



Submission to NSW Law Reform
Commission review of *Anti-Discrimination
Act 1977*.

The Presbyterian Church of Australia in the
State of New South Wales

29 September 2023

PO Box 2196, Strawberry Hills, NSW, 2012

Who we are

The Presbyterian Church of Australia in the State of New South Wales (PCNSW) consists of 186 pastoral charges spread through NSW. It is a community of about 35,000 people and has congregations from nine different non-English speaking cultures. It operates 6 schools, 5 pre-schools, and a theological college, aged care facilities, a hospital for children with severe disabilities and is active in providing disaster relief for communities in NSW.

By its constitution, the PCNSW holds to the Bible as its supreme standard in all matters of faith and life and holds to the Westminster Confession of Faith (read in the light of the Declaratory Statement of 1901) as a subordinate standard and an explanation of how we interpret the Bible. These doctrinal standards commit us to ethical standards, including views on marriage, sex and gender. The General Assembly of the PCA in 2019 adopted the “Statement on Sex, Gender and Marriage” which summarises these views.

This submission has been prepared by the Gospel, Society and Culture Committee of the PCNSW General Assembly.

For further information contact the convener of the committee, Rev. Dr. John McClean.

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Our Position

1. From Christian convictions we are committed to treating all people as equally valuable and deserving of dignity and respect, so we support legislation that seeks to circumvent discriminatory and vilifying behaviour towards others.
2. A healthy functioning pluralistic society requires positive protections for freedom of religion should be upheld in legislation. The Act should include religious belief and practice a protected attributes to protect both individuals and religious bodies.
3. Almost all religions have a communal aspect and this is certainly the case for Christians. The Anti-Discrimination Act only serves to protect freedom of religion if it offers protections for religious bodies and organisations as well as for individuals.
4. The Act should allow people with religious convictions and with no religious convictions, to express their views in their workplace, and protect them from coercion to limit their expression in order to protect employment. It should also protect employees from discrimination when their religious and other convictions limit them from participating in workplace activities that are not a required aspect of the business or service.
5. The Act should protect religious groups from discrimination in hiring facilities or using public spaces which are usually available to other groups for hire or use.
6. The current exceptions in the Act which allow churches to operate according to their convictions are important and must be retained.
7. The current exceptions in the Act allow church mercy ministries to function as an expression of a religious conviction and allow organizations to maintain their religious ethos in order to provide their distinctive service. These provisions must be retained.
8. The current Act allows schools in NSW established for a religious purpose to employ Christian staff who support their ethos. This allows families to access education which reflects their religious convictions.

The Presbyterian Church endorses the submission by Freedom for Faith.

Introduction

We welcome the opportunity to contribute to this preliminary discussion on ways in which Anti-Discrimination Law in NSW may need to be revised and updated. The changing nature of Australian society, particularly its growing diversity and multi-cultural character, necessitates the regular review of the legislative protections and freedoms we have in place. As a church, we are particularly concerned for freedom of religion and hope that New South Wales will continue to be a state in which there is wide freedom to hold and express religious views and to follow religious practices.

Support for Anti-discrimination legislation

One of the most basic tenants of the Christian faith is that all humans are equally valuable and are thus to be treated with dignity and respect. It follows that we adamantly support legislation that seeks to circumvent discriminatory and vilifying behaviour towards others. This position is held on the basis of our convictions about God, human life, religion and the common good. The Bible teaches that God, as author of life, stamps his image on each and every human being. Thus, we respect the dignity of humankind, which includes creating a space for the individual's expression of convictions, without fear of discrimination which would circumvent their full participation in society.

Positive protection for freedom of religion

For the healthy functioning of a pluralistic society that accommodates a variety of views, positive protections for freedom of religion should be upheld in legislation. This was a key point made by many faith groups, including the Presbyterian Church of Australia (PCA), to the 2018 Ruddock Review. The PCA submission states, "Freedom of religion is thus more than freedom to worship and belief; it must include freedom of speech, freedom of conscience, freedom of association and freedom of assembly. These rights are important for individuals, and for communities. Nothing is gained by limiting freedom of religion for the sake of social harmony, since this simply breeds resentment and disharmony. It is far better to allow people to express their faith, or lack of faith, as fully as possible in the expectation that they will learn to live together while recognising fundamental differences in worldview and ethical commitments. Freedom of religion serves the good of the whole of society."

Currently, the only protections for freedom of religion in NSW legislation is found in the general exceptions provided in the Anti-Discrimination Act. These are important provisions that allow religious bodies to function according to their own ethos. As such, they need to be retained in the Act. The Act does not, however, offer any positive protections of freedom of religion. It could and should do so by including religious belief and practice as a protected attribute in the Act. These need to protect both individuals and religious bodies.

