

**Submission
No 192**

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

Organisation: Australian Sikh Association

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

Dear Joint Select Committee,

We¹ thank you for the opportunity to make this delayed submission or a brief in respect of the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the **Bill**). Our interest in commenting on this Bill relates to the paramount importance of the protection of the right of freedom of religious belief and practice for Australian residents of Sikh faith and the efficacy of this Bill in doing this.

Who We Are?

1. The Australian Sikh Association Limited (**ASAL**) is the pre-eminent representative body for the Sikhs in Australia. It has over 2,000 registered members in the Sydney metro area alone. Weekly congregation of the Gurdwara Sahib Glenwood in NSW (the Sikh Centre which ASAL is entrusted to operate) ranges between 3,000 and 10,000, depending on the time of year.
2. ASAL is responsible for operating the Gurdwara Sahib Glenwood in NSW and other charitable, social, sporting and educational programs and activities which are accessible to all Australians, as listed in the ASAL Constitution.
3. Its established purposes are charitable include; to promote an understanding of the Sikh philosophy, identity, religion and culture in Australia and to make representations to the Government and other organisations on matters affecting the Sikh faith at local, state, federal and international forums.
4. ASAL has been highly active in promoting charitable activities for the Australian communities. We have donated generously during each flood and bush fire crisis and not to mention the recent Covid-19 pandemic where we have been distributing free food packets and grocery hampers.

¹ Australian Sikh Association Limited, Glenwood, NSW

Most recently we have donated generously to the Westmead Children Hospital for their procurement of Vital Sign Monitor.

Who are Sikhs?

5. A Sikh is any person, who faithfully:
 - believes in the existence of One Eternal God;
 - follows the teachings of, and accepts as their only Spiritual guide, the Holy Sikh Scripture “Sri Guru Granth Sahib Ji” and the ten human Gurus;
 - believes in Amrit Sanchar (baptism) as promoted by the tenth Guru

Three Pillars of Sikhism

6. Sikhism is based on adherence to a personal discipline and development of a strong family life and at the same time to support the weak and needy around them. This is possible because the Sikhs believe and practise:
 - Naam Japo (live as per the guidance of Sri Guru Granth Sahib Ji);
 - Kirat Karo (earn an honest livelihood); and
 - Vand chhako (share earnings with the needy).

Five K's in Sikhism

7. A baptised Sikh, is required to observe essential principles of carrying a **kirpan** (sword), maintaining **Kesh** (uncut hair), wearing a **Kara** (steel or iron bracelet), carrying a **Kanga** (wooden comb) and wearing a **Kacchaera** (cotton underwear).
 - Kesh is the keeping of one's hair uncut. Hair on any body part is never trimmed or cut for any reason. It is a gift from God. It is the first and foremost duty of a baptised Sikh to keep his or her God-given form intact. This is a requisite and an inviolable vow. The uncut head hair must be kept wrapped in a Turban.
 - The Sikh Turban is an outward commitment of the mission given to all Sikhs to stand for truth, against tyranny and to protect the weak – and by doing so, to uphold liberty, equality and fraternity.
 - A Sikh person who wears a Turban is not permitted to be seen in public without a Turban, or to be seen to remove their Turban in public. In this way, the Turban is not an article of clothing, it is in fact part of one's *being* a Sikh.

- The Sikh Rehat Maryada is the Sikh Code of Conduct. It provides that a Sikh is to wear a Turban and not any other headwear. It is endorsed by the Akal Takhat Sahib, which is a 400 year old temporal seat for Sikhs that was set up by the 6th Sikh Guru (or spiritual and temporal leader).
- Indeed, the head of the temporal Sikhs, the Akal Takhat, has stated a Sikh person is only to wear a Turban on their head and is not permitted to wear a helmet under or over their Turban.² And these five K's must be worn by a baptised Sikh at all times.
- Removal of a turban in public for Sikhs is considered an equivalent to a strip search. Baptised Sikhs do not smoke or consume alcohol.
- Not all Sikhs follow the five K's or carry a kirpan. Though they may wear a turban but not carry a kirpan.

