



20 October 2023

New South Wales Law Reform Commission
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**SUBMISIONS BY
THE CATHOLIC WOMEN'S LEAGUE AUSTRALIA- NEW SOUTH WALES INC
ON THE ANTI-DISCRIMINATION ACT 1977 (NSW)**

Thank you for the opportunity to contribute to this review of the *Anti-Discrimination Act 1977 (NSW)* and for the extension given to provide our submissions to you by 20 October 2023.

About the Catholic Women's League in New South Wales:

1. Catholic Women's League Australia – New South Wales Incorporated (CWLA-NSW) has been present in New South Wales for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1600 active members in the seven (7) Catholic dioceses in New South Wales. Our organisation fosters the spiritual, cultural, intellectual and social development of women and promotes the role of lay women in the mission of the Church.
2. This submission is made on behalf of CWLA-NSW, a member organisation of the Catholic Women's League Australia Incorporated (CWLA), the national peak body representing the League's six member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

Executive summary:

The submissions of the CWLA-NSW focus on the need to ensure that there is legal protection in New South Wales law for freedom of conscience. It therefore focuses on the question within the terms of reference as to whether the range of attributes protected against discrimination requires reform. Our submissions can be summarised as follows:

1. That the *Anti-Discrimination Act* be amended to include conscience and religion as protected attributes as laid down specifically in International Declarations such as:
 - i) The Universal Declaration of Human Rights 1948; and
 - ii) The International Declaration on Civil and Political Rights.
2. That the term ‘conscience’ be interpreted broadly enough to reflect the Catholic adherence to conscience and the observances of our Catholic faith in accordance with the unbroken tradition of Catholic Teaching. This understanding of ‘conscience’ reflects the historical contribution of human conscience attributes within the development of the moral precepts of civilizations, including the foundational principles the Judeo-Christian tradition, and of the guiding international conscience underlying international declarations.
3. That should conscience be added as a protected attribute under the *Anti-Discrimination Act*, then where the manifestation of a Catholic person’s conscience arguably conflicts with another protected attribute such as that of being a transgender person, or the ground of homosexuality, that exemptions (or clarification by way of a note) be inserted so that the manifestation of Catholic teachings on such matters by Catholic persons, organizations or faith-based institutions are not deemed to be behaviour consistent with ‘vilification’ or ‘hate speech’, or unlawful discrimination.

Submissions in relation to making ‘Conscience’ a protected attribute:

1. CWLA-NSW submits that the Act be amended so that conscience and religion are deemed to be protected attributes under the Act. This is a long overdue reform that would bring the NSW Legislation into line with other jurisdictions of Australia which protect conscience and/or religion as an attribute. It would also be in line with international human rights law and declarations, where freedom of thought, conscience and belief are considered to be fundamental, inviolable human rights, which are congruent with the Catholic perspective on conscience and its importance to human dignity and freedom.
2. We would be grateful if the Commission would take into account what the Catholic Church teaches on conscience. The Catholic Church upholds the awareness of the exalted dignity proper to the human person, who stands above all things and has universal and inviolable rights and duties. This concept and dignity of the human person requires that their right to conscience is respected:

There must be made available to all men everything necessary for leading a life truly human, such as food, clothing and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, to appropriate information to activity in accord with the upright norm of one’s own conscience, to protection of rightful freedom even in matters religious. Gaudium et Spes 1965

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3. The Catholic Church constantly upholds that man has the right to act in conscience and in freedom so as to personally make moral decisions.¹ This attribute of each man and of each woman, developing and responding to an inner conscience reflects the discovery of a law which he has not laid upon himself:

Its voice, ever calling him to love and to do what is good and to avoid evil, sounds in his heart...His conscience is man's most secret core and his sanctuary'
(Catechism of the Catholic Church 1776).

4. The Universal Declaration of Human Rights, 1948 delineates these rights:²

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 18: Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom...either alone or in community, with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

5. The International Convention on Civil and Political Rights (ICCPR) Article 18(2): confers protection on its signatories for freedom of thought conscience and religion.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.'

