



CHURCH OF SCIENTOLOGY
AUSTRALIA

**Preliminary Submission to the NSW Law Reform Commission's
*Anti-Discrimination Act Review (Terms of Reference)***

INTRODUCTION

The Church of Scientology Australia ("the Church") welcomes this opportunity to provide a preliminary submission to the terms of reference of the NSW Law Reform Commission's *Anti-Discrimination Act Review* ("the Review"), and we thank the Commission for their time in considering this submission.

By way of background, on 18 February 1954, Scientology's founder L Ron Hubbard published *The Creed of the Church of Scientology*. Encapsulating the Church of Scientology's views on human rights and the nature of Man, it is from this foundation we present this submission:

"We of the Church believe

"That all men of whatever race, color or creed were created with equal rights.

"That all men have inalienable rights to their own religious practices and their performance.

"That all men have inalienable rights to their own lives.

"That all men have inalienable rights to their sanity.

"That all men have inalienable rights to their own defense.

"That all men have inalienable rights to conceive, choose, assist or support their own organizations, churches and governments.

"That all men have inalienable rights to think freely, to talk freely, to write freely their own opinions and to counter or utter or write upon the opinions of others.

"That all men have inalienable rights to the creation of their own kind.

"That the souls of men have the rights of men.

"That the study of the Mind and the healing of mentally caused ills should not be alienated from religion or condoned in nonreligious fields.

“And that no agency less than God has the power to suspend or set aside these rights, overtly or covertly.

“And we of the Church believe

“That Man is basically good.

“That he is seeking to Survive.

“That his survival depends upon himself and upon his fellows and his attainment of brotherhood with the Universe.

“And we of the Church believe that the laws of God forbid Man

“To destroy his own kind.

“To destroy the sanity of another.

“To destroy or enslave another’s soul.

“To destroy or reduce the survival of one’s companions or one’s group.

“And we of the Church believe

“That the spirit can be saved.

“And that the spirit alone may save or heal the body.”

In seeking to realise the Creed, the Church advocates for the fair and equal treatment of all persons, of all backgrounds and faiths; we acknowledge the inherent dignity of all persons. We also recognise the essential role religion plays in the well-being of an individual’s life by providing meaning, purpose and opportunities for betterment, as well as the indispensable role it plays for the community in promoting social cohesion, morality and the care of the vulnerable.

The Church sponsors the not-for-profit human rights organisations *United for Human Rights* (<https://www.humanrights.com/about-us/what-is-united-for-human-rights.html>) and *Youth for Human Rights* (<https://www.youthforhumanrights.org/about-us/purpose-of-youth-for-human-rights.html>), whose purposes are to educate adults and children alike of their human rights, specifically the *United Nations Universal Declaration of Human Rights*, thereby driving awareness and positive change at a grassroots level. Combined, they provide, free of charge, illustrated booklets for children, in-person lectures, online courses, documentaries including “The Story of Human Rights” as well as short videos for each right, and human rights curriculums and educators’ kits for primary and secondary school age students.

It is our view that human rights, as defined in the Core International Human Rights Treaties, must be protected equally and for all people, and no one right may be subjugated to another.

Unfortunately, in its current form, the *Anti-Discrimination Act 1977* (NSW) (“the Act”) fails in this and treats religion as a second-class right by not protecting against religious discrimination; falling behind other Australian jurisdictions and expectations of the international community.

We are hopeful that the Law Reform Commission's Review will address this inequity in a manner that addresses persisting excuses or reasons thwarting including religious belief, expression and activity as a protected attribute in the Act.

On behalf of the Church of Scientology Australia, I am pleased to present the attached submission.

Yours faithfully,

Sei Kato
Church of Scientology Australia

29 September 2023

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PROTECTED ATTRIBUTES IN THE ANTI-DISCRIMINATION ACT

Terms of reference:

“1. Whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards

“2. Whether the range of attributes protected against discrimination requires reform”¹

RELIGIOUS BELIEF, EXPRESSION, AND ACTIVITY

Religion in New South Wales

In New South Wales, 4,817,692 people in 2021 identified with a religion.²

Notably, in 2021, over 2.5 million people reported an affiliation with “Other religions” nationally. This was an increase of approximately 617,800 since 2016. Since 1996, those identifying with “Other religions” has increased from 3.5 to 10 per cent,³ and we are told there are now 148 religions in New South Wales.⁴

Considering the range of matters currently covered by state, territory and Commonwealth anti-discrimination and equal opportunity legislation, religion in New South Wales is not on an equal footing. The Church is concerned that New South Wales is one of only two states or territories in Australia that has not legislated against religious discrimination.

