

**Submission
No 136**

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

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Religious Freedom in NSW

Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

A Submission

Discrimination on the grounds of religion is to be deplored as intolerant and detrimental to the well-being of a cohesive pluralist society.

However, in Australia, there is nothing that restricts a person from the personal practice of their faith, and nothing from which churches and other religious bodies need protecting. This is true also of the current situation in New South Wales.

THE CURRENT SITUATION

The current relevant NSW legislation, the Anti-Discrimination Act, NSW 1977 ('ADA') makes discrimination on the basis of race, sex, marital status, pregnancy, disability, carer's responsibilities, age, sexuality, HIV status or transgender status unlawful in a number of specified areas, including employment, education, provision of goods and services, accommodation. It is also unlawful to victimise a person who has made a complaint of discrimination or to vilify a person on the grounds of race, sexuality HIV status or transgender status.

Regarding protection to persons of religious faith, the ADA states in s56 that:

"Nothing in this Act affects –

- a) The origination or appointment of priests, ministers of religion or members of any religious order;
- b) The training or education of persons seeking ordination or appointment as priests, ministers of religions or members of a religious order;
- c) The appointment of any other person in any capacity by a body established to propagate religions, or
- 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."

Further, S57 states that:

"Nothing in this Act affects –

- a) Any rule or practice of a body which restricts admission to membership of that body, or
- b) The provision of benefits, facilities or services to members of that body."

In s57, the term "body" is defined relevantly as "a body, the activities of which are carried on otherwise than for profit and which is not established by an Act"

Thus, the combination of ss56 and 57 means that:

- a) Activities in the areas otherwise covered by the ADA, but which come within the terms of s56 are not unlawful.
- b) Churches and other religiously-related bodies can control the training and education of their ministers and others appointed "in any capacity" by a religious body;
- c) Any act by a religious body "that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion" is protected under the ADA even if it would otherwise offend the ADA.
- d) It is not any and every activity by any person who claims to be acting in the name of religion that is protected from being unlawful. This is a safeguard, as it means that individuals, who may or may

not be mentally well, and who may or may not be deeply learned, wise or generous in their understanding of their own faith cannot discriminate against others on the grounds set out in the ADA with impunity.

- e) The present ADA reflects a careful balance of the needs of a multicultural, multi-religious, multi-ethnic society, which promotes tolerance and respect.

In summary, there are sufficient protections for religious people and organisations embodied in the ADA as it stands.

THE AMENDMENT BILL 2020

This Bill is not necessary or desirable for the people of NSW and could cause division, distress and unforeseen consequences.

With the existing Act (ADA) there is an objective test as to what conforms to the doctrines of a particular religion, so that if found that a particular practice of a person does not conform to the doctrines of that person's religion, then it will not be protected. However, with the proposed Amendment Bill, the test becomes very subjective, and the belief or practice in question does not have to be generally part of the person's religion: so long as a person holds any religious view that they assert to be their "sincere belief" they cannot be treated less favourably because of it in the realms of supply of goods and services, education and in other areas.

Consequently,

- This Bill enables every view that can be characterised by the adherent as "religious" to become a basis for an anti-discrimination action.
- Any individual (person A), claiming a "sincere belief", can engage in any conduct (s22K(J) including writing, teaching, disseminating publications in the name of religion, and if another person (person B) treats person A less favourably than others without such a belief, then person B could be accused of discriminating against person A and an anti-discrimination claim brought against person B. If a person's beliefs (which could be also politically extremist, e.g. Muslim Brotherhood, or some strange cult or sect), can be characterised as "religious", they can form the basis of an action against another person or entity.
- If a religious movement has views about matters such as vaccination, western medicine generally or alternative healing practices, then if these views form part of their religion, this Bill could result in organisations that did not agree with those views not being able to exclude a person with such views from joining an organisation and propagating those views.
- The Bill uses a very vague term "religious ethos organisation" which could be used by very extreme groups to hide behind.

It is not desirable for there to be legislative licence for every belief of every adherent of religion to be expressed in every context, regardless of impact upon others and the beliefs of others?

Sadly, this proposed Bill would inherently provide such permission for people to express nastiness, even bigotry, towards others on the basis of religious belief. It would be singularly unhelpful to provide more platforms in society for those who seek to denigrate, humiliate and offend others, appealing to 'religious belief' as the justification for doing so. This is highly detrimental to social harmony and cohesion.

The Bill intends to protect religious people from being discriminated against because of their religious beliefs. For example, if it becomes law, a person, who says “ I believe that God wants homosexual people to go to hell” and seeks to enrol in an educational institution, could not be denied enrolment on the grounds that he/she may insult or greatly upset other students by expressing such views on social media or in the classroom. Do we want to provide more platforms in society to those who seek to denigrate, humiliate and offend others on grounds already protected by the ADA?

Further, S22Y of the Bill provides that it is unlawful for a registered club to discriminate against a person who is not a member of the registered club by denying the person’s application for membership and/or denying the person access to any benefit provided by the club. Thus, where a person (person A) applies for membership of a club and the ‘religious’ views of person A are highly opposed to the likely views of the existing members of that club, that person cannot, if the Bill were passed, be refused admission to the club. This would enable people who wished to stir others up to demand membership of clubs with which they disagreed on religious grounds.

On the other hand, rather paradoxically, the Bill will give religious bodies more extensive rights to discriminate on the basis of religious belief, so that actions that are currently illegal under anti-discrimination law could become lawful if done because of religious belief. This would simply be a subtle way of providing religious bodies and individuals with ‘exemptions’ from otherwise applicable anti-discrimination provisions, and therefore the Bill should be rejected on the grounds that the such ‘exemptions’ would be morally objectionable.

Ultimately, this Bill may have the unintended consequence of bringing religion into disrepute, of leading to greater anti-religious hostility in the broader society, and also of creating divisive sectarian intolerance between and within religious bodies.

SUMMARY

This Bill is not required. There are already sufficient protections under the law, in the ADA, for religious organisations and individuals to express our religious faith, and legislation that might open the possibility of more religious intolerance and sectarianism is highly undesirable.