Submission No 134

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

Submission made by the
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1. Introduction

This submission is made on behalf of the broader Australian Muslim community relating to the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Bill). The submission has been prepared by Sam (Ekermawi) with a Representative role in the Australian Muslim communities and specifically in NSW and Generally in the Commonwealth.

2. Mr Ekermawi has extensive experience in the Anti and Racial Discrimination Acts.

Therefore, this submission is reflective of the views prevalent to the Australian Muslim community that has been experiencing Racial and Hatred Vilifications and denial of natural Justice.

3- The concept of the Bill is much overdue in NSW. It offers a critical opportunity to address an urgent and pressing concern held by the Australian Muslims living in NSW and persons of other minorities' faiths. This is in a context where, in NSW, there is legislative protection against discrimination directed at a person or group of persons on the ground of the **race** of the person or members of the group. While that has been extended to Jews and Sikhs based on present judicial interpretations to s4 (**Ethno-Religious**) concept of "Race" of the Anti Discrimination Act 1977 (the Act) based on their religious identity and belief, however this has not been extended to Muslims, based on religious identity and belief.

4. The NSW Judges and Tribunal Members whom were involved in NSW Muslims vilification cases lacked Code of Conduct that is based upon the premise that staff members will act with:

- integrity
- honesty
- fairness
- conscientiousness
- compassion
- loyalty to the public interest
- Not involved in Conflicts of interest
- All staff members shall perform their professional duties diligently, impartially and to the best of their ability in accordance to the Law and Statutes of Parliaments.

and that they will, in carrying out their duties, adhere to the spirit and intention of the *Judicial Officers Act* 1986.

5- Human rights are the basic freedoms and protections that belong to every single one of us all human beings are born with equal and inalienable rights and fundamental freedoms.

Our rights are about being treated fairly and treating others fairly, and having the ability to make choices about your own life. These basic human rights are:

- **Universal;** They belong to all of us – everybody in the world
- **Inalienable;** They cannot be taken away from us

- **Indivisible and interdependent** Governments should not be able to pick and choose who are respected and entitled to justice.

Unfortunately Australia has some Judges and or Tribunal members that are bias, where it comes to Muslims; they do not extend equal rights nor they comply with the Legislation and that those Judges deliberately misuses it.

6. Based on the introductions to the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 Part 2B (proposed sections 22K–22Z) while that is very desirable it does not help, Walsh, Muslim Australians.

7. The Fact that there is Acts by the States of the ACT, Queensland and Victoria that has protections for religion and religious beliefs and indeed New South Wales, under s4 (ethno-religious) concept of "race" it has made no deference to Judges and Tribunal members when it comes to Muslims cases; Examples ie,

(a) Catch the Fire Ministries Inc v Islamic Council of Victoria Inc. [2006] VSCA 284
(b) Ekermawi v Harbour Radio Pty Ltd, Ekermawi v Nine Network Television Pty Ltd [2010] NSWADT 145
(c) Ekermawi v Harbour Radio Pty Ltd & Ekermawi v Nine Network Television Pty Ltd (No 2) [2010] NSWADT 198
(d) Ekermawi v Nine Network Australia Pty Limited [2019] NSWCATAD 29
(e) Khan -v- Commisioner, Department of Corrective Services & anor [2002] NSWADT 131
(f) Trad v Jones (No. 3) (EOD) [2012] NSWADTAP 33
(g) Deen v Lamb [2001] QADT 20 (8 November 2001)

8. Precedent Cases from higher Courts which indicates that Muslims are a RACE that was ignored ie;

(a) Jones v Scully [2002] FCA 1080 (2 September 2002)
(b) King-Ansell v Police [1979] 2 NZLR 531
(c) Mandla (Sewa Singh) and Another v Dowell Lee and Another [1983] 2 AC 548
(d) Mahommed v State of Queensland [2006] QADT 21 (24 May 2006)

9. Making Legislations by Parliaments, than have Judges and Tribunal Members who are Racist bigots to dismissing (err) them is a tragedy for the Justice System and violation of human right and public interest.

10. Our voted representative's members of Parliaments are obliged under the Law to protect all members of the Communities equally, and if they have found a hole in a Statute they must plug it immediately. What is the use having Legislation that can be misused to create injustice?