We acknowledge the protection against discrimination for race, including ethno-religious origin; however, this protects only a limited number of people of certain faiths.

While the twentieth century saw the rise of anti-discrimination legislation in Australia, which has been an important and meaningful progression into a more welcoming, inclusive and tolerant culture, in New South Wales, a fundamental category, religion, has not been treated equally.

¹ NSW Law Reform Commission, ‘Terms of Reference’, *Anti-Discrimination Act Review* (web page, last updated 29 August 2023) < <https://www.lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/anti-discrimination-act-review-terms-of-reference.html> >.

² Australian Bureau of Statistics, *Religious Affiliation (Broad Groups) by State and Territory 2016 and 2021* (Spreadsheet, 4 July 2022) Table 1, Column B <<https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021/Census%20article%20-%20Religious%20affiliation%20in%20Australia.xlsx>>.

³ Australian Bureau of Statistics, ‘Growth in affiliation with Other religions’, *Religious affiliation in Australia* (web page, 4 July 2022) <<https://www.abs.gov.au/articles/religious-affiliation-australia#growth-in-affiliation-with-other-religions>>.

⁴ Multicultural NSW, ‘Our multicultural community’, *Communities* (web page, 5 May 2023) <<https://multicultural.nsw.gov.au/communities/>>.

The Right to Religious Freedom and Religious Discrimination

In 1983, Mason ACJ and Brennan J the High Court of Australia proclaimed:

“Freedom of religion, the paradigm of freedom of conscience, is of the essence of a free society. The chief function in the law of a definition of religion is to mark out an area within which a person subject to the law is free to believe and to act in accordance with his belief without legal restraint.”⁵

While Australia is a relatively tolerant nation for the most part, and fortunately it is not violent oppression that inhibits our free exercise of this right, there are a growing number of limitations imposed on the right to freely practice religion and to manifest one’s religious beliefs.

Articles 2(1) and 26 of the *International Covenant on Civil and Political Rights* proclaims that the right to freedom of religion deserves equal and non-discriminatory treatment and protection, as compared with other rights and protected attributes.

In the Joint Standing Committee on Foreign Affairs, Defence and Trade’s *Interim Report: Legal Foundations of Religious Freedom in Australia*, the Chair said:

“[T]he threats to religious freedom in the 21st century are arising not from the dominance of one religion over others, or from the State sanctioning an official religion, or from other ways in which religious freedom has often been restricted throughout history. Rather, the threats are more subtle and often arise in the context of protecting other, conflicting rights. An imbalance between competing rights and the lack of an appropriate way to resolve the ensuing conflicts is the greatest challenge to the right to freedom of religion.”⁶

The limitations to express their faith that religious people face are not as easy to readily see; discrimination is however awfully insidious. Discrimination against one’s right to freely manifest one’s religious beliefs is a serious violation of human rights, just as it is a serious violation of human rights to discriminate based on age, gender, disability, race, et cetera. No one but the holder of the beliefs can understand their importance and meaning. And no one but the victim of discrimination can understand the gravity and injury of each instance of discrimination.

Aside from the impacts on the individual, religious discrimination poisons our society’s lifeblood – our core values of individual liberty and the freedom to express one’s true self, without the arbitrary interference of those on the higher end of the power imbalance: employers, big business, the media, or government, to name but just a few. These values are fundamental to our nation’s status as a liberal democracy, and must endure despite their, sometimes, contemporary unpopularity.

⁵ *Church of the New Faith v Commissioner of Pay-Roll Tax* (Vic) (1983) 154 CLR 120, 130. This ruling was a landmark decision that not only recognised the religiosity of Scientology, but broadened the definition of religion to include faiths practiced by millions of people that were not recognised under the definition of religion in use before this decision.

⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Interim Report: Legal Foundations of Religious Freedom in Australia* (Report, November 2017) Chair’s Foreword viii.

The effect of discrimination on the right to religious freedom was proclaimed in the United Nations' *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* ("the Declaration"):

Article 2

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms...⁷

Further, article 4 of the Declaration provides:

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.

Religious Discrimination in New South Wales

As religious discrimination is not prohibited in New South Wales, statistics are not readily available to examine its prevalence. However, NSW has the largest population of any state or territory in Australia, and therefore, an examination of the prevalence of religious discrimination in other jurisdictions is illustrative of the number of people suffering in silence in NSW.