And further:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

6. Proper to the human attribute of dignity is the requirement for each person to take responsibility for his actions and to engage with and respond to the just judgment of conscience.³ This is an age-old concept, integral to human nature. From ancient times cultures and civilizations record the quest for the recognition, discernment and passing on of moral thinking. Herodotus records that youth were trained to 'ride and shoot with a bow...and to speak the truth'⁴, from age five to age 20; the Code of Hammurabi crafted a manual of ethics to imbue human decisions; fifth century Joannis Stobaeus set forth the joys of a good conscience and the sorrows of an evil one in his collection of excerpts of Greek poetry and prose, in which the key to true freedom is described as 'a good conscience'⁵. Confucius laid a high moral concept as

¹ Catechism of the Catholic Church 1782.

² United Nations General Assembly Paris 1948 Resolution 217

³ Catechism of the Catholic Church 1781

⁴ Herodotus: on the Customs of the Persians

⁵ Thomas Gaisford: Joannis Stobaeus

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did Aristotle and Plato, and pre-dating these, the Mosaic Law. The internal compass of man has long been sought and developed and its eternal links have been acknowledged and drawn within cultures and civilizations apart from our own.

Submissions in relation to preserving the current definition of ‘woman’, the role of conscience, and the potential conflict this may have with the protected attribute of being a transgender person:

1. The attribute of sex is protected under the Act where the definitions of man and woman in section 23 are consistent with the understanding of sex as being either male or female. Elsewhere in section 38A and following, the Act refers to the ‘opposite sex’, which implies there are only two sexes, and the balance of Part 3A of the Act refers to ‘him’ and ‘her’ which again reflects a binary worldview on sex.
2. This worldview is also supported by the teachings of the Catholic Church (and wholly endorsed by CWLA-NSW) which provides that:

God created man in His image; in the image of God he created him; male and female He created them’. (Gen 1:27; cf Gen. 5:1-2.) According to the Scripture therefore the Imago Dei manifests itself at the outset in the difference between the sexes.’ and “In creating the human race ‘male and female’ God gives man and woman an equal personal dignity, endowing them with the inalienable rights and responsibilities proper to the human person”... Persons created in the Image of God are bodily beings whose identity as male or female orders them to a special kind of communion with one another. ⁶

3. Should the definition of man and woman be amended to include a transgender worldview where sex and gender identity are intertwined so that a person can change their sex based on ‘self-identification’, and/or that their gender identity includes a category of sex other than male or female, then there are a number of consequences that flow from this that require the Act to expand the scope of its exceptions so that the freedom to believe the binary understanding of sex is preserved either as a specific exception, or as part of the protection of freedom of conscience/ freedom of religion.
4. People who disagree with the ‘transgender worldview’ and are honestly and firmly convicted that sex is binary and immutable should not be found to have unlawfully discriminated against a transgender person and be subject to a penalty or be found guilty of vilification or hate speech for expressing this view in a respectful manner.
5. As an example, section 38M covers the provision of goods and services and makes unlawful a person who discriminates against another person on transgender grounds by refusing to provide the person with those goods and services or in the terms on which the other person is provided with those goods and services.

⁶ Communion and Stewardship: Human Persons Created in the Image of God. International Theological Commission. 33.

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6. Arguably, a medical doctor who refuses to prescribe medication or treatment to a transgender person on the basis that the transgender person who identifies as the opposite sex is not really of the opposite sex, has treated the transgender person 'less favourably' than they would a person who is not transgender and is in fact of that sex. The conclusion that the doctor in this instance is a perpetrator of unlawful discrimination is absurd. Other examples can be supplied.
7. Division 3 of the Act focuses on exceptions to Part 3A but is confined to superannuation and sport where failure to treat the transgender person as being of the opposite sex with which the transgender person identifies is not considered to be unlawful discrimination. Whether or not the definitions of man and woman are amended, which the CWLA opposes, these exceptions should be broadened to conform to the logic and rationale for why these exceptions exist at all. For reasons of public health and safety, they ought at the very least to apply to the provision of medical services.
8. Section 38S provides that transgender vilification has occurred when a person, by way of a public act, incites hatred towards, serious contempt for, or severe ridicule of a person on the ground that the person is a transgender person, or a group of persons on the ground that they members of the group are transgender persons.
9. There needs to be sensible discussion on what constitutes hatred, serious contempt, and severe ridicule so that merely expressing the belief either explicitly or implicitly that sex is binary and immutable is not considered to be unlawful and a crime. In addition, as the definition of a 'public act' under section 38R is non-exhaustive and incredibly broad, the section seems to infringe upon any expression of belief in the binary worldview of sex. This is an unjustified silencing of a reasonable belief that has existed for hundreds of years and not reflective of a civilised and truly tolerant democratic society.
10. Part 6 of the Act refers to general exemptions, but these are narrow in scope and in our submission are not broad enough to provide protection for people who subscribe to the Catholic Church's teaching on the body being either male and female and who may engage in acts that treat a person less favourably than in the same circumstances (or circumstances which are not materially different) than they would treat a person who he or she did not think was a transgender person, or fall within the definition of a 'public act' but he or she acts as an individual and does not fall within the definition of a religious body, voluntary body or faith-based organisation.

