

**Submission
No 130**

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

Organisation: The Presbyterian Church of Australia in the State of NSW

Date Received: 21 August 2020



Submission to

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

From

**The Presbyterian Church of Australia
In the State of NSW**

PO Box 2196, Strawberry Hills, NSW, 2012

The Presbyterian Church of Australia in the State of NSW

Who we are

The Presbyterian Church in Australia in NSW (PCNSW) consists of 186 pastoral charges spread through NSW. It is a community of about 35,000 people and has congregations from nine different non-English speaking cultures. Beyond its congregational ministries, the PCNSW operates schools, aged care facilities, pre-schools and provides social services and chaplaincy care in a wide range of communities in the state. The Presbyterian Church has been part of NSW society since 1803 and helped to form the Presbyterian Church of Australia in 1901.

This submission has been prepared by the Gospel, Society and Culture Committee of the PCNSW Assembly. For further information contact the convener of the committee, Rev. Dr. John McClean.

Rev. Dr. John McClean

Vice-Principal and Lecturer in Systematic Theology

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Our Position

We support the objectives of the Bill and agree that the terms of the Bill are appropriate for securing its objectives.

We endorse submissions made by *Freedom for Faith*, the Religious Freedom Reference Group of the Anglican Church Diocese of Sydney and the Social Issues Committee of the Anglican Church Diocese of Sydney. We offer the following comments that reflect our particular experience as a Christian church engaging with the people of NSW.

Our Reasons

1. Christian convictions about the freedom of individuals and organisations to hold religious beliefs.
 - 1.1. We welcome the opportunity to understand and engage with the beliefs and practices of people of other faiths, and to be able to share our own. As a Christian community, we are called to bless people of all backgrounds, and we do this across faiths. We seek the freedom to pursue our life and mission as fully as possible, and we believe that similar freedom should be available to all religious communities, as well as those of no religious faith.
 - 1.2. The foundational documents of our denomination, The Presbyterian Church of Australia, include a commitment to freedom of religion. In the 1901 Declaratory Statement, the Church “disclaims ...intolerant or persecuting principles” and upholds “the liberty of conscience and the right of private judgment”. This statement is an assertion of the Church’s support of freedom of religion in Australia.
 - 1.3. We welcome the Bill’s goal to have appropriate regard for the Siracusa Principles, following the recommendation of the Ruddock Review that NSW legislation should recognize these Principles in its Anti-Discrimination legislation. Freedom of religion is a fundamental human right, and legislation should provide a mechanism to balance competing rights rather than privileging other rights over freedom of religion.
 - 1.4. We support the amendments to the Definitions in the Act that define *religious beliefs* as both *having* a religious conviction, belief, opinion or affiliation, and *not having* such any such convictions. People should have the same rights to hold and express non-belief as they do to hold and express various religious beliefs.
 - 1.5. We support the limitations to religious freedom that the Bill achieves by excluding conduct that would constitute an offence punishable by imprisonment.
 - 1.6. We support the definition of *religious ethos organisation* as a private educational authority, ACNC registered charity or other body that conducts itself in accordance

with the doctrines, tenets, beliefs or teachings of a particular religion, and we note that the impact of this definition is to *not exclude* organisations that are currently deemed (under the Commonwealth *Religious Discrimination Bill*) to engage in commercial activities. The point is well made in the *Freedom for Faith* submission: “engaging in commercial activities does not make a particular organisation less religious and therefore less entitled to the bill’s protection.”

2. Christian convictions about the freedom of individuals and organisations to express their religious beliefs through action.

2.1. We support in general the amendments in the Bill and offer comment on a few specific amendments below.

2.2. **We note the definitions at s22L** regarding what constitutes discrimination on the ground of religious beliefs and religious activities **and we support the amendments** because they clarify what we know to be the case: discrimination against a person or organisation may be the result of either (or sometimes both) *receiving less favourable treatment or being subjected to forced compliance* because of holding religious beliefs. We recognise the challenge in balancing competing rights, and we acknowledge that this section must be read in conjunction with s22M. Taking these sections together, we can see that the Bill aims to protect religious ethos organisations against discrimination on the basis of their religious beliefs, while still permitting them to exercise preference in order to maintain the integrity of their own religious ethos. This is important to us as a Christian denomination, both for our own activities and for the activities of people and organisations of other faiths, or no faith. As a Christian denomination, we would not expect, for example, a Muslim school to accept our request to rent their auditorium for Sunday church services or other church activities. Conversely, we would not want to be compelled to rent our own facilities to religious ethos organisations who didn’t share our Christian beliefs. The Muslim school’s refusal to rent to us, and our refusal to rent to them, would be entirely reasonable and in keeping with each organisations right to maintain its religious integrity.