Victoria

In 2018-19, the Victorian Equal Opportunity and Human Rights Commission received 56 complaints on the basis of religious belief or activity. In 2019-20, this was 36, and in 2020-21, 44.⁸

The issue of religious discrimination was raised in enquiries 193 times in 2018-19, 103 times in 2019-20, and 98 times in 2020-21.⁹

Western Australia

Of all the complaints the WA Equal Opportunity Commission received in 2021-22:

- 7.5% were for religious conviction (39 complaints); whereas

⁷ UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, UN Doc A/RES/36/55 (25 November 1981).

⁸ Victorian Equal Opportunity and Human Rights Commission, 'Annual Report 2020-21' (December 2021) 160-161.

⁹ *Idem* 158.

- 8.9% were on the basis of age, and
- 6.4% were for sexual harassment.¹⁰

The following is an example of discrimination being handled in Western Australia under prohibitions of religious discrimination:

“A Muslim man in prison complained that he was unable to perform his afternoon prayers due to the required muster. He had sought alternatives but claimed he was ridiculed by the guards.

“Outcome: Resolved with an acknowledgment of the complaint and a suitable adjustment.”¹¹

Tasmania

In Tasmania, religious belief or affiliation was the fifth most raised attribute in enquiries to Equal Opportunity Tasmania in 2021-22.¹²

In 2021-22, Equal Opportunity Tasmania reported 18 allegations of discrimination on the basis of religious belief or affiliation, and three for religious activity.¹³

Examples of Religious Hatred and Discrimination: A Contemporary Issue

In July 2020, the Australian Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission released a report titled *Freedom of Religion in Australia: a focus on serious harms*.¹⁴

The publication reported statistics from the Executive Council of Australian Jewry who collect and report on instances of anti-Semitism in Australia. Their 2018 report recorded 366 anti-Semitic incidents – an unprecedented 59% increase from the previous year. A similar number of incidents were reported in 2019, though it was noted that ‘there was a larger increase in certain categories of incidents of a more serious kind, including verbal abuse, harassment and intimidation.’¹⁵

Freedom of Religion in Australia: a focus on serious harms also reported on findings from the Islamophobia Register that was launched in 2014. Their report released in 2019 documents 349 verified instances from 2016-17. In the majority of cases, women were the target of discrimination, often when they were unaccompanied.¹⁶

¹⁰ WA Equal Opportunity Commission, ‘Annual Report 2021-22’ (September 2022) 28, 52.

¹¹ Idem 36.

¹² Equal Opportunity Tasmania, ‘Annual Report 2021-22’ (September 2022) 31.

¹³ Idem 11.

¹⁴ Australian Human Rights Commission and Victorian Equal Opportunity and Human Rights Commission (Position Paper, July 2020)

¹⁵ Ibid, page 8. See also Victorian Equal Opportunity and Human Rights Commission, Submission No 51 to the Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Anti-Vilification Protections in Victoria* (31 January 2020) 36 [3.4.3] (‘VEOHRC Submission No 51’).

¹⁶ Ibid 9. See also *VEOHRC Submission No 51 (n 2)* 35 [3.4.2].

Freedom for Faith’s submission to the *Religious Freedom Review* noted that the Australian Christian Lobby has reported numerous death threats to its staff in recent years, and some of their female staff had been sent pornographic material.¹⁷

Their submission also reported that ‘churches have also been subjected to arson attacks and other criminal damage. In Geelong, for example, five churches were burned down between 2015–16, belonging to different Christian denominations.’¹⁸

In Victoria, in just one example, a female Scientologist wore a “Clear” bracelet with a recognisable Scientology symbol, which signifies an important status in the Scientology religion. The employer recognised the symbol, and made it known to the Scientologist working there that they knew she was a Scientologist. Unexpectedly and shortly thereafter she was made redundant.

In 2019, a 16-year-old teenager who murdered a Scientologist outside a Scientology Church NSW was found to have been reading an anti-Scientology website with content that incites hatred and contempt, prior to the crime.

While some of the above examples include conduct that would be captured by the newly introduced prohibition against religious vilification,¹⁹ they evidence the hostility that people of religious faith confront in Australia – which invariably plays out in vilification *and* discrimination. Whilst religious discrimination remains lawful, religious hatred, whatever its form, will invariably continue. The realisation of the objects of the *Anti-Discrimination Amendment (Religious Vilification) Bill 2023* (NSW) (now, to Government’s credit and with our thanks, passed) depends upon religion being treated on an equal footing by Government: What message does Government send the people of NSW in permitting religious discrimination, as distinct from other rights?