11. It is therefore an anomaly and unfortunate predicament that, in NSW, there is Legislative protection against discrimination directed at a person or the Group based on their religious identity and belief. Isn't it peculiar as Legal Aid said;

If your current ADT applications are refused on the basis that Muslims are not people from the same "ethno religious origin" then you are welcome to lodge another application for Legal Aid NSW to represent you in the Supreme Court.

In our conversation earlier this week I agreed that the current understanding of the meaning of "ethno religious origin" is narrow and that, if it is read to exclude Muslims, it may need to be challenged in the higher courts. I also said that Legal Aid NSW would consider funding such an appeal if an appropriate test case presented itself and counsel's advice supported the merit of conducting such an appeal.

12. The Courts and Tribunals are refusing to accept the Interpretation Act s34, refusing to accept the words and intentions of Parliaments as to the meaning of an ambiguous words.

13. There has been bias and bigotry in the State Courts and Tribunal against Muslims of the State and the Commonwealth, Australian Human Right Commission (AHRC), by the Courts and Tribunals refusal to comply with the existing Legislations namely the Anti and Racial Discriminated Acts; and as emended that are mandated by State and Commonwealth Statutes with the full knowledge of the State and Fed Governments.

14. The Courts, Tribunals and the AHRC, has been using allusive language and using common Law precedents that is supposedly null and void as pretext to their decisions not to comply with the Legislation in fact the Board, AHRC and Parliament members appear to agree with the judgement cases against Muslim Australians condoning vilifications against them.

15. Muslim Australians has been denied their natural justice enshrined in the Universal Human Right treaties which Australia is a signatory and the Stats and Federal Legislations that was made in support that is systemic issues.

The flame of irrational prejudice has been directed towards the vast majority of law-abiding citizens Muslim Australians in the Commonwealth.

16. The Courts and Tribunals, was informed in the past by 3 Attorney Generals not to continue looking at the Legislation narrowly, without enforcing the Legislation;

(a) In Australian law, the Anti-Discrimination Act 1977 of New South Wales defines s4(1)(3) whether its one race or several races "race" to include "ethnic, ethno-religious or national origin" it has never required Muslims to associate their pleading (Muslims) with their nationality as it appears a requirements by the Tribunal (NCAT) that's preposterous and never was the Parliaments intentions. The reference to "ethno-religious" was added by the Anti-Discrimination (Amendment) Act 1994 (NSW). John Hannaford, the NSW Attorney-General at the time, explained, "The effect of the latter amendment is to clarify that ethno-religious groups, such as **Jews, Muslims and Sikhs,** have access to the racial vilification and discrimination provisions of the Act.... extensions of the Anti-Discrimination Act to ethno-religious groups will not extend to discrimination on the ground of religion" the last paragraph has been used by the Tribunal as a catalyst against Muslims using

them as a religion instead of been a race member of the groups. We are not claiming nor have any Muslim claimed discrimination on the ground of religion.
This amendment was passed by 100% of both houses of Parliament and was assented to on May 1994. Not just by few Parliamentarians.

17. In relation to the requirement required that Muslims must associate their pleading (Muslims) with their nationality, finally they did by claiming they are **Australian Muslims** as in **Ekermawi v Nine Network Australia Pty Limited [2019] NSWCATAD 29** that did not work either, what will make it work?

18. In Australia, the States that cover religious discrimination in their legislations are Victoria, Queensland, Western Australia, the ACT and the Northern Territory. I note that New South Wales contains Australia's largest Muslim population, and yet they are not protected from racial or religious vilification. Interestingly, the *New South Wales Anti-Discrimination Act* (1977) was amended in 1994 to add a reference to "ethno-religious." The then NSW Attorney-General, John Hannaford, explained that "the effect of the amendment is to clarify that ethno-religious groups, such as Jewish people, Muslims and Sikhs, have access to the racial vilification and discrimination provisions of the Act." The stated intention was, in fact, to also cover Australian Muslims - but this never materialised for them but was materialised for Jews and Sikhs. **Why?**

"Do you want to know how it feels to be an Australian Muslim in Australia today? Just attend a kangaroo court hearing racial vilification involving Muslims.

