

Statement by George Williams, Professor of Constitutional Law, University of NSW

Inconsistency with the Tasmanian Constitution Act

I think it is likely that the Anti-Discrimination Amendment Bill 2015 (the Bill) is inconsistent with section 46 of the Tasmanian Constitution Act (the Act).

The inconsistency would arise because:

- The Bill lawfully allows access to an educational institution to be denied on the basis of religious belief or affiliation or religious activity.
- Section 46 of the Act protects religious freedom, including freedom of conscience, free profession and practise of religion, and prevents the subjection of any Tasmanian to a disability on the grounds of their religion or religious belief.

Limits on section 46

My view is that section 46 has a broader operation than public offices. If nothing else, the first clause makes no mention of such offices.

The application of section 46 of the Act therefore includes school enrollment.

The consequences of a finding of inconsistency

The legal consequences of any finding of inconsistency by the Tasmanian Supreme Court are uncertain.

Section 46 has not been the subject of judicial interpretation, and the Tasmanian Constitution is not entrenched.

It is possible that section 46 sets down a legal principle that cannot be departed from except through express words in a later statute.