

# Submission to the NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

21 August 2020

Dear Committee Secretary

The Australian Association of Christian Schools (AACS) supports the proposed *NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*. We believe the Bill's proposed amendments are necessary and long overdue. As highlighted by the Ruddock Religious Freedom Review over two years ago, New South Wales and South Australia are the only two States that do not protect their citizens from discrimination on the basis of religious belief. This protection will allow our schools to continue delivering a Christian education and the right of Australian parents to choose an education that conforms with their religious beliefs. The following submission provides an overview of our association, the nature of our parent-controlled Christian schools and the importance of religious freedom and parental choice to our model of education.

## About the Australian Association of Christian Schools

AACS represents Christian schools from a wide variety of backgrounds, cultures and denominations, in every state and territory across Australia, ranging from very small to large; urban to regional, rural and remote. Characterised as low-fee schools that operate from an authentic faith-based foundation, our schools operate autonomously and are accountable to their parents in the education of students, following Australian curriculum requirements, in a Christian community where Jesus Christ and His teachings shape students' worldview.

## The Nature of Christian Schools

Christian schools were established out of a desire by parents to see their children grow up in a teaching and learning environment where they could be nurtured in their faith. Our schools employ staff who are committed Christians and can teach through a Christian worldview and model the life of faith, through God's love, in all areas of school life. Our parents have an expectation of a religiously framed environment for their children. They make a deliberate choice, and a financial investment, to place their children in a school that teaches, nurtures and seeks to live out a value and belief system that is consistent with their home environment.

Faith shapes all parts of the educational expression and is the foundation upon which the character and ethos of our schools are based. Our schools strive to be holistic learning communities in which everyone plays a part. The 'lived-out' values, modelled by our staff, are as equally important as the formal teaching of the tenets and beliefs of the faith. The decision of parents to enrol their children in a Christian school is made in the full knowledge that our schools are unashamedly Christian in their values and beliefs.

## Religious Freedom and Parental Choice

Respect for religious freedom is fundamental to our way of life and is a well-established human right within the Australian democratic context. It is supported in common and statute law and affirmed in multiple international covenants to which Australia is a signatory. This freedom allows individuals and communities to exercise their faith within the framework of Australian law and civic life. A feature of a democratic, pluralistic and respectful society allows its citizens to be free to hold a variety of viewpoints and to gather around areas of common concern and values. It means that viewpoints can be held, and disagreements can be had, without there being claims of 'discrimination' or 'hate speech'. In their joint submission to the Australian Commonwealth Parliament Human Rights Sub-Committee Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the Status of the Human Right of Freedom of Religion or Belief Professor Nicholas Aroney and Mr Mark Fowler made the following argument about the right to manifest religion or belief individually and in community with others:

Religious freedom is the ultimate test of a society's willingness to recognise the liberty of the individual. The very idea of individual freedom and its protection in modern liberal democracies owes its origin to the defence of religion against encroachments by the state. The right of individuals to formulate and articulate their beliefs, to act upon their consciences and to associate with fellow believers is fundamental to a free society.<sup>1</sup>

As a society that values choice and diversity, it follows that different faith communities will be able to reflect their own values and beliefs in education. It is well recognised that Christian schools, as one expression of schooling choice, play a valuable role within Australian society. Indeed, the existence of such a large number of faith-based schools across Australia is a powerful testimony to the trust and value parents place in this model of schooling. Our schools publicly declare their beliefs through governing documents, policies and practices; so it is impossible to miss that they are steeped in the teachings of the Bible and the gospel of Jesus Christ.

By their very nature, the educational offering of Christian schools will be different to those of other faiths or their secular independent or state counterparts. Parental choice is made on the basis of such difference. Those who do not agree with the Christian faith have the opportunity to choose a school that is in line with their own beliefs and values; either religiously motivated or not. When the freedom to shape such differences is taken away, parental choice and diversity are diminished and frustrated. The right of parents to send their children to a Christian school is a freedom we expect in a democratic, tolerant and pluralistic society.

We acknowledge that religious freedom is not absolute and must be fairly balanced with other human rights. Christian schools understand their responsibilities to work within a democratic framework of broadly accepted values and standards. However, when the government's task of protecting the vulnerable in society via anti-discrimination laws results in religious associations, like Christian schools, no longer having the confidence to control their employment and enrolment policies, we believe the balance has swung too far.

<sup>1</sup> Professor Nicholas Aroney and Mr Mark Fowler, Submission 148, p. 1

## Definitions of ‘Religious Activity’ and ‘Religious Ethos Organisation’ and Religious Belief (Section 22K and Section 22KA)

The Explanatory Note of the Bill indicates that the definition of *religious activity* in **Section 22K** is intended to include the following actions: worship, observance, practice or teaching, writing, seeking, receiving and imparting religious beliefs... and any activity motivated by a religious belief. Christian schools engage in all of these activities on a daily basis and we agree with the note that “for many religious believers, religious convictions that impact on or motivate behaviour can extend to the whole of their personal values and lived experience”<sup>2</sup>. Religion is not simply taught as a stand-alone subject but permeates every aspect of school life and is embedded within all parts of the teaching and learning program.