(b) That position is reinforced by the Anti-Discrimination Amendment (Miscellaneous Provisions) Bill 2004: Second Reading Speech, The Hon R J Debus MLA, NSW, Parliamentary Debates (Hansard), Legislative Council, 16 September 2004, p 11044. His Honour in actual fact has reprimanded his subordinate NSW Courts when he said;

> “I mention in passing one other matter relating to the definition of "race" within the Act. In 1994 the then Attorney, Mr John Hannaford, MLC, in moving the second reading of an earlier bill to amend the Act, noted that the term "ethno-religious origin" was being added to the definition of "race", and I quote:
>
> **“to clarify that groups such as Jews, Muslims and Sikhs have access to the racial vilification and discrimination provisions of the Act.**
>
> “Since that time the **term "ethno-religious origin" has been given a narrower judicial interpretation.** However, it is important to reiterate the Government's clear position that the original intention of these provisions should continue to apply—that is, that members of specific groups who share a common religious and cultural identity, such as

Jews, Muslims and Sikhs, should continue to be protected by the racial discrimination provisions of the Act. Recent international events have highlighted the importance of ensuring that the flames of irrational prejudice are not directed towards the vast majority of law-abiding citizens in New South Wales, **regardless of their ethno-religious origin.** The Anti-Discrimination Act is designed to protect all such citizens from prejudice and bigotry. It is my pleasure to commend the Anti-Discrimination Amendment (Miscellaneous Provisions) Bill to the House".

(c) That position is reinforced further by. **Religious vilification, anti-discrimination law and religious freedom Speech by the NSW Attorney General, another boss of the NSW Courts, the Hon Greg Smith SC MP,** 24 August 2011 at 85

"85. Arguably, various Jewish groups might have **availed themselves of remedies under the Anti-Discrimination Act for race discrimination given that the term 'race' is defined in the Act to include 'ethno-religious origin'.** The term 'ethno-religious origin' was inserted in the legislation in 1994. In his second reading speech, the then Attorney-General stated that the amended definition of race would allow 'members of ethno-religious groups such as **Jews, Muslims and Sikhs to lodge complaints, not on the basis of their religion, but based on 'their membership of a group which shares a historical identity in terms of their racial national or ethnic origin.'** However, no group as far as I am aware, made any complaints or sought any remedy under that Act." As I just indicated, democratic processes achieved a satisfactory result"?

Not true "Muslims did seek remedy under that Act." And did lodge complaints, not on the basis of their religion, but based on 'their membership of a group which shares a historical identity in terms of their racial national or ethnic origin, but failed. Why?

(d) In **Khan -v- Commissioner, Department of Corrective Services & anor [2000] NSWADT 72 at 10**

10 Bearing in mind the absence of any definition of the word "ethno-religious" in the standard dictionaries, and the ambiguity inherent in the combination of the two words "ethnic" and "religious", it seems to us that the phrase is "ambiguous or obscure" within the meaning of the *Interpretation Act 1987* (NSW) s.34(1)(b)(i), **entitling us to have reference to the second reading speech of the Attorney General** (*Interpretation Act 1987* s.34(2)(f)). Having had reference to that address, it seems to us that all adherents to the Muslim religion are entitled, pursuant to the 1977 Act, to be considered to be a racial group for the purposes of that legislation.

In **Khan -v- Commissioner, Department of Corrective Services & anor [2002] NSWADT 131 at 7, 12, 18, 21 and 22**

7 The Appeal Panel found that the Tribunal had erred in that it failed to make a finding as to the meaning of the term **"ethno-religious"** within the context of s 4, but had simply adopted the words of the Attorney-General in his Second Reading

Speech. The Appeal Panel said the proper course for the Tribunal to have followed in the first instance was to have applied the principles of statutory interpretation, but **without immediately relying upon the Second Reading Speech.** Why?

The Tribunal is not authorised to by pass segments of the interpretation Act. The speech made by the sponsor of a prospective Statute at the time it is debated in the legislature, may be used as an aid to interpretation when there is an **ambiguity or the like:** Interpretation Act 1987 (NSW) s 34(2)(f); Re Bolton; Ex parte Beane (1987) 162 CLR 514 at 518 per Mason CJ, Wilson and Dawson JJ; Lisafa Holdings Pty Ltd v Cmr of Police (1988) 15 NSWLR 1 at [17]- [18] per Kirby P, at [26] per McHugh JA.