RECOMMENDATION 1

IN UNDERTAKING ITS REVIEW OF THE *ANTI-DISCRIMINATION ACT 1977*, WITH RESPECT TO, INTER ALIA, ITEMS 1 AND 2 OF THE TERMS OF REFERENCE, THE NSW LAW REFORM COMMISSION ADDRESS THE INEQUITY THAT CURRENTLY EXISTS IN TERMS OF RELIGIOUS RIGHTS AS COMPARED TO OTHER PROTECTED ATTRIBUTES BY CONSIDERING WHETHER RELIGIOUS BELIEF, EXPRESSION AND ACTIVITY SHOULD BE INCLUDED AS A PROTECTED ATTRIBUTE IN THE ACT, EQUAL WITH OTHER PROTECTED RIGHTS.

RECOMMENDATION 2

IN UNDERTAKING ITS REVIEW OF THE *ANTI-DISCRIMINATION ACT 1977*, THE NSW LAW REFORM COMMISSION *NOT* CONSIDER AND MAKE RECOMMENDATIONS TO DILUTE THE PROTECTIONS THAT WERE AFFORDED TO PROTECT SAFEGAURD AGAINST RELIGIOUS VILIFICATION BY PASSAGE

¹⁷ Ibid 12, citing *Freedom for Faith, Protecting Diversity: Towards a Better Legal Framework for Religious Freedom in Australia*, available at <https://freedomforfaith.org.au/library/the-ruddock-review>.

¹⁸ Ibid.

¹⁹ Act number 15 of 2023: *Anti-Discrimination Amendment (Religious Vilification) Bill 2023* (NSW).

OF THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS VILIFICATION) BILL 2023 (NSW).

Impediments to Protecting Against Religious Discrimination

This is not the first time that Government has considered whether to enact protections against religious discrimination by amending the Act; yet for various reasons, those efforts have been in vain.

In learning from these attempts, it is essential that the impediments to prohibiting religious discrimination be addressed, leaving Parliament certain of the correctness in amending the Act.

Certain sections of society object to protections for people of faith and religion more broadly; those views are incongruous with basic human rights, widely held community values and are inconsistent with International Human Rights Law. Accordingly, we do not propose that those people must be consulted and appeased in determining whether to protect against religious discrimination – rather, we propose addressing current legal barriers to enacting said protections.

Namely, concerns have previously been raised in respect of consistency and/or simultaneous compliance issues with the much awaited but now uncertain Commonwealth religious freedom legislation. This was a major stumbling block to the *Anti-Discrimination (Religious Freedoms and Equality) Bill 2020* (NSW).

Considering that the existing federal and state and territory anti-discrimination legislation protects broadly the same categories and prohibits the same types of discrimination, simultaneous compliance with both regimes is a well-established practice.

The concurrent operation of Commonwealth and New South Wales anti-discrimination legislation on religious freedom is in line with the approach taken in protecting other categories. Additionally, the *Ruddock Religious Freedom Review*, at *Recommendations 15 and 16*, calls for the enactment of both state *and* federal legislation.²⁰

Despite this, interplay with anticipated federal anti-discrimination legislation has been a barrier to enacting protections in NSW. While we are of the view these concerns are not good reason to stall protecting against religious discrimination in NSW, there is a risk that these will be raised again, and it would therefore be prudent for the Commission to consider and make recommendations on this issue.

RECOMMENDATION 3

IN MAKING RECOMMENDATIONS REGARDING THE AMENDMENT OF THE ANTI-DISCRIMINATION ACT 1977 TO PROHIBIT RELIGIOUS DISCRIMINATION, THE NSW LAW REFORM COMMISSION SHOULD IDENTIFY, ADDRESS, AND MAKE RECOMMENDATIONS AS TO ITS INTERPLAY WITH CURRENT OR

²⁰ Expert Panel, *Religious Freedom Review: Report of the Expert Panel* (Final Report, 18 May 2020) 95 [1.394] (“Ruddock Religious Freedom Review”).

ANTICIPATED FEDERAL RELIGIOUS FREEDOM (ANTI-DISCRIMINATION) LAW, IN A MANNER THAT HELPS TO DISTINGUISH BETWEEN THE STATE AND FEDERAL LAWS, SO THAT ISSUES RELATING TO THE FEDERAL LAW ARE NOT USED AS REASONS TO NOT PROHIBIT RELIGIOUS DISCRIMINATION IN NSW.