Submissions in relation to conscience, and the potential conflict this may have with the protected attribute of homosexuality:

1. Part 4C of the Act refers to a person's homosexuality as a protected attribute. This raises similar concerns as expressed above for the potential conflict that might exist where a Catholic person manifests the Church's teaching on this subject and their communication is deemed as 'vilification' or 'hate speech'.

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2. The Catechism of the Catholic Church teaches of homosexual activity:

Basing itself on sacred scripture, which presents homosexual acts as acts of grave depravity (Gen 19:1-29; Rom 1: 24-29; 1 Cor:6:10; 1 Tim 1:10), tradition has always declared that "homosexual acts are intrinsically disordered". (Congregation for the Doctrine of the Faith persona humana 8). They are contrary to the Natural Law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.⁷

3. At the same time the Catholic Church also teaches:

The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided⁸. However, the Church further teaches that 'homosexual persons are called to chastity.⁹

4. Hence the Catholic Church, and families within her, reserve the right to uphold these precepts in the education of youth, both in the home and in the Catholic schooling system. Upholding these moral guidelines in discourse and in raising their children is the right and duty of Catholics, in accordance with conscience. They are not upheld to discriminate or to dishonour homosexual individuals, who are at all times to be treated with love and respect.
5. All Christian denominations and all faiths have a right to conscience. We should have a right to express our conscience, to discuss conscience, to inform conscience, to debate conscience and to teach the formation of conscience to our youth. We should have a right to live by conscience. This right and its associated obligations should be protected by the Anti-Discrimination Act 1977. As such, any amendments should not conflict with the rights of Catholic people to hold and teach these precepts to our children and youth to the extent that to do is considered a crime or unlawful discrimination. This especially applies to sections 3A, 38A and 49ZG.

Conclusion

1. Within the rights laid down and agreed to by Australia, the freedom to hold a belief is considered fundamental and inviolable. Any proposed amendments should not oppose or conflict with or condemn the practice and transmission of Catholic Teaching or Christian revelation, nor impinge on the rights to hold and teach and to hand on these precepts to our youth. In this we support the submissions made by 'Freedom for Faith'.
2. Assisting man and woman in the development of a responsive conscience is a law in his heart inscribed by God. He may also seek the wisdom and teaching of the ages, of

⁷ Catechism of the Catholic Church 2357

⁸ Catechism of the Catholic Church 2358

⁹ Catechism of the Catholic Church 2359

other minds enlightened and illumined by experience and witness to truth and to the supreme good, to which the human person is drawn. However, for Catholics it is not merely a law of the mind that he follows, but a law acknowledged deep in one's soul as the voice of God.

3. This attribute of conscience has hitherto been protected within International Declarations to which Australia is signatory. As the federal government has not yet been able to pass legislation to recognise and protect freedom of thought, conscience and religion, it is up to the State of New South Wales to fill the breach and in this regard, to reflect that as a multi-cultural/multi-faith society, we must find a way to co-exist so that the deeply held convictions of people of faith are respected and protected.
4. We are happy to expand on any of the matters raised above and thank you again for the opportunity to contribute to this important review of the *Anti-Discrimination Act 1977* (NSW).

Yours faithfully

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