just and equitable society may be built and secured.

It is in that spirit that this submission is being presented, conscious that we not harm those who presently sit on the margins and suffer exclusion, harassment and vilification. On the contrary, at the heart of the Christian message is a message of love and we need to practice this in word and deed. We must be as “wise as serpents and as loving as doves” and not allow religion to be used to excuse intolerant behaviour that divides, ridicules and excludes. That is a travesty of Christianity but, sadly, there are some who think that is all

⁶ Keith Joseph, op. cit.

⁷ David Gill, Op.cit.

Christianity is about or think they are “upholding the faith” when actually they are giving vent to cultural prejudices that masquerade as faith.

For the above reasons, we strongly urge the NSW Parliament not to support this NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020.

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