MISUSE OF THE COMPLAINTS PROCESS

Terms of reference:

“9. The adequacy and accessibility of complaints procedures and remedies

“10. The powers and functions of the Anti-Discrimination Board of NSW and its President, including potential mechanisms to address systemic discrimination”²¹

Under the existing Act, there remain ongoing concerns of ‘vexatious’ complainants causing great hardship to everyday Australians in the course of socio-political agendas.

The Chair of Portfolio Committee No.5 – Legal Affairs of the NSW Legislative Council summarised this aptly when he wrote in *Report 55 – PC 5 – Legal Affairs – Anti-Discrimination Amendment (Complaint Handling) Bill 2020*: (“the Complaint Handling Report”):

“[T]here are individuals that are misusing the complaints process for personal vendettas, with the President of the Anti-Discrimination Board lacking the powers to prevent this. Vexatious litigants are abusing the complaints process and in doing so are wasting tax payers resources unnecessarily.”²²

In NSW, section 89B of the Act – which enumerates the reasons for which a complaint may be declined – does not provide for a complaint to be declined where it is frivolous, vexatious, misconceived or lacking in substance. This is an irregular position when compared with other jurisdictions where complaints are accepted or declined upon their receipt.

In statutory regimes analogous to NSW (wherein complaints may be declined upon receipt), in the Northern Territory²³, South Australia,²⁴ and Tasmania,²⁵ complaints may be rejected if they are frivolous or vexatious, trivial or misconceived et cetera, and in Queensland, complaints that are frivolous, trivial or vexatious, or misconceived or lacking in substance *must* be rejected.

In Western Australia the regime operates differently in that all complaints are accepted, and therefrom complaints that are frivolous, vexatious, misconceived, lacking in substance may be dismissed.²⁶ In the Australian Capital Territory, where the complaints regime is similar to WA,

²¹ Supra (1).

²² Portfolio Committee No.5 – Legal Affairs, NSW Legislative Council, *Report 55: Anti-Discrimination Amendment (Complaint Handling) Bill 2020* (September 2020) v.

²³ Anti-Discrimination Act 1992 (NT) s 67.

²⁴ *Equal Opportunity Act 1984* (SA) s 95A(1)(a).

²⁵ *Anti-Discrimination Act 1998* (Tas) s 64(1).

²⁶ *Equal Opportunity Act 1984* (WA) s 89(1).

complaints *must* be dismissed where they are found to be frivolous, vexatious, or not made honestly.²⁷

The *Anti-Discrimination Amendment (Complaint Handling) Bill 2020* was introduced to address these, and many other issues. That bill addresses several matters and makes recommendations to address vexatious and politically fuelled complainants, including in relation to the geographical nexus of the complainant, the interplay of interstate complaints, assistance to be provided to complainants and respondents, as well as what factors are to be considered in determining whether complaints are in fact vexatious or frivolous et cetera. The Complaint Handling Report was published in reply to this bill.

The forthcoming review of the Act is an opportune time to comprehensively address the above issues that will otherwise undermine the efficacy of all other amendments.

RECOMMENDATION 4

IN UNDERTAKING ITS REVIEW OF THE *ANTI-DISCRIMINATION ACT 1977*, WITH RESPECT TO, INTER ALIA, ITEMS 9 AND 10 OF THE TERMS OF REFERENCE, THE NSW LAW REFORM COMMISSION CONSIDER HOW THE ACT OUGHT TO BE AMENDED TO PROTECT PERSONS FROM VEXATIOUS OR POLITICALLY MOTIVATED COMPLAINTS, INCLUDING BY HAVING REGARD THE (1) *ANTI-DISCRIMINATION AMENDMENT (COMPLAINT HANDLING) BILL 2020* – THEREBY ENSURING THE COMPLAINTS MECHANISM DOES NOT UNDERMINE THE EFFICACY OF THE COMMISSION’S OTHER RECOMMENDATIONS.

CONCLUSION

We thank the NSW Law Reform Commission for their time considering this submission.

The Act, while the first of any state or territory of Australia, means also that it is now the longest running, and is overdue for a review.

Just as NSW broke new ground in the implementation of the Act, so too is this an opportunity to institute best practice in Australian anti-discrimination law.

This can only be realised if all rights and attributes are treated fairly and given equal weight.

END

²⁷ *Human Rights Commission Act 2005* (ACT) s 78(2)(c); see also Neil Rees, Simon Rice and Dominique Allen, *Australian Anti-Discrimination and Equal Opportunity Law* (Federation Press, 3rd ed, 2018) 815 [15.4.5].