The communal character of religion

One way in which we express our individual convictions is that we join communities and groups which share values. This is especially the case for people with religious convictions. Almost all religions have a communal aspect. For Christians, meeting together for worship and working together to care for one another and for the wider community is an essential expression of our faith. Thus the Anti-Discrimination Act only serves to protect freedom of religion if it offers protections for religious bodies and organisations as well as for individuals.

Freedom of religion

The current NSW Anti-discrimination Act provides protection from discrimination on the following grounds: race, including colour, nationality, descent and ethnic, ethno-religious or national origin, sex, including pregnancy and breastfeeding, marital or domestic status, disability, homosexuality, age, transgender status, and carer's responsibilities. While this includes "ethno-religious" as protected attribute, it fails to include religious convictions and practice directly. Many people hold religious convictions and participate in religious practices that have no particular tie to their ethnicity.

Article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a signatory, affirms "the right to freedom of thought, conscience and religion", including freedom to practice religion or belief "individually or in community with others and in public or private". Article 4(2) of the ICCPR affirms that Freedom of religion is one of the very few non-derogable human rights.

A review of the NSW Anti-discrimination Act must address this glaring gap in the legislation. The Act should prohibit discrimination based on religious convictions and practice, both for individuals and for communities. Such provisions should allow people with religious convictions and with no religious convictions, to express their views in their workplace, and protect them from coercion to limit their expression in order to protect employment. They should also protect employees from discrimination when their religious and other convictions limit them from participating in workplace activities that are not a required aspect of the business or service. These provisions should also extend to protecting religious groups from discrimination in hiring facilities or using public space which are usually available to other groups for hire or use.

As many Australian workplaces embrace a radically different worldview on issues such as sexuality, to that of the Judeo-Christian worldview, many of our people find themselves fearing that their employment or career advancement is at risk if they express respectfully traditional Christian values which may preclude their adherence to and participation in some aspects of the workplace ethos. Publicly practiced faith, where adherents feel free to express their convictions as *individuals* in both public space and the workplace, should be facilitated and encouraged. In a pluralist setting, the common, civic, good is served by transparency. This includes respect for individuals to abstain from

adhering to social ideologies which may contradict tenants of their faith. When legislation assumes that religion is essentially a private matter, people with religious convictions feel pressured to withdraw from public spaces in order to pursue their identity with integrity and authenticity. Or, at least religious people will tend to conceal their deepest convictions from public scrutiny. This creates a more fragmented population with diminished understanding of each other and undermines social cohesion and legitimate expressions of differing points of views; both necessary ingredients for a robust pluralistic society.

Church staff and membership

We are grateful for current exceptions in the Act which allow churches to operate according to their convictions., These allow churches to require those who work in ministry roles in churches to hold to classical Christian teaching on sexual ethics and marriage. Without the exceptions these requirements would conflict with the Anti-Discrimination Act. The Presbyterian Church of Australia only ordains men as ministers, again this would conflict with the Act apart from the exception provision. If the Act were to include religious belief and practice as a protected attribute, churches and other religious bodies would also have to be excepted from those provisions. A religious body cannot exist if it is not able to limit membership to those who share the same religious convictions and wish to partake in the same practices.

Schools and Mercy ministries

No religion can be constrained to private expressions of belief; all religious conviction will lead to some form of public expression. Therefore, the freedom of expression of religion will not be confined to private life and the context of religious services. The outworking of the Christian faith is in showing love to the community around us. This is why what we know as 'mercy ministries', such as the running of hospitals and other social services are an integral expression of our faith. These ministries are for the good of the whole society, that is, we do not discriminate about who is able to benefit. They are open to all. In the operation of such ministries managers or CEOs seek to maintain the Christian character of the organisation, through the employment of people who adhere to and/or support the ethos of the Christian faith. It is essential that the Act continue to allow for this. Since the provision of such services is an expression of a religious conviction, organization need to be able to maintain their religious ethos in order to provide their distinctive service.

This is of particular relevance and concern for our Schools. The provision of education has been a focus of the Presbyterian Church throughout history and is an obvious outworking of faith convictions. School Principals and boards need to be able to select staff who hold to the religious convictions of such schools, or who support the convictions and ethos.

Many Christians schools are attractive to families because they operate with a consistent Christian ethos and express a Christian world and life view in all aspects of school life. This cannot be maintained if schools can only prefer candidates with Christian convictions for a limited range of positions. For example, there are proposals that schools should only be granted exceptions from the Act in relation to senior leadership roles, chaplains and Christian studies teachers. However, this would not enable schools to maintain their total Christian ethos. The current Act allows schools in NSW that are established for a religious purpose to employ Christian staff who support their ethos. It also allows schools to expect students to behave in consistency with Christian ethical standards including Christian sexual ethics. Any changes to the Act should continue to enable schools to do this.

Conclusion

We are grateful to have the opportunity to contribute to this review of the Anti-Discrimination Act and we look forward to continuing participation in future discussions on these and other related matters.