We would suggest that access to public facilities falls outside such sensibilities. It is not unheard of, in our experience, for Christian congregations to be denied the opportunity to rent NSW public school facilities for no clear operational reason. Nor is it unheard of for Christian congregations that are renting school facilities, or other community facilities, to feel they must restrain their teaching from the Bible about certain matters, lest they lose the opportunity to renew their rental agreement. It is troubling to us that these particular experiences might arise out of the difference between the ethos of Christians and the ethos of some public servants on those matters, and there is little or no way of seeking redress. The Bill appears to be silent on such matters. Some clarity would be therefore be welcome in the legislation with regard to protection from discrimination for religious ethos organisations seeking access to community facilities.

2.3. **We support the amendments at s22M** that include in the definition of conduct that *will not* be taken to be discrimination under the Act, the preferencing by a religious ethos organisation of persons of the same religion as that organisation. The language of “preferencing” is more helpful than that which speaks of “exemptions” from the Act. The language of “preferencing” affirms the human right of freedom to associate on the basis of religious ethos. We therefore welcome the use of this terminology in the amendments. Further, this language is a more accurate reflection of the day-to-day decision making that occurs in religious ethos organisations. A Muslim school, for example, is not discriminating against non-Muslim applicants for a teaching job when they offer the job to a Muslim applicant – they are making a reasonable decision to preference a Muslim applicant over a non-Muslim applicant because the religious beliefs and conduct of the applicant are relevant to their involvement in the school community. Similarly, a Christian mission organisation is not discriminating against non-Christian applicants when they seek an office manager who is a Christian – they are making a reasonable decision to preference a Christian applicant over a non-Christian applicant because that person’s religious beliefs and conduct have an impact on the way they assist the mission agency to further its activities.

2.4. Further, we support the amendments at s22N that aim to protect employees from discrimination against them on the grounds of religious beliefs or religious activities, while also clarifying and limiting the extent to which an employee may reasonably engage in a protected activity while employed. These amendments will prevent employers from limiting an employee’s engagement in protected activities outside of the time and place of employment, *and also* will prevent employees from, as part of their engagement in a protected activity, directly criticising, attacking or causing direct financial detriment to their employer. In practical terms, these clauses would prevent, for example, an employer terminating the contract of an employee because of general comments on controversial issues made by the employee on social media, yet would reasonably prevent an employee openly and specifically criticising their employer’s stand on such issues. The clarification of what *does not* constitute “direct and material financial detriment to an employer” is welcome. We suggest that more clarification may be needed on what does, or does not, constitute “criticism” or “attack”. We can think of a number of possible scenarios where an individual may express their religious beliefs in ways that might be at variance to those of their employer. Where is the line at which an employer will perceive the employee’s words or actions to be an “attack” or “criticism”? The Explanatory Notes attached to the amendments do give some helpful examples of where an employer may overstep the line, and consequently be in breach of the Act, but we expect that these matters will be tested by the courts should these amendments be successful entered into law.

2.5. We support the amendments at s22S that aim to protect individuals from being discriminated against by their authorising or qualifying body because that body prevents them from engaging in a protected activity, or punishes them for engaging in such activity, or refuses to authorise or qualify them for their work. This section will protect, for example, Christian doctors who act in accordance with their religious beliefs as they practice medicine, including those who decline to refer a woman to another practitioner in order to obtain an abortion (because of their beliefs about the unborn), and those who will not participate in the practice of

euthanasia (because of their views on the taking of life). This is a welcome protection.

2.6. We support the amendments at s22V that aim to offer protection from discrimination for students who hold, and act in accordance with, religious beliefs that are at variance with the ethos of their educational institution. We note that this section aims to protect both religious students at non-religious schools, and students attending religious schools while not holding religious beliefs. Further, we note the similarity between the reasonable limitations on students' expression of religious belief and the limitations on employees' expression of religious belief at s22N, and we welcome these amendments.