

## **21/00 Freedom of religion in New South Wales and proposals for reform of the Anti-Discrimination Act 1977**

(A report from the Standing Committee.)

### **Introduction**

1. In paragraph 5.3 of our 2000 Report to the Synod we reported on a report (Report 92) of the New South Wales Law Reform Commission which proposed reform of the current Anti Discrimination Act 1977. We expressed concern that the Law Reform Commission's proposals, if adopted, would significantly restrict the freedom of members of a religious group to practice their religion in this state.
2. On 11 October 2000 the Synod resolved (resolution 21/00) -  
"Synod -
  - (a) notes with concern the New South Wales Law Reform Commission's proposals for reform of the Anti Discrimination Act; and
  - (b) calls on the Premier, the Attorney General and Parliament of New South Wales to respect the principle of 'freedom of religion', and reject those of the Commission's proposals which will detract from the exercise of that freedom in New South Wales; and
  - (c) requests parish councils, schools, other diocesan organisations and individuals to write to their local Member of Parliament expressing their concern about those proposals."
3. Following the passing of resolution 21/00, Archbishop Goodhew wrote to the Premier and to the Attorney General requesting that the Government, in its response to the Law Reform Commission's proposals, respect the principle of freedom of religion and reject those of the Commission's proposals which would detract from its exercise. In his letters the Archbishop drew attention to the concern in the community that a body as influential as the Commission had made proposals which, if adopted, would erode the principle of freedom of religion in New South Wales. The Archbishop respectfully suggested that if the Government did not intend adopting those proposals a public assurance to that effect be given as soon as possible.
4. The Diocesan Secretary wrote to each other member of the New South Wales Parliament advising of the terms of resolution 21/00. Each letter was accompanied by a short dot point summary of our main

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concerns together with a full copy of the submission which we made to the Attorney General in March 2000.

5. The Diocesan Secretary also wrote to our parish councils and schools encouraging them to contact their local member of Parliament about their concerns. Many parishes did contact their local member.

### **Response of the Premier**

6. In December 2000 the Premier responded to Archbishop Goodhew in the following terms -

"Thank you for your letter on behalf of the Anglican Church Diocese of Sydney concerning the NSW Law Reform Commission's recommendations for amendments to the Anti-Discrimination Act in the Report 92, *Review of the Anti-Discrimination Act 1977*.

I have carefully noted the recent resolution of the Synod of the Diocese and the Synod Standing Committee's submission to the then Attorney General in March 2000 expressing concerns about the Commission's proposals.

As you know, the Commission's Report was released for public comment by the former Attorney General, Mr Shaw. Submissions have been received from many religious organisations and concerned members of the public.

I can advise, the Government does not intend to implement the Commission's recommendations in relation to religion."

### **Response of the Attorney General**

7. The Attorney General's Department has sent the Diocesan Secretary a copy of the following letter which the Attorney General sent to a member of Parliament in response to submissions made on our behalf.

"I refer to your representations on behalf of Mr Mark Payne, Diocesan Secretary, Anglican Church Diocese of Sydney, PO Box Q190, QVB Post Office 1230 concerning proposed changes to the *Anti-Discrimination Act 1977* recommended by the New South Wales Law Reform Commission.

A number of religious bodies and individuals have written to me expressing their concerns about the recommendations of the NSW Law Reform Commission contained in its Report 92, entitled 'Review of the Anti-Discrimination Act 1977'. That Report contains a draft

Bill which illustrates how many of the recommendations made in the Report might be given legislative effect.

The Law Reform Commission's Report, including the draft Bill, was released by my predecessor, the Hon Jeff Shaw, QC, MLC, early in 2000, for the purposes of public consultation. The many submissions which have been received since that time are currently being considered by the Attorney General's Department. Many groups and individuals, including a number of religious bodies and congregations have made submissions to me and my Department concerning recommendations in the Report. It is important to stress at the outset that the recommendations in no sense reflect Government policy, and I have no intention of introducing the draft Bill in its current form.

Once the submissions which have been received have been fully analysed, the Government will be in a position to respond publicly to the Law Reform Commission's recommendations. At this stage, I anticipate that a final Government position on implementation of the Report will not be settled until early in the New Year.

One of the Law Reform Commission's proposals involves the introduction of a new ground of discrimination on the basis of religion. The Law Reform Commission's draft Bill proposes that the new ground should provide statutory protection for people being discriminated against on the basis of their religion in areas such as employment, the provision of goods and services, education and accommodation. The draft Bill also provides for a number of exemptions from the proposed ground, such as the ordination, training and education of the clergy. However, there is widespread community concern that the Commission's proposed ground of religious discrimination would unduly interfere with fundamental religious freedoms.

Please assure Mr Payne that the Government has paid careful attention to the concerns which have been raised. My understanding is that the Commission intended the proposed provisions to protect religious freedom, rather than to encroach upon it. However, the Government has no intention of proceeding with the Commission's proposed changes concerning religious discrimination if these proposals are likely, advertently or inadvertently, to have the consequences foreshadowed by religious organisations.

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I thank you for bringing Mr Payne's concerns to my attention.”.

#### Responses of other members of Parliament

8. 48 members of Parliament replied to the Diocesan Secretary's letter. Generally, the substance of those responses was as follows.