> 12 Because of the ambiguity and recent invention of the word, it is not entirely clear whether the term is "technical" or has a broader, "ordinary" meaning. In our opinion, the fact that the word is not defined in the major dictionaries suggests only that it is a recently minted word, but does not tell us whether it is a word which requires specialist skills to interpret. If expert evidence is required to determine the meaning of the word, that is a strong indication that it has a "technical" meaning. On the other hand, if expertise is not required to find the meaning, it will be given its "ordinary" meaning. **Nothing has been put to us to suggest that the word has some special or technical meaning.** On the other hand we are unable to agree with the Appeal Panel's suggestion in obiter dicta that the word has no ordinary meaning. **The fact is, apparently, it is a word in use by a significant number of people and must therefore have some "ordinary meaning".**
>
> 18 It is not even clear that Muslims, to use the words of the Attorney-General "share a common racial, national or ethnic origin". **While Muslims are all adherents to Islam, they do not share common racial, national or ethnic origins.** There are Muslims in every continent and of many different racial and ethnic backgrounds. It is common knowledge for example that there are South Asian, South-East Asian, African, Middle-eastern and European communities of Muslims. Many African-Americans, most famously Mohammed Ali, are Muslims.
>
> **The Tribunal has disregarded ss 4(3) (7) of the Act and the fact that Jews and Sikhs of simular position yet covered by the Statute.**
>
> **The applicant's race**
>
> 21 For the reasons as set out in this decision in our view it is insufficient for the applicant merely to assert **his Muslim faith to fall within the statutory definition**, notwithstanding the Second Reading Speech's examples. There must be some evidence that there exists a close tie between that faith and his race, nationality or ethnic origin for him to be regarded as a member of an "ethno-religious" group.
>
> **Another elusive language.**

22 The Points of Claim filed for the applicant state that the applicant is Muslim. **The applicant's case proceeded on the basis that it is enough to establish that he is Muslim to fall within the definition of "race" for the purpose of the Act.** Given the uncertainty surrounding the meaning of the term "ethno-religious**" in our view procedural fairness demands that the applicant be given the opportunity to file further evidence**, if he is of the view that he falls within the definition of "ethno-religious" as set out in these reasons [at 20].

This case was incomplete, why then this case was been used as a catalyst precedent to deny Muslim Australians their natural justice?

(e) In **Ekermawi v Harbour Radio Pty Ltd, Ekermawi v Nine Network Television Pty Ltd [2010] NSWADT 145 at 42, 50, 53, 57, 63 ,66 and 67**

42 Understandably, Mr **Ekermawi** relied on these passages in the Explanatory Memorandum for the Commonwealth Racial Hatred Bill and the Second Reading Speech for the amendments to the New South Wales Act for the proposition that Muslims, like Jews and indeed Sikhs (as held by the House of Lords in *Mandla v Dowell Lee* [1982] UKHL 7; [1983] 2 AC 548), constituted an ethno-religious group.

48 In support of this part of his argument, Mr Stewart cited the following paragraphs from the Tribunal's decision in *Ahmed v Macquarie Radio Network (Radio Station 2GB)* [2006] NSWADT 89:-
15 The applicant brings the complaint as a person of the Islamic religion. **In order to have standing, he needs to show that he is a member of the racial group vilified**, as well as being an "aggrieved person" pursuant to s 88 of the Act as set out above.

50 A related submission put by Mr Stewart was that if any of these statements were in fact vilificatory (a proposition that he denied), **the vilification was on grounds of religion only, not on the ground of ethno-religious origin**. It referred only to facets of the Muslim religion, and was therefore religious, not racial, vilification falling outside the scope of section 20C(1).

At 50 above is much erred elusive language.

53 First, vilification of Muslims does not fall within section 20C(1), **because Muslims are not a 'race'** as defined in section 4 of the Act. The reason, as the Tribunal said in *Khan* at [18], is that Muslims 'do not share common racial, national or ethnic origins' and are therefore not an ethno-religious group such as the definition embraces. In so ruling, we follow the decisions, commencing with *Khan*, that are listed above at [44]. We are unaware of any recent authority to the contrary. **It follows that any statements broadcast by the Respondents that generated negative feelings towards Muslims generally, or any group of Muslims, on the ground of their being Muslims could not amount to unlawful racial vilification.**

Wow; Not only another elusive language but also condoning vilifications and hatred, where in a Statute this can be found.

