

**INQUIRY INTO ANTI-DISCRIMINATION AMENDMENT
(COMPLAINT HANDLING) BILL 2020**

Organisation: FamilyVoice Australia

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SUBMISSION

Into The

Anti-Discrimination Amendment (Complaint Handling) Bill 2020

By

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1. Bill Overview

The object of this Bill is to make further provision with respect to the declining of certain complaints by the President of the Anti-Discrimination Board and to remove the requirement for the President to refer certain declined complaints to the Civil and Administrative Tribunal.

2. Submission Overview

FamilyVoice Australia welcomes Mark Latham MLC's long overdue Religious Freedom and Equality Bill which will strengthen the NSW Anti-Discrimination Board complaints handling process.

The Bill is based on the recommendations of the Ruddock Religious Freedom Review recommending the amendment of the anti-discrimination laws to render it unlawful to discriminate on the basis of a person's religious belief or activity, including on the basis that a person does not hold a religious belief.

Our understanding is that the purpose of the Bill is to extend anti-discrimination protections in NSW beyond existing categories of citizenship (gender, sexuality, race, disability, etc.) to people of religious faith.

FamilyVoice is calling on all NSW political parties to allow debate and a conscience vote.

The Latham Bill is critical for all NSW Australians in the wake of the recent decision in which the anti-discrimination board rejected a complaint filed by an LGBTIQ+ activist.

We totally support the amendments which would compel the President of the Board to decline vexatious claims or claims against people with cognitive impairment. [see Almost 100 complaints against John Sunol, a brain-damaged man from Newcastle]

In making determinations about vexatious claims, the President will be required to consider the number of complaints lodged by the complainant and whether the subject matter of the dispute has been resolved elsewhere.

The Anti-Discrimination Board has long been the body of choice for frivolous, vexatious, and malicious complaints because of its lack of rigour in rejecting

complaints. The Latham Bill is an overdue improvement to the complaints process given that complainants have used the NSW Civil and Administrative Tribunal to satisfy their personal vendetta or political motives with the complainant bearing no personal cost to do so.

The Christian and conservative communities of NSW have been the victims of the current process which has been used as a political weapon by ideological opponents to natural law.

FamilyVoice confirms its support and will urge the NSW government and the Opposition parties to support Latham's Bill which is a marked improvement over the status quo.

3. Key Points in Support of the Bill

- FamilyVoice Australia welcomes Mark Latham MLC's long overdue Religious Freedom and Equality Bill which will strengthen the NSW Anti-Discrimination Board complaint handling process.
- FamilyVoice Australia has always supported freedom to express beliefs on social media as in the case of Israel Folau.
- The NSW Anti-Discrimination Board's recent decision to throw out a further and vexatious case against Mr Folau supports the reforms proposed by the Hon. Mark Latham MLC.
- Mr Latham's anti-discrimination reforms will reject claims by gender and political activists which are merely politically motivated vexatious complaints.
- Activists are using the legal system to try to score the political points they cannot achieve by democratic means, or even worse, they are using the legal system to try to destroy their opponents financially to break them with the cost of using lawyers and going through tribunals to defend themselves. See Garry Burns v. Bernard Gaynor case.
- The proposed ill through the anti-discrimination system aim to end vexatious complaints against innocent NSW Australians who have been relentlessly hunted by gender and political activists.
- The NSW government's Premier Gladys Berejiklian must support the private member's Bill on religious freedom that would prevent future cases such as the banning of Israel Folau from rugby union over his faith-based social media posts about people who flout the moral law of Scripture, including homosexuals.
- Mr Latham's proposed amendments to the Anti-Discrimination Act must be supported in the same way that Alex Greenwich moved a private member's Bill to decriminalise abortion, on which Ms Berejiklian allowed debate and a conscience vote.
- In relation to situations such as Folau's, we need penalties in the Bill for any sacking of a worker for their religious beliefs.
- Consideration must be given to providing appropriate exceptions and exemptions for religious bodies, religious schools, and charities. The growth of employment contracts (linked to vague concepts of employee obligations to corporate image diversity etc) used by employers to limit the religious freedom of staff in their private lives away from the workplace must stop.

- FamilyVoice understands that the courts have in the past limited religious freedom claims by denying that a claim is religious in nature, substituting their own views for those of the religious believer. The draft Bill guards against judicial activism of this kind.

4. SPECIFIC COMMENTS ON THE ANTI-DISCRIMINATION AMENDMENT (COMPLAINT HANDLING) BILL 2020

FamilyVoice is of the view that The Anti-Discrimination Amendment (Complaints Handling) Bill 2020 will achieve the following:

1. The bill repeals section 93A of the Anti-Discrimination Act such that in future referrals and appeals to the New South Wales Civil and Administrative Tribunal [NCAT] for matters discontinued during board investigations will no longer be possible. This brings the Act into line with section 89B (4).
2. The bill will consider changes in the social media environment regarding posts made by individuals privately and in private personal time.
3. We understand that the bill ensures complaints cannot be accepted against people who have exemptions in other parts of the Act, for example, churches and those who preach in them, as per the Israel Folau example. If a complaint is lodged, the President of the ADB must refer to other parts of the Act and ensure exemptions do not apply before accepting such a complaint.
4. Under proposed section 89B (2) (1) the President must decline a complaint if satisfied "the respondent has a cognitive impairment and it is reasonably expected that the cognitive impairment was a significant contributing factor to the conduct that is the subject of the complaint." If a complaint is lodged, the board president should not accept it if it is known that the respondent has an intellectual disability, a developmental disorder including an autistic spectrum disorder, a neurological disorder, dementia or a brain injury [see case of John Sunol, a brain injured man from Newcastle].
5. The bill adds clarifying clauses to section 89B (2) governing the acceptance or declining of complaints by the President. The Latham bill proposes to adopt the standard threshold provisions that are operational in other States and Territory.
6. The bill seeks to strengthen the obligations of the President in declining and discontinuing complaints. In relation to sections 89B (2) and 92 (1) it is proposed to change the current, discretionary wording "the President may" to bring it into line with interstate practice, that is, to make a more definitive provision whereby "the President must" follow the requirements of the Act in ruling out complaints. We understand that this bill will not affect any complaint currently lodged with the Anti-Discrimination Board. It has no retrospective provisions. It takes effect only when it passes into law.

5. FURTHER OBSERVATIONS AND RECOMMENDATIONS

While we support the move to require the President of the Anti-Discrimination Board to reject claims that are frivolous, vexatious, misconceived or unsubstantial, we recommend a rejection of cases that are clearly mercenary. In a recent rejection of the action against Israel Folau by Garry Burns, the Anti-Discrimination Board rightly threw out the case as vexatious since it was founded on a collateral purpose, as a means to pressure the respondent to settle.

Since mercenary cases should not be considered by the Anti-Discrimination Board, its President must be required by black letter law to refuse such actions. While FamilyVoice Australia does not approve of the use of anti-discrimination remedies to alleged instances of injustice, and although it does not support the use of quasi-judicial tribunals, any reform of their process is welcomed. Anti-discrimination legislation is a fundamentally flawed approach to handling the healthy tensions that arise in society as people engage in dialogue. However, while such tribunals and processes persist, their reform, as far as can possibly be achieved, is needed.

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