	ALP	Coalition	Other	Total
Support our position	3	14	-	17
Do not support our position	1	-	-	1
No position stated but made representations to the Attorney-General or Premier	13	5	1	19
No position stated	4	3	4	11
	21	22	5	48

9. The following is a sample of some of the comments received -

*From Mrs Kerry Chickarovski, Leader of the Opposition -*

“Please be assured that the Coalition will continue to monitor any further changes to anti-discrimination legislation carefully, with a view to ensuring the right of religious persons and organisations to uphold their belief system is protected.”.

*From the Hon Dr Meredith Burgmann, President of the Legislative Council (ALP) -*

“In my view the recommendations of the Report bear no relationship to any potential erosion of the principle of freedom of religion in NSW, but would act to provide improved protection against discrimination for all the people of NSW.

.....

Perhaps some thought should be given to updating your views, as I am sure your church does not want to be seen as adopting a position which supports discrimination.”.

*From Mr John Brogden MP, member for Pittwater (Coalition) -*

“I am committed to the principles of religious freedom. The Anglican Church should be able to decide upon those qualified to administer the sacraments, and to employ staff on the basis of common beliefs.

The NSW Coalition will strongly oppose any changes to anti-discrimination legislation that jeopardises the right of religious persons and organisations to uphold their belief system.”

*From Mr Peter Nagle, Member for Auburn (ALP) -*

“I ..... have major concerns that unaccountable people in the Law Reform Commission may be pushing their own anti-religion agendas.”

*From Mr Stephen O’Doherty, Member for Hornsby (Coalition) -*

“Religious freedom is a fundamental right and one which I would not see eroded.

The proposals in question are not warranted. In reaching its conclusions the Law Reform Commission has, in my opinion, completely misunderstood the nature of faith and gone well beyond what would be acceptable in a nation which values freedom of thought and conscience.”

*From Mr Barry O’Farrell, Member for Ku-ring-gai (Coalition) -*

“I read the Standing Committee’s submission with interest and can affirm my strong support for the principle of freedom of religion and my complete, opposition to the Law Reform Commission’s recommendations which would curtail that freedom.

I know my views are shared by my Liberal and National colleagues.”

*From Mr Peter Webb, Member for Monaro (Coalition) -*

“I agree with you entirely that the principle of freedom of religion, as a fundamental freedom protected by international declarations and covenants, must continue to be protected for the people of New South Wales.”

*From Ms Clover Moore, Member of Bligh (Independent) -*

“I support the freedom to participate in religious worship, but also, the freedom to choose a life which excludes the practice of religion. The Attorney General has not yet made available an exposure draft of the new legislation. You may, however, be assured that I will pay close attention to the proposed amendments to ensure these fundamental freedoms are maintained.”

10. The Diocesan Secretary wrote an appropriate letter of acknowledgement to all members of Parliament who replied to the

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original letter. Subsequently, upon Archbishop Goodhew receiving the response from the Premier referred to in paragraph 6 above, the Diocesan Secretary wrote to all members of Parliament in the following terms -

“Our Archbishop wrote to the Premier expressing concern about the impact of the Law Reform Commission's proposals on freedom of religion on New South Wales.

The Premier has subsequently replied to the Archbishop advising that the Government does not intend to implement the Commission's recommendations in relation to religion.

The Coalition Opposition has also indicated its opposition to proposals which would erode the principle of freedom of religion in New South Wales.

We thank and congratulate the Government and the Opposition for their affirmation of their support for freedom of religion in New South Wales.”

11. In addition, in Parliament in recent times several members have made statements strongly supporting the freedom of religion. For example, in debate on the *Superannuation Legislation Amendment (Same Sex Partners) Bill 2000* on 22 November 2000 the Shadow Attorney General made the following comments -

“The Coalition is determined to respect and ensure the freedom of every religion to uphold their own teachings and uphold the propagation of their doctrines, the administration of their rituals and sacraments and the conduct of their educational establishments, their charitable outreach and their hospital services. Religion is not simply a matter that occurs in a church, synagogue or temple. It occurs, too, in the extensive life of religious organisations. The important principle must be upheld that legislation that relates to property rights should in no way be used as a precedent to somehow restrict the future operation of religious freedom. For this reason, the Coalition parties have determined that that principle should be outlined to Parliament. We will oppose any amendment to the Anti-Discrimination Act that affects the integrity of religious freedom in our society. We hold a wide definition of religious freedom. It is not simply restricted to rituals, observances and sacraments or to religious teaching; it relates to the educational and charitable outreaches of religious organisations.”

**From here**

12. In the letter referred to in paragraph 7 above the Attorney General indicated that the Government's final position on the Law Reform Commission's proposals would not be settled before early 2001. The Attorney General has subsequently advised that he is still giving consideration to the report and that the Government's position on its implementation will be settled later this year. However, from the earlier assurances given by the Premier and the Attorney General it seems that our concerns (and the concerns of other religious groups) about the Commission's proposals have been accepted. In light of those assurances we will continue to carefully monitor progress and, in particular, review any draft legislation which may be proposed by the Government in due course.

For and on behalf of the Standing Committee

MARK PAYNE  
*Diocesan Secretary*

28 August 2001