59 We are not persuaded by Mr Stewart's submission that if any of the broadcast statements were in fact vilificatory (a proposition that he denied), the vilification referred only to facets of the Muslim religion and was therefore religious vilification, falling outside the scope of section 20C(1). In this connection, he cited the above-quoted extract from the Appeal Panel's judgment in *A obo V and A v New South Wales Department of School Education (EOD)* [2000] NSWADTAP 14. We prefer, however, the reasoning of the Appeal Panel in a later judgment, *Khan v Commissioner, Department of Corrective Services & anor (EOD)* [2001] NSWADTAP 1. At [44], the Appeal Panel said:-

"We accept the appellant's written submission in relation to the meaning of "on the ground of". In our view, once the Tribunal is satisfied that an applicant is a member of a particular race, **then it is not appropriate to "split" that person's race into ethnic aspects and religious aspects**. As Mr Hillard pointed out, the subject matter of the differential treatment (provision of religiously acceptable food) cannot be equated with the reason or ground for the discriminatory treatment. In each case the Tribunal must ask itself whether **race was one of the reasons for the discrimination**. In this case the Tribunal made an error of law when, in paragraph 15, it concluded that the refusal to serve the complainant halal food was an act done on the ground of his religion despite its earlier finding that as a Muslim he fell within the statutory definition of "race**". If to be a Muslim could cause a person to fall within the statutory definition of "race", treatment afforded to that person because he/she is a Muslim must be, for the purposes of the ADA, treatment on the ground of race. As we have previously stated, the issue of whether the complainant, as a Muslim, falls within the statutory definition of "race" awaits proper determination.**

Why the Tribunal did "split" that person's race into ethnic aspects and religious aspects even if they did that is supported by s4A of the Act. Why do we have to waits for proper determination, isn't that what the case is all about?

63 It would of course be open to us to determine some or all of these questions, **but we have decided not to.** This is principally because, for entirely understandable reasons mentioned above, the arguments put to us by Mr **Ekermawi** failed, generally speaking, to come to grips with the detailed and somewhat technical issues that arise when deciding whether published material constitutes unlawful vilification under section 20C. **The provisions of this section pose difficulties even for qualified lawyers whose first language is English. It is not at all surprising that a person who lacks legal qualifications and is not expert in English would pass over or misunderstand significant questions needing to be addressed**. If our conclusions on the issue of race were held on appeal to be incorrect and these proceedings were remitted for redetermination, it would be unfortunate if rulings made by us on the other issues arising under section 20C, based on insufficient arguments on behalf of the complainant, were treated as binding on the parties. In such event, it is to be hoped that Mr **Ekermawi**'s claims **would be argued at the rehearing more effectively than was the case before us.**

66 We believe that one line of argument emphasised by Mr Stewart carries significant weight. This is that the criticism conveyed in substantial segments of the programs

broadcast by the Respondents was confined to certain minorities of Muslims and was not ‘on the ground of’ their adherence to the Muslim faith. Mr Jones in particular pointed out that a number of Muslim leaders, and indeed the majority of Muslims, were opposed to the violent acts and aspirations of these minorities.

67 We incline to the view, however, that a few passages of the transcripts record the broadcast of material which incited hatred or serious contempt of Muslims on the ground of their adherence to the Muslim faith and therefore would have amounted to unlawful vilification under section 20C(1**) if Muslims were a ‘race’.** One such passage is to be found during the heated debate in Program 3 between Mr Hadley, whose tone of voice was distinctly aggressive, and the caller named Miriam. It is as follows:-

Despite the above Mr Ekermawi was his with cost where the rules each party to pay its own, why the Victimisation?

It is against the law to victimise a person for making a complaint about racial and religious vilification.

(f) In **Ekermawi v Harbour Radio Pty Ltd & Ekermawi v Nine Network Television Pty Ltd (No 2) [2010] NSWADT 198 at 53**

53 None of our rulings regarding the period before 9 November 2009 undermines our conclusion that from this date onwards Mr Ekermawi’s complaints had ‘no tenable basis in fact or in law’. As it happens, it was shortly before this date that he ceased to have the benefit of **Legal Aid.** But the Points of Defence made it quite clear that two key matters which previously appeared to be conceded were now being contested. The reason why he still persisted with his complaints may have been (as he claimed) that he did not appreciate the significance of this change. **But his apparent failure to obtain appropriate advice about it is a matter for which he must bear the consequences.**

As it can be seen the Tribunal has disregarded their remarks made at (e 63) above.