Current Crisis and challenges

8. Presently, there exist aspects of Australian law which fail to protect these basic rights for the Sikhs. For Australian Sikhs, these include aspects of the law which require the removal of a Turban and a Kirpan and at times cutting of hair.
9. We understand that Australia is a party to the International Covenant on Civil and Political Rights (**Covenant**) and as such is legally bound to enact laws which are consistent with a number of Articles of the Covenant - which together recognise an individual's right to freedom of thought, conscience and *religion or belief*. Fundamentally, to not have an enshrined protection of the right to freedom of religious belief and practice in Australia at a Federal level and at a State level is a failure to recognise the indivisible and inalienable nature of human rights.
10. While, this Bill endeavour to protect the fundamental human right of freedom of religion of all Australians in certain areas of public life. However, we believe that further clarification is essential to ensure consistent application of the protections intended by this Bill to all Australians. The Bill should be properly balanced to achieve its intended outcome, neither more nor less. The Bill should not favour any group.
11. In particular this Bill should also consider other instruments in addition to the Covenant, the Siracusa Principles and other Acts.³ For example, in resolving any dispute of a subject from Sikh religion, consider using an Expert Panel from ASAL to guide you on the application of Sikh principles in resolving the issue. Before making any decision on the breach of

² Sikh Regiment participated in the World War I and World War II with the British Army with their turbans, the Sikh Regiment didn't wear any helmets. This is also evidenced in the Battle of Saraghari fought in 1897 where the Sikh soldiers fought for the British Indian Contingent.

³ The Bill, Section 3 (1) to 3 (3)

religious beliefs it is recommended that you involve a panel of experts who are well verse with those religious principles and beliefs.

12. The Sikh persons continue to be readily identifiable by their names, appearance, dress and their places of worship. The discrimination which they experience threatens their freedom to express their religious identity, creates significant stress for their children and erodes their sense of security and belonging. School kids are subject to the acts of discrimination and bullying due to their unique appearance.

13. When it results in mistaken identity; the psychological impacts are lasting when there are attacks on our places of worships.

14. Sub section 22N(6) in the Bill should be considered thoughtfully to remove the factors stated in section 22N(6)(b)(i) and (ii). An assessment of the lawfulness of otherwise of any prohibition of the wearing of religious symbols and clothing with reference to factors such as workplace safety, productivity, communications and customer service requirements of that employment and the industry standards of that employment, are broad and without constraint. Reference to such broad factors may have a disproportionately detrimental impact on a Sikh Man and a Sikh Women who wear the turban as one article of faith, has long uncut hairs, which in turn would make it more difficult for Sikhs to engage in such employment. This should be considered with some workaround and by making some workable solutions mutually agreeable to all the stakeholders.

15. The requirement is strict and makes it impossible for a Sikh person who wears a Turban to comply with the *Road Rules 2008* (NSW) which provide at rule 256 that a rider of a bicycle which is not parked must wear an approved bicycle helmet securely fitted and fastened on the rider's head. This is compulsory unless the rider is exempt from wearing a bicycle helmet under another law of the jurisdiction. There is no law in the jurisdiction of NSW which expressly exempts a Sikh person who wears a Turban from the requirement in the road rule.

16. The Kirpan must always be carried by a baptised Sikh to remind him or her of their duty to uphold and defend the truth courageously. It is like a miniature steel or iron sword and is kept in a protective scabbard and held in a cloth holster on the body.

17. Clearly, a more even balance must be struck between the public interest of safety and the right of the individual to practice his or her faith, which is of itself in the public interest of maintaining a free and civil society.

Personal Experiences

18. Regrettably, we see daily examples of religion-based discrimination against Australian Sikhs due to their turbans and due to their kirpans they

are not allowed in the premises unless they remove it, or they replace their turbans with either a hard hat or a helmet.

19. Our kids are not getting admission in either private schools or catholic schools because of having long hair covered with a turban and the school uniform policy does not allow the student to have any headgear other than a school cap or school hat.