Our schools also sit comfortably within the definition of a *religious ethos organisation* provided in the Bill which is defined as “a private educational authority that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion”. This definition is sufficiently broad enough to apply to our schools which are autonomously governed by parent-controlled Boards who articulate the vision and mission of the school in their Constitution and Statement of Faith. These documents clearly outline the principles and the tenets of the Christian faith that guide how the school operates. They are publicly available to all prospective families and provide a transparent declaration of beliefs, as well as an outline of the Christian understanding that is foundational to the content of the education provided by the School.

AACS also supports **Section 22KA** which outlines that a person holds a *religious belief* if the person “genuinely believes the belief”. This assessment of someone’s sincerity of belief is fairer than an objective test which would require the courts to arbitrate in matters of religion. It is consistent with the well-respected common law approach which we believe is superior to the ‘reasonable believer’ test proposed under the Federal Religious Discrimination (RD) Bill 2019. Many Christian schools are non-denominational and so a ‘sincerity test’ for religious belief of an organisation is appropriate for our sector. Due to the cross-section of Christian denominations involved in the formation and governance of our schools there could be difficulty providing sufficient evidence that would satisfy a court that a school was operating according to its faith. Which faith, stream or tradition would each of our schools refer to? In our submission to the second exposure draft of the RD Bill we argued that it was not appropriate to entrust courts to adjudicate on theological disagreements within faith traditions. It could lead to the untenable situation where a secular judge must decide whether religious activity is legitimate, or not, in circumstances where there are a range of conclusions to a theological question within faith traditions.

## School Enrolment and Employment Decisions (Section 22M)

AACS seeks to ensure that Christian schools can continue to maintain their authentic faith-based communities through the preservation of Christian teaching programs, transparent enrolment policies and consistent employment decisions. Of concern to Christian schools has been the recent

<sup>2</sup> Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 [NSW] Explanatory note, p.4.

diminishment of respect and value in society for long-standing Christian values and beliefs with the resultant impact on religious freedom. Our schools desire to retain the ability to continue employing staff who share, and agree to teach, a distinctive Christian worldview without fear of defending costly discrimination battles in the courts.

As such, AACS strongly supports the proposed **Section 22M** of the Bill which states that: a religious ethos organisation is taken not to discriminate against another person on the ground of the person's religious beliefs or religious activities by engaging in conduct if the organisation genuinely believes the conduct -

- (a) is consistent with the doctrines, tenets, beliefs or teachings of the religion of the organisation, or
- (b) is required because of the religious susceptibilities of the adherents of the religion of the organisation, or
- (c) furthers or aids the organisation in acting in accordance with the doctrines, tenets, beliefs or teachings of the religion of the organisation.

This section will provide our schools with the confidence to continue preferencing those who share their faith, as outlined in their governing documents such as their constitution and statement of faith, in decisions about employment and enrolment decisions. We understand that this will bring NSW into line with international practice and we appreciate the clarification about how an organisation could provide evidence of its beliefs in the Explanatory Note of the Bill.<sup>3</sup>

## Qualifying Bodies (Section 22S)

The inclusion of protections from religious discrimination in **Section 22S** by a qualifying body is important for faith-based schools as well as Christian educators who might work in the Christian, independent or government sector. Our schools must be able to maintain their Christian distinctiveness through upholding long-held Christian beliefs on a range of moral issues without fear of losing their registration as education providers. In the same way, Christian teachers should not be discriminated against by qualifying bodies for their beliefs. There are numerous examples documented by the Human Rights Law Alliance of people who are under attack for living out their faith in public and have lost their registration with a professional qualifying body and livelihoods as a result.<sup>4</sup> We also know that many of our students choose to work in the field of health and must be protected for decisions of conscience based on their religious beliefs.

## State Government Funding (Section 22Z)

AACS supports **Section 22Z** of the Bill which prevents the State Government from discriminating against service providers on the basis of religion. We believe that every Australian child deserves to receive a financial contribution toward their education. The Government should not be able to impose conditions that exclude Christian schools from the receipt of funding or grants, or else use financial pressure to coerce them, to act inconsistently with their religious beliefs. Such actions

<sup>3</sup> Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 [NSW] Explanatory note, p.3, 6.

<sup>4</sup> Human Rights Law Alliance. *Australian Cases: Freedom of Thought, Conscience and Religion*. 2 May 2020.

would impact our schools' Christian distinctiveness and limit the choice available to individuals within society. Parents who do not wish to have their child educated by a faith-based school are able to choose a secular independent or state-based school which reflects their values. As a matter of equity, religious families should also be allowed the opportunity to choose a school that reflects their values in recognition of their contribution to society as active citizens and taxpayers. Our schools must be able to maintain their unique educational model by upholding Christian teachings on a range of moral issues, in keeping with the school's faith position, even if these views are deemed to be 'out of step' with contemporary mainstream values.

## Conclusion

The *NSW Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* is a positive step to protect all faith communities in NSW into the future. In the current climate of antipathy towards people of faith we believe a greater level of legal protection for freedom of belief and religion is required. Freedom of belief in a society means having a broad range of educational options through which such beliefs can be expressed. Choice in schooling provides parents with the opportunity to choose a school that is religiously motivated or one that is not. As an association of schools that operate within a multicultural and pluralist society AACS is committed to ensuring that all communities have the freedom to express themselves and live according to their beliefs.

We urge members of the NSW Parliament to pass this Bill to protect freedom of religion and association, which are foundational rights in a democracy, and thank you for the opportunity to provide a submission to this inquiry.

Yours sincerely,



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