(g) In **Ekermawi v Nine Network Australia Pty Limited [2019] NSWCATAD 29 at 16-17**

16- By and large, we accept it is for the Applicant to define **what is the alleged targeted group**. We are inclined to think that the Applicant could have pursued in his application before us either or both of these descriptions, provided this was done with clarity and proper notice to the Respondents. An issue may have arisen as to whether the remarks of Ms Kruger, **which was targeting simply the "Muslim population" in Australia,** only could be referring to those who live here, as opposed to Australian nationals who are also Muslims.

17- In the result, we do not need to consider this issue any further given that in the submissions before us at hearing the **Applicant was content to have his application dealt with on the basis that the targeted group was "Muslims living in Australia".** In the balance of this decision

sometimes we refer **to "Muslim Australians" or "ethnic Muslim Australians" or even the Muslim community in Australia and the like. In each case, we are still referring to "Muslims living in Australia".**

Wow, another double language, which has caused injustice.

69. We are of the view that to the ext Similar remarks were made by the ADT in *Khan v Commissioner, Department of Corrective Services* [2002] NSWADT 131, which we have already referred to above. **The approach in *Khan* has been applied and followed in numerous Tribunal decisions. Many cases have failed on either the ground that there was insufficient evidence that Muslims in Australia generally form an ethno-religious group or, alternatively or further, that characterised, the alleged conduct was on the ground of religious discrimination, not racial.** Many of those cases were summarised in *Alchin v Rail Corporation NSW* [2012] NSWADT 142 at [43]–[46]:

122. Accordingly, the attack was on the Muslim Australian community and Muslim culture as a whole, not the observance of the religion as such. The total effect of the statements fits within the third of the categories listed by the Appeal Panel in *Jones and Harbour Radio Pty Ltd v Trad (No 2) (EOD)* [2011] NSWADTAP 62 at [13].

123.In conclusion, if Australian Muslims have a common 'ethno-religious origin', then, in our view, Ms Kruger's remarks were an insult to, or an attack on, such Muslims seen as a group of ethno-religious origin, and on the ground of that origin.

128**. In our view, such remarks would likely encourage hatred towards or serious contempt for, Australian Muslims by ordinary members of the Australian population.**

127. However, we need not consider this question further in light of our conclusion as to whether the evidence establishes that Muslims living in Australia have a common ethno-religious origin. **Apart from that issue, we would have found that both of the Respondents engaged in racial vilification of the Australian Muslim community, being Muslims living in Australia, in breach of s.20C of the ADA.**

Orders

1. The application will be dismissed. **Why?**

17. The speech made by the sponsor of a prospective Statute at the time it is debated in the legislature, may be used as an aid to interpretation when there is an **ambiguity or the like:** Interpretation Act 1987 (NSW) s 34(2)(f); Re Bolton; Ex parte Beane (1987) 162 CLR 514 at 518 per Mason CJ, Wilson and Dawson JJ; Lisafa Holdings Pty Ltd v Cmr of Police (1988) 15 NSWLR 1 at [17]- [18] per Kirby P, at [26] per McHugh JA.

18. Mills v Meeking (1990) 91 ALR 16 at 30-31.;
In our view, this provision requires a court or Tribunal to

> "take into account the purpose of the legislation even if the meaning of the term is clear. The court or Tribunal should consider the purpose of the legislation to determine whether there is more than one possible construction. If there is, then the construction which is consistent with the purpose of the legislation should be preferred".

19. the Explanatory Memorandum to the Racial Hatred Bill 1994 (Cth) suggests that Muslims are included in the expressions "race" and/or "ethnic origin" (see Explanatory Memorandum, Racial Hatred Bill 1994 (Cth), 2-3):

> "**The term 'ethnic origin'** ... would provide the broadest basis for protection of peoples such as Sikhs, Jews and **Muslims** …"
>
> "The term 'race' would include … groups of people such as Muslims".

(h) The Explanatory Memorandum to the Racial Hatred Bill 1994 (Cth) was cited with approval by Justice Hely in Jones v Scully (2002) 120 FCR 243 at [111 and 112] in interpreting the Racial Discrimination Act 1975 (Cth), a Federal statute which also shares a common purpose with the State Statute they presently at issue.