20. Definition of "religious ethos organization"⁴ should be limited to organizations that teach/practice faith i.e. churches, mosques, gurdwaras and temples etc. and should not be extended to, schools, colleges, hospitals and businesses inspired by religion. Unless the school is a weekend community school being operated to promote their own mother tongue and teach their religious beliefs.

- Religious organisations should be free to recruit employees from their own faith if it relates to propagating and teaching the principles of their own religion
- Private hospitals that run under a charity should be open to provide treatment to the wider Australian communities subject to their service charges. It should not be limited to the patients of their own faith.

21. We are aware of another discouraging example of religion-based discrimination that occurred in 2016 at NSW Parliament House in Macquarie Street, Sydney. Three Sikh youths (one female and two male, each aged 21) were refused entry into the NSW Parliament House to attend, rather ironically, an interfaith public event.

- The refusal was based on their carrying of Kirpans necessary to their religious beliefs and activities. Although the *Summary Offences Act 1988* (NSW)⁵ allows for a person that provides a 'reasonable excuse', to have in his or her custody, a knife in a public place or school, it is ambiguous as to whether carrying a Kirpan into a public place constitutes a the requisite 'religious purpose' of the type contemplated by the provision.
- Having been refused entry to an interfaith event, held at a public government building left them in a state of shock and disbelief.
- The three later were told that there existed a protocol which required Sikhs carrying a Kirpan and wanting to enter the NSW Parliament House building were required to obtain prior approval.

⁴ The BILL, Section 22K

⁵ The *Summary Offences Act 1998* was amended to include Section 11C (2) (a) (vii) of the *Summary Offences Act 1988* states, "without limitation it is a reasonable excuse for the purposes of this section for a person to have custody of a knife if: (a) the custody is reasonably necessary in all the circumstances for any of the following: (vii) genuine religious purpose.

22. Although this is an accommodation, it again demonstrated the urgent need for legislation supporting a clear and consistent approach to allow for the movement of people of all faiths throughout public spaces, it would be relevant to spaces such as courthouses.

- Even for our attendance in the Parliament to represent the Australian Sikhs to discuss this Bill, we must get special permission to wear our kirpan.

23. This has led to many instances of discrimination based on religion which can be extremely degrading to the individual involved, to the Sikh community as a whole and therefore detrimental to the very fabric of Australian civil society.

24. As mentioned earlier, in NSW, a Sikh person is effectively prevented from riding on a bicycle owing to the notable absence of an exemption to the requirement to wear a helmet in the NSW road rules. This position is not only inconsistent with the position in the other States and Territories, but also with existing federal anti (race) discrimination laws which by virtue of section 109 of the Constitution of Australia render the NSW relevant road rule (rule 256) invalid.

25. Religion, religious activity or belief or conviction is not protected in NSW in any area of public life such as work, education, goods and services and facilities, accommodation, clubs and associations, requests for information, superannuation and insurance, access to premises, administration of laws and programs and sports. Nor are there any religious exemptions in those areas in NSW and (to varying degrees) in each of the other States and Territories.

26. Clearly, there is an urgent need for a harmonisation of the anti-discrimination laws in so far as they relate to the protection of an individual's right to freedom of religious activity and belief.

27. We are optimistic that the Bills (once enacted) will apply in certain areas of public life such that discrimination based on the Turban, the Kirpan or on the other mentioned essential articles of the Sikh faith will not be permissible unless an exception or exemption applies which is justifiable in the law of court.

28. Overall this Bill should protect persons wearing religious clothes in case there is an accident and employer or any statutory body does not shrug off their responsibility under the guise that there would have been lesser injury or damage if these clothes were not worn.

ASAL commends the Joint Committee for conducting inquiries into these important issues. This submission or brief represents the preliminary

views of the ASAL. Subject to the foregoing comments and highlighted recommendations, the ASAL supports the Bill. We would appreciate the opportunity for continued engagement with the Joint Committee on this Bill and welcome any requests for clarification or further information.

Yours sincerely,

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