Jews Muslims and Sikhs are relying on those Explanatory Statements and second reading speeches which explicitly envisage that Muslim people represent a racial group especially they were supported by higher Courts decisions then the decisions made by the Tribunal.

The Tribunal in its equal opportunity division claims; that the words of a member of parliaments can not be taken into account using and refusing to extend equality to NSW Ethnic Muslims and the Governments condoning such acts is nothing short of Religious persecution.

19. William David Bugmy's lawyers convinced **the High Court that the Wilcannia man's case was a suitable vehicle for considering the fundamental question of equality before the law amid a national crisis of indigenous over-representation in prisons and chronic Aboriginal social disadvantage.** WILLIAM DAVID BUGMY v THE QUEEN [2013] HCA 37; 2 October 2013. **This is national crisis of Muslims over-representation in the NCAT (Tribunal) NSW Courts and the Australian Human Righty Commission.**

20. Despite the above, the NCAT refusing to use the Legislation and the words of the Attorneys Generals Statutes and refusing to comply with the Interpretations Act when the words in a statute are proving to be ambiguous.

21. The following cases were deliberately erred, therefore there was a miscarriages of Justice thus they are null and void, that is supported by The Hon R J Debus MLA,

NSW, Parliamentary Debates (Hansard), Legislative Council, 16 September 2004, p 11044; as at (b) above;

a) Khan -v- Commissioner, Department of Corrective Services & anor [2000] NSWADT 72; at 10, this case decided that Muslims were a race, yet the case was dismissed for no apparent reason;

10 “Bearing in mind the absence of any definition of the word “ethno-religious” in the standard dictionaries, and the ambiguity inherent in the combination of the two words “ethnic” and “religious”, it seems to us that the phrase is “ambiguous or obscure” within the meaning of the *Interpretation Act 1987* (NSW) s.34(1)(b)(i), entitling us to have reference to the second reading speech of the Attorney General (*Interpretation Act 1987* s.34(2)(f)). **Having had reference to that address, it seems to us that all adherents to the Muslim religion are entitled, pursuant to the 1977 Act, to be considered to be a racial group for the purposes of that legislation.** This is notwithstanding that some Muslims may have converted from other religions or be indistinguishable racially from other persons not of Muslim faith, or be distinguishable from other members of the Muslim religion in racial terms, even having regard to the type of biological considerations referred to by Lord Fraser in *Mandla v Dowell Lee* (1983) 2 AC 548. Accordingly we answer the first question in favour of the Applicant”. **Case was dismissed, why?**

b) Khan v Commissioner, Department of Corrective Services & anor (EOD) [2001] NSWADTAP 1; in this case the Tribunal did upheld the appeal, but made too many errors in its directions. As to say that the words of the Attorney General of the State can’t be taken into account.

The speech made by the sponsor of a prospective Statute at the time it is debated in the legislature, may be used as an aid to interpretation when there is an **ambiguity or the like:** Interpretation Act 1987 (NSW) s 34(2)(f); Re Bolton; Ex parte Beane (1987) 162 CLR 514 at 518 per Mason CJ, Wilson and Dawson JJ; Lisafa Holdings Pty Ltd v Cmr of Police (1988) 15 NSWLR 1 at [17]- [18] per Kirby P, at [26] per McHugh JA.

c) Khan v Commissioner, Department of Corrective Services & anor [2002] NSWADT 131; while this case was used as a precedent, for all other Muslims cases that followed, it was erred especially under ss 4 (1) (3) 4A, 7, 56 State and 116 of the Cth constitution of the acts, **and it was an incomplete case yet it was used as a bias catalyst precedence to deny Muslims their natural Justice.**

4 (1) AND (3) DEFINITIONS

(1) **"race"** includes colour, nationality, descent and ethnic, ethno-religious or national origin.

(3) For the purposes of this Act, the fact that a race may comprise two or more distinct races does not prevent it from being a race.

4A ACT DONE BECAUSE OF UNLAWFUL DISCRIMINATION AND FOR OTHER REASONS If--

(a) an act is done for 2 or more reasons, and
(b) one of the reasons consists of unlawful discrimination under this Act against a person (whether or not it is the dominant or a substantial reason for doing the act), then, for the purposes of this Act, the act is taken to be done for that reason.

7 WHAT CONSTITUTES DISCRIMINATION ON THE GROUND OF RACE

(1) A person (
"the perpetrator") discriminates against another person (
"the aggrieved person") on the ground of race if the perpetrator--
(a) on the ground of the aggrieved person's race or the race of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a different race, or
(b) on the ground of the aggrieved person's race or the race of a relative or associate of the aggrieved person, segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race, or
(c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
(2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person's race if it is done on the ground of the person's race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race.
The Tribunal claims Jews and Sikhs are covered under the Act but not Muslims.

S56 of the Act (d)
(d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

Mr Khan 2000, 2001 and 2002; was denied his free exercise to his religious activities as a person and member of the group s20 (1) of the Act, a right that was giving to the Jewish inmate who was giving kosher food the dictate of the Torah Hebrew Bible, simular to his Shari'ah halal food the dictate of the Qur'an. This would trigger s7(1) of the Act. Shari'ah in the community has both mobilised Islamic conservatism and the Tribunal confused its understandings of the core humanistic tenets of the faith followers.

Section 116 of the Australian Constitution which provides 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 (Cth).

d) In Ekermawi v Harbour Radio Pty Ltd & Ekermawi v Nine Network Television Pty Ltd (No 2) [2010] NSWADT 198, at 53. This case is the most heinous decision, for it was based on prejudice, which caused great miscarriages of Justice. The decision was already made by the tribunal for it gave permission for the application for cost where that should have been refused and it was erred. In this case, the law is quite clear that each party pays its own cost, Mr Ekermawi was ordered to pay cost where cost was not due; the case was erred, as it was a false conviction, unjust and miscarriage of justice. In the one hand he was informed that as a Muslims he has no standing, yet it appears then, that he has standing when it comes to ordering him to pay cost for the same case. Especially when in Ekermawi v Harbour Radio Pty & anor [2010] NSWADT 145; at 42, 66 and 67, in the Tribunal reason for the 3.5 days of hearing the Tribunal never said anything about Mr Ekermawi's wasting the ADT time or his claim was vexatious or misconceived.. In this case the Tribunal has claimed that the person that was vilified was a Pakistani Muslim, Mr Ekermawi as a Palestinian Muslim he has no standing. The Tribunal has completely ignored that; Mr Mamdoh Habib the Guantanamo detainee is an ethnic Australian Palestinian Muslim, and those who were stated in Alan Jones statements that was read on 2GB, said; Arabs, Sheiks and Imams and others including Mr Ekermawi are **a group of Ethno-religious origin that shares a common religious and cultural identity.**

e) In Trad v Jones (No 3) [2009] NSWADT 318; in this case the Tribunal were unable to differentiate between a person or group of persons on the ground of race turning vilifications against the groups into only religious, where a religion is not a protected attribute by the Act. Further the Tribunal demanded from Mr Trad that he must associate his religion with his nationality to trigger the Act under race in s4(1), that was erred, Muslims don't have to do that and they remain to be persons member of the group which triggers ss20 and 7(1).

There is no where in **Ekermawi v Nine Network Australia Pty Limited [2019] NSWCATAD 29 a claim against the religion;**

22. Australia could never be a true democracy while some of its citizens are not entitled to equal opportunity.

23. Why the Fed and NSW Governments are treating Australian Muslims as second citizens serving them with injustices?

24. It’s not about racist individual; it’s about institutional racisms, Politicians, the Media, and Courts who appears to condone (gives licence) to right wing fanatics like they had been trained by the Aryan Nation.

Conclusion

25. The writer are grateful for the opportunity to make his submission and, subject to the matters outlined above, commend the Bill in seeking to address a significant abnormality and position in NSW whereby there is an absence of adequate and appropriate legislative protection against discrimination by the Courts and Tribunals based on a person’s and the groups religious identity and or belief. Legal protections of Australian Muslims and other minorities must be very clear without ambiguity. And that compensation and an apology must be mandatory.

26. That the NSW Parliaments must reaffirms that all forms of bigotry are unacceptable and calls upon all leaders across a civil society to condemn the disgraceful racisms rise of anti-Muslims in our society.

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27. If the Joint Select Committee requires further information or has any questions or clarifications, I would be pleased to address any request or issues.

Yours Faithfully

Sam Ekermawi